

1-1 By: Parker S.B. No. 1650  
1-2 (In the Senate - Filed March 6, 2023; March 16, 2023, read  
1-3 first time and referred to Committee on Jurisprudence;  
1-4 April 4, 2023, reported favorably by the following vote: Yeas 4,  
1-5 Nays 0; April 4, 2023, 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 A BILL TO BE ENTITLED  
1-14 AN ACT

1-15 relating to durable powers of attorney and the construction of  
1-16 certain powers conferred in those durable powers of attorney.

1-17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-18 SECTION 1. Section 751.002(5), Estates Code, is amended to  
1-19 read as follows:

1-20 (5) "Principal" means an adult individual [person] who  
1-21 signs or directs the signing of the individual's [person's] name on  
1-22 a power of attorney that designates an agent to act on the  
1-23 individual's [person's] behalf.

1-24 SECTION 2. Section 751.00201, Estates Code, is amended to  
1-25 read as follows:

1-26 Sec. 751.00201. MEANING OF DISABLED OR INCAPACITATED FOR  
1-27 PURPOSES OF DURABLE POWER OF ATTORNEY. Unless otherwise defined by  
1-28 a durable power of attorney, an individual [a person] is considered  
1-29 disabled or incapacitated for purposes of the durable power of  
1-30 attorney if a physician certifies in writing at a date later than  
1-31 the date the durable power of attorney is executed that, based on  
1-32 the physician's medical examination of the individual [person], the  
1-33 individual [person] is determined to be mentally incapable of  
1-34 managing the individual's [person's] financial affairs.

1-35 SECTION 3. Section 751.133, Estates Code, is amended by  
1-36 amending Subsection (a) and adding Subsection (a-1) to read as  
1-37 follows:

1-38 (a) If, after execution of a durable power of attorney, a  
1-39 court ~~[of the principal's domicile]~~ appoints a:

1-40 (1) permanent guardian of the estate for a ward who is  
1-41 [of] the principal who executed the power of attorney, on the  
1-42 qualification of the guardian the powers and authority granted to  
1-43 [of] the agent named in the power of attorney are automatically  
1-44 revoked unless the court enters an order that the powers of the  
1-45 agent be suspended during the pendency of the guardianship of the  
1-46 estate; or

1-47 (2) temporary guardian of the estate for a ward who is  
1-48 the principal who executed the power of attorney, on the  
1-49 qualification of the guardian the powers and authority granted to  
1-50 the agent named in the power of attorney are automatically  
1-51 suspended for the duration of the guardianship unless the court  
1-52 enters an order that:

1-53 (A) affirms and states the effectiveness of the  
1-54 power of attorney; and

1-55 (B) confirms the validity of the appointment of  
1-56 the named agent [terminate on the qualification of the guardian of  
1-57 the estate].

1-58 (a-1) If the powers and authority of an [The] agent are  
1-59 revoked as provided by Subsection (a), the agent shall:

1-60 (1) deliver to the guardian of the estate all assets of  
1-61 the ward's [incapacitated person's] estate that are in the

2-1 possession of the agent; and

2-2 (2) account to the guardian of the estate as the agent  
 2-3 would account to the principal if the principal had terminated the  
 2-4 powers of the agent.

2-5 SECTION 4. Section 751.251, Estates Code, is amended by  
 2-6 amending Subsection (a) and adding Subsection (d) to read as  
 2-7 follows:

2-8 (a) The following may bring an action requesting a court to  
 2-9 construe, or determine the validity or enforceability of, a durable  
 2-10 power of attorney, or to review an agent's conduct under a durable  
 2-11 power of attorney and grant appropriate relief:

2-12 (1) the principal or the agent;

2-13 (2) a guardian, conservator, or other fiduciary acting  
 2-14 for the principal;

2-15 (3) a person named as a beneficiary to receive  
 2-16 property, a benefit, or a contractual right on the principal's  
 2-17 death;

2-18 (4) a governmental agency with ~~[regulatory]~~ authority  
 2-19 to provide protective services to the principal ~~[protect the~~  
 2-20 ~~principal's welfare]~~; and

2-21 (5) a person who demonstrates to the court sufficient  
 2-22 interest in the principal's welfare or estate.

2-23 (d) In an action brought under this section, the court may  
 2-24 award costs and reasonable and necessary attorney's fees in an  
 2-25 amount the court considers equitable and just.

2-26 SECTION 5. Section 752.001(a), Estates Code, is amended to  
 2-27 read as follows:

2-28 (a) An individual ~~[A person]~~ may use a statutory durable  
 2-29 power of attorney to grant an ~~[attorney in fact or]~~ agent powers  
 2-30 with respect to an individual's ~~[a person's]~~ property and financial  
 2-31 matters.

2-32 SECTION 6. Section 752.107, Estates Code, is amended to  
 2-33 read as follows:

2-34 Sec. 752.107. BUSINESS OPERATION TRANSACTIONS. Subject to  
 2-35 the terms of an agreement or other document governing or relating to  
 2-36 an entity or entity ownership interest, to the extent the agent is  
 2-37 permitted by law to act for the principal and unless the power of  
 2-38 attorney provides otherwise, the ~~[The]~~ language conferring  
 2-39 authority with respect to business operating transactions in a  
 2-40 statutory durable power of attorney empowers the ~~[attorney in fact~~  
 2-41 ~~or]~~ agent to:

2-42 (1) operate, buy, sell, enlarge, reduce, or terminate  
 2-43 an ownership ~~[a business]~~ interest;

2-44 (2) ~~[do the following, to the extent that an attorney~~  
 2-45 ~~in fact or agent is permitted by law to act for a principal and~~  
 2-46 ~~subject to the terms of a partnership agreement:~~

2-47 ~~[(A)]~~ perform a duty or ~~[7]~~ discharge a liability,  
 2-48 or exercise in person or by proxy a right, power, privilege, or  
 2-49 option that the principal has, may have, or claims to have ~~[under~~  
 2-50 ~~the partnership agreement, whether or not the principal is a~~  
 2-51 ~~general or limited partner]~~;

2-52 (3) ~~[(B)]~~ enforce the terms of an agreement or other  
 2-53 document governing or relating to an entity or entity ownership  
 2-54 interest ~~[the partnership agreement by litigation, action, or~~  
 2-55 ~~otherwise]~~; ~~[and]~~

2-56 (4) ~~[(C)]~~ defend, submit to arbitration, settle, or  
 2-57 compromise litigation or an action to which the principal is a party  
 2-58 because of an entity ownership interest ~~[membership in the~~  
 2-59 ~~partnership]~~;

2-60 (5) ~~[(3)]~~ exercise in person or by proxy, or enforce  
 2-61 by litigation, action, or otherwise, a right, power, privilege, or  
 2-62 option the principal has or claims to have as the holder of a  
 2-63 certificated or uncertificated ownership interest;

2-64 (6) ~~[bond, share, or other similar instrument and]~~  
 2-65 defend, submit to alternative dispute resolution ~~[arbitration]~~,  
 2-66 settle, or compromise litigation ~~[a legal proceeding]~~ to which the  
 2-67 principal is a party concerning a certificated or uncertificated  
 2-68 ownership interest ~~[because of a bond, share, or similar~~  
 2-69 ~~instrument]~~;

3-1                   (7) ~~[(4)]~~ with respect to a business or entity owned  
3-2 solely by the principal:  
3-3                   (A) continue, modify, renegotiate, extend, and  
3-4 terminate a contract made by or on behalf of the principal with  
3-5 respect to the business or entity ~~[before execution of the power of~~  
3-6 ~~attorney with an individual, legal entity, firm, association, or~~  
3-7 ~~corporation by or on behalf of the principal with respect to the~~  
3-8 ~~business];~~  
3-9                   (B) determine:  
3-10                   (i) the location of the business's or  
3-11 entity's operation;  
3-12                   (ii) the nature and extent of the business;  
3-13                   (iii) the methods of manufacturing,  
3-14 selling, merchandising, financing, accounting, and advertising  
3-15 employed in the business's or entity's operation;  
3-16                   (iv) the amount and types of insurance  
3-17 carried; and  
3-18                   (v) the method of engaging, compensating,  
3-19 and dealing with the business's or entity's employees and  
3-20 accountants, attorneys, or ~~[and]~~ other agents ~~[and employees];~~  
3-21                   (C) change the name or form of organization under  
3-22 which the business or entity is operated and enter into an [a  
3-23 partnership] agreement with other persons ~~[or organize a~~  
3-24 ~~corporation]~~ to take over all or part of the operation of the  
3-25 business or entity; and  
3-26                   (D) demand and receive money due or claimed by  
3-27 the principal or on the principal's behalf in the operation of the  
3-28 business or entity and control and disburse the money in the  
3-29 operation of the business or entity;  
3-30                   (8) ~~[(5)]~~ put additional capital into a business or  
3-31 entity in which the principal has an interest;  
3-32                   (9) ~~[(6)]~~ join in a plan of reorganization,  
3-33 consolidation, interest exchange, conversion, or merger of the  
3-34 business or entity;  
3-35                   (10) ~~[(7)]~~ sell or liquidate a business or entity or  
3-36 all or part of the assets of the business or entity ~~[at the time and~~  
3-37 ~~on the terms that the attorney in fact or agent considers~~  
3-38 ~~desirable];~~  
3-39                   (11) ~~[(8)]~~ establish the value of a business or entity  
3-40 under a buy-out agreement to which the principal is a party;  
3-41                   (12) ~~[(9) do the following:~~  
3-42                   ~~[(A)]~~ prepare, sign, file, and deliver reports,  
3-43 compilations of information, returns, or other papers with respect  
3-44 to a business or entity and~~+~~  
3-45                   ~~[(i) that are required by a governmental~~  
3-46 ~~agency, department, or instrumentality; or~~  
3-47                   ~~[(ii) that the attorney in fact or agent~~  
3-48 ~~considers desirable; and~~  
3-49                   ~~[(B)]~~ make related payments; and  
3-50                   (13) ~~[(10)]~~ pay, compromise, or contest taxes or  
3-51 assessments and perform any other act ~~[that the attorney in fact or~~  
3-52 ~~agent considers desirable]~~ to protect the principal from illegal or  
3-53 unnecessary taxation, fines, penalties, or assessments with  
3-54 respect to a business or entity, including attempts to recover, in  
3-55 any manner permitted by law, money paid before or after the  
3-56 execution of the power of attorney.

3-57                   SECTION 7. Section 240.008, Property Code, is amended by  
3-58 amending Subsection (c) and adding Subsection (c-1) to read as  
3-59 follows:  
3-60                   (c) Except as provided by Subsection (c-1), the ~~[The]~~  
3-61 following disclaimers by a fiduciary acting in a fiduciary capacity  
3-62 are not effective unless approved by a court of competent  
3-63 jurisdiction:  
3-64                   (1) a disclaimer by a personal representative who is  
3-65 not an independent administrator or independent executor;  
3-66                   (2) a disclaimer by the trustee of a management trust  
3-67 created under Chapter 1301, Estates Code;  
3-68                   (3) a disclaimer by the trustee of a trust created  
3-69 under Section 142.005; or

4-1 (4) a disclaimer that would result in an interest in or  
4-2 power over property passing to the person making the disclaimer.

4-3 (c-1) A disclaimer described by Subsection (c)(4) does not  
4-4 require court approval if the disclaimer is authorized under  
4-5 Subtitle P, Title 2, Estates Code.

4-6 SECTION 8. The following sections of the Estates Code are  
4-7 repealed:

4-8 (1) Section 751.052; and

4-9 (2) Section 751.133(b).

4-10 SECTION 9. Section 751.251, Estates Code, as amended by  
4-11 this Act, applies to a proceeding concerning a durable power of  
4-12 attorney pending on, or commenced on or after, the effective date of  
4-13 this Act.

4-14 SECTION 10. Section 752.107, Estates Code, as amended by  
4-15 this Act, applies only to a durable power of attorney, including a  
4-16 statutory durable power of attorney, executed on or after the  
4-17 effective date of this Act. A durable power of attorney, including a  
4-18 statutory durable power of attorney, executed before the effective  
4-19 date of this Act is governed by the law in effect on the date the  
4-20 durable power of attorney was executed, and the former law is  
4-21 continued in effect for that purpose.

4-22 SECTION 11. Section 240.008, Property Code, as amended by  
4-23 this Act, applies only to a disclaimer made on or after the  
4-24 effective date of this Act. A disclaimer made before the effective  
4-25 date of this Act is governed by the law in effect at the time the  
4-26 disclaimer was made, and the former law is continued in effect for  
4-27 that purpose.

4-28 SECTION 12. This Act takes effect September 1, 2023.

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