

1-1 By: Moody (Senate Sponsor - Hughes) H.B. No. 2183
 1-2 (In the Senate - Received from the House May 17, 2021;
 1-3 May 17, 2021, read first time and referred to Committee on State
 1-4 Affairs; May 21, 2021, reported favorably by the following vote:
 1-5 Yeas 9, Nays 0; May 21, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to durable powers of attorney and the construction of
 1-20 certain powers conferred in those powers of attorney.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 751.002(5), Estates Code, is amended to
 1-23 read as follows:

1-24 (5) "Principal" means an adult individual [person] who
 1-25 signs or directs the signing of the individual's [person's] name on
 1-26 a power of attorney that designates an agent to act on the
 1-27 individual's [person's] behalf.

1-28 SECTION 2. Section 751.00201, Estates Code, is amended to
 1-29 read as follows:

1-30 Sec. 751.00201. MEANING OF DISABLED OR INCAPACITATED FOR
 1-31 PURPOSES OF DURABLE POWER OF ATTORNEY. Unless otherwise defined by
 1-32 a durable power of attorney, an individual [a person] is considered
 1-33 disabled or incapacitated for purposes of the durable power of
 1-34 attorney if a physician certifies in writing at a date later than
 1-35 the date the durable power of attorney is executed that, based on
 1-36 the physician's medical examination of the individual [person], the
 1-37 individual [person] is determined to be mentally incapable of
 1-38 managing the individual's [person's] financial affairs.

1-39 SECTION 3. Section 752.001(a), Estates Code, is amended to
 1-40 read as follows:

1-41 (a) An individual [A person] may use a statutory durable
 1-42 power of attorney to grant an [attorney in fact or] agent powers
 1-43 with respect to an individual's [a person's] property and financial
 1-44 matters.

1-45 SECTION 4. Section 752.107, Estates Code, is amended to
 1-46 read as follows:

1-47 Sec. 752.107. BUSINESS OPERATION TRANSACTIONS. Subject to
 1-48 the terms of an agreement or other document governing or relating to
 1-49 an entity or entity ownership interest, to the extent the agent is
 1-50 permitted by law to act for the principal and unless the power of
 1-51 attorney provides otherwise, the [The] language conferring
 1-52 authority with respect to business operating transactions in a
 1-53 statutory durable power of attorney empowers the [attorney in fact
 1-54 or] agent to:

1-55 (1) operate, buy, sell, enlarge, reduce, or terminate
 1-56 an ownership [a business] interest;

1-57 (2) [do the following, to the extent that an attorney
 1-58 in fact or agent is permitted by law to act for a principal and
 1-59 subject to the terms of a partnership agreement:

1-60 [~~A~~] perform a duty or [r] discharge a liability,
 1-61 or exercise in person or by proxy a right, power, privilege, or

2-1 option that the principal has, may have, or claims to have ~~[under~~
2-2 ~~the partnership agreement, whether or not the principal is a~~
2-3 ~~general or limited partner];~~
2-4 (3) ~~[(B)]~~ enforce the terms of an agreement or other
2-5 document governing or relating to an entity or entity ownership
2-6 interest ~~[the partnership agreement by litigation, action, or~~
2-7 ~~otherwise]; [and]~~
2-8 (4) ~~[(C)]~~ defend, submit to arbitration, settle, or
2-9 compromise litigation or an action to which the principal is a party
2-10 because of an entity ownership interest ~~[membership in the~~
2-11 ~~partnership];~~
2-12 (5) ~~[(3)]~~ exercise in person or by proxy, or enforce
2-13 by litigation, action, or otherwise, a right, power, privilege, or
2-14 option the principal has or claims to have as the holder of a
2-15 certificated or uncertificated ownership interest;
2-16 (6) ~~[bond, share, or other similar instrument and]~~
2-17 defend, submit to alternative dispute resolution ~~[arbitration],~~
2-18 settle, or compromise litigation ~~[a legal proceeding]~~ to which the
2-19 principal is a party concerning a certificated or uncertificated
2-20 ownership interest ~~[because of a bond, share, or similar~~
2-21 ~~instrument];~~
2-22 (7) ~~[(4)]~~ with respect to a business or entity owned
2-23 solely by the principal:
2-24 (A) continue, modify, renegotiate, extend, and
2-25 terminate a contract made by or on behalf of the principal with
2-26 respect to the business or entity ~~[before execution of the power of~~
2-27 ~~attorney with an individual, legal entity, firm, association, or~~
2-28 ~~corporation by or on behalf of the principal with respect to the~~
2-29 ~~business];~~
2-30 (B) determine:
2-31 (i) the location of the business's or
2-32 entity's operation;
2-33 (ii) the nature and extent of the business;
2-34 (iii) the methods of manufacturing,
2-35 selling, merchandising, financing, accounting, and advertising
2-36 employed in the business's or entity's operation;
2-37 (iv) the amount and types of insurance
2-38 carried; and
2-39 (v) the method of engaging, compensating,
2-40 and dealing with the business's or entity's accountants, attorneys,
2-41 or ~~[and]~~ other agents ~~[and employees];~~
2-42 (C) change the name or form of organization under
2-43 which the business or entity is operated and enter into an ~~[a~~
2-44 ~~partnership]~~ agreement with other persons ~~[or organize a~~
2-45 ~~corporation]~~ to take over all or part of the operation of the
2-46 business or entity; and
2-47 (D) demand and receive money due or claimed by
2-48 the principal or on the principal's behalf in the operation of the
2-49 business or entity and control and disburse the money in the
2-50 operation of the business or entity;
2-51 (8) ~~[(5)]~~ put additional capital into a business or
2-52 entity in which the principal has an interest;
2-53 (9) ~~[(6)]~~ join in a plan of reorganization,
2-54 consolidation, interest exchange, conversion, or merger of the
2-55 business or entity;
2-56 (10) ~~[(7)]~~ sell or liquidate a business or entity or
2-57 all or part of the assets of the business or entity ~~[at the time and~~
2-58 ~~on the terms that the attorney in fact or agent considers~~
2-59 ~~desirable];~~
2-60 (11) ~~[(8)]~~ establish the value of a business or entity
2-61 under a buy-out agreement to which the principal is a party;
2-62 (12) ~~[(9)]~~ ~~do the following:~~
2-63 ~~[(A)]~~ prepare, sign, file, and deliver reports,
2-64 compilations of information, returns, or other papers with respect
2-65 to a business or entity and~~+~~
2-66 ~~[(i)]~~ ~~that are required by a governmental~~
2-67 ~~agency, department, or instrumentality; or~~
2-68 ~~[(ii)]~~ ~~that the attorney in fact or agent~~
2-69 ~~considers desirable; and~~

3-1 [~~(B)~~] make related payments; and
3-2 (13) [~~(10)~~] pay, compromise, or contest taxes or
3-3 assessments and perform any other act [~~that the attorney in fact or~~
3-4 ~~agent considers desirable~~] to protect the principal from illegal or
3-5 unnecessary taxation, fines, penalties, or assessments with
3-6 respect to a business or entity, including attempts to recover, in
3-7 any manner permitted by law, money paid before or after the
3-8 execution of the power of attorney.

3-9 SECTION 5. Section 752.107, Estates Code, as amended by
3-10 this Act, applies only to a durable power of attorney, including a
3-11 statutory durable power of attorney, executed on or after the
3-12 effective date of this Act. A durable power of attorney, including a
3-13 statutory durable power of attorney, executed before the effective
3-14 date of this Act is governed by the law in effect on the date the
3-15 durable power of attorney was executed, and the former law is
3-16 continued in effect for that purpose.

3-17 SECTION 6. This Act takes effect September 1, 2021.

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