

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 510
Committee Substitute Favorable 4/4/05

Short Title: Enforcement of Power of Attorney.

(Public)

Sponsors:

Referred to:

March 7, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO ENCOURAGE PERSONS TO ACCEPT THE AUTHORITY GRANTED
3 UNDER POWERS OF ATTORNEY.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 32A of the General Statutes is amended by adding a
6 new Article to read:

7 "Article 5.

8 "Enforcement of Power of Attorney.

9 "**§ 32A-35. Reliance on power of attorney.**

10 (a) A person who in good faith relies on a writing that on its face is duly signed
11 and acknowledged and otherwise regular, and that purports to confer a power of
12 attorney, durable or otherwise, shall be protected to the full extent of the powers granted
13 in the writing that purports to confer a power of attorney, unless the person has actual
14 knowledge that the writing is not a valid power of attorney, whether or not the person
15 demands or receives an affidavit under subsection (b) of this section. A person who
16 conducts activities through employees or other agents has actual knowledge of a fact
17 involving a power of attorney only from the time the information was received by an
18 employee or agent having the authority to approve the power of attorney presented. No
19 person so dealing with a person named as an attorney-in-fact in the writing that purports
20 to confer a power of attorney is responsible for the misapplication of any money or
21 other property paid or transferred as directed by the attorney-in-fact and pursuant to the
22 writing that purports to confer a power of attorney.

23 (b) A person may, prior to acceptance of the authority of the attorney-in-fact or at
24 any other time, request an affidavit executed by the attorney-in-fact to the effect that the
25 attorney-in-fact did not have, at the time of the presentation to the person of the writing
26 purporting to confer a power of attorney, actual knowledge of either (i) the revocation
27 of the power of attorney; or (ii) facts that would cause the attorney-in-fact to question
28 the authenticity or validity of the power of attorney. An affidavit meeting the
29 requirements of this subsection shall be sufficient proof to the requesting person, as of

1 the date of the affidavit, of (i) the nonrevocation of the power of attorney; and (ii) the
2 authenticity and validity of the power of attorney. If the exercise of the power of
3 attorney requires execution and delivery of an instrument that is recordable, the affidavit
4 shall be prepared so as to be recordable. An affidavit prepared under this subsection
5 may also be used as an affidavit under G.S. 32A-13(c). An affidavit in the form
6 described in subsection (d) of this section shall be deemed to meet the requirements of
7 this subsection but shall not be the sole means of meeting those requirements.

8 (c) This section does not affect any provision in a power of attorney for its
9 termination by expiration of time or occurrence of an event other than an express
10 revocation or a change in the principal's capacity.

11 (d) Example of Affidavit of Attorney-in-Fact.

12 STATE OF _____

13 COUNTY OF _____

14 The undersigned does hereby state and affirm the following:

- 15 (1) The undersigned is the person named as Attorney-in-Fact in the Power
16 of Attorney executed by _____ ("Principal") on
17 [date] _____, _____ (the "Power of Attorney").
- 18 (2) The Power of Attorney is currently exercisable by the undersigned.
- 19 (3) The undersigned has no actual knowledge of any of the following:
 - 20 a. The Principal is deceased.
 - 21 b. The Power of Attorney has been revoked or terminated,
22 partially or otherwise.
 - 23 c. The Principal lacked the understanding and capacity to make
24 and communicate decisions regarding his estate and person at
25 the time the Power of Attorney was executed.
 - 26 d. The Power of Attorney was not properly executed and is not a
27 legal, valid power of attorney.
- 28 (4) The undersigned agrees not to exercise any powers granted under the
29 Power of Attorney if the undersigned becomes aware that the Principal
30 is deceased or has revoked such powers.

31
32 This is the _____ day of _____.

33
34 _____
35 [Signature]

36 [Acknowledgement]

37 **"§ 32A-36. Penalty for unreasonable refusal to recognize power.**

38 (a) A person dealing with an attorney-in-fact who unreasonably refuses to accept
39 a power of attorney shall be subject to all of the following:

- 40 (1) Liable for reasonable attorney fees and costs incurred in any action or
41 proceeding necessary to confirm the validity of a power of attorney or
42 to implement a power of attorney.
- 43 (2) Subject to an order of the court requiring acceptance of the valid
44 power of attorney.
- (3) Subject to any other remedy available under applicable law.

1 (b) Acceptance of a power of attorney shall mean (i) acknowledging the validity
2 and authenticity of the document; and (ii) allowing the attorney-in-fact to conduct
3 business in accordance with the terms of the document.

4 **"§ 32A-37. Protection for third parties.**

5 (a) A person is not required to honor the attorney-in-fact's authority or to conduct
6 business with the attorney-in-fact if the person is not otherwise required to conduct
7 business with the principal in the same circumstances.

8 (b) Without limiting the generality of subsection (a) of this section, nothing in
9 this Article requires a person to do any of the following:

10 (1) Engage in any transaction with an attorney-in-fact if the
11 attorney-in-fact has previously breached any agreement with the
12 person, whether in an individual or fiduciary capacity.

13 (2) Open an account for a principal at the request of an attorney-in-fact if
14 the principal is not currently a customer of the person.

15 (3) Make a loan to the principal at the request of the attorney-in-fact.

16 (c) A person who is presented with a power of attorney shall not be deemed to
17 have unreasonably refused to accept the power of attorney solely on the basis of failure
18 to accept the power of attorney within five business days.

19 (d) A person who has reasonable cause to question the authenticity or validity of
20 a power of attorney may refuse to accept the authority granted by that document.

21 (e) A person who promptly requests, and does not within a reasonable time
22 receive, an affidavit as described in G.S. 32A-35(b), is not deemed under G.S. 32A-36
23 to have unreasonably refused to accept a power of attorney.

24 (f) The principal, the attorney-in-fact, or a person presented with a power of
25 attorney may initiate a special proceeding in accordance with the procedures of Article
26 33 of Chapter 1 of the General Statutes to request a determination of the validity of the
27 power of attorney. If the decision in that special proceeding is that reasonable cause to
28 refuse to accept the power of attorney existed, and that the attorney-in-fact willfully
29 misrepresented the authenticity or validity of the power of attorney, the attorney-in-fact,
30 and not the principal, is liable for reasonable attorney fees and costs incurred in that
31 action.

32 (g) Nothing in this Article requires a person who accepts a power of attorney to
33 permit an attorney-in-fact to conduct business not authorized by the terms of the power
34 of attorney."

35 **"§ 32A-38. Scope of Article.**

36 This Article shall apply to all or any portion of a document executed under Article 1,
37 Article 2, or Article 2A of this Chapter."

38 **SECTION 2.** This act becomes effective October 1, 2005, and applies to
39 powers of attorney created before and after that date.