



SPONSOR: Sen. Hansen & Rep. Osienski
Sens. Lawson, Paradee, Sokola, Townsend, Walsh; Reps.
Baumbach, Mitchell

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 157

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO POWERS OF ATTORNEY,
ELECTRONIC SIGNATURES, AND THE REGISTRATION OF VEHICLES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Part II, Title 21 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 Chapter 32. Limited Power of Attorney and Electronic Signatures for Division of Motor Vehicles Matters.

4 § 3201 Definitions.

5 In this chapter:

6 (1) "Agent" means a person granted authority to act for the benefit of a principal under a limited durable power of
7 attorney for completing all paperwork necessary to accomplish any required action(s) set forth in this title, whether
8 denominated an agent, attorney-in-fact, or otherwise. The term includes an original agent, concurrent agent, joint agent,
9 successor agent, and a person to which an agent's authority is delegated.

10 (2) "Durable," with respect to a power of attorney, means not terminated by the principal's incapacity, and
11 satisfying the requirements set forth in §3203 of this title.

12 (3) "Durable power of attorney" means a power of attorney that is durable, meeting the requirements of §3203 of
13 this title.

14 (4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical,
15 electromagnetic, or similar capabilities.

16 (5) "Electronic Signature" shall mean the execution of the document by the identified person after appropriate
17 verification of identity of the person executing the document using a verification system acceptable to the Department.

18 (6) "Good faith" means honesty in fact.

19 (7) "Incapacity" means inability of an individual to manage his or her property or business affairs.

(8) "Limited" means that the power of attorney authorized herein is for the sole purpose of completing all paperwork necessary to accomplish any required action(s) set forth in this title.

(9) "Person" means an individual, corporation, statutory trust, estate, trust, partnership (general or limited), limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity or association.

(10) "Personal power of attorney" means any limited durable power of attorney executed in this State or, if executed other than in this State, specifying that the laws of this State shall govern such power of attorney.

(11) "Power of attorney" means a grant of authority to an agent to act in the place of the principal, whether or not the term power of attorney is used.

(12) "Principal" means an individual who grants authority to an agent in a power of attorney acting for himself or herself and not as a fiduciary, officer, employee, representative, agent or official of any legal, governmental, or commercial entity or association.

(13) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) "Sign" means, with present intent to authenticate or adopt a record:

a. To execute or adopt a tangible symbol; or

b. To attach to or logically associate with the record an electronic sound, symbol, or process using an electronic program acceptable to the Department.

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

§ 3202 Applicability.

(a) This chapter shall only apply to limited durable powers of attorney which are executed for the sole purpose of completing documentation required and allowable by the Department to accomplish certain actions set forth in this title.

(1) The provisions of this chapter shall not apply to any business or individual who is specifically required by statute or regulation to identify persons who have authority to sign on behalf of the business or individual. In those instances, all documentation must still be executed by an individual who has been previously identified in writing to the Department.

(b) A power of attorney that was granted in compliance with the laws of the jurisdiction governing such power of attorney will be recognized and enforceable under the laws of the State of Delaware in accordance with its terms.

§ 3203 Power of attorney is durable.

A power of attorney is durable if it contains the words: "This power of attorney shall not be affected by the subsequent incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent incapacity.

§ 3204 Execution of personal power of attorney.

(a) A personal power of attorney must be:

(1) In writing;

(2) Signed by the principal or by another person subscribing the principal's name in the principal's presence and at the principal's express direction;

(3) Dated; and

(4) Signed in the presence of a notarial officer or contain an electronic signature acceptable to the Department.

(b) A personal power of attorney may be accompanied by a notice in the following form, signed by the principal and placed at the beginning of the personal power of attorney. In the absence of a signed notice, upon a challenge to the authority of an agent to act under the personal power of attorney, the agent shall have the burden of demonstrating that the personal power of attorney is valid.

NOTICE

As the person signing this limited durable power of attorney you are the Principal.

The purpose of this power of attorney is to give the person you designate (your "Agent") broad powers to complete all paperwork necessary to accomplish any required actions set forth in this title without advance notice to you or approval by you.

This power of attorney does not authorize your Agent to make health-care decisions for you.

Unless you specify otherwise, your Agent's authority will continue even if you become incapacitated, or until you die or revoke the power of attorney, or until your Agent resigns or is unable to act for you. You should select someone you trust to serve as your Agent.

This power of attorney does not impose a duty on your Agent to exercise granted powers, but when powers are exercised, your Agent must use due care to act for your benefit and in accordance with this power of attorney.

Your Agent must keep your funds and other property separate from your Agent's funds and other property.

A court can take away the powers of your Agent if it finds your Agent is not acting properly.

The powers and duties of an Agent under a durable power of attorney are explained more fully in § 3212 of this title.

If there is anything about this form that you do not understand, you should ask a lawyer of your own choosing to explain it to you.

I have read or had explained to me this notice and I understand its contents.

Principal Date

(c) Regardless of the method by which a person accepts appointment as an agent under a personal power of attorney (pursuant to § 3211 of this title), such agent shall have no authority to act as agent under the personal power of attorney unless the agent has first executed and affixed to the personal power of attorney a certification in substantially the following form:

AGENT'S CERTIFICATION

I, (Name of Agent), have read the attached limited durable personal power of attorney and I am the person identified as the Agent or identified as the Agent for the Principal. To the best of my knowledge this power has not been revoked. I hereby acknowledge that, when I act as Agent, I shall:

Act in accordance with the principal's reasonable expectations to the extent actually known to me and, otherwise, in the Principal's best interest;

Act in good faith;

Act only within the scope of authority granted in the personal power of attorney; and

To the extent reasonably practicable under the circumstances, keep in regular contact with the principal and communicate with the principal.

In addition, in the absence of a specific provision to the contrary in the limited durable personal power of attorney, when I act as Agent, I shall:

Keep the assets of the Principal separate from my assets;

Exercise reasonable caution and prudence; and

Keep a full and accurate record of all actions, receipts and disbursements on behalf of the Principal.

Agent Date

§ 3205 Execution of personal power of attorney.

(a) A personal power of attorney is validly executed if it complies with § 3204 of this title, unless such personal power of attorney provides that it is governed by the laws of another jurisdiction, in which case, such personal power of attorney is validly executed if such execution complies with the laws of such other jurisdiction.

(b) A limited durable power of attorney (other than a personal power of attorney) will be deemed to be validly executed under the laws of this State if, when the power of attorney was executed, the execution complied with:

109 (1) The law of the jurisdiction that determines the meaning and effect of the power of attorney; or
110 (2) The requirements for a military power of attorney pursuant to 10 U.S.C. § 1044b, as amended.
111 (d) Except as otherwise provided by statute other than this chapter, a photocopy or electronically transmitted copy
112 of an original power of attorney has the same effect as the original.

113 § 3206 Nomination of guardian of person or property; relation of agent to court-appointed fiduciary.

114 (a) The appointment by a court of a guardian or other fiduciary charged with the management of the principal's
115 property or the care of the principal's person shall terminate all personal powers of attorney.

116 (b) After the appointment of a guardian or other fiduciary charged with the management of the principal's property
117 or the care of the principal's person, the agent is accountable to such guardian or other fiduciary as well as to the principal
118 as to any personal powers of attorney which the agent continues to hold. A guardian or other fiduciary shall only have such
119 powers to revoke or amend the powers of the agent as shall be given to such guardian or other fiduciary by the court.

120 § 3207 When the personal power of attorney is effective.

121 (a) A personal power of attorney is effective when executed.

122 § 3208 Termination of personal power of attorney or agent's authority.

123 (a) A personal power of attorney terminates when:

- 124 (1) The principal dies;
125 (2) The principal revokes the personal power of attorney;
126 (3) A terminating event set forth in the personal power of attorney occurs;
127 (4) The purpose of the personal power of attorney is accomplished;
128 (5) The principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the
129 personal power of attorney does not provide for another agent to act; or
130 (6) The personal power of attorney is revoked by order of the Court of Chancery pursuant to §3214 of this
131 title or otherwise.

132 (b) An agent's authority terminates when:

- 133 (1) The principal revokes the authority;
134 (2) The agent dies, becomes incapacitated, or resigns;
135 (3) An action is filed for the dissolution or annulment of the agent's marriage to the principal, unless the
136 personal power of attorney otherwise provides;
137 (4) All documentation has been submitted, accepted, processed and acted upon by the Department;
138 (5) One year from the date of execution of the power of attorney; or

139 (6) The personal power of attorney terminates.

140 (c) Unless the personal power of attorney otherwise provides, an agent's authority is exercisable until the authority
141 terminates under subsection (b) of this section, notwithstanding a lapse of time since the execution of the personal power of
142 attorney.

143 (d) Termination of an agent's authority or of a personal power of attorney is not effective as to the agent or another
144 person that, without actual knowledge of the termination, acts in good faith under the personal power of attorney. An act so
145 performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

146 (e) The execution of a personal power of attorney does not revoke a personal power of attorney previously
147 executed by the principal unless the subsequent personal power of attorney provides that the previous personal power of
148 attorney is revoked or that all other personal powers of attorney are revoked.

149 § 3209 Concurrent agents, joint agents, and successor agents.

150 (a) A principal may designate 2 or more persons to act as concurrent agents. Each concurrent agent may exercise
151 its authority independently.

152 (b) A principal may designate 2 or more persons to act as joint agents. No joint agent shall have the power to act
153 without the agreement of all other joint agents and shall have no power to act independent of the other agent.

154 (c) If the principal designates more than 1 agent and does not specify that they are concurrent agents or joint
155 agents, such agents shall be considered concurrent agents.

156 (d) A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated,
157 is not qualified to serve, or declines to serve. Unless the personal power of attorney otherwise provides, a successor agent:

158 (1) Has the same authority as that granted to the original agent; and

159 (2) May not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified
160 to serve, or have declined to serve.

161 (e) A principal may give an appointed agent or another person designated by name, office or function the authority
162 to designate by a writing executed by such person, 1 or more concurrent, joint, or successor agents in addition to those
163 designated in the personal power of attorney. Unless the personal power of attorney authorizing the appointment of such
164 further agents otherwise provides, a concurrent, joint, or successor agent appointed by this method:

165 (1) Has the same authority as that granted to the original agent; and

166 (2) May not act until the predecessor designee has resigned, died, become incapacitated, is no longer qualified
167 to serve, or has declined to serve.

(f) Except as otherwise provided in the personal power of attorney and subsection (g) of this section, an acting agent that does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

(g) An acting agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's best interest. An agent that fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action.

§ 3210 Reimbursement and compensation of agent.

(a) An agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal.

(b) An agent shall not be entitled to compensation unless:

(1) The personal power of attorney so provides; and

(2) The compensation is reasonable under the circumstances.

§ 3211 Agent's acceptance.

Except as otherwise provided in the personal power of attorney, a person accepts appointment as an agent under a personal power of attorney by signing the agent's certification (pursuant to § 3204 of this title) or by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.

§ 3212 Agent's duties.

(a) Notwithstanding provisions in the personal power of attorney, an agent that has accepted appointment pursuant to a personal power of attorney shall, in connection with exercising the authority granted to such agent therein:

(1) Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest;

(2) Act in good faith;

(3) Act only within the scope of authority granted in the personal power of attorney; and

(4) To the extent reasonably practicable under the circumstances, keep in regular contact with the principal and communicate with the principal.

(b) Except as otherwise provided in the personal power of attorney, an agent that has accepted appointment shall:

(1) Act loyally for the principal's benefit;

(2) Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;

(3) Act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances; and

(4) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal.

(c) An agent that acts with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

(d) If an agent has special skills or expertise the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.

(e) An agent that engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person.

(f) Except as otherwise provided in the personal power of attorney and by § 3206 of this title, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested the agent shall comply with the request within a reasonable period of time.

§ 3213 Exoneration of agent.

A provision in a personal power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent the provision:

(1) Relieves the agent of liability for breach of duty committed in bad faith or with reckless indifference to the purposes of the personal power of attorney or the best interest of the principal; or

(2) Was inserted as a result of undue influence upon the principal.

§ 3214 Judicial relief.

(a) A person designated in subsection (b) of this section may petition the Court of Chancery requesting that the Court:

(1) Determine whether the personal power of attorney or the authority of an agent is in effect or has terminated pursuant to § 3208 of this title or otherwise;

(2) Compel the agent to exercise or refrain from exercising authority in a particular manner or for a particular purpose;

(3) Compel the agent to account for transactions conducted on the principal's behalf pursuant to § 3212(f) of this title;

(4) Modify, suspend, or revoke the powers of the agent to act under a personal power of attorney, and, if the principal has not designated another agent or successor agent in the personal power of attorney, appoint another agent to act in place of the agent whose powers are modified, suspended, or revoked;

(5) Determine an agent's liability for violation of his or her duties pursuant to § 3212 of this title.

(b) Any of the following persons may file a petition seeking appropriate relief under this section:

(1) The principal or the agent;

(2) The spouse, child, or parent of the principal;

(3) A guardian, trustee, or other fiduciary acting for the principal;

(4) The personal representative, trustee, or a beneficiary of the principal's estate;

(5) Any other interested person, as long as the person demonstrates to the Court's satisfaction that the person is interested in the welfare of the principal and has a good faith belief that:

a. The Court's intervention is necessary; and

b. The principal is incapacitated at the time of filing the petition or otherwise unable to protect that principal's own interests; or

(6) A person asked to accept a personal power of attorney.

(c) Upon motion by the principal, who shall be presumed to have legal capacity, the Court shall dismiss a petition filed under this section, unless the Court finds that the principal lacks capacity to revoke the agent's authority or the personal power of attorney.

(d) Nothing in this section shall preclude or diminish the Court's authority to appoint a guardian or other fiduciary pursuant to Chapter 39 of Title 12, or to order other judicial relief, in order to grant appropriate relief upon review of a personal power of attorney or an agent's conduct with respect to a personal power of attorney.

(e) Nothing in this section shall preclude the Department of Health and Social Services, the Public Guardian, or other governmental agency having authority to protect the welfare of the principal from petitioning the Court for access to the principal or to records necessary to determine, or terminate, possible abuse, neglect, exploitation or abandonment of the principal.

§ 3215 Agent's resignation; notice.

Unless the personal power of attorney provides a different method for an agent's resignation, an agent may resign by giving written notice to the principal and, if the principal is incapacitated:

(1) To the guardian, if one has been appointed for the principal, and a concurrent agent or successor agent; or

(2) If there is no person described in paragraph (1) of this section, to:

258 a. The principal's primary caregiver;

259 b. Another person reasonably believed by the agent to have sufficient interest in the principal's welfare;

260 or

261 c. A governmental agency having authority to protect the welfare of the principal.

262 § 3216 Acceptance of and reliance upon acknowledged personal power of attorney.

263 (a) For purposes of this section, "acknowledged" means purportedly verified before a notarial officer or contain an
264 electronic signature acceptable to the Department.

265 (b) A person that in good faith accepts an acknowledged personal power of attorney without actual knowledge that
266 the signature is not genuine may rely upon a presumption that the signature is genuine.

267 (c) A person that in good faith accepts an acknowledged personal power of attorney without actual knowledge that
268 the personal power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or
269 terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely upon the personal power
270 of attorney as if the personal power of attorney were genuine, valid and still in effect, the agent's authority were genuine,
271 valid and still in effect, and the agent had not exceeded and had properly exercised the authority.

272 (d) A person that is asked to accept an acknowledged personal power of attorney may request, and rely upon,
273 without further investigation, an English translation, under oath of the translator, of the personal power of attorney if it
274 contains, in whole or in part, language other than English.

275 (e) For purposes of this section, a person that conducts activities through employees is without actual knowledge
276 of a fact relating to a personal power of attorney, a principal, or an agent if the employee conducting the transaction
277 involving the personal power of attorney is without actual knowledge of the fact. Notification of revocation of a personal
278 power of attorney by a principal or agent to an officer of a bank or other financial institution shall constitute actual notice to
279 all employees.

280 § 3217 Acceptance of Electronic Signatures.

281 The Department may accept electronic signatures on any documents required to be submitted pursuant to this title.

SYNOPSIS

Delaware's Power of Attorney statute requires a notary to verify the signature on a document. Many financial institutions have difficulty having the customer appear before a notary for that notarization. There are several electronic signature verification processes that are available to businesses. This bill would create a Power of Attorney for motor vehicle business that would allow for electronic signature verification if the verification system is acceptable to the Department. This bill will enable businesses of all sizes to accelerate document turnaround time and reduce costs, while ensuring document security and privacy. The revised bill clarifies when a power of attorney becomes valid, the duration of the power of attorney, and removes any potential conflict with an appointed guardian's responsibilities.

Author: Senator Hansen