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Recording Date – May 19, 2016

Recording Availability – December 7, 2016

Meeting Location	Date	Time	Topic
King County Bar Association 1200 Fifth Ave., Suite 700 Seattle WA	Thursday, May 19, 2016	12:00 pm to 1:15 pm	Uniform Fiduciary Access to Digital Assets Act; Uniform Power of Attorney Act; Legislative Update

AGENDA

12:00 p.m. Introductions/Lunch

12:15 p.m. Presentation: “Uniform Fiduciary Access to Digital Assets Act; Uniform Power of Attorney Act; Legislative Update”, by Megan Farr, Farr Law Group PLLC

Bench Tip: Honorable Carlos Velategui, King County Superior Court Commissioner

1:15 p.m. Evaluations & Adjourn

SPEAKER BIOGRAPHY:

Megan Farr, Farr Law Group PLLC - Ms. Farr is a member of Farr Law Group, PLLC, where her practice focuses on elder law and estate planning. She is a member of the Washington State Bar Association, King and Pierce County Bar Associations, and is admitted to the United States District Court for the Western District of Washington. Ms. Farr serves on the Washington State Bar Association Elder Law Section Executive Committee as Legislative Co-Chair. In 2010, her peers voted her a “Rising Star” in Washington Law & Politics magazine. Ms. Farr earned her law degree from the University of Washington in 2003. Prior to attending law school, she worked in the United States Senate.

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5635

Chapter 209, Laws of 2016

64th Legislature
2016 Regular Session

UNIFORM POWER OF ATTORNEY ACT

EFFECTIVE DATE: 1/1/2017

Passed by the Senate March 7, 2016
Yeas 48 Nays 0

BRAD OWEN

President of the Senate

Passed by the House March 3, 2016
Yeas 96 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Approved April 1, 2016 4:39 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5635** as passed by Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN

Secretary

FILED

April 4, 2016

**Secretary of State
State of Washington**

1 coagent, successor agent, and a person to which an agent's authority
2 is delegated.

3 (2) "Durable," with respect to a power of attorney, means not
4 terminated by the principal's incapacity.

5 (3) "Electronic" means relating to technology having electrical,
6 digital, magnetic, wireless, optical, electromagnetic, or similar
7 capabilities.

8 (4) "Good faith" means honesty in fact.

9 (5) "Incapacity" means inability of an individual to manage
10 property, business, personal, or health care affairs because the
11 individual:

12 (a) Has an impairment in the ability to receive and evaluate
13 information or make or communicate decisions even with the use of
14 technological assistance; or

15 (b) Is:

16 (i) An absentee, as defined in chapter 11.80 RCW; or

17 (ii) Outside the United States and unable to return.

18 (6) "Person" means an individual, corporation, business trust,
19 estate, trust, partnership, limited liability company, association,
20 joint venture, public corporation, government or governmental
21 subdivision, agency, or instrumentality, or any other legal or
22 commercial entity.

23 (7) "Power of attorney" means a writing that uses the term "power
24 of attorney" and grants authority to an agent to act in the place of
25 the principal.

26 (8) "Presently exercisable general power of appointment," with
27 respect to property or a property interest subject to a power of
28 appointment, means power exercisable at the time in question to vest
29 absolute ownership in the principal individually, the principal's
30 estate, the principal's creditors, or the creditors of the
31 principal's estate. The term includes a power of appointment not
32 exercisable until the occurrence of a specified event, the
33 satisfaction of an ascertainable standard, or the passage of a
34 specified period only after the occurrence of the specified event,
35 the satisfaction of the ascertainable standard, or the passage of the
36 specified period. The term does not include a power exercisable in a
37 fiduciary capacity or only by will.

38 (9) "Principal" means an individual who grants authority to an
39 agent in a power of attorney.

1 (10) "Property" means anything that may be the subject of
2 ownership, whether real or personal, legal or equitable, tangible or
3 intangible, or any interest or right therein.

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

8 (12) "Stocks, bonds, and financial instruments" means stocks,
9 bonds, mutual funds, and all other types of securities and financial
10 instruments, whether held directly, indirectly, or in any other
11 manner. The term shall also include but not be limited to commodity
12 futures contracts, call or put options on stocks or stock indexes,
13 derivatives, and margin accounts.

14 NEW SECTION. **Sec. 103.** (1) This chapter applies to all powers
15 of attorney except:

16 (a) A power to the extent it is coupled with an interest in the
17 subject of the power, including a power given to or for the benefit
18 of a creditor in connection with a credit transaction;

19 (b) A proxy or other delegation to exercise voting rights or
20 management rights with respect to an entity; and

21 (c) A power created on a form prescribed by a government or
22 governmental subdivision, agency, or instrumentality for a
23 governmental purpose.

24 (2) Notwithstanding subsection (1) of this section, section 117
25 of this act shall not apply to a power to make health care decisions
26 under sections 217 and 218 of this act, nor shall it apply to the
27 power to nominate a guardian for a minor child under section 218 of
28 this act.

29 NEW SECTION. **Sec. 104.** The authority conferred under a power of
30 attorney created prior to the effective date of this section, and
31 also for a power of attorney created on or after the effective date
32 of this section, terminates upon the incapacity of the principal
33 unless the writing contains the words "This power of attorney shall
34 not be affected by disability of the principal," or "This power of
35 attorney shall become effective upon the disability of the
36 principal," or similar words showing the intent of the principal that
37 the authority conferred shall be exercisable notwithstanding the
38 principal's incapacity.

1 NEW SECTION. **Sec. 105.** (1) A power of attorney must be signed
2 and dated by the principal, and the signature must be either
3 acknowledged before a notary public or other individual authorized by
4 law to take acknowledgments, or attested by two or more competent
5 witnesses who are neither home care providers for the principal nor
6 care providers at an adult family home or long-term care facility in
7 which the principal resides, and who are unrelated to the principal
8 or agent by blood, marriage, or state registered domestic
9 partnership, by subscribing their names to the power of attorney,
10 while in the presence of the principal and at the principal's
11 direction or request.

12 (2) A power of attorney shall be considered signed in accordance
13 with this section if, in the case of a principal who is physically
14 unable to sign his or her name, the principal makes a mark in
15 accordance with RCW 11.12.030, or in the case of a principal who is
16 physically unable to make a mark, the power of attorney is executed
17 in accordance with RCW 64.08.100.

18 (3) A signature on a power of attorney is presumed to be genuine
19 if the principal acknowledges the signature before a notary public or
20 other individual authorized by law to take acknowledgments.

21 NEW SECTION. **Sec. 106.** (1) A power of attorney executed in this
22 state on or after the effective date of this section is valid if its
23 execution complies with section 105 of this act.

24 (2) A power of attorney executed in this state before the
25 effective date of this section is valid if its execution complied
26 with the law of this state as it existed at the time of execution.

27 (3) A power of attorney executed other than in this state is
28 valid in this state if, when the power of attorney was executed, the
29 execution complied with:

30 (a) The law of the jurisdiction that determines the meaning and
31 effect of the power of attorney pursuant to section 107 of this act;
32 or

33 (b) The requirements for a military power of attorney pursuant to
34 10 U.S.C. Sec. 1044b, as amended.

35 (4) Except as otherwise provided by statute other than this act,
36 a photocopy or electronically transmitted copy of an original power
37 of attorney has the same effect as the original.

1 NEW SECTION. **Sec. 107.** The meaning and effect of a power of
2 attorney is determined by the law of the jurisdiction indicated in
3 the power of attorney and, in the absence of an indication of
4 jurisdiction, by the law of the jurisdiction in which the power of
5 attorney was executed.

6 NEW SECTION. **Sec. 108.** (1) In a power of attorney, a principal
7 may nominate a guardian of the principal's estate or guardian of the
8 principal's person for consideration by the court if protective
9 proceedings for the principal's estate or person are begun after the
10 principal executes the power of attorney. Except for good cause shown
11 or disqualification, the court shall make its appointment in
12 accordance with the principal's most recent nomination.

13 (2) If, after a principal executes a power of attorney, a court
14 appoints a guardian of the principal's estate or other fiduciary
15 charged with the management of all of the principal's property, the
16 power of attorney is terminated and the agent's authority does not
17 continue unless continued by the court.

18 (3) If, after a principal executes a power of attorney, a court
19 appoints a guardian of the principal's estate or other fiduciary
20 charged with the management of some but not all of the principal's
21 property, the power of attorney shall not terminate or be modified,
22 except to the extent ordered by the court.

23 NEW SECTION. **Sec. 109.** (1) A power of attorney is effective
24 when executed unless the principal provides in the power of attorney
25 that it becomes effective at a future date or upon the occurrence of
26 a future event or contingency.

27 (2) If a power of attorney becomes effective upon the occurrence
28 of a future event or contingency, the principal, in the power of
29 attorney, may authorize one or more persons to determine in a writing
30 that the event or contingency has occurred.

31 (3) If a power of attorney becomes effective upon the principal's
32 incapacity and the principal has not authorized a person to determine
33 whether the principal is incapacitated, or the person authorized is
34 unable or unwilling to make the determination, the power of attorney
35 becomes effective upon a determination in a writing by:

36 (a) A physician or licensed psychologist, unrelated to the
37 principal or agent by blood or marriage, who has personally examined

1 the principal, that the principal is incapacitated within the meaning
2 of section 102(5)(a) of this act; or

3 (b) A judge or an appropriate governmental official that the
4 principal is incapacitated within the meaning of section 102(5)(b) of
5 this act.

6 (4) A person authorized by the principal in the power of attorney
7 to determine that the principal is incapacitated may act as the
8 principal's personal representative pursuant to the health insurance
9 portability and accountability act, sections 1171 through 1179 of the
10 social security act, 42 U.S.C. Sec. 1320d, as amended, and applicable
11 regulations, to obtain access to the principal's health care
12 information and communicate with the principal's health care
13 provider.

14 NEW SECTION. **Sec. 110.** (1) A power of attorney terminates when:

15 (a) The principal dies;

16 (b) The principal becomes incapacitated, if the power of attorney
17 is not durable;

18 (c) The principal revokes the power of attorney;

19 (d) The power of attorney provides that it terminates;

20 (e) The purpose of the power of attorney is accomplished; or

21 (f) The principal revokes the agent's authority or the agent
22 dies, becomes incapacitated, or resigns, and the power of attorney
23 does not provide for another agent to act under the power of
24 attorney.

25 (2) An agent's authority terminates when:

26 (a) The principal revokes the authority;

27 (b) The agent dies, becomes incapacitated, or resigns;

28 (c) An action is filed for the dissolution or annulment of the
29 agent's marriage to the principal or for their legal separation, or
30 an action is filed for dissolution or annulment of the agent's state
31 registered domestic partnership with the principal or for their legal
32 separation, unless the power of attorney otherwise provides; or

33 (d) The power of attorney terminates.

34 (3) An agent's authority which has been terminated under
35 subsection (2)(c) of this section shall be reinstated effective
36 immediately in the event that such action is dismissed with the
37 consent of both parties or the petition for dissolution, annulment,
38 or legal separation is withdrawn.

1 (4) Unless the power of attorney otherwise provides, an agent's
2 authority is exercisable until the authority terminates under
3 subsection (2) of this section, notwithstanding a lapse of time since
4 the execution of the power of attorney.

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

11 (6) Incapacity of the principal of a power of attorney that is
12 not durable does not revoke or terminate the power of attorney as to
13 an agent or other person that, without actual knowledge of the
14 incapacity, acts in good faith under the power of attorney. An act so
15 performed, unless otherwise invalid or unenforceable, binds the
16 principal and the principal's successors in interest.

17 (7) The execution of a power of attorney does not revoke a power
18 of attorney previously executed by the principal unless the
19 subsequent power of attorney provides that the previous power of
20 attorney is revoked or that all other powers of attorney are revoked.

21 NEW SECTION. **Sec. 111.** (1) A principal may designate in a power
22 of attorney two or more persons to act as coagents. Unless the power
23 of attorney otherwise provides, all coagents must exercise their
24 authority jointly; provided, however, a coagent may delegate that
25 coagent's authority to another coagent.

26 (2) A principal may designate one or more successor agents to act
27 if an agent resigns, dies, becomes incapacitated, is not qualified to
28 serve, or declines to serve. A principal may grant authority to
29 designate one or more successor agents to an agent or other person
30 designated by name, office, or function. Unless the power of attorney
31 otherwise provides, a successor agent:

32 (a) Has the same authority as that granted to the original agent;
33 and

34 (b) May not act until all predecessor agents have resigned, died,
35 become incapacitated, are no longer qualified to serve, or have
36 declined to serve.

37 (3) Except as otherwise provided in the power of attorney and
38 subsection (4) of this section, an agent that does not participate in
39 or conceal a breach of fiduciary duty committed by another agent,

1 including a predecessor agent, is not liable for the actions of the
2 other agent.

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

11 NEW SECTION. **Sec. 112.** Unless the power of attorney otherwise
12 provides, an agent is entitled to reimbursement of expenses
13 reasonably incurred on behalf of the principal and to reasonable
14 compensation.

15 NEW SECTION. **Sec. 113.** Except as otherwise provided in the
16 power of attorney, a person accepts appointment as an agent under a
17 power of attorney by exercising authority or performing duties as an
18 agent or by any other assertion or conduct indicating acceptance.

19 NEW SECTION. **Sec. 114.** (1) Notwithstanding provisions in the
20 power of attorney, an agent that has accepted appointment shall:

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

24 (b) Act in good faith; and

25 (c) Act only within the scope of authority granted in the power
26 of attorney.

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

29 (a) Act loyally for the principal's benefit;

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

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

35 (d) Keep a record of all receipts, disbursements, and
36 transactions made on behalf of the principal;

1 (e) Cooperate with a person that has authority to make health
2 care decisions for the principal to carry out the principal's
3 reasonable expectations to the extent actually known by the agent
4 and, otherwise, act in the principal's best interest; and

5 (f) Attempt to preserve the principal's estate plan, to the
6 extent actually known by the agent, if preserving the plan is
7 consistent with the principal's best interest based on all relevant
8 factors, including:

9 (i) The value and nature of the principal's property;

10 (ii) The principal's foreseeable obligations and need for
11 maintenance;

12 (iii) Minimization of taxes, including income, estate,
13 inheritance, generation-skipping transfer, and gift taxes; and

14 (iv) Eligibility for a benefit, a program, or assistance under a
15 statute or rule.

16 (3) An agent that acts in good faith is not liable to any
17 beneficiary of the principal's estate plan for failure to preserve
18 the plan.

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

23 (5) If an agent is selected by the principal because of special
24 skills or expertise possessed by the agent or in reliance on the
25 agent's representation that the agent has special skills or
26 expertise, the special skills or expertise must be considered in
27 determining whether the agent has acted with care, competence, and
28 diligence under the circumstances.

29 (6) Absent a breach of duty to the principal, an agent is not
30 liable if the value of the principal's property declines.

31 (7) An agent that engages another person on behalf of the
32 principal is not liable for an act, error of judgment, or default of
33 that person if the agent exercises care, competence, and diligence in
34 selecting and monitoring the person, provided however that the agent
35 shall not be relieved of liability for such person's discretionary
36 acts, that, if done by the agent, would result in liability to the
37 agent.

38 (8) Unless section 111(1) of this act applies, an agent may only
39 delegate authority to another person if expressly authorized to do so
40 in the power of attorney and may delegate some, but not all, of the

1 authority granted by the principal. An agent that exercises authority
2 to delegate to another person the authority granted by the principal
3 is not liable for an act, error of judgment, or default of that
4 person if the agent exercises care, competence, and diligence in
5 selecting and monitoring the person, provided however that the agent
6 shall not be relieved of liability for such person's discretionary
7 acts, that, if done by the agent, would result in liability to the
8 agent.

9 (9) Except as otherwise provided in the power of attorney, an
10 agent is not required to disclose receipts, disbursements, or
11 transactions conducted on behalf of the principal unless ordered by a
12 court or requested in writing by the principal, a guardian, a
13 conservator, another fiduciary acting for the principal, a
14 governmental agency having authority to protect the welfare of the
15 principal, or, upon the death of the principal, by the personal
16 representative or successor in interest of the principal's estate.
17 Such request by a guardian, conservator, or another fiduciary acting
18 for the principal must be limited to information reasonably related
19 to that guardian, conservator, or fiduciary's duties. If so
20 requested, within thirty days the agent shall comply with the request
21 or provide a writing or other record substantiating why additional
22 time is needed and shall comply with the request within an additional
23 thirty days.

24 NEW SECTION. **Sec. 115.** A provision in a power of attorney
25 relieving an agent of liability for breach of duty is binding on the
26 principal and the principal's successors in interest except to the
27 extent the provision:

28 (1) Relieves the agent of liability for breach of duty committed
29 dishonestly, with an improper motive, or with gross negligence to the
30 purposes of the power of attorney or the best interest of the
31 principal; or

32 (2) Was inserted as a result of an abuse of a confidential or
33 fiduciary relationship with the principal.

34 NEW SECTION. **Sec. 116.** (1) Except as otherwise provided in the
35 power of attorney, the following persons may bring a petition
36 described in subsection (2) of this section:

37 (a) The principal or the agent;

1 (b) The spouse or state registered domestic partner of the
2 principal;

3 (c) The guardian of the estate or person of the principal;

4 (d) Any other interested person, as long as the person
5 demonstrates to the court's satisfaction that the person is
6 interested in the welfare of the principal and has a good faith
7 belief that the court's intervention is necessary, and that the
8 principal is incapacitated at the time of filing the petition or
9 otherwise unable to protect his or her own interests; and

10 (e) A person asked to accept the power of attorney.

11 (2) A person designated in subsection (1) of this section may
12 file a petition requesting the court to construe a power of attorney
13 or grant any other appropriate relief, including but not limited to:

14 (a) Determination of whether the power of attorney is in effect
15 or has terminated;

16 (b) Compelling the agent to submit the agent's accounts or report
17 the agent's acts as agent to the principal, the spouse or state
18 registered domestic partner of the principal, the guardian of the
19 person or the estate of the principal, or to any other person
20 required by the court in its discretion, if the agent has not timely
21 complied with a request under section 114(9) of this act. However, a
22 government agency having authority to protect the welfare of the
23 principal may file a petition upon the agent's refusal or failure to
24 submit an accounting upon written request and shall not be required
25 to wait sixty days;

26 (c) Ratification of past acts or approval of proposed acts of the
27 agent;

28 (d) Issuance of an order directing the agent to exercise or
29 refrain from exercising authority in a power of attorney in a
30 particular manner or for a particular purpose;

31 (e) Modification of the authority of an agent under a power of
32 attorney;

33 (f) Removal of the agent on a determination by the court of both
34 of the following:

35 (i) Determination that the agent has violated or is unfit to
36 perform the fiduciary duties under the power of attorney; and

37 (ii) Determination that the removal of the agent is in the best
38 interest of the principal;

39 (g) Approval of the resignation of the agent and approval of the
40 final accountings of the resigning agent if submitted, subject to any

1 orders the court determines are necessary to protect the principal's
2 interests;

3 (h) Confirmation of the authority of a successor agent to act
4 under a power of attorney upon removal or resignation of the previous
5 agent;

6 (i) Compelling a third person to honor the authority of an agent,
7 provided that a third person may not be compelled to honor the
8 agent's authority if the principal could not compel the third person
9 to act in the same circumstances;

10 (j) Order the agent to furnish a bond in an amount the court
11 determines to be appropriate.

12 (3) Any action commenced under this section shall be subject to
13 the notice requirements of chapter 11.96A RCW.

14 (4) Upon motion by the principal, the court shall dismiss a
15 petition filed under this section, unless the court finds that the
16 principal lacks capacity to revoke the agent's authority or the power
17 of attorney.

18 (5) Except as otherwise provided in section 120(3)(b) of this
19 act, any action commenced under this section shall be subject to the
20 provisions of RCW 11.96A.150.

21 NEW SECTION. **Sec. 117.** An agent that violates this chapter is
22 liable to the principal or the principal's successors in interest for
23 the amount required to restore the value of the principal's property
24 to what it would have been had the violation not occurred.

25 NEW SECTION. **Sec. 118.** Unless the power of attorney has been
26 terminated in accordance with section 108 of this act, or the power
27 of attorney provides a different method for an agent's resignation,
28 an agent may resign by giving notice to the principal and, if the
29 principal is incapacitated:

30 (1) To the conservator or guardian, if one has been appointed for
31 the principal, and a coagent or successor agent, if designated; or

32 (2) If there is no person described in subsection (1) of this
33 section:

34 (a) To any person reasonably believed by the agent to have
35 sufficient interest in the principal's welfare;

36 (b) To a governmental agency having authority to protect the
37 welfare of the principal; or

1 (c) By filing notice with the county recorder's office in the
2 county where the principal resides.

3 NEW SECTION. **Sec. 119.** (1) For purposes of this section and
4 section 120 of this act, "acknowledged" means purportedly verified
5 before a notary public or other individual authorized to take
6 acknowledgments.

7 (2) A person that in good faith accepts an acknowledged power of
8 attorney without actual knowledge that the signature is not genuine
9 may rely upon the presumption under section 105 of this act that the
10 signature is genuine.

11 (3) A person that in good faith accepts an acknowledged power of
12 attorney without actual knowledge that the power of attorney is void,
13 invalid, or terminated, that the purported agent's authority is void,
14 invalid, or terminated, or that the agent is exceeding or improperly
15 exercising the agent's authority may rely upon the power of attorney
16 as if the power of attorney were genuine, valid and still in effect,
17 the agent's authority were genuine, valid and still in effect, and
18 the agent had not exceeded and had properly exercised the authority.

19 (4) A person that is asked to accept an acknowledged power of
20 attorney may request, and rely upon, without further investigation:

21 (a) An agent's certification given under penalty of perjury
22 meeting the requirements of subsection (5) of this section; and

23 (b) An English translation of the power of attorney if the power
24 of attorney contains, in whole or in part, language other than
25 English.

26 (5) A certification presented pursuant to subsection (4) of this
27 section or pursuant to section 120 of this act shall state that:

28 (a) The person presenting himself or herself as the agent and
29 signing the affidavit or declaration is the person so named in the
30 power of attorney;

31 (b) If the agent is named in the power of attorney as a successor
32 agent, the circumstances or conditions stated in the power of
33 attorney that would cause that person to become the acting agent have
34 occurred;

35 (c) To the best of the agent's knowledge, the principal is still
36 alive;

37 (d) To the best of the agent's knowledge, at the time the power
38 of attorney was signed, the principal was competent to execute the
39 document and was not under undue influence to sign the document;

1 (e) All events necessary to making the power of attorney
2 effective have occurred;

3 (f) The agent does not have actual knowledge of the revocation,
4 termination, limitation, or modification of the power of attorney or
5 of the agent's authority;

6 (g) The agent does not have actual knowledge of the existence of
7 other circumstances that would limit, modify, revoke, or terminate
8 the power of attorney or the agent's authority to take the proposed
9 action;

10 (h) If the agent was married to or in a state registered domestic
11 partnership with the principal at the time of execution of the power
12 of attorney, then at the time of signing the affidavit or
13 declaration, the marriage or state registered domestic partnership of
14 the principal and the agent has not been dissolved or declared
15 invalid, and no action is pending for the dissolution of the marriage
16 or domestic partnership or for legal separation; and

17 (i) The agent is acting in good faith pursuant to the authority
18 given under the power of attorney.

19 (6) An English translation requested under this section must be
20 provided at the principal's expense unless the request is made more
21 than seven business days after the power of attorney is presented for
22 acceptance.

23 (7) For purposes of this section and section 120 of this act, a
24 person that conducts activities through employees is without actual
25 knowledge of a fact relating to a power of attorney, a principal, or
26 an agent if the employee conducting the transaction involving the
27 power of attorney is without actual knowledge of the fact.

28 NEW SECTION. **Sec. 120.** (1) Except as otherwise provided in
29 subsection (2) of this section:

30 (a) A person shall either accept an acknowledged power of
31 attorney or request a certification or a translation no later than
32 seven business days after presentation of the power of attorney for
33 acceptance;

34 (b) If a person requests a certification or a translation, the
35 person shall accept the power of attorney no later than five business
36 days after receipt of the certification or translation; and

37 (c) A person may not require an additional or different form of
38 power of attorney for authority granted in the power of attorney
39 presented.

1 (2) A person is not required to accept an acknowledged power of
2 attorney if:

3 (a) The person is not otherwise required to engage in a
4 transaction with the principal in the same circumstances;

5 (b) Engaging in a transaction with the agent or the principal in
6 the same circumstances would be inconsistent with federal law;

7 (c) The person has actual knowledge of the termination of the
8 agent's authority or of the power of attorney before exercise of the
9 power;

10 (d) A request for a certification or a translation is refused;

11 (e) The person in good faith believes that the power is not valid
12 or that the agent does not have the authority to perform the act
13 requested, whether or not a certification or a translation has been
14 requested or provided; or

15 (f) The person makes, or has actual knowledge that another person
16 has made, a report to the department of social and health services
17 stating a good faith belief that the principal may be subject to
18 physical or financial abuse, neglect, exploitation, or abandonment by
19 the agent or a person acting for or with the agent.

20 (3) A person that refuses in violation of this section to accept
21 an acknowledged power of attorney is subject to:

22 (a) A court order mandating acceptance of the power of attorney;
23 and

24 (b) Liability for reasonable attorneys' fees and costs incurred
25 in any action or proceeding that confirms the validity of the power
26 of attorney or mandates acceptance of the power of attorney.

27 NEW SECTION. **Sec. 121.** Unless displaced by a provision of this
28 chapter, the principles of law and equity supplement this chapter.

29 NEW SECTION. **Sec. 122.** This chapter does not supersede any
30 other law applicable to financial institutions or other entities, and
31 the other law controls if inconsistent with this chapter.

32 NEW SECTION. **Sec. 123.** The remedies under this chapter are not
33 exclusive and do not abrogate any right or remedy under the law of
34 this state other than this chapter.

35 **PART II**

1 NEW SECTION. **Sec. 201.** (1) An agent under a power of attorney
2 may, subject to the requirements of section 114 of this act, and in
3 particular section 114(2)(f) of this act, do the following on behalf
4 of the principal or with the principal's property only if the power
5 of attorney expressly grants the agent the authority and exercise of
6 the authority is not otherwise prohibited by another agreement or
7 instrument to which the authority or property is subject:

8 (a) Create, amend, revoke, or terminate an inter vivos trust;

9 (b) Make a gift;

10 (c) Create or change rights of survivorship;

11 (d) Create or change a beneficiary designation;

12 (e) Delegate some but not all of the authority granted under the
13 power of attorney, except as otherwise provided in section 111(1) of
14 this act;

15 (f) Waive the principal's right to be a beneficiary of a joint
16 and survivor annuity, including a survivor benefit under a retirement
17 plan;

18 (g) Exercise fiduciary powers that the principal has authority to
19 delegate;

20 (h) Exercise any power of appointment in favor of anyone other
21 than the principal;

22 (i) Create, amend, or revoke a community property agreement;

23 (j) Cause a trustee to make distributions of property held in
24 trust under the same conditions that the principal could;

25 (k) Make any other provisions for nonprobate transfer at death
26 contained in nontestamentary instruments described in RCW 11.02.091;

27 (1) Make health care decisions for the principal, or give
28 informed consent to health care decisions on the principal's behalf.

29 (2) Notwithstanding the provisions of subsection (1)(a) of this
30 section, an agent may, even in the absence of a specific grant of
31 authority, make transfers of property to any trust that benefits the
32 principal alone and does not have dispositive provisions that are
33 different from those that would have governed the property had it not
34 been transferred into such trust.

35 (3) Notwithstanding the provisions of subsection (1)(b) of this
36 section, an agent may, even in the absence of a specific grant of
37 authority, make any transfer of resources not prohibited under
38 chapter 74.09 RCW when the transfer is for the purpose of qualifying
39 the principal for medical assistance or the limited casualty program
40 for the medically needy.

1 (4) Notwithstanding a grant of authority to do an act described
2 in subsection (1) of this section, unless the power of attorney
3 otherwise provides, an agent that is not an ancestor, spouse, state
4 registered domestic partner, or descendant of the principal, may not
5 exercise authority under a power of attorney to create in the agent,
6 or in an individual to whom the agent owes a legal obligation of
7 support, an interest in the principal's property, whether by gift,
8 right of survivorship, beneficiary designation, disclaimer, or
9 otherwise.

10 (5) Unless the power of attorney otherwise provides, a grant of
11 authority to make a gift is subject to section 216 of this act.

12 (6) Subject to subsections (1) through (5) of this section, if
13 the subjects over which authority is granted in a power of attorney
14 are similar or overlap, the broadest authority controls.

15 (7) Authority granted in a power of attorney is exercisable with
16 respect to property that the principal has when the power of attorney
17 is executed or acquires later, whether or not the property is located
18 in this state and whether or not the authority is exercised or the
19 power of attorney is executed in this state.

20 (8) An act performed by an agent pursuant to a power of attorney
21 has the same effect and inures to the benefit of and binds the
22 principal and the principal's successors in interest as if the
23 principal had performed the act.

24 NEW SECTION. **Sec. 202.** (1) Subject to the provisions of section
25 201 of this act, if a power of attorney grants to an agent authority
26 to do all acts that a principal could do or contains words of similar
27 effect, the agent has the general authority described in sections 203
28 through 218 of this act.

29 (2) An agent has authority described in this act if the power of
30 attorney refers to general authority with respect to the descriptive
31 term for the subjects stated in sections 204 through 218 of this act
32 or cites the section in which the authority is described.

33 (3) A reference in a power of attorney to general authority with
34 respect to the descriptive term for a subject in sections 204 through
35 218 of this act or a citation to a section of sections 204 through
36 218 of this act incorporates the entire section as if it were set out
37 in full in the power of attorney.

38 (4) A principal may modify authority incorporated by reference.

1 NEW SECTION. **Sec. 203.** Except as otherwise provided in the
2 power of attorney, by executing a power of attorney that incorporates
3 by reference a subject described in sections 204 through 218 of this
4 act or that grants to an agent authority to do all acts that a
5 principal could do pursuant to section 202(1) of this act, a
6 principal authorizes the agent, with respect to that subject, to:

7 (1) Demand, receive, and obtain by litigation or otherwise,
8 declaratory or injunctive relief, money, or another thing of value to
9 which the principal is, may become, or claims to be entitled, and
10 conserve, invest, disburse, or use anything so received or obtained
11 for the purposes intended;

12 (2) Contract in any manner with any person, on terms agreeable to
13 the agent, to accomplish a purpose of a transaction and perform,
14 rescind, cancel, terminate, reform, restate, release, or modify the
15 contract or another contract made by or on behalf of the principal;

16 (3) Execute, acknowledge, seal, deliver, file, or record any
17 instrument or communication the agent considers desirable to
18 accomplish a purpose of a transaction, including creating at any time
19 a schedule listing some or all of the principal's property and
20 attaching it to the power of attorney;

21 (4) Initiate, participate in, submit to alternative dispute
22 resolution, settle, oppose, or propose or accept a compromise with
23 respect to a claim existing in favor of or against the principal or
24 intervene in litigation relating to the claim;

25 (5) Seek on the principal's behalf the assistance of a court or
26 other governmental agency to carry out an act authorized in the power
27 of attorney;

28 (6) Engage, compensate, and discharge an attorney, accountant,
29 investment manager, expert witness, or other advisor;

30 (7) Prepare, execute, and file a record, report, or other
31 document to safeguard or promote the principal's interest under a
32 statute or regulation;

33 (8) Communicate with any representative or employee of a
34 government or governmental subdivision, agency, or instrumentality,
35 on behalf of the principal;

36 (9) Access communications intended for, and communicate on behalf
37 of the principal, whether by mail, electronic transmission,
38 telephone, or other means; and

39 (10) Do any lawful act with respect to the subject and all
40 property related to the subject.

1 NEW SECTION. **Sec. 204.** Unless the power of attorney otherwise
2 provides, language in a power of attorney granting general authority
3 with respect to real property authorizes the agent to:

4 (1) Demand; buy; sublease; license; receive; accept as a gift or
5 as security for an extension of credit; or otherwise acquire or
6 reject an interest in real property or a right incident to real
7 property;

8 (2) Sell; exchange; convey with or without reservations,
9 covenants, representations, or warranties; quitclaim; release;
10 surrender; retain title for security; encumber; partition; consent to
11 partitioning; subject to an easement or covenant, common interest
12 regime; subdivide; apply for zoning or other governmental permits;
13 plat or consent to platting; develop; grant an option concerning;
14 lease; sublease; license; contribute to an entity in exchange for an
15 interest in that entity; or, subject to section 201 of this act,
16 otherwise grant or dispose of an interest in real property or a right
17 incident to real property;

18 (3) Pledge or mortgage an interest in real property or right
19 incident to real property as security to borrow money or pay, renew,
20 extend the time of payment of a debt of the principal or a debt
21 guaranteed by the principal, or as security for a nonmonetary
22 obligation;

23 (4) Release, assign, satisfy, or enforce by litigation or
24 otherwise a mortgage, deed of trust, conditional sale contract,
25 encumbrance, lien, or other claim to real property which exists or is
26 asserted;

27 (5) Manage or conserve an interest in real property or a right
28 incident to real property owned or claimed to be owned by the
29 principal, including:

30 (a) Insuring against liability or casualty or other loss;

31 (b) Obtaining or regaining possession of or protecting the
32 interest or right by litigation or otherwise;

33 (c) Paying, assessing, compromising, or contesting taxes or
34 assessments or applying for and receiving refunds in connection with
35 them; and

36 (d) Purchasing supplies, hiring assistance or labor, and making
37 repairs or alterations to the real property;

38 (6) Use, develop, alter, replace, remove, erect, or install
39 structures or other improvements upon real property in or incident to
40 which the principal has, or claims to have, an interest or right;

1 (7) Participate in a reorganization with respect to real property
2 or an entity that owns an interest in or right incident to real
3 property and receive, and hold, and act with respect to stocks and
4 bonds or other property received in a plan of reorganization,
5 including:

6 (a) Selling or otherwise disposing of them;

7 (b) Exercising or selling an option, right of conversion, or
8 similar right with respect to them; and

9 (c) Exercising any voting rights in person or by proxy;

10 (8) Change the form of title of an interest in or right incident
11 to real property; and

12 (9) Dedicate to public use, with or without consideration,
13 easements or other real property in which the principal has, or
14 claims to have, an interest.

15 NEW SECTION. **Sec. 205.** Unless the power of attorney otherwise
16 provides, language in a power of attorney granting general authority
17 with respect to tangible personal property authorizes the agent to:

18 (1) Demand, buy, receive, accept as a gift or as security for an
19 extension of credit, or otherwise acquire or reject ownership or
20 possession of tangible personal property or an interest in tangible
21 personal property;

22 (2) Sell; exchange; convey with or without covenants,
23 representations, or warranties; quitclaim; release; surrender; create
24 a security interest in; grant options concerning; lease; sublease;
25 or, otherwise dispose of tangible personal property or an interest in
26 tangible personal property;

27 (3) Grant a security interest in tangible personal property or an
28 interest in tangible personal property as security to borrow money or
29 pay, renew, or extend the time of payment of a debt of the principal
30 or a debt guaranteed by the principal;

31 (4) Release, assign, satisfy, or enforce by litigation or
32 otherwise, a security interest, lien, or other claim on behalf of the
33 principal, with respect to tangible personal property or an interest
34 in tangible personal property;

35 (5) Manage or conserve tangible personal property or an interest
36 in tangible personal property on behalf of the principal, including:

37 (a) Insuring against liability or casualty or other loss;

38 (b) Obtaining or regaining possession of or protecting the
39 property or interest, by litigation or otherwise;

1 (c) Paying, assessing, compromising, or contesting taxes or
2 assessments or applying for and receiving refunds in connection with
3 taxes or assessments;

4 (d) Moving the property from place to place;

5 (e) Storing the property for hire or on a gratuitous bailment;
6 and

7 (f) Using and making repairs, alterations, or improvements to the
8 property; and

9 (6) Change the form of title of an interest in tangible personal
10 property.

11 NEW SECTION. **Sec. 206.** Unless the power of attorney otherwise
12 provides, language in a power of attorney granting general authority
13 with respect to stocks, bonds, and financial instruments authorizes
14 the agent to:

15 (1) Buy, sell, and exchange stocks, bonds, and financial
16 instruments;

17 (2) Establish, continue, modify, or terminate an account with
18 respect to stocks, bonds, and financial instruments;

19 (3) Pledge stocks, bonds, and financial instruments as security
20 to borrow, pay, renew, or extend the time of payment of a debt of the
21 principal;

22 (4) Receive certificates and other evidences of ownership with
23 respect to stocks, bonds, and financial instruments;

24 (5) Exercise voting rights with respect to stocks, bonds, and
25 financial instruments in person or by proxy, enter into voting
26 trusts, and consent to limitations on the right to vote;

27 (6) Buy, sell, exchange, assign, settle, and exercise commodity
28 futures contracts and call or put options on stocks or stock indexes
29 traded on a regulated option exchange; and

30 (7) Establish, continue, modify, and terminate option accounts.

31 NEW SECTION. **Sec. 207.** Except as otherwise expressly provided
32 in this act and in chapter 30A.22 RCW, unless the power of attorney
33 otherwise provides, language in a power of attorney granting general
34 authority with respect to banks and other financial institutions
35 authorizes the agent to:

36 (1) Continue, modify, and terminate an account or other banking
37 arrangement made by or on behalf of the principal;

1 (2) Establish, modify, and terminate an account or other banking
2 arrangement with a bank, trust company, savings and loan association,
3 credit union, thrift company, brokerage firm, or other financial
4 institution selected by the agent;

5 (3) Contract for services available from a financial institution,
6 including renting a safe deposit box or space in a vault;

7 (4) Withdraw, by check, order, electronic funds transfer, or
8 otherwise, money or property of the principal deposited with or left
9 in the custody of a financial institution;

10 (5) Receive statements of account, vouchers, notices, and similar
11 documents from a financial institution and act with respect to them;

12 (6) Enter a safe deposit box or vault and withdraw or add to the
13 contents;

14 (7) Borrow money and pledge as security personal property of the
15 principal necessary to borrow money or pay, renew, or extend the time
16 of payment of a debt of the principal or a debt guaranteed by the
17 principal;

18 (8) Make, assign, draw, endorse, discount, guarantee, and
19 negotiate promissory notes, checks, drafts, and other negotiable or
20 nonnegotiable paper of the principal or payable to the principal or
21 the principal's order, transfer money, receive the cash or other
22 proceeds of those transactions, and accept a draft drawn by a person
23 upon the principal and pay it when due;

24 (9) Receive for the principal and act upon a sight draft,
25 warehouse receipt, or other document of title whether tangible or
26 electronic, or other negotiable or nonnegotiable instrument;

27 (10) Apply for, receive, and use letters of credit, credit and
28 debit cards, electronic transaction authorizations, and traveler's
29 checks from a financial institution and give an indemnity or other
30 agreement in connection with letters of credit; and

31 (11) Consent to an extension of the time of payment with respect
32 to commercial paper or a financial transaction with a financial
33 institution.

34 NEW SECTION. **Sec. 208.** Subject to the terms of a document or an
35 agreement governing an entity or an entity ownership interest, and
36 unless the power of attorney otherwise provides, language in a power
37 of attorney granting general authority with respect to operation of
38 an entity or business authorizes the agent to:

- 1 (1) Operate, buy, sell, enlarge, reduce, or terminate an
2 ownership interest;
- 3 (2) Perform a duty or discharge a liability and exercise in
4 person or by proxy a right, power, privilege, or option that the
5 principal has, may have, or claims to have;
- 6 (3) Enforce the terms of an ownership agreement;
- 7 (4) Initiate, participate in, submit to alternative dispute
8 resolution, settle, oppose, or propose or accept a compromise with
9 respect to litigation to which the principal is a party because of an
10 ownership interest;
- 11 (5) Exercise in person or by proxy, or enforce by litigation or
12 otherwise, a right, power, privilege, or option the principal has or
13 claims to have as the holder of stocks, bonds, and financial
14 instruments;
- 15 (6) Initiate, participate in, submit to alternative dispute
16 resolution, settle, oppose, or propose or accept a compromise with
17 respect to litigation to which the principal is a party concerning
18 stocks, bonds, and financial instruments;
- 19 (7) With respect to an entity or business owned solely by the
20 principal:
- 21 (a) Continue, modify, renegotiate, extend, and terminate a
22 contract made by or on behalf of the principal with respect to the
23 entity or business before execution of the power of attorney;
- 24 (b) Determine:
- 25 (i) The location of its operation;
- 26 (ii) The nature and extent of its business;
- 27 (iii) The methods of manufacturing, selling, merchandising,
28 financing, accounting, and advertising employed in its operation;
- 29 (iv) The amount and types of insurance carried; and
- 30 (v) The mode of engaging, compensating, and dealing with its
31 employees and accountants, attorneys, or other advisors;
- 32 (c) Change the name or form of organization under which the
33 entity or business is operated and enter into an ownership agreement
34 with other persons to take over all or part of the operation of the
35 entity or business; and
- 36 (d) Demand and receive money due or claimed by the principal or
37 on the principal's behalf in the operation of the entity or business
38 and control and disburse the money in the operation of the entity or
39 business;

1 (8) Put additional capital into an entity or business in which
2 the principal has an interest;

3 (9) Join in a plan of reorganization, consolidation, conversion,
4 domestication, or merger of the entity or business;

5 (10) Sell or liquidate all or part of an entity or business;

6 (11) Establish through agreement or independent appraisal the
7 value of an entity or business to which the principal is a party;

8 (12) Prepare, sign, file, and deliver reports, compilations of
9 information, returns, or other papers with respect to an entity or
10 business and make related payments; and

11 (13) Pay, compromise, or contest taxes, assessments, fines, or
12 penalties and perform any other act to protect the principal from
13 illegal or unnecessary taxation, assessments, fines, or penalties,
14 with respect to an entity or business, including attempts to recover,
15 in any manner permitted by law, money paid before or after the
16 execution of the power of attorney.

17 NEW SECTION. **Sec. 209.** Unless the power of attorney otherwise
18 provides, language in a power of attorney granting general authority
19 with respect to insurance and annuities authorizes the agent to:

20 (1) Continue, pay the premium or make a contribution on, modify,
21 exchange, sell, rescind, release, or terminate a contract procured by
22 or on behalf of the principal which insures or provides an annuity to
23 either the principal or another person, whether or not the principal
24 is a beneficiary under the contract;

25 (2) Procure new, different, and additional contracts of insurance
26 and annuities for the benefit of the principal and the principal's
27 spouse, state registered domestic partner, children, and other
28 dependents, and select the amount, type of insurance or annuity, and
29 mode of payment;

30 (3) Pay the premium or make a contribution on, modify, exchange,
31 rescind, release, or terminate a contract of insurance or annuity
32 procured by the agent;

33 (4) Apply for and receive a loan secured by a contract of
34 insurance or annuity;

35 (5) Surrender and receive the cash surrender value on a contract
36 of insurance or annuity;

37 (6) Exercise an election;

38 (7) Exercise investment powers available under a contract of
39 insurance or annuity;

1 (8) Change the manner of paying premiums on a contract of
2 insurance or annuity;

3 (9) Change or convert the type of insurance or annuity with
4 respect to which the principal has or claims to have authority
5 described in this section;

6 (10) Apply for and procure a benefit or assistance under a
7 statute or regulation to guarantee or pay premiums of a contract of
8 insurance on the life of the principal;

9 (11) Collect, sell, assign, hypothecate, borrow against, or
10 pledge the interest of the principal in a contract of insurance or
11 annuity;

12 (12) Select the form and timing of the payment of proceeds from a
13 contract of insurance or annuity; and

14 (13) Pay, from proceeds or otherwise, compromise or contest, and
15 apply for refunds in connection with, a tax or assessment levied by a
16 taxing authority with respect to a contract of insurance or annuity
17 or its proceeds or liability accruing by reason of the tax or
18 assessment.

19 NEW SECTION. **Sec. 210.** (1) In this section, "estates, trusts,
20 and other beneficial interests" means a trust, probate estate,
21 guardianship, conservatorship, escrow, or custodianship or a fund
22 from which the principal is, may become, or claims to be, entitled to
23 a share or payment.

24 (2) Unless the power of attorney otherwise provides, language in
25 a power of attorney granting general authority with respect to
26 estates, trusts, and other beneficial interests authorizes the agent
27 to:

28 (a) Accept, receive, receipt for, sell, assign, pledge, or
29 exchange a share in or payment from the fund;

30 (b) Demand or obtain money or another thing of value to which the
31 principal is, may become, or claims to be, entitled by reason of the
32 fund, by litigation or otherwise;

33 (c) Exercise for the benefit of the principal a presently
34 exercisable general power of appointment held by the principal;

35 (d) Exercise for the benefit of the principal a presently
36 exercisable limited power of appointment held by the principal;

37 (e) Initiate, participate in, submit to alternative dispute
38 resolution, settle, oppose, or propose or accept a compromise with
39 respect to litigation to ascertain the meaning, validity, or effect

1 of a deed, will, declaration of trust, or other instrument or
2 transaction affecting the interest of the principal;

3 (f) Initiate, participate in, submit to alternative dispute
4 resolution, settle, oppose, or propose or accept a compromise with
5 respect to litigation to remove, substitute, or surcharge a
6 fiduciary, and any other matter as defined under RCW 11.96A.030;

7 (g) Conserve, invest, disburse, or use anything received for an
8 authorized purpose;

9 (h) Transfer an interest of the principal in real property,
10 stocks, bonds, and financial instruments, accounts with financial
11 institutions or securities intermediaries, insurance, annuities, and
12 other property to the trustee of a revocable trust created by the
13 principal as settlor, subject to the limitations in section 201(1) of
14 this section; and

15 (i) Reject, renounce, disclaim, release, or consent to a
16 reduction in or modification of a share in or payment from the fund.

17 NEW SECTION. **Sec. 211.** Unless the power of attorney otherwise
18 provides, language in a power of attorney granting general authority
19 with respect to claims and litigation authorizes the agent, without
20 the need for appointment of a guardian or guardian ad litem under
21 Title 4 RCW, to:

22 (1) Assert and maintain before a court or administrative agency a
23 claim, claim for relief, cause of action, counterclaim, offset,
24 recoupment, or defense, including an action to recover property or
25 other thing of value, recover damages sustained by the principal,
26 eliminate or modify tax liability, or seek an injunction, specific
27 performance, or other relief;

28 (2) Bring or defend an action to determine adverse claims or
29 intervene or otherwise participate in litigation;

30 (3) Seek an attachment, garnishment, order of arrest, or other
31 preliminary, provisional, or intermediate relief and use an available
32 procedure to effect or satisfy a judgment, order, or decree;

33 (4) Make or accept a tender, offer of judgment, or admission of
34 facts, submit a controversy on an agreed statement of facts, consent
35 to examination, and bind the principal in litigation;

36 (5) Submit to alternative dispute resolution, settle, and propose
37 or accept a compromise, subject to special proceeding rule 98.16W;

38 (6) Waive the issuance and service of process upon the principal,
39 accept service of process, appear for the principal, designate

1 persons upon which process directed to the principal may be served,
2 execute, and file or deliver stipulations on the principal's behalf,
3 verify pleadings, seek appellate review, procure and give surety and
4 indemnity bonds, contract and pay for the preparation and printing of
5 records and briefs, receive, execute, and file or deliver a consent,
6 waiver, release, confession of judgment, satisfaction of judgment,
7 notice, agreement, or other instrument in connection with the
8 prosecution, settlement, or defense of a claim or litigation;

9 (7) Act for the principal with respect to bankruptcy or
10 insolvency, whether voluntary or involuntary, concerning the
11 principal or some other person, or with respect to a reorganization,
12 receivership, or application for the appointment of a receiver or
13 trustee which affects an interest of the principal in property or
14 other thing of value;

15 (8) Pay a judgment, award, or order against the principal or a
16 settlement made in connection with a claim or litigation; and

17 (9) Receive money or other thing of value paid in settlement of
18 or as proceeds of a claim or litigation.

19 NEW SECTION. **Sec. 212.** (1) Unless the power of attorney
20 otherwise provides, language in a power of attorney granting general
21 authority with respect to personal and family maintenance authorizes
22 the agent to:

23 (a) Perform the acts necessary to maintain the customary standard
24 of living of the principal, the principal's spouse or state
25 registered domestic partner, and the following individuals, whether
26 living when the power of attorney is executed or later born:

27 (i) The principal's children;

28 (ii) Other individuals legally entitled to be supported by the
29 principal; and

30 (iii) The individuals whom the principal has customarily
31 supported or indicated the intent to support;

32 (b) Make periodic payments of child support and other family
33 maintenance required by a court or governmental agency or an
34 agreement to which the principal is a party;

35 (c) Provide living quarters for the individuals described in
36 subsection (1) of this section by:

37 (i) Purchase, lease, or other contract; or

1 (ii) Paying the operating costs, including interest, amortization
2 payments, repairs, improvements, and taxes, for premises owned by the
3 principal or occupied by those individuals;

4 (d) Provide reasonable domestic help, usual vacations and travel
5 expenses, and funds for shelter, clothing, food, appropriate
6 education, including postsecondary and vocational education, and
7 other current living costs for the individuals described in
8 subsection (1) of this section;

9 (e) Pay expenses for necessary health care and custodial care on
10 behalf of the individuals described in subsection (1) of this
11 section;

12 (f) Act as the principal's personal representative pursuant to
13 the health insurance portability and accountability act, sections
14 1171 through 1179 of the social security act, 42 U.S.C. Sec. 1320d,
15 as amended, and applicable regulations, for the limited purpose of
16 making decisions regarding the payment of costs and expenses arising
17 from past, present, or future health care provided to the principal
18 which was consented to by the principal or anyone authorized under
19 the law of this state to consent to health care on behalf of the
20 principal;

21 (g) Continue any provision made by the principal for automobiles
22 or other means of transportation, including registering, licensing,
23 insuring, and replacing them, for the individuals described in
24 subsection (1) of this section;

25 (h) Maintain credit and debit accounts for the convenience of the
26 individuals described in subsection (1) of this section and open new
27 accounts; and

28 (i) Continue payments incidental to the membership or affiliation
29 of the principal in a religious institution, club, society, order, or
30 other organization or to continue contributions to those
31 organizations.

32 (2) Authority with respect to personal and family maintenance is
33 neither dependent upon, nor limited by, authority that an agent may
34 or may not have with respect to gifts under this act.

35 NEW SECTION. **Sec. 213.** (1) In this section, "benefits from
36 governmental programs or civil or military service" means any
37 benefit, program or assistance provided under a statute or regulation
38 including social security, medicare, and medicaid.

1 (2) Unless the power of attorney otherwise provides, language in
2 a power of attorney granting general authority with respect to
3 benefits from governmental programs or civil or military service
4 authorizes the agent to:

5 (a) Execute vouchers in the name of the principal for allowances
6 and reimbursements payable by the United States or a foreign
7 government or by a state or subdivision of a state to the principal,
8 including allowances and reimbursements for transportation of the
9 individuals described in section 212(1)(a) of this act, and for
10 shipment of their household effects;

11 (b) Take possession and order the removal and shipment of
12 property of the principal from a post, warehouse, depot, dock, or
13 other place of storage or safekeeping, either governmental or
14 private, and execute and deliver a release, voucher, receipt, bill of
15 lading, shipping ticket, certificate, or other instrument for that
16 purpose;

17 (c) Enroll in, apply for, select, reject, change, amend, or
18 discontinue, on the principal's behalf, a benefit or program;

19 (d) Prepare, file, and maintain a claim of the principal for a
20 benefit or assistance, financial or otherwise, to which the principal
21 may be entitled under a statute or regulation;

22 (e) Initiate, participate in, submit to alternative dispute
23 resolution, settle, oppose, or propose or accept a compromise with
24 respect to litigation concerning any benefit or assistance the
25 principal may be entitled to receive under a statute or regulation;
26 and

27 (f) Receive the financial proceeds of a claim described in (d) of
28 this subsection and conserve, invest, disburse, or use for a lawful
29 purpose anything so received.

30 NEW SECTION. **Sec. 214.** (1) In this section, "retirement plan"
31 means a plan or account created by an employer, the principal, or
32 another individual to provide retirement benefits or deferred
33 compensation of which the principal is a participant, beneficiary, or
34 owner, including but not limited to a plan or account under the
35 following sections of the internal revenue code:

36 (a) An individual retirement account under internal revenue code
37 section 408, 26 U.S.C. Sec. 408, as amended;

38 (b) A roth individual retirement account under internal revenue
39 code section 408A, 26 U.S.C. Sec. 408A, as amended;

1 (c) A deemed individual retirement account under internal revenue
2 code section 408(q), 26 U.S.C. Sec. 408(q), as amended;

3 (d) An annuity or mutual fund custodial account under internal
4 revenue code section 403(b), 26 U.S.C. Sec. 403(b), as amended;

5 (e) A pension, profit-sharing, stock bonus, or other retirement
6 plan qualified under internal revenue code section 401(a), 26 U.S.C.
7 Sec. 401(a), as amended;

8 (f) A plan under internal revenue code section 457(b), 26 U.S.C.
9 Sec. 457(b), as amended; and

10 (g) A nonqualified deferred compensation plan under internal
11 revenue code section 409A, 26 U.S.C. Sec. 409A, as amended.

12 (2) Unless the power of attorney otherwise provides, language in
13 a power of attorney granting general authority with respect to
14 retirement plans authorizes the agent to:

15 (a) Select the form and timing of payments under a retirement
16 plan and withdraw benefits from a plan;

17 (b) Make a rollover, including a direct trustee-to-trustee
18 rollover, of benefits from one retirement plan to another;

19 (c) Establish a retirement plan in the principal's name;

20 (d) Make contributions to a retirement plan;

21 (e) Exercise investment powers available under a retirement plan;
22 and

23 (f) Borrow from, sell assets to, or purchase assets from a
24 retirement plan.

25 NEW SECTION. **Sec. 215.** Unless the power of attorney otherwise
26 provides, language in a power of attorney granting general authority
27 with respect to taxes authorizes the agent to:

28 (1) Prepare, sign, and file federal, state, local, and foreign
29 income, gift, payroll, property, federal insurance contributions act,
30 and other tax returns, claims for refunds, requests for extension of
31 time, petitions regarding tax matters, and any other tax-related
32 documents, including receipts, offers, waivers, consents, including
33 consents and agreements under internal revenue code section 2032A, 26
34 U.S.C. Sec. 2032A, as amended, closing agreements, and any power of
35 attorney required by the internal revenue service or other taxing
36 authority including, but not limited to, an internal revenue service
37 form 2848 in favor of any third party with respect to a tax year upon
38 which the statute of limitations has not run and the following
39 twenty-five tax years;

1 (2) Pay taxes due, collect refunds, post bonds, receive
2 confidential information, and contest deficiencies determined by the
3 internal revenue service or other taxing authority;

4 (3) Exercise any election available to the principal under
5 federal, state, local, or foreign tax law; and

6 (4) Act for the principal in all tax matters for all periods
7 before the internal revenue service, or other taxing authority.

8 NEW SECTION. **Sec. 216.** (1) In this section, a gift "for the
9 benefit of" a person includes but is not limited to a gift to a
10 trust, an account under the uniform transfers to minors act of any
11 jurisdiction, and a tuition savings account or prepaid tuition plan
12 as defined under internal revenue code section 529, 26 U.S.C. Sec.
13 529, as amended. Notwithstanding the terms of section 201(1)(a) of
14 this act, the power to make a gift pursuant to section 201(1)(b) of
15 this act shall include the power to create a trust, an account under
16 the uniform transfers to minors act, or a tuition savings account or
17 prepaid tuition plan as defined under internal revenue code section
18 529, 26 U.S.C. Sec. 529, as amended, into which a gift is to be made.

19 (2) Unless the power of attorney otherwise provides, language in
20 a power of attorney granting general authority with respect to gifts
21 authorizes the agent only to:

22 (a) Make outright to, or for the benefit of, a person, a gift of
23 any of the principal's property, including by the exercise of a
24 presently exercisable general power of appointment held by the
25 principal, in an amount per donee not to exceed the annual dollar
26 limits of the federal gift tax exclusion under internal revenue code
27 section 2503(b), 26 U.S.C. Sec. 2503(b), as amended, without regard
28 to whether the federal gift tax exclusion applies to the gift, or if
29 the principal's spouse agrees to consent to a split gift pursuant to
30 internal revenue code section 2513, 26 U.S.C. Sec. 2513, as amended,
31 in an amount per donee not to exceed twice the annual federal gift
32 tax exclusion limit; and

33 (b) Consent, pursuant to internal revenue code section 2513, 26
34 U.S.C. Sec. 2513, as amended, to the splitting of a gift made by the
35 principal's spouse in an amount per donee not to exceed the aggregate
36 annual gift tax exclusions for both spouses.

37 (3) An agent may make a gift outright to, or for the benefit of,
38 a person of the principal's property only as the agent determines is
39 consistent with the principal's objectives if actually known by the

1 agent and, if unknown, as the agent determines is consistent with the
2 principal's best interest based on all relevant factors, including
3 but not limited to:

4 (a) The value and nature of the principal's property;

5 (b) The principal's foreseeable obligations and need for
6 maintenance;

7 (c) Minimization of taxes, including income, estate, inheritance,
8 generation-skipping transfer, and gift taxes;

9 (d) Eligibility for a benefit, a program, or assistance under a
10 statute or rule; and

11 (e) The principal's personal history of making or joining in
12 making gifts.

13 NEW SECTION. **Sec. 217.** Unless the power of attorney otherwise
14 provides, where language in a power of attorney grants general
15 authority with respect to health care matters:

16 (1) The agent shall be authorized to act as the principal's
17 personal representative pursuant to the health insurance portability
18 and accountability act, sections 1171 through 1179 of the social
19 security act, 42 U.S.C. Sec. 1320d, as amended, and applicable
20 regulations for all purposes thereunder, including but not limited to
21 accessing and acquiring the principal's health care related
22 information.

23 (2) The agent shall be authorized to provide informed consent for
24 health care decisions on the principal's behalf. If a principal has
25 appointed more than one agent with authority to make mental health
26 treatment decisions in accordance with a directive under chapter
27 71.32 RCW, to the extent of any conflict, the most recently appointed
28 agent shall be treated as the principal's agent for mental health
29 treatment decisions unless provided otherwise in either appointment.

30 (3) Unless he or she is the spouse, state registered domestic
31 partner, father or mother, or adult child or brother or sister of the
32 principal, none of the following persons may act as the agent for the
33 principal: Any of the principal's physicians, the physicians'
34 employees, or the owners, administrators, or employees of the health
35 care facility or long-term care facility as defined in RCW 43.190.020
36 where the principal resides or receives care. Except when the
37 principal has consented in a mental health advance directive executed
38 under chapter 71.32 RCW to inpatient admission or electroconvulsive
39 therapy, this authorization is subject to the same limitations as

1 those that apply to a guardian under RCW 11.92.043(5) (a) through (c)
2 and 11.92.190.

3 NEW SECTION. **Sec. 218.** Unless the power of attorney otherwise
4 provides, the following general provisions shall apply to any power
5 of attorney making reference to the care of the principal's minor
6 children:

7 (1) A parent or guardian, through a power of attorney, may
8 authorize an agent to make health care decisions on behalf of one or
9 more of his or her children, or children for whom he or she is the
10 legal guardian, who are under the age of majority as defined in RCW
11 26.28.015, to be effective if the child has no other parent or legal
12 representative readily available and authorized to give such consent.

13 (2) A principal may further nominate a guardian or guardians of
14 the person, or of the estate or both, of a minor child, whether born
15 at the time of making the durable power of attorney or afterwards, to
16 continue during the disability of the principal, during the minority
17 of the child or for any less time by including such a provision in
18 his or her power of attorney.

19 (3) The authority of any guardian of the person of any minor
20 child shall supersede the authority of a designated agent to make
21 health care decisions for the minor only after such designated
22 guardian has been appointed by the court.

23 (4) In the event a conflict between the provisions of a will
24 nominating a testamentary guardian under the authority of RCW
25 11.88.080 and the nomination of a guardian under the authority of
26 this statute, the most recent designation shall control.

27 NEW SECTION. **Sec. 219.** Notwithstanding any provision in this
28 act, or any provision in a power of attorney, no rights under
29 Washington's death with dignity act, chapter 70.245 RCW, may be
30 exercised through a power of attorney.

31 **PART III**

32 NEW SECTION. **Sec. 301.** The following optional form may be used
33 by an agent to certify facts concerning a power of attorney.

34 **AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY**
35 **AND AGENT'S AUTHORITY**

1 State of _____

2 [County] of _____]

3 I, _____ (Name of Agent), [certify] under penalty of perjury that
4 (Name of Principal) granted me authority as an agent or successor agent in a power of attorney dated _____.

5 I further [certify] that to my knowledge:

6 (1) I am acting in good faith pursuant to the authority given under the power of attorney;

7 (2) The principal is alive and has not terminated, revoked, limited, or modified the power of attorney or my
8 authority to act under the power of attorney; nor has the power of attorney or my authority to act under the power of
9 attorney been terminated, revoked, limited, or modified by any other circumstances;

10 (3) When the power of attorney was signed, the principal was competent to execute it and was not under undue
11 influence to sign;

12 (4) All events necessary to making the power of attorney effective have occurred;

13 (5) If I was married or a registered domestic partner of the principal when the power of attorney was executed,
14 there has been no subsequent dissolution, annulment, or legal separation, and no action is pending for the dissolution of the
15 marriage or domestic partnership or for legal separation;

16 (6) If the power of attorney was drafted to become effective upon the happening of an event or contingency, the
17 event or contingency has occurred;

18 (7) If I was named as a successor agent, the prior agent is no longer able or willing to serve, or the conditions
19 stated in the power of attorney that cause me to become the acting agent have occurred; and

20 (8) _____
21 _____
22 _____
23 _____

24 (Insert other relevant statements)

25 **SIGNATURE AND ACKNOWLEDGMENT**

26 _____
27 Agent's Signature Date

28 _____
29 Agent's Name Printed

30 _____
31 _____

32 _____
33 Agent's Address

34 _____
Agent's Telephone Number

1 This document was acknowledged before me on _____,

2 (Date)

3 by _____

4 (Name of Agent)

5 _____ (Seal, if any)

6 Signature of Notary

7 My commission expires: _____

8 [This document prepared by:

9 _____]

10 **PART IV**

11 **Sec. 401.** RCW 11.88.080 and 2005 c 97 s 11 are each amended to
12 read as follows:

13 When either parent is deceased, the surviving parent of any minor
14 child or a sole parent of a minor child, may by last will or durable
15 power of attorney nominate a guardian or guardians of the person, or
16 of the estate or both, of a minor child, whether born at the time of
17 executing the instrument or afterwards, to continue during the
18 minority of such child or for any less time. This nomination shall be
19 effective in the event of the death or incapacity of such parent.
20 Every guardian of the estate of a child shall give bond in like
21 manner and with like conditions as required by RCW 11.88.100 and
22 11.88.110, and he or she shall have the same powers and perform the
23 same duties with regard to the person and estate of the minor as a
24 guardian appointed under this chapter. The court shall confirm the
25 parent's nomination unless the court finds, based upon evidence
26 presented at a hearing on the matter, that the individual nominated
27 in the surviving parent's will or durable power of attorney is not
28 qualified to serve. In the event of a conflict between the provisions
29 of a will nominating a testamentary guardian under the authority of
30 this section and the nomination of a guardian under section 218 of
31 this act, the most recent designation shall control. This section
32 applies to actions commenced under section 116 of this act.

33 **Sec. 402.** RCW 11.86.021 and 1989 c 34 s 2 are each amended to
34 read as follows:

1 (1) A beneficiary may disclaim an interest in whole or in part,
2 or with reference to specific parts, shares or assets, in the manner
3 provided in RCW 11.86.031.

4 (2) Likewise, a beneficiary may so disclaim through an agent or
5 attorney so authorized by written instrument.

6 (3) A personal representative, guardian, attorney-in-fact if
7 authorized under a durable power of attorney under chapter (~~11.94~~)
8 11.-- RCW (the new chapter created in section 505 of this act), or
9 other legal representative of the estate of a minor, incompetent, or
10 deceased beneficiary, may so disclaim on behalf of the beneficiary,
11 with or without court order, if:

12 (a) The legal representative deems the disclaimer to be in the
13 best interests of those interested in the estate of the beneficiary
14 and of those who take the disclaimed interest because of the
15 disclaimer, and not detrimental to the best interests of the
16 beneficiary; and

17 (b) In the case of a guardian, no order has been issued under RCW
18 11.92.140 determining that the disclaimer is not in the best
19 interests of the beneficiary.

20 **Sec. 403.** RCW 11.88.010 and 2008 c 6 s 802 are each amended to
21 read as follows:

22 (1) The superior court of each county shall have power to appoint
23 guardians for the persons and/or estates of incapacitated persons,
24 and guardians for the estates of nonresidents of the state who have
25 property in the county needing care and attention.

26 (a) For purposes of this chapter, a person may be deemed
27 incapacitated as to person when the superior court determines the
28 individual has a significant risk of personal harm based upon a
29 demonstrated inability to adequately provide for nutrition, health,
30 housing, or physical safety.

31 (b) For purposes of this chapter, a person may be deemed
32 incapacitated as to the person's estate when the superior court
33 determines the individual is at significant risk of financial harm
34 based upon a demonstrated inability to adequately manage property or
35 financial affairs.

36 (c) A determination of incapacity is a legal not a medical
37 decision, based upon a demonstration of management insufficiencies
38 over time in the area of person or estate. Age, eccentricity,

1 poverty, or medical diagnosis alone shall not be sufficient to
2 justify a finding of incapacity.

3 (d) A person may also be determined incapacitated if he or she is
4 under the age of majority as defined in RCW 26.28.010.

5 (e) For purposes of giving informed consent for health care
6 pursuant to RCW 7.70.050 and 7.70.065, an "incompetent" person is any
7 person who is (i) incompetent by reason of mental illness,
8 developmental disability, senility, habitual drunkenness, excessive
9 use of drugs, or other mental incapacity, of either managing his or
10 her property or caring for himself or herself, or both, or (ii)
11 incapacitated as defined in (a), (b), or (d) of this subsection.

12 (f) For purposes of the terms "incompetent," "disabled," or "not
13 legally competent," as those terms are used in the Revised Code of
14 Washington to apply to persons incapacitated under this chapter,
15 those terms shall be interpreted to mean "incapacitated" persons for
16 purposes of this chapter.

17 (2) The superior court for each county shall have power to
18 appoint limited guardians for the persons and estates, or either
19 thereof, of incapacitated persons, who by reason of their incapacity
20 have need for protection and assistance, but who are capable of
21 managing some of their personal and financial affairs. After
22 considering all evidence presented as a result of such investigation,
23 the court shall impose, by order, only such specific limitations and
24 restrictions on an incapacitated person to be placed under a limited
25 guardianship as the court finds necessary for such person's
26 protection and assistance. A person shall not be presumed to be
27 incapacitated nor shall a person lose any legal rights or suffer any
28 legal disabilities as the result of being placed under a limited
29 guardianship, except as to those rights and disabilities specifically
30 set forth in the court order establishing such a limited
31 guardianship. In addition, the court order shall state the period of
32 time for which it shall be applicable.

33 (3) Venue for petitions for guardianship or limited guardianship
34 shall lie in the county wherein the alleged incapacitated person is
35 domiciled, or if such person resides in a facility supported in whole
36 or in part by local, state, or federal funding sources, in either the
37 county where the facility is located, the county of domicile prior to
38 residence in the supported facility, or the county where a parent or
39 spouse or domestic partner of the alleged incapacitated person is
40 domiciled.

1 If the alleged incapacitated person's residency has changed
2 within one year of the filing of the petition, any interested person
3 may move for a change of venue for any proceedings seeking the
4 appointment of a guardian or a limited guardian under this chapter to
5 the county of the alleged incapacitated person's last place of
6 residence of one year or more. The motion shall be granted when it
7 appears to the court that such venue would be in the best interests
8 of the alleged incapacitated person and would promote more complete
9 consideration of all relevant matters.

10 (4) Under (~~RCW 11.94.010~~) section 108 of this act, a principal
11 may nominate, by a durable power of attorney, the guardian or limited
12 guardian of his or her estate or person for consideration by the
13 court if guardianship proceedings for the principal's person or
14 estate are thereafter commenced. The court shall make its appointment
15 in accordance with the principal's most recent nomination in a
16 durable power of attorney except for good cause or disqualification.

17 (5) Imposition of a guardianship for an incapacitated person
18 shall not result in the loss of the right to vote unless the court
19 determines that the person is incompetent for purposes of rationally
20 exercising the franchise in that the individual lacks the capacity to
21 understand the nature and effect of voting such that she or he cannot
22 make an individual choice. The court order establishing guardianship
23 shall specify whether or not the individual retains voting rights.
24 When a court determines that the person is incompetent for the
25 purpose of rationally exercising the right to vote, the court shall
26 notify the appropriate county auditor.

27 **Sec. 404.** RCW 11.103.030 and 2013 c 272 s 24 are each amended to
28 read as follows:

29 (1) Unless the terms of a trust expressly provide that the trust
30 is revocable, the trustor may not revoke or amend the trust.

31 (2) If a revocable trust is created or funded by more than one
32 trustor and unless the trust agreement provides otherwise:

33 (a) To the extent the trust consists of community property, the
34 trust may be revoked by either spouse or either domestic partner
35 acting alone but may be amended only by joint action of both spouses
36 or both domestic partners;

37 (b) To the extent the trust consists of property other than
38 community property, each trustor may revoke or amend the trust with

1 regard to the portion of the trust property attributable to that
2 trustor's contribution;

3 (c) The character of community property or separate property is
4 unaffected by its transfer to and from a revocable trust; and

5 (d) Upon the revocation or amendment of the trust by fewer than
6 all of the trustors, the trustee must promptly notify the other
7 trustors of the revocation or amendment.

8 (3) The trustor may revoke or amend a revocable trust:

9 (a) By substantial compliance with a method provided in the terms
10 of the trust; or

11 (b)(i) If the terms of the trust do not provide a method or the
12 method provided in the terms is not expressly made exclusive, by:

13 (A) A later will or codicil that expressly refers to the trust or
14 specifically devises property that would otherwise have passed
15 according to the terms of the trust; or

16 (B) A written instrument signed by the trustor evidencing intent
17 to revoke or amend.

18 (ii) The requirements of chapter 11.11 RCW do not apply to
19 revocation or amendment of a revocable trust under (b)(i) of this
20 subsection.

21 (4) Upon revocation of a revocable trust, the trustee must
22 deliver the trust property as the trustor directs.

23 (5) A trustor's powers with respect to the revocation or
24 amendment of a trust or distribution of the property of a trust((~~7~~))
25 may be exercised by the trustor's agent under a power of attorney
26 only to the extent specified in the power of attorney document, as
27 provided in ((~~RCW 11.94.050(1)~~)) section 201 of this act and to the
28 extent consistent with or expressly authorized by the trust
29 agreement.

30 (6) A guardian of the trustor may exercise a trustor's powers
31 with respect to revocation, amendment, or distribution of trust
32 property only with the approval of the court supervising the
33 guardianship pursuant to RCW 11.92.140.

34 (7) A trustee who does not know that a trust has been revoked or
35 amended is not liable to the trustor or trustor's successors in
36 interest for distributions made and other actions taken on the
37 assumption that the trust had not been amended or revoked.

38 (8) This section does not limit or affect operation of RCW
39 11.96A.220 through 11.96A.240.

1 **Sec. 405.** RCW 30A.22.170 and 1981 c 192 s 17 are each amended to
2 read as follows:

3 Any funds on deposit in an account may be paid by a financial
4 institution to or upon the order of any agent of any depositor. The
5 contract of deposit or other document creating such agency may
6 provide, in accordance with chapter (~~11.94~~) 11.-- RCW (the new
7 chapter created in section 505 of this act), that any such agent's
8 powers to receive payments and make withdrawals from an account
9 continues in spite of, or arises by virtue of, the incompetency of a
10 depositor, in which event the agent's powers to make payments and
11 withdrawals from an account on behalf of a depositor is not affected
12 by the incompetency of a depositor. Except as provided in this
13 section, the authority of an agent to receive payments or make
14 withdrawals from an account terminates with the death or incompetency
15 of the agent's principal: PROVIDED, That a financial institution is
16 not liable for any payment or withdrawal made to or by an agent for a
17 deceased or incompetent depositor unless the financial institution
18 making the payment or permitting the withdrawal had actual knowledge
19 of the incompetency or death at the time payment was made.

20 **Sec. 406.** RCW 70.122.130 and 2013 c 251 s 12 are each amended to
21 read as follows:

22 (1) The department of health shall establish and maintain a
23 statewide health care declarations registry containing the health
24 care declarations identified in subsection (2) of this section as
25 submitted by residents of Washington. The department shall digitally
26 reproduce and store health care declarations in the registry. The
27 department may establish standards for individuals to submit
28 digitally reproduced health care declarations directly to the
29 registry, but is not required to review the health care declarations
30 that it receives to ensure they comply with the particular statutory
31 requirements applicable to the document. The department may contract
32 with an organization that meets the standards identified in this
33 section.

34 (2)(a) An individual may submit any of the following health care
35 declarations to the department of health to be digitally reproduced
36 and stored in the registry:

37 (i) A directive, as defined by this chapter;

1 (ii) A durable power of attorney for health care, as authorized
2 in chapter ((11.94)) 11.-- RCW (the new chapter created in section
3 505 of this act);

4 (iii) A mental health advance directive, as defined by chapter
5 71.32 RCW; or

6 (iv) A form adopted pursuant to the department of health's
7 authority in RCW 43.70.480.

8 (b) Failure to submit a health care declaration to the department
9 of health does not affect the validity of the declaration.

10 (c) Failure to notify the department of health of a valid
11 revocation of a health care declaration does not affect the validity
12 of the revocation.

13 (d) The entry of a health care directive in the registry under
14 this section does not:

15 (i) Affect the validity of the document;

16 (ii) Take the place of any requirements in law necessary to make
17 the submitted document legal; or

18 (iii) Create a presumption regarding the validity of the
19 document.

20 (3) The department of health shall prescribe a procedure for an
21 individual to revoke a health care declaration contained in the
22 registry.

23 (4) The registry must:

24 (a) Be maintained in a secure database that is accessible through
25 a web site maintained by the department of health;

26 (b) Send annual electronic messages to individuals that have
27 submitted health care declarations to request that they review the
28 registry materials to ensure that it is current;

29 (c) Provide individuals who have submitted one or more health
30 care declarations with access to their documents and the ability to
31 revoke their documents at all times; and

32 (d) Provide the personal representatives of individuals who have
33 submitted one or more health care declarations to the registry,
34 attending physicians, advanced registered nurse practitioners, health
35 care providers licensed by a disciplining authority identified in RCW
36 18.130.040 who is acting under the direction of a physician or an
37 advanced registered nurse practitioner, and health care facilities,
38 as defined in this chapter or in chapter 71.32 RCW, access to the
39 registry at all times.

1 (5) In designing the registry and web site, the department of
2 health shall ensure compliance with state and federal requirements
3 related to patient confidentiality.

4 (6) The department shall provide information to health care
5 providers and health care facilities on the registry web site
6 regarding the different federal and Washington state requirements to
7 ascertain and document whether a patient has an advance directive.

8 (7) The department of health may accept donations, grants, gifts,
9 or other forms of voluntary contributions to support activities
10 related to the creation and maintenance of the health care
11 declarations registry and statewide public education campaigns
12 related to the existence of the registry. All receipts from donations
13 made under this section, and other contributions and appropriations
14 specifically made for the purposes of creating and maintaining the
15 registry established under this section and statewide public
16 education campaigns related to the existence of the registry, shall
17 be deposited into the general fund. These moneys in the general fund
18 may be spent only after appropriation.

19 (8) The department of health may adopt rules as necessary to
20 implement chapter 108, Laws of 2006.

21 (9) By December 1, 2008, the department shall report to the house
22 and senate committees on health care the following information:

23 (a) Number of participants in the registry;

24 (b) Number of health care declarations submitted by type of
25 declaration as defined in this section;

26 (c) Number of health care declarations revoked and the method of
27 revocation;

28 (d) Number of providers and facilities, by type, that have been
29 provided access to the registry;

30 (e) Actual costs of operation of the registry.

31 **Sec. 407.** RCW 71.32.020 and 2011 c 89 s 15 are each amended to
32 read as follows:

33 The definitions in this section apply throughout this chapter
34 unless the context clearly requires otherwise.

35 (1) "Adult" means any individual who has attained the age of
36 majority or is an emancipated minor.

37 (2) "Agent" has the same meaning as an attorney-in-fact or agent
38 as provided in chapter (~~11.94~~) 11.-- RCW (the new chapter created
39 in section 505 of this act).

1 (3) "Capacity" means that an adult has not been found to be
2 incapacitated pursuant to this chapter or RCW 11.88.010(1)(e).

3 (4) "Court" means a superior court under chapter 2.08 RCW.

4 (5) "Health care facility" means a hospital, as defined in RCW
5 70.41.020; an institution, as defined in RCW 71.12.455; a state
6 hospital, as defined in RCW 72.23.010; a nursing home, as defined in
7 RCW 18.51.010; or a clinic that is part of a community mental health
8 service delivery system, as defined in RCW 71.24.025.

9 (6) "Health care provider" means an osteopathic physician or
10 osteopathic physician's assistant licensed under chapter 18.57 or
11 18.57A RCW, a physician or physician's assistant licensed under
12 chapter 18.71 or 18.71A RCW, or an advanced registered nurse
13 practitioner licensed under RCW 18.79.050.

14 (7) "Incapacitated" means an adult who: (a) Is unable to
15 understand the nature, character, and anticipated results of proposed
16 treatment or alternatives; understand the recognized serious possible
17 risks, complications, and anticipated benefits in treatments and
18 alternatives, including nontreatment; or communicate his or her
19 understanding or treatment decisions; or (b) has been found to be
20 incompetent pursuant to RCW 11.88.010(1)(e).

21 (8) "Informed consent" means consent that is given after the
22 person: (a) Is provided with a description of the nature, character,
23 and anticipated results of proposed treatments and alternatives, and
24 the recognized serious possible risks, complications, and anticipated
25 benefits in the treatments and alternatives, including nontreatment,
26 in language that the person can reasonably be expected to understand;
27 or (b) elects not to be given the information included in (a) of this
28 subsection.

29 (9) "Long-term care facility" has the same meaning as defined in
30 RCW 43.190.020.

31 (10) "Mental disorder" means any organic, mental, or emotional
32 impairment which has substantial adverse effects on an individual's
33 cognitive or volitional functions.

34 (11) "Mental health advance directive" or "directive" means a
35 written document in which the principal makes a declaration of
36 instructions or preferences or appoints an agent to make decisions on
37 behalf of the principal regarding the principal's mental health
38 treatment, or both, and that is consistent with the provisions of
39 this chapter.

1 (12) "Mental health professional" means a psychiatrist,
2 psychologist, psychiatric nurse, or social worker, and such other
3 mental health professionals as may be defined by rules adopted by the
4 secretary pursuant to the provisions of chapter 71.05 RCW.

5 (13) "Principal" means an adult who has executed a mental health
6 advance directive.

7 (14) "Professional person" means a mental health professional and
8 shall also mean a physician, registered nurse, and such others as may
9 be defined by rules adopted by the secretary pursuant to the
10 provisions of chapter 71.05 RCW.

11 (15) "Social worker" means a person with a master's or further
12 advanced degree from a social work educational program accredited and
13 approved as provided in RCW 18.320.010.

14 **Sec. 408.** RCW 71.32.050 and 2003 c 283 s 5 are each amended to
15 read as follows:

16 (1) An adult with capacity may execute a mental health advance
17 directive.

18 (2) A directive executed in accordance with this chapter is
19 presumed to be valid. The inability to honor one or more provisions
20 of a directive does not affect the validity of the remaining
21 provisions.

22 (3) A directive may include any provision relating to mental
23 health treatment or the care of the principal or the principal's
24 personal affairs. Without limitation, a directive may include:

25 (a) The principal's preferences and instructions for mental
26 health treatment;

27 (b) Consent to specific types of mental health treatment;

28 (c) Refusal to consent to specific types of mental health
29 treatment;

30 (d) Consent to admission to and retention in a facility for
31 mental health treatment for up to fourteen days;

32 (e) Descriptions of situations that may cause the principal to
33 experience a mental health crisis;

34 (f) Suggested alternative responses that may supplement or be in
35 lieu of direct mental health treatment, such as treatment approaches
36 from other providers;

37 (g) Appointment of an agent pursuant to chapter (~~11.94~~) 11.--
38 RCW (the new chapter created in section 505 of this act) to make
39 mental health treatment decisions on the principal's behalf,

1 including authorizing the agent to provide consent on the principal's
2 behalf to voluntary admission to inpatient mental health treatment;
3 and

4 (h) The principal's nomination of a guardian or limited guardian
5 as provided in ((RCW 11.94.010)) section 108 of this act for
6 consideration by the court if guardianship proceedings are commenced.

7 (4) A directive may be combined with or be independent of a
8 nomination of a guardian or other durable power of attorney under
9 chapter ((11.94)) 11.-- RCW (the new chapter created in section 505
10 of this act), so long as the processes for each are executed in
11 accordance with its own statutes.

12 **Sec. 409.** RCW 71.32.060 and 2003 c 283 s 6 are each amended to
13 read as follows:

14 (1) A directive shall:

15 (a) Be in writing;

16 (b) Contain language that clearly indicates that the principal
17 intends to create a directive;

18 (c) Be dated and signed by the principal or at the principal's
19 direction in the principal's presence if the principal is unable to
20 sign;

21 (d) Designate whether the principal wishes to be able to revoke
22 the directive during any period of incapacity or wishes to be unable
23 to revoke the directive during any period of incapacity; and

24 (e) Be witnessed in writing by at least two adults, each of whom
25 shall declare that he or she personally knows the principal, was
26 present when the principal dated and signed the directive, and that
27 the principal did not appear to be incapacitated or acting under
28 fraud, undue influence, or duress.

29 (2) A directive that includes the appointment of an agent
30 pursuant to a power of attorney under chapter ((11.94)) 11.-- RCW
31 (the new chapter created in section 505 of this act) shall contain
32 the words "This power of attorney shall not be affected by the
33 incapacity of the principal," or "This power of attorney shall become
34 effective upon the incapacity of the principal," or similar words
35 showing the principal's intent that the authority conferred shall be
36 exercisable notwithstanding the principal's incapacity.

37 (3) A directive is valid upon execution, but all or part of the
38 directive may take effect at a later time as designated by the
39 principal in the directive.

1 (4) A directive may:

2 (a) Be revoked, in whole or in part, pursuant to the provisions
3 of RCW 71.32.080; or

4 (b) Expire under its own terms.

5 **Sec. 410.** RCW 71.32.100 and 2003 c 283 s 10 are each amended to
6 read as follows:

7 (1) If a directive authorizes the appointment of an agent, the
8 provisions of chapter (~~11.94~~) 11.-- RCW (the new chapter created in
9 section 505 of this act) and RCW 7.70.065 shall apply unless
10 otherwise stated in this chapter.

11 (2) The principal who appoints an agent must notify the agent in
12 writing of the appointment.

13 (3) An agent must act in good faith.

14 (4) An agent may make decisions on behalf of the principal.
15 Unless the principal has revoked the directive, the decisions must be
16 consistent with the instructions and preferences the principal has
17 expressed in the directive, or if not expressed, as otherwise known
18 to the agent. If the principal's instructions or preferences are not
19 known, the agent shall make a decision he or she determines is in the
20 best interest of the principal.

21 (5) Except to the extent the right is limited by the appointment
22 or any federal or state law, the agent has the same right as the
23 principal to receive, review, and authorize the use and disclosure of
24 the principal's health care information when the agent is acting on
25 behalf of the principal and to the extent required for the agent to
26 carry out his or her duties. This subsection shall be construed to be
27 consistent with chapters 70.02, 70.24, 70.96A, 71.05, and 71.34 RCW,
28 and with federal law regarding health care information.

29 (6) Unless otherwise provided in the appointment and agreed to in
30 writing by the agent, the agent is not, as a result of acting in the
31 capacity of agent, personally liable for the cost of treatment
32 provided to the principal.

33 (7) An agent may resign or withdraw at any time by giving written
34 notice to the principal. The agent must also give written notice to
35 any health care provider, professional person, or health care
36 facility providing treatment to the principal. The resignation or
37 withdrawal is effective upon receipt unless otherwise specified in
38 the resignation or withdrawal.

1 (8) If the directive gives the agent authority to act while the
2 principal has capacity, the decisions of the principal supersede
3 those of the agent at any time the principal has capacity.

4 (9) Unless otherwise provided in the durable power of attorney,
5 the principal may revoke the agent's appointment as provided under
6 other state law.

7 **Sec. 411.** RCW 71.32.180 and 2003 c 283 s 18 are each amended to
8 read as follows:

9 (1) Where an incapacitated principal has executed more than one
10 valid directive and has not revoked any of the directives:

11 (a) The directive most recently created shall be treated as the
12 principal's mental health treatment preferences and instructions as
13 to any inconsistent or conflicting provisions, unless provided
14 otherwise in either document.

15 (b) Where a directive executed under this chapter is inconsistent
16 with a directive executed under any other chapter, the most recently
17 created directive controls as to the inconsistent provisions.

18 (2) Where an incapacitated principal has appointed more than one
19 agent under chapter ((11.94)) 11.-- RCW (the new chapter created in
20 section 505 of this act) with authority to make mental health
21 treatment decisions, ((RCW 11.94.010)) section 217 of this act
22 controls.

23 (3) The treatment provider shall inquire of a principal whether
24 the principal is subject to any court orders that would affect the
25 implementation of his or her directive.

26 **Sec. 412.** RCW 71.32.200 and 2003 c 283 s 20 are each amended to
27 read as follows:

28 Any person with reasonable cause to believe that a directive has
29 been created or revoked under circumstances amounting to fraud,
30 duress, or undue influence may petition the court for appointment of
31 a guardian for the person or to review the actions of the agent or
32 person alleged to be involved in improper conduct under ((RCW
33 11.94.090)) section 116 of this act or RCW 74.34.110.

34 **Sec. 413.** RCW 71.32.260 and 2009 c 217 s 14 are each amended to
35 read as follows:

36 The directive shall be in substantially the following form:

NOTICE TO PERSONS

CREATING A MENTAL HEALTH ADVANCE DIRECTIVE

This is an important legal document. It creates an advance directive for mental health treatment. Before signing this document you should know these important facts:

(1) This document is called an advance directive and allows you to make decisions in advance about your mental health treatment, including medications, short-term admission to inpatient treatment and electroconvulsive therapy.

YOU DO NOT HAVE TO FILL OUT OR SIGN THIS FORM.

IF YOU DO NOT SIGN THIS FORM, IT WILL NOT TAKE EFFECT.

If you choose to complete and sign this document, you may still decide to leave some items blank.

(2) You have the right to appoint a person as your agent to make treatment decisions for you. You must notify your agent that you have appointed him or her as an agent. The person you appoint has a duty to act consistently with your wishes made known by you. If your agent does not know what your wishes are, he or she has a duty to act in your best interest. Your agent has the right to withdraw from the appointment at any time.

(3) The instructions you include with this advance directive and the authority you give your agent to act will only become effective under the conditions you select in this document. You may choose to limit this directive and your agent's authority to times when you are incapacitated or to times when you are exhibiting symptoms or behavior that you specify. You may also make this directive effective immediately. No matter when you choose to make this directive effective, your treatment providers must still seek your informed consent at all times that you have capacity to give informed consent.

(4) You have the right to revoke this document in writing at any time you have capacity.

YOU MAY NOT REVOKE THIS DIRECTIVE WHEN YOU HAVE BEEN FOUND TO BE INCAPACITATED UNLESS YOU HAVE SPECIFICALLY STATED IN THIS DIRECTIVE THAT YOU WANT IT TO BE REVOCABLE WHEN YOU ARE INCAPACITATED.

(5) This directive will stay in effect until you revoke it unless you specify an expiration date. If you specify an expiration date and you are incapacitated at the time it expires, it will remain in effect until you have capacity to make treatment decisions again unless you chose to be able to revoke it while you are incapacitated and you revoke the directive.

(6) You cannot use your advance directive to consent to civil commitment. The procedures that apply to your advance directive are different than those provided for in the Involuntary Treatment Act. Involuntary treatment is a different process.

(7) If there is anything in this directive that you do not understand, you should ask a lawyer to explain it to you.

(8) You should be aware that there are some circumstances where your provider may not have to follow your directive.

(9) You should discuss any treatment decisions in your directive with your provider.

(10) You may ask the court to rule on the validity of your directive.

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PART I.
STATEMENT OF INTENT TO CREATE A
MENTAL HEALTH ADVANCE DIRECTIVE

I, being a person with capacity, willfully and voluntarily execute this mental health advance directive so that my choices regarding my mental health care will be carried out in circumstances when I am unable to express my instructions and preferences regarding my mental health care. If a guardian is appointed by a court to make mental health decisions for me, I intend this document to take precedence over all other means of ascertaining my intent.

The fact that I may have left blanks in this directive does not affect its validity in any way. I intend that all completed sections be followed. If I have not expressed a choice, my agent should make the decision that he or she determines is in my best interest. I intend this directive to take precedence over any other directives I have previously executed, to the extent that they are inconsistent with this document, or unless I expressly state otherwise in either document.

I understand that I may revoke this directive in whole or in part if I am a person with capacity. I understand that I cannot revoke this directive if a court, two health care providers, or one mental health professional and one health care provider find that I am an incapacitated person, unless, when I executed this directive, I chose to be able to revoke this directive while incapacitated.

I understand that, except as otherwise provided in law, revocation must be in writing. I understand that nothing in this directive, or in my refusal of treatment to which I consent in this directive, authorizes any health care provider, professional person, health care facility, or agent appointed in this directive to use or threaten to use abuse, neglect, financial exploitation, or abandonment to carry out my directive.

I understand that there are some circumstances where my provider may not have to follow my directive.

PART II.
WHEN THIS DIRECTIVE IS EFFECTIVE

YOU MUST COMPLETE THIS PART FOR YOUR DIRECTIVE TO BE VALID.

I intend that this directive become effective (*YOU MUST CHOOSE ONLY ONE*):

- Immediately upon my signing of this directive.
- If I become incapacitated.
- When the following circumstances, symptoms, or behaviors occur:
-
-

PART III.
DURATION OF THIS DIRECTIVE

YOU MUST COMPLETE THIS PART FOR YOUR DIRECTIVE TO BE VALID.

I want this directive to (*YOU MUST CHOOSE ONLY ONE*):

1 Remain valid and in effect for an indefinite period of time.
2 Automatically expire years from the date it was created.

3
4 **PART IV.**
5 **WHEN I MAY REVOKE THIS DIRECTIVE**

6 *YOU MUST COMPLETE THIS PART FOR THIS DIRECTIVE TO BE VALID.*

7 I intend that I be able to revoke this directive (*YOU MUST CHOOSE ONLY ONE*):

8 Only when I have capacity.

9 I understand that choosing this option means I may only revoke this directive if I have capacity. I further understand that if
10 I choose this option and become incapacitated while this directive is in effect, I may receive treatment that I specify in this
11 directive, even if I object at the time.

12 Even if I am incapacitated.

13 I understand that choosing this option means that I may revoke this directive even if I am incapacitated. I further
14 understand that if I choose this option and revoke this directive while I am incapacitated I may not receive treatment that I
15 specify in this directive, even if I want the treatment.

16
17 **PART V.**
18 **PREFERENCES AND INSTRUCTIONS ABOUT TREATMENT, FACILITIES, AND PHYSICIANS OR**
19 **PSYCHIATRIC ADVANCED REGISTERED NURSE PRACTITIONERS**

20 **A. Preferences and Instructions About Physician(s) or Psychiatric Advanced Registered Nurse Practitioner(s) to be**
21 **Involved in My Treatment**

22 I would like the physician(s) or psychiatric advanced registered nurse practitioner(s) named below to be involved in my
23 treatment decisions:

24 Dr. or PARNP Contact information:

25 Dr. or PARNP Contact information:

26 I do not wish to be treated by Dr. or PARNP.

27 **B. Preferences and Instructions About Other Providers**

28 I am receiving other treatment or care from providers who I feel have an impact on my mental health care. I would like the
29 following treatment provider(s) to be contacted when this directive is effective:

30 Name Profession Contact information.

31 Name Profession Contact information.

32 **C. Preferences and Instructions About Medications for Psychiatric Treatment** (*initial and complete all that apply*)

33 I consent, and authorize my agent (if appointed) to consent, to the following
34 medications:

1 I do not consent, and I do not authorize my agent (if appointed) to consent, to the administration of the following
2 medications:

3 I am willing to take the medications excluded above if my only reason for excluding them is the side effects which
4 include.
5 and these side effects can be eliminated by dosage adjustment or other means

6 I am willing to try any other medication the hospital doctor or psychiatric advanced registered nurse practitioner
7 recommends

8 I am willing to try any other medications my outpatient doctor or psychiatric advanced registered nurse practitioner
9 recommends

10 I do not want to try any other medications.

11 **Medication Allergies**

12 I have allergies to, or severe side effects from, the following:

14 **Other Medication Preferences or Instructions**

15 I have the following other preferences or instructions about medications.

17 **D. Preferences and Instructions About Hospitalization and Alternatives**

18 *(initial all that apply and, if desired, rank "1" for first choice, "2" for second choice, and so on)*

19 In the event my psychiatric condition is serious enough to require 24-hour care and I have no physical conditions
20 that require immediate access to emergency medical care, I prefer to receive this care in programs/facilities designed as
21 alternatives to psychiatric hospitalizations.

22 I would also like the interventions below to be tried before hospitalization is considered:

23 Calling someone or having someone call me when needed.

24 Name: Telephone:

25 Staying overnight with someone

26 Name: Telephone:

27 Having a mental health service provider come to see me

28 Going to a crisis triage center or emergency room

29 Staying overnight at a crisis respite (temporary) bed

30 Seeing a service provider for help with psychiatric medications

31 Other, specify:

32 **Authority to Consent to Inpatient Treatment**

33 I consent, and authorize my agent (if appointed) to consent, to voluntary admission to inpatient mental health treatment
34 for days *(not to exceed 14 days)*

1 (Sign one):
2 If deemed appropriate by my agent (if appointed) and treating physician or psychiatric advanced registered nurse
3 practitioner

4
5 (Signature)

6 or
7 Under the following circumstances (specify symptoms, behaviors, or circumstances that indicate the need for
8 hospitalization)

9
10 (Signature)

11 I do **not** consent, or authorize my agent (if appointed) to consent, to inpatient treatment
12

13 (Signature)

14 **Hospital Preferences and Instructions**

15 If hospitalization is required, I prefer the following hospitals:
16 I do not consent to be admitted to the following hospitals:

17 **E. Preferences and Instructions About Preemergency**

18 I would like the interventions below to be tried before use of seclusion or restraint is considered
19 (*initial all that apply*):

- 20 "Talk me down" one-on-one
- 21 More medication
- 22 Time out/privacy
- 23 Show of authority/force
- 24 Shift my attention to something else
- 25 Set firm limits on my behavior
- 26 Help me to discuss/vent feelings
- 27 Decrease stimulation
- 28 Offer to have neutral person settle dispute
- 29 Other, specify

30 **F. Preferences and Instructions About Seclusion, Restraint, and Emergency Medications**

31 If it is determined that I am engaging in behavior that requires seclusion, physical restraint, and/or emergency use of
32 medication, I prefer these interventions in the order I have chosen (*choose "1" for first choice, "2" for second choice, and*
33 *so on*):

34 Seclusion

1 Seclusion and physical restraint (combined)

2 Medication by injection

3 Medication in pill or liquid form

4 In the event that my attending physician or psychiatric advanced registered nurse practitioner decides to use medication in
5 response to an emergency situation after due consideration of my preferences and instructions for emergency treatments
6 stated above, I expect the choice of medication to reflect any preferences and instructions I have expressed in Part III C of
7 this form. The preferences and instructions I express in this section regarding medication in emergency situations do not
8 constitute consent to use of the medication for nonemergency treatment.

9 **G. Preferences and Instructions About Electroconvulsive Therapy**

10 **(ECT or Shock Therapy)**

11 My wishes regarding electroconvulsive therapy are (*sign one*):

12 I do not consent, nor authorize my agent (if appointed) to consent, to the administration of electroconvulsive
13 therapy

14

15 (Signature)

16 I consent, and authorize my agent (if appointed) to consent, to the administration of electroconvulsive therapy

17

18 (Signature)

19 I consent, and authorize my agent (if appointed) to consent, to the administration of electroconvulsive therapy, but
20 only under the following conditions:

21

22

23 (Signature)

24 **H. Preferences and Instructions About Who is Permitted to Visit**

25 If I have been admitted to a mental health treatment facility, the following people are not permitted to visit me there:

26 Name:

27 Name:

28 Name:

29 I understand that persons not listed above may be permitted to visit me.

30 **I. Additional Instructions About My Mental Health Care**

31 Other instructions about my mental health care:

32

33 In case of emergency, please contact:

34 Name: Address:

1 Work telephone: Home telephone:
2 Physician or Psychiatric Advanced Registered Address:
3 Nurse Practitioner:

4 Telephone:

5 The following may help me to avoid a hospitalization:
6

7 I generally react to being hospitalized as follows:
8

9 Staff of the hospital or crisis unit can help me by doing the following:
10
11

12 **J. Refusal of Treatment**

13 I do not consent to any mental health treatment.
14
15 (Signature)

16
17 **PART VI.**
18 **DURABLE POWER OF ATTORNEY (APPOINTMENT OF MY AGENT)**
19 *(Fill out this part only if you wish to appoint an agent or nominate a guardian.)*

20 I authorize an agent to make mental health treatment decisions on my behalf. The authority granted to my agent includes
21 the right to consent, refuse consent, or withdraw consent to any mental health care, treatment, service, or procedure,
22 consistent with any instructions and/or limitations I have set forth in this directive. I intend that those decisions should be
23 made in accordance with my expressed wishes as set forth in this document. If I have not expressed a choice in this
24 document **and my agent does not otherwise know my wishes**, I authorize my agent to make the decision that my agent
25 determines is in my best interest. This agency shall not be affected by my incapacity. Unless I state otherwise in this
26 durable power of attorney, I may revoke it unless prohibited by other state law.

27 **A. Designation of an Agent**

28 I appoint the following person as my agent to make mental health treatment decisions for me as authorized in this document
29 and request that this person be notified immediately when this directive becomes effective:

30 Name: Address:
31 Work telephone: Home telephone:
32 Relationship:

33 **B. Designation of Alternate Agent**

1 If the person named above is unavailable, unable, or refuses to serve as my agent, or I revoke that person's authority to
2 serve as my agent, I hereby appoint the following person as my alternate agent and request that this person be notified
3 immediately when this directive becomes effective or when my original agent is no longer my agent:

4 Name: Address:
5 Work telephone: Home telephone:
6 Relationship:

7 **C. When My Spouse is My Agent** (*initial if desired*)

8 If my spouse is my agent, that person shall remain my agent even if we become legally separated or our marriage is
9 dissolved, unless there is a court order to the contrary or I have remarried.

10 **D. Limitations on My Agent's Authority**

11 I do not grant my agent the authority to consent on my behalf to the following:
12
13

14 **E. Limitations on My Ability to Revoke this Durable Power of Attorney**

15 I choose to limit my ability to revoke this durable power of attorney as follows:
16
17

18 **F. Preference as to Court-Appointed Guardian**

19 In the event a court appoints a guardian who will make decisions regarding my mental health treatment, I **nominate** the
20 following person **as my guardian**:

21 Name: Address:
22 Work telephone: Home telephone:
23 Relationship:

24 The appointment of a guardian of my estate or my person or any other decision maker shall not give the guardian or
25 decision maker the power to revoke, suspend, or terminate this directive or the powers of my agent, except as authorized by
26 law.

27
28 (Signature required if nomination is made)

29
30 **PART VII.**
31 **OTHER DOCUMENTS**

32 (*Initial all that apply*)

33 I have executed the following documents that include the power to make decisions regarding health care services for
34 myself:

1 Health care power of attorney (chapter ((41-94)) 11.— RCW (the new chapter created in section 505 of this act))

2 "Living will" (Health care directive; chapter 70.122 RCW)

3 I have appointed more than one agent. I understand that the most recently appointed agent controls except as stated
4 below:

5

6

7 **PART VIII.**

8 **NOTIFICATION OF OTHERS AND CARE OF PERSONAL AFFAIRS**

9 *(Fill out this part only if you wish to provide nontreatment instructions.)*

10 I understand the preferences and instructions in this part are **NOT** the responsibility of my treatment provider and that no
11 treatment provider is required to act on them.

12 **A. Who Should Be Notified**

13 I desire my agent to notify the following individuals as soon as possible when this directive becomes effective:

14 Name: Address:

15 Day telephone: Evening telephone:

16 Name: Address:

17 Day telephone: Evening telephone:

18 **B. Preferences or Instructions About Personal Affairs**

19 I have the following preferences or instructions about my personal affairs (e.g., care of dependents, pets, household) if I am
20 admitted to a mental health treatment facility:

21

22

23 **C. Additional Preferences and Instructions:**

24

25

26

27

28

29 **PART IX.**

30 **SIGNATURE**

31 By signing here, I indicate that I understand the purpose and effect of this document and that I am giving my informed
32 consent to the treatments and/or admission to which I have consented or authorized my agent to consent in this directive. I
33 intend that my consent in this directive be construed as being consistent with the elements of informed consent under
34 chapter 7.70 RCW.

1 Signature: Date:

2 Printed Name:

3 This directive was signed and declared by the "Principal," to be his or her directive, in our presence who, at his or her
4 request, have signed our names below as witnesses. We declare that, at the time of the creation of this instrument, the
5 Principal is personally known to us, and, according to our best knowledge and belief, has capacity at this time and does not
6 appear to be acting under duress, undue influence, or fraud. We further declare that none of us is:

7 (A) A person designated to make medical decisions on the principal's behalf;

8 (B) A health care provider or professional person directly involved with the provision of care to the principal at the time the
9 directive is executed;

10 (C) An owner, operator, employee, or relative of an owner or operator of a health care facility or long-term care facility in
11 which the principal is a patient or resident;

12 (D) A person who is related by blood, marriage, or adoption to the person, or with whom the principal has a dating
13 relationship as defined in RCW 26.50.010;

14 (E) An incapacitated person;

15 (F) A person who would benefit financially if the principal undergoes mental health treatment; or

16 (G) A minor.

17 Witness 1: Signature: Date:

18 Printed Name:

19 Telephone: Address:

20 Witness 2: Signature: Date:

21 Printed Name:

22 Telephone: Address:

24 **PART X.**

25 **RECORD OF DIRECTIVE**

26 I have given a copy of this directive to the following persons:
27

28 DO NOT FILL OUT PART XI UNLESS YOU INTEND TO REVOKE
29 THIS DIRECTIVE IN PART OR IN WHOLE

31 **PART XI.**

32 **REVOCAION OF THIS DIRECTIVE**

33 *(Initial any that apply):*

34 I am revoking the following part(s) of this directive (specify):

1

2 I am revoking all of this directive.

3 By signing here, I indicate that I understand the purpose and effect of my revocation and that no person is bound by any
4 revoked provision(s). I intend this revocation to be interpreted as if I had never completed the revoked provision(s).

5 Signature: Date:

6 Printed Name:

7 **DO NOT SIGN THIS PART UNLESS YOU INTEND TO REVOKE THIS**
8 **DIRECTIVE IN PART OR IN WHOLE**

9 **PART V**

10 NEW SECTION. **Sec. 501.** In applying and construing this uniform
11 act, consideration must be given to the need to promote uniformity of
12 the law with respect to its subject matter among the states that
13 enact it.

14 NEW SECTION. **Sec. 502.** This act modifies, limits, and
15 supersedes the federal electronic signatures in global and national
16 commerce act, 15 U.S.C. Sec. 7001 et seq., but does not modify,
17 limit, or supersede section 101(c) of that act, 15 U.S.C. Sec.
18 7001(c), or authorize electronic delivery of any of the notices
19 described in section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

20 NEW SECTION. **Sec. 503.** Except as otherwise provided in this
21 act, on the effective date of this section:

22 (1) This act applies to a power of attorney created before, on,
23 or after the effective date of this section;

24 (2) This act applies to a judicial proceeding concerning a power
25 of attorney commenced on or after the effective date of this section;

26 (3) This act applies to a judicial proceeding concerning a power
27 of attorney commenced before the effective date of this section
28 unless the court finds that application of a provision of this act
29 would substantially interfere with the effective conduct of the
30 judicial proceeding or prejudice the rights of a party, in which case
31 that provision does not apply and the superseded law applies; and

32 (4) An act done before the effective date of this section is not
33 affected by this act.

1 NEW SECTION. **Sec. 504.** The following acts or parts of acts are
2 each repealed:

3 (1) RCW 11.94.010 (Designation—Authority—Effect of acts done—
4 Appointment of guardian, effect—Accounting—Reliance on instrument)
5 and 2007 c 156 s 31, 2005 c 97 s 12, 2003 c 283 s 27, 1995 c 297 s 9,
6 1989 c 211 s 1, & 1985 c 30 s 25;

7 (2) RCW 11.94.020 (Effect of death, disability, or incompetence
8 of principal—Acts without knowledge) and 1985 c 30 s 26;

9 (3) RCW 11.94.030 (Banking transactions) and 1985 c 30 s 27;

10 (4) RCW 11.94.040 (Liability for reliance on power of attorney
11 document) and 2001 c 203 s 2 & 1985 c 30 s 28;

12 (5) RCW 11.94.043 (Durable power of attorney—Revocation or
13 termination) and 1989 c 211 s 2;

14 (6) RCW 11.94.046 (Durable power of attorney—Validity) and 1989 c
15 211 s 3;

16 (7) RCW 11.94.050 (Attorney or agent granted principal's powers—
17 Powers to be specifically provided for—Transfer of resources by
18 principal's attorney or agent) and 2014 c 58 s 23, 2011 c 327 s 4,
19 2001 c 203 s 12, 1989 c 87 s 1, & 1985 c 30 s 29;

20 (8) RCW 11.94.060 (Conveyance or encumbrance of homestead) and
21 1985 c 30 s 30;

22 (9) RCW 11.94.070 (Limitations on powers to benefit attorneys-in-
23 fact) and 1994 c 221 s 67;

24 (10) RCW 11.94.080 (Termination of marriage or state registered
25 domestic partnership) and 2007 c 156 s 14 & 2001 c 203 s 1;

26 (11) RCW 11.94.090 (Court petition) and 2008 c 6 s 808 & 2001 c
27 203 s 3;

28 (12) RCW 11.94.100 (Persons allowed to file court petition) and
29 2008 c 6 s 809 & 2001 c 203 s 4;

30 (13) RCW 11.94.110 (Ruling on court petition) and 2001 c 203 s 5;

31 (14) RCW 11.94.120 (Award of costs on court petition) and 2001 c
32 203 s 6;

33 (15) RCW 11.94.130 (Applicability of dispute resolution
34 provisions to court petition) and 2001 c 203 s 7;

35 (16) RCW 11.94.140 (Notice of hearing on court petition) and 2008
36 c 6 s 810 & 2001 c 203 s 8;

37 (17) RCW 11.94.150 (Mental health treatment decisions—
38 Compensation of agent prohibited—Reimbursement of expenses allowed)
39 and 2003 c 283 s 28;

1 (18) RCW 11.94.900 (Application of 1984 c 149 §§ 26-31 as of
2 January 1, 1985) and 1985 c 30 s 140; and

3 (19) RCW 11.94.901 (Construction—Chapter applicable to state
4 registered domestic partnerships—2009 c 521) and 2009 c 521 s 37.

5 NEW SECTION. **Sec. 505.** Sections 101 through 301 and 501 through
6 503 of this act constitute a new chapter in Title 11 RCW.

7 NEW SECTION. **Sec. 506.** This act takes effect January 1, 2017.

Passed by the Senate March 7, 2016.

Passed by the House March 3, 2016.

Approved by the Governor April 1, 2016.

Filed in Office of Secretary of State April 4, 2016.

Washington State Legislature 2016 Session Update:

**Uniform Power of Attorney Act,
Uniform Fiduciary Access to Digital Assets Act,
Isolation**

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INTRODUCTION

Work on “Elder Law” legislation is a year round endeavor. As an active participant in the legislative process, The WSBA Elder Law Section (“ELS”) attends “stakeholder” meetings; responds to requests for information and analysis from the Legislature, the Superior Court Judges Association, interest groups, and the general public; provides written comments on legislation; and testifies during committee hearings in Olympia.

Before commenting on legislation, the ELS Executive Committee must engage in a two-step analysis.

First, 75% of the ELS Executive Committee must agree that the proposed course of action relates to or affects the practice of law or the administration of justice. This standard comes from GR 12.1(c), which states:

Activities Not Authorized. The Washington State Bar Association will not:

- (1) Take positions on issues concerning the politics or social positions of foreign nations;
- (2) Take positions on political or social issues which do not relate to or affect the practice of law or the administration of justice;
- (3) Support or oppose, in an election, candidates for public office.

Second, if 75% of the ELS Executive Committee determines that the legislation does relate to or affect the practice of law or the administration of justice, then 75% of the ELS Executive Committee must agree on one of five options in how to express its comment:

- (1) Support;
- (2) Support with comments or concerns;
- (3) Concerns;
- (4) Oppose; and
- (5) Neutral.

Many bills are introduced which concern “Elder Law.” Few bills satisfy GR 12.1(c). Other bills may satisfy GR 12.1(c), but involve practice areas outside the subject matter expertise of the Executive Committee, e.g., criminal matters affecting vulnerable adults. On such occasions, the ELS Executive Committee works with the WSBA’s legislative staff to ensure that the bills are brought to the attention of the appropriate WSBA section.

2016 LEGISLATION OF MAJOR IMPORTANCE TO ELDER LAW AND GUARDIANSHIP

In accordance with the two-step process described above, the ELS Executive Committee worked on a number of bills during the 2016 session. Below are a discussion of two bills that passed the legislature, which will impact elder law and guardianship practitioners, and also a discussion of the bills that were introduced regarding the issue of isolation of the elderly, which was a hot topic in Olympia in 2016.

I. Uniform Power of Attorney Act – Engrossed Substitute Senate Bill 5635, Effective Date: January 1, 2017 (full copy of ESSB 5635 follows these materials)

Washington’s Power of Attorney Act has been in effect since January 1, 1985. It is codified at RCW 11.94. The Uniform Law Commission¹ approved a new Uniform Power of Attorney Act (“UPAA”) in 2006 in order to mitigate the growing divergence among the various states’ treatment of powers of attorney and to provide additional safeguards to protect incapacitated persons. To date, 20 states have adopted the UPAA.²

Beginning in 2009, the WSBA’s Real Property, Probate & Trust Section and Elder Law Section analyzed the UPAA. It was concluded that the UPAA should be adopted in Washington with certain modifications. The proposed bill, SB 5636, was introduced by Senator Jamie Pedersen last year and was signed by Governor Inslee on April 1, 2016, as Engrossed Substitute Senate Substitute Bill 5635 (ESSB 5635), effective January 1, 2017.

ESSB 5635 increases the usefulness of a durable power of attorney, includes provisions to prevent elder abuse, clarifies the role of an agent, and protects third parties who deal with an agent. Below are descriptions of what Washington law has been, followed by explanations of ESSB 5635’s *Changes* (new provisions that change the current law) and *Additions* (new provisions that will be added to current law, which is retained).

A. Increased Usefulness.

1. **General Grant of Authority over Broad Subject Matter.** Washington law has provided very few details about specific powers that fall within the scope of a general grant of authority under a power of attorney. ***Change:*** ESSB 5635 details numerous grants of general authority. *See* ESSB 5635 Sec. 202-218. This provides the third party with a specific description of the scope of the agent’s authority as defined in the statute, allowing power of attorney documents to be shortened, more readable, and simplified.

¹ The Uniform Law Commission “provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.” <http://www.uniformlaws.org/> (Feb. 11, 2016).

² Alabama, Arkansas, Colorado, Connecticut, Hawaii, Idaho, Iowa, Maine, Maryland, Montana, Nebraska, Nevada, New Mexico, Ohio, Pennsylvania, Utah, Virginia, Washington, West Virginia, and Wisconsin.

2. General Authority over the Principal's Health Care Matters. Washington's law regarding health care agents under a power of attorney is retained in ESSB 5635. **Addition:** ESSB 5635 brings Washington's power of attorney laws into compliance with the federal Health Insurance Portability and Accountability Act (HIPAA), which makes the necessity of a specific HIPAA waiver unnecessary. *See* ESSB 5635 Sec. 217.

B. Elder Abuse Prevention.

1. Heightened Formality to Execution of a Valid Power of Attorney. Under Washington law, a power of attorney has been valid if in writing and signed by the principal. RCW 11.94.010(3). There are no required safeguards of witnesses or notaries. **Change:** ESSB 5635 requires formalities of either a notary or disinterested witnesses in the execution of a power of attorney to help ensure that the principal is not subject to undue influence or duress. *See* ESSB 5635 Sec. 105.
2. Express Language Must be Used to Grant an Agent Specific Authority over Certain Subject Matters. ESSB 5635 retains current Washington law in regard to requiring specific authority to (a) exercise any power of appointment in favor of anyone other than the principal; (b) create, amend or revoke a community property agreement; (c) compel distributions from a trust; and (d) provide for non-probate transfer of the principal's assets upon death. *See* Sec. 201(1). Additionally, two exceptions in Washington's current law allow an agent to exercise some powers in the absence of a specific grant of authority: (a) an agent may make transfers to any trust so long as it benefits the principal alone, and (b) an agent may transfer resources so long as the transfer is for the purpose of qualifying the principal for medical assistance or the limited casualty program for the medically needy. Sec. 201(2)-(3). **Addition:** ESSB 5635 emphasizes that any specific powers granted to an agent are subject to the general duty of an agent to preserve the principal's estate plan. *See* Sec.s 201(1) and 114(2)(f).
3. Exoneration of an Agent from Liability. Washington law has not allowed a principal to exonerate an agent *in advance* from a breach of duty. **Change:** ESSB 5635 allows a principal to exonerate an agent from liability for a breach of duty, so long as the breach was not "committed dishonestly, with an improper motive, or with gross negligence to the purpose of the power of attorney or the best interest of the principal," or, if such an exoneration "was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal." *See* Sec. 115.
4. Explicit Fiduciary Duties of Agent. Washington statutes have not provided a clear list of an agent's duties. **Addition:** ESSB 5635 codifies case law (*see Moon v. Phipps*, 67 Wn.2d 948, 955, 411 P.2d 157, 16 (1966)) and explicitly enumerates a clear list of fiduciary duties that require an agent to act in accordance with the principal's reasonable expectations to the extent they are

known, and otherwise in the principal's best interest. See ESSB 5635 Sec. 114(1). It also enumerates default duties that may be modified, including an agent's duty to act loyally and impartially, to keep a record of all transactions, cooperate with a health care agent, and to preserve the principal's estate plan. See ESSB 5635 Sec. 114(2). **Change:** It also limits the request for an accounting from a guardian or personal representative to information that reasonably relates to the duties of the guardian or personal representative. See ESSB 5635 Sec. 114(3).

5. Modification of the Definitions of "Incapacitated" and "Power of Attorney." Washington law has allowed the principal to define "disability or incompetence." RCW 11.94.010(1). **Change:** ESSB 5635(5) defines "incapacity" as follows:

"Incapacity" means inability of an individual to manage property, business, personal, or health care affairs because the individual:

- (a) Has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance; or
- (b) Is:
 - (i) An absentee, as defined in chapter 11.80 RCW; or
 - (ii) Outside the United States and unable to return.

Change: ESSB 5635 also requires the term "Power of Attorney" be used in the authorizing document. Sec. 102(7)

6. Requirements for Judicial Review of an Agent's Actions. ESSB 5635 is consistent with current law regarding who may file a petition for court review and for what reasons. See Sec. 116, RCW 11.94.100(1)(a)-(d). **Addition:** It also provides notice requirements and attorneys' fees, which are procedural safeguards consistent with TEDRA procedures to help avoid frivolous requests for court interventions.

C. Clarification of Agent's Role.

1. Authority Terminated upon Filing of Dissolution of Marriage or Domestic Partnership, and Automatically Reinstated if Dissolutions is Withdrawn. Under Washington law the power of attorney granted to a spouse or domestic partner has not been revoked until the final decree of marriage, declaration of invalidity, or legal separation. RCW 11.94.080. **Change:** ESSB 5635 provides that a spouse's authority as agent is terminated upon the filing of a dissolution or separation and is automatically reinstated if the dissolution is withdrawn or dismissed. See ESSB 5635 Sec. 110(2)(c) and (3).
2. Coagents Must Exercise their Authority Jointly. There has been no express provision applying to coagents under Washington law. **Change:** ESSB 5635 requires coagents to act jointly *unless* the Principal grants independent authority

to each agent. Further, ESSB 5635 allows a coagent to delegate authority to the other coagent. *See* ESSB 5635 Sec. 111(1).

3. Power of Attorney Terminates once a Court Appoints a Guardian. Once a guardian (full or limited of the person and/or estate), the agent's power of attorney continues in effect but the agent must account to the guardian and the guardian has the authority to modify or terminate the power of attorney under current Washington law. RCW 11.94.010(1). **Change:** ESSB 5635 terminates an agent's authority under a power of attorney unless the court specifies otherwise, and in the case of a limited guardianship, the agent's power continues except to the extent ordered by the court. *See* ESSB 5635 Sec. 108 (2) and (3).

D. Third Parties.

1. Agent's Liability for Delegation to Third Parties. Washington law has been silent on the subject of the liability of an agent who delegates or hires another to assist with the exercise of his or her authority. **Change:** ESSB 5635 does not hold an agent liable for the discretionary acts of a third party engaged by the agent to act on behalf of the principal. The agent cannot be held liable for the acts of someone the agent delegates authority, unless it was a discretionary act which the agent would have been liable for. *See* ESSB 5635 Sec. 114(7)-(8).
2. Resignation of Agent. Washington law has been silent on the subject of how an agent may resign. **Change:** ESSB 5635 specifies how and to whom an agent may give notice of his or her resignation. *See* Sec. 118.
3. Requirements of Third-Parties asked to Accept a Power of Attorney. Washington law has been silent on a number of issues involving third-parties: the mechanism or timeline for a third-party to request a certification of a power of attorney and then accept or reject the power of attorney; what constitutes a justifiable basis for a third party presented with a power of attorney and accompanying certificate to still reject the power of attorney; and the liability of the third party for wrongfully failing to honor a power of attorney. **Change:** ESSB 5635 specifies the procedures and timelines that a third party presented with a power of attorney must follow if they intend to demand a certification, a description of the circumstances under which a third party presented with a certification may still reject the power of attorney, and a third party's liability for attorneys' fees if they wrongfully reject a power of attorney. *See* Sec. 120.

II. Uniform Fiduciary Access to Digital Assets Act - Engrossed Substitute Senate Bill 5029, effective June 9, 2016 (full copy of ESSB 5029 follows these materials)

The Engrossed Substitute Senate Bill 5029 was signed by Governor Inslee on March 31, 2016, effective June 9, 2016. This bill also stems from the Uniform Law Commission. It sets standards for the custodians of digital assets to follow when a fiduciary

(agent/attorney-in-fact, trustee, guardian, personal representative) acting on behalf of the owner of the digital assets, or on behalf of his or her estate, requires access to those assets. *See ESSB 5029* Sec. 14.

Digital assets consist of any content or media, in any form, maintained and accessed electronically. Examples of digital assets include electronic information in online banking, investment accounts, medical records (such as “Explanation of Benefits”), photos, emails, and social media accounts.

In the past, a fiduciary would be advised to sort through a deceased or incapacitated person's files and the mail delivered to the decedent's or incapacitated person's residence to marshal the assets, determine known creditors, and find information regarding health care (such as insurance, history, and providers). Now that much, if not all, of such information is kept electronically, there are fewer paper trails to follow to the source.

Privacy advocates and companies in the technology sector have concerns regarding unintended access to sensitive personal information. However, guardians need access to digital assets to pay expenses or protect an incapacitated person from exploitation. ESSB 5029 is a compromise between these competing interests.

III. Guardianship and Vulnerable Adult “Isolation” Bills: HB 2401, HB 2402, HB 2797, HB 2869/SB 6619 (full copies of each bill follow these materials)

NOTE: Unlike the bills discussed in Sections I and II above, the bills discussed in this section did *not* make it out of committee by the cut-off date, meaning that these bills are now “dead” and *will not be passed this session*. Nevertheless, the bills on isolation were quite numerous this session and thus the Section wanted to bring them to your attention. It is likely that similar bills will be introduced in future sessions.

The issue of isolation has gained momentum in Olympia, due in part to the efforts of the daughters of two deceased celebrities. Kerri Kasem, the daughter of Casey Kasem (American Top 40), and Catherine Falk, the daughter of Peter Falk (“Columbo”), have both been in contact with Washington legislators and testified this winter in Olympia in support of one or more bills aimed at addressing the isolation of persons under guardianship and other adults. These bills set up framework for family members to receive notifications regarding the hospitalization, death, and disposition of remains, and also set forth various procedures to petition the court for access to a loved one.

The Elder Law Section has taken a consistent position in regard to the issue of isolation in our testimony to the legislature this session: We understand that the issue of isolation in guardianships is a concern of some stakeholders, however Washington has statutes already in place that address isolation and abuse. Historically, stakeholders in our state have come together to address issues facing vulnerable adults *in advance of* the legislative session. As we testified, any perceived inadequacies in our laws in regard to

isolation should be addressed by a diverse group of stakeholders outside of the active legislative session in order to ensure that proposed changes are thoroughly and thoughtfully considered before they become law.

The issues these bills look to address are already addressed in Washington statutes:

1. The Vulnerable Adult Protection Act, RCW 74.34. In fact, RCW 74.34.020(2)(c) includes “isolation” in the definition of “abuse.”
2. RCW 11.92, which sets for notification provisions when there is a substantial change in an incapacitated person’s condition.
3. RCW 11.88.160 addresses the duties of the Guardian following death, including consent for disposition of the incapacitated person’s remains pursuant to RCW 68.50.160, which addresses the rights of relatives. Also, again, notices must be given to those who have requested special notice of proceedings pursuant to RCW 11.92.150, and if there is a probate, then notices are required to be provided to heirs within the probate proceeding.

In addition, to the confusion such duplication would cause, these bills could violate an incapacitated person’s privacy if he or she does not want relatives or other individuals/entities who have filed a request for special notice of court proceedings (which could include adverse parties, e.g. creditors) to know if they are temporarily hospitalized.

CONCLUSION

If you have questions or concerns about these bills or other legislative issues addressed by the WSBA Elder Law Section, I may be contacted at msf@farrlawgroup.com.

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5029

Chapter 140, Laws of 2016

64th Legislature
2016 Regular Session

REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

EFFECTIVE DATE: 6/9/2016

Passed by the Senate March 7, 2016
Yeas 47 Nays 1

BRAD OWEN

President of the Senate

Passed by the House March 3, 2016
Yeas 80 Nays 15

FRANK CHOPP

Speaker of the House of Representatives

Approved March 31, 2016 4:41 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5029** as passed by Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN

Secretary

FILED

April 1, 2016

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5029

AS AMENDED BY THE HOUSE

Passed Legislature - 2016 Regular Session

State of Washington 64th Legislature 2016 Regular Session

By Senate Law & Justice (originally sponsored by Senators Pedersen and O'Ban; by request of Uniform Law Commission)

READ FIRST TIME 01/22/16.

1 AN ACT Relating to the revised uniform fiduciary access to
2 digital assets act; and adding a new chapter to Title 11 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** SHORT TITLE. This act may be known and
5 cited as the revised uniform fiduciary access to digital assets act.

6 NEW SECTION. **Sec. 2.** DEFINITIONS. In this chapter:

7 (1) "Account" means an arrangement under a terms-of-service
8 agreement in which a custodian carries, maintains, processes,
9 receives, or stores a digital asset of the user or provides goods or
10 services to the user.

11 (2) "Agent" means an attorney in fact granted authority under a
12 durable or nondurable power of attorney.

13 (3) "Carries" means engages in the transmission of an electronic
14 communication.

15 (4) "Catalogue of electronic communications" means information
16 that identifies each person with which a user has had an electronic
17 communication, the time and date of the communication, and the
18 electronic address of the person.

19 (5) "Content of an electronic communication" means information
20 concerning the substance or meaning of the communication which:

1 (a) Has been sent or received by a user;

2 (b) Is in electronic storage by a custodian providing an
3 electronic communication service to the public or is carried or
4 maintained by a custodian providing a remote computing service to the
5 public; and

6 (c) Is not readily accessible to the public.

7 (6) "Court" means the superior court of each county.

8 (7) "Custodian" means a person that carries, maintains,
9 processes, receives, or stores a digital asset of a user.

10 (8) "Designated recipient" means a person chosen by a user using
11 an online tool to administer digital assets of the user.

12 (9) "Digital asset" means an electronic record in which an
13 individual has a right or interest. The term does not include an
14 underlying asset or liability unless the asset or liability is itself
15 an electronic record.

16 (10) "Electronic" means relating to technology having electrical,
17 digital, magnetic, wireless, optical, electromagnetic, or similar
18 capabilities.

19 (11) "Electronic communication" has the meaning set forth in 18
20 U.S.C. Sec. 2510(12), as it existed on the effective date of this
21 section.

22 (12) "Electronic communication service" means a custodian that
23 provides to a user the ability to send or receive an electronic
24 communication.

25 (13) "Fiduciary" means an original, additional, or successor
26 personal representative, guardian, agent, or trustee.

27 (14) "Guardian" means a person appointed by a court to manage the
28 estate or person, or both, of a living individual. The term includes
29 a limited guardian or certified professional guardian.

30 (15) "Incapacitated person" means an individual for whom a
31 guardian has been appointed.

32 (16) "Information" means data, text, images, videos, sounds,
33 codes, computer programs, software, databases, or the like.

34 (17) "Online tool" means an electronic service provided by a
35 custodian that allows the user, in an agreement distinct from the
36 terms-of-service agreement between the custodian and user, to provide
37 directions for disclosure or nondisclosure of digital assets to a
38 third person.

1 (18) "Person" means an individual, estate, business or nonprofit
2 entity, public corporation, government or governmental subdivision,
3 agency, or instrumentality, or other legal entity.

4 (19) "Personal representative" means an executor, administrator,
5 special administrator, or person that performs substantially the same
6 function under law of this state other than this chapter.

7 (20) "Power of attorney" means a record that grants an agent
8 authority to act in the place of a principal.

9 (21) "Principal" means an individual who grants authority to an
10 agent in a power of attorney.

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

14 (23) "Remote computing service" means a custodian that provides
15 to a user computer processing services or the storage of digital
16 assets by means of an electronic communications system, as defined in
17 18 U.S.C. Sec. 2510(14), as it existed on the effective date of this
18 section.

19 (24) "Terms-of-service agreement" means an agreement that
20 controls the relationship between a user and a custodian.

21 (25) "Trustee" means a fiduciary with legal title to property
22 under an agreement or declaration that creates a beneficial interest
23 in another. The term includes a successor trustee.

24 (26) "User" means a person that has an account with a custodian.

25 (27) "Will" includes a codicil, testamentary instrument that only
26 appoints an executor, and instrument that revokes or revises a
27 testamentary instrument.

28 NEW SECTION. **Sec. 3.** APPLICABILITY. (1) This chapter applies
29 to:

30 (a) A fiduciary acting under a will or power of attorney executed
31 before, on, or after the effective date of this section;

32 (b) A personal representative acting for a decedent who died
33 before, on, or after the effective date of this section;

34 (c) A guardian acting for an incapacitated person appointed
35 before, on, or after the effective date of this section;

36 (d) A trustee acting under a trust created before, on, or after
37 the effective date of this section; and

38 (e) A custodian if the user resides in this state or resided in
39 this state at the time of the user's death.

1 (2) This chapter does not apply to a digital asset of an employer
2 used by an employee in the ordinary course of the employer's
3 business.

4 NEW SECTION. **Sec. 4.** USER DIRECTION FOR DISCLOSURE OF DIGITAL
5 ASSETS. (1) A user may use an online tool to direct the custodian to
6 disclose to a designated recipient or not to disclose some or all of
7 the user's digital assets, including the content of electronic
8 communications. If the online tool allows the user to modify or
9 delete a direction at all times, a direction regarding disclosure
10 using an online tool overrides a contrary direction by the user in a
11 will, trust, power of attorney, or other record.

12 (2) If a user has not used an online tool to give direction under
13 subsection (1) of this section or if the custodian has not provided
14 an online tool, the user may allow or prohibit in a will, trust,
15 power of attorney, or other record, disclosure to a fiduciary of some
16 or all of the user's digital assets, including the content of
17 electronic communications sent or received by the user.

18 (3) A user's direction under subsection (1) or (2) of this
19 section overrides a contrary provision in a terms-of-service
20 agreement that does not require the user to act affirmatively and
21 distinctly from the user's assent to the terms-of-service agreement.

22 NEW SECTION. **Sec. 5.** TERMS-OF-SERVICE AGREEMENT. (1) This
23 chapter does not change or impair a right of a custodian or a user
24 under a terms-of-service agreement to access and use digital assets
25 of the user.

26 (2) This chapter does not give a fiduciary or a designated
27 recipient any new or expanded rights other than those held by the
28 user for whom, or for whose estate, the fiduciary or designated
29 recipient acts or represents.

30 (3) A fiduciary's or designated recipient's access to digital
31 assets may be modified or eliminated by a user, by federal law, or by
32 a terms-of-service agreement if the user has not provided direction
33 under section 4 of this act.

34 NEW SECTION. **Sec. 6.** PROCEDURE FOR DISCLOSING DIGITAL ASSETS.
35 (1) When disclosing digital assets of a user under this chapter, the
36 custodian may at its sole discretion:

1 (a) Grant a fiduciary or designated recipient full access to the
2 user's account;

3 (b) Grant a fiduciary or designated recipient partial access to
4 the user's account sufficient to perform the tasks with which the
5 fiduciary or designated recipient is charged; or

6 (c) Provide a fiduciary or designated recipient a copy in a
7 record of any digital asset that, on the date the custodian received
8 the request for disclosure, the user could have accessed if the user
9 were alive and had full capacity and access to the account.

10 (2) A custodian may assess a reasonable administrative charge for
11 the cost of disclosing digital assets under this chapter.

12 (3) A custodian need not disclose under this chapter a digital
13 asset deleted by a user.

14 (4) If a user directs or a fiduciary or designated recipient
15 requests a custodian to disclose under this chapter some, but not
16 all, of the user's digital assets, the custodian need not disclose
17 the assets if segregation of the assets would impose an undue burden
18 on the custodian. If the custodian believes the direction or request
19 imposes an undue burden, the custodian or the fiduciary or designated
20 recipient may seek an order from the court to disclose:

21 (a) A subset limited by date of the user's digital assets;

22 (b) All of the user's digital assets to the fiduciary or
23 designated recipient;

24 (c) None of the user's digital assets; or

25 (d) All of the user's digital assets to the court for review in
26 camera.

27 NEW SECTION. **Sec. 7.** DISCLOSURE OF CONTENT OF ELECTRONIC
28 COMMUNICATIONS OF DECEASED USER. If a deceased user consented to or a
29 court directs disclosure of the contents of electronic communications
30 of the user, the custodian shall disclose to the personal
31 representative of the estate of the user the content of an electronic
32 communication sent or received by the user if the personal
33 representative gives the custodian:

34 (1) A written request for disclosure in physical or electronic
35 form;

36 (2) A certified copy of the death certificate of the user;

37 (3) A certified copy of the letter of appointment of the
38 representative, or a small estate affidavit or court order;

1 (4) Unless the user provided direction using an online tool, a
2 copy of the user's will, trust, power of attorney, or other record
3 evidencing the user's consent to disclosure of the content of
4 electronic communications; and

5 (5) If requested by the custodian:

6 (a) A number, user name, address, or other unique subscriber or
7 account identifier assigned by the custodian to identify the user's
8 account;

9 (b) Evidence linking the account to the user; or

10 (c) A finding by the court that:

11 (i) The user had a specific account with the custodian,
12 identifiable by the information specified in (a) of this subsection;

13 (ii) Disclosure of the content of electronic communications of
14 the user would not violate 18 U.S.C. Sec. 2701 et seq. and 47 U.S.C.
15 Sec. 222, existing on the effective date of this section, or other
16 applicable law;

17 (iii) Unless the user provided direction using an online tool,
18 the user consented to disclosure of the content of electronic
19 communications; or

20 (iv) Disclosure of the content of electronic communications of
21 the user is reasonably necessary for administration of the estate.

22 NEW SECTION. **Sec. 8.** DISCLOSURE OF OTHER DIGITAL ASSETS OF
23 DECEASED USER. Unless the user prohibited disclosure of digital
24 assets or the court directs otherwise, a custodian shall disclose to
25 the personal representative of the estate of a deceased user a
26 catalogue of electronic communications sent or received by the user
27 and digital assets, other than the content of electronic
28 communications of the user, if the representative gives the
29 custodian:

30 (1) A written request for disclosure in physical or electronic
31 form;

32 (2) A certified copy of the death certificate of the user;

33 (3) A certified copy of the letter of appointment of the
34 representative, or a small estate affidavit or court order; and

35 (4) If requested by the custodian:

36 (a) A number, user name, or address, or other unique subscriber
37 or account identifier assigned by the custodian to identify the
38 user's account;

39 (b) Evidence linking the account to the user;

1 (c) An affidavit stating that disclosure of the user's digital
2 assets is reasonably necessary for administration of the estate; or

3 (d) A finding by the court that:

4 (i) The user had a specific account with the custodian,
5 identifiable by the information specified in (a) of this subsection;
6 or

7 (ii) Disclosure of the user's digital assets is reasonably
8 necessary for administration of the estate.

9 NEW SECTION. **Sec. 9.** DISCLOSURE OF CONTENT OF ELECTRONIC
10 COMMUNICATIONS OF PRINCIPAL. To the extent a power of attorney
11 expressly grants an agent authority over the content of electronic
12 communications sent or received by the principal and unless directed
13 otherwise by the principal or the court, a custodian shall disclose
14 to the agent the content if the agent gives the custodian:

15 (1) A written request for disclosure in physical or electronic
16 form;

17 (2) An original or copy of the power of attorney expressly
18 granting the agent authority over the content of electronic
19 communications of the principal;

20 (3) A certification by the agent, under penalty of perjury, that
21 the power of attorney is in effect; and

22 (4) If requested by the custodian:

23 (a) A number, user name, address, or other unique subscriber or
24 account identifier assigned by the custodian to identify the
25 principal's account; or

26 (b) Evidence linking the account to the principal.

27 NEW SECTION. **Sec. 10.** DISCLOSURE OF OTHER DIGITAL ASSETS OF
28 PRINCIPAL. Unless otherwise ordered by the court, directed by the
29 principal, or provided by a power of attorney, a custodian shall
30 disclose to an agent with specific authority over digital assets or
31 general authority to act on behalf of a principal a catalogue of
32 electronic communications sent or received by the principal and
33 digital assets, other than the content of electronic communications
34 of the principal, if the agent gives the custodian:

35 (1) A written request for disclosure in physical or electronic
36 form;

1 (2) An original or a copy of the power of attorney that gives the
2 agent specific authority over digital assets or general authority to
3 act on behalf of the principal;

4 (3) A certification by the agent, under penalty of perjury, that
5 the power of attorney is in effect; and

6 (4) If requested by the custodian:

7 (a) A number, user name, address, or other unique subscriber or
8 account identifier assigned by the custodian to identify the
9 principal's account; or

10 (b) Evidence linking the account to the principal.

11 NEW SECTION. **Sec. 11.** DISCLOSURE OF DIGITAL ASSETS HELD IN
12 TRUST WHEN TRUSTEE IS ORIGINAL USER. Unless otherwise ordered by the
13 court or provided in a trust, a custodian shall disclose to a trustee
14 that is an original user of an account any digital asset of that
15 account held in trust, including a catalogue of electronic
16 communications of the trustee and the content of electronic
17 communications.

18 NEW SECTION. **Sec. 12.** DISCLOSURE OF CONTENT OF ELECTRONIC
19 COMMUNICATIONS HELD IN TRUST WHEN TRUSTEE NOT ORIGINAL USER. Unless
20 otherwise ordered by the court, directed by the user, or provided in
21 a trust, a custodian shall disclose to a trustee that is not an
22 original user of an account the content of an electronic
23 communication sent or received by an original or successor user and
24 carried, maintained, processed, received, or stored by the custodian
25 in the account of the trust if the trustee gives the custodian:

26 (1) A written request for disclosure in physical or electronic
27 form;

28 (2) A certified copy of the trust instrument, or a certification
29 of the trust under RCW 11.98.075, that includes consent to disclosure
30 of the content of electronic communications to the trustee;

31 (3) A certification by the trustee, under penalty of perjury,
32 that the trust exists and the trustee is a currently acting trustee
33 of the trust; and

34 (4) If requested by the custodian:

35 (a) A number, user name, address, or other unique subscriber or
36 account identifier assigned by the custodian to identify the trust's
37 account; or

38 (b) Evidence linking the account to the trust.

1 NEW SECTION. **Sec. 13.** DISCLOSURE OF OTHER DIGITAL ASSETS HELD
2 IN TRUST WHEN TRUSTEE NOT ORIGINAL USER. Unless otherwise ordered by
3 the court, directed by the user, or provided in a trust, a custodian
4 shall disclose, to a trustee that is not an original user of an
5 account, a catalogue of electronic communications sent or received by
6 an original or successor user and stored, carried, or maintained by
7 the custodian in an account of the trust and any digital assets,
8 other than the content of electronic communications in which the
9 trust has a right or interest, if the trustee gives the custodian:

10 (1) A written request for disclosure in physical or electronic
11 form;

12 (2) A certified copy of the trust instrument or a certification
13 of the trust under RCW 11.98.075;

14 (3) A certification by the trustee, under penalty of perjury,
15 that the trust exists and the trustee is a currently acting trustee
16 of the trust; and

17 (4) If requested by the custodian:

18 (a) A number, user name, address, or other unique subscriber or
19 account identifier assigned by the custodian to identify the trust's
20 account; or

21 (b) Evidence linking the account to the trust.

22 NEW SECTION. **Sec. 14.** DISCLOSURE OF DIGITAL ASSETS TO GUARDIAN
23 OF INCAPACITATED PERSON. (1) Unless otherwise ordered by the court, a
24 guardian appointed due to a finding of incapacity under RCW
25 11.88.010(1) has the right to access an incapacitated person's
26 digital assets other than the content of electronic communications.

27 (2) Unless otherwise ordered by the court or directed by the
28 user, a custodian shall disclose to a guardian the catalogue of
29 electronic communications sent or received by an incapacitated person
30 and any digital assets, other than the content of electronic
31 communications, if the guardian gives the custodian:

32 (a) A written request for disclosure in physical or electronic
33 form;

34 (b) Certified copies of letters of guardianship and the court
35 order appointing the guardian; and

36 (c) If requested by the custodian:

37 (i) A number, user name, address, or other unique subscriber or
38 account identifier assigned by the custodian to identify the account
39 of the person; or

1 (ii) Evidence linking the account to the incapacitated person.

2 (3) A guardian may request a custodian of the incapacitated
3 person's digital assets to suspend or terminate an account of the
4 incapacitated person for good cause. A request made under this
5 section must be accompanied by certified copies of letters of
6 guardianship and the court order appointing the guardian.

7 NEW SECTION. **Sec. 15.** FIDUCIARY DUTY AND AUTHORITY. (1) The
8 legal duties imposed on a fiduciary charged with managing tangible
9 property apply to the management of digital assets, including:

- 10 (a) The duty of care;
11 (b) The duty of loyalty; and
12 (c) The duty of confidentiality.

13 (2) A fiduciary's or designated recipient's authority with
14 respect to a digital asset of a user:

- 15 (a) Except as otherwise provided in section 4 of this act, is
16 subject to the applicable terms-of-service agreement;
17 (b) Is subject to other applicable law, including copyright law;
18 (c) In the case of a fiduciary, is limited by the scope of the
19 fiduciary's duties; and
20 (d) May not be used to impersonate the user.

21 (3) A fiduciary with authority over the property of a decedent,
22 incapacitated person, principal, or settlor has the right to access
23 any digital asset in which the decedent, incapacitated person,
24 principal, or settlor had a right or interest and that is not held by
25 a custodian or subject to a terms-of-service agreement.

26 (4) A fiduciary acting within the scope of the fiduciary's duties
27 is an authorized user of the property of the decedent, incapacitated
28 person, principal, or settlor for the purpose of applicable computer
29 fraud and unauthorized computer access laws.

30 (5) A fiduciary with authority over the tangible, personal
31 property of a decedent, incapacitated person, principal, or settlor:

- 32 (a) Has the right to access the property and any digital asset
33 stored in it; and
34 (b) Is an authorized user for the purpose of computer fraud and
35 unauthorized computer access laws.

36 (6) A custodian may disclose information in an account to a
37 fiduciary of the user when the information is required to terminate
38 an account used to access digital assets licensed to the user.

1 (7) A fiduciary of a user may request a custodian to terminate
2 the user's account. A request for termination must be in writing, in
3 either physical or electronic form, and accompanied by:

4 (a) If the user is deceased, a certified copy of the death
5 certificate of the user;

6 (b) A certified copy of the letter of appointment of the
7 representative or a small estate affidavit or court order, court
8 order, power of attorney, or trust giving the fiduciary authority
9 over the account; and

10 (c) If requested by the custodian:

11 (i) A number, user name, address, or other unique subscriber or
12 account identifier assigned by the custodian to identify the user's
13 account;

14 (ii) Evidence linking the account to the user; or

15 (iii) A finding by the court that the user had a specific account
16 with the custodian, identifiable by the information specified in

17 (c)(i) of this subsection.

18 NEW SECTION. **Sec. 16.** CUSTODIAN COMPLIANCE AND IMMUNITY. (1)

19 Not later than sixty days after receipt of the information required
20 under sections 7 through 15 of this act, a custodian shall comply
21 with a request under this chapter from a fiduciary or designated
22 recipient to disclose digital assets or terminate an account. If the
23 custodian fails to comply, the fiduciary or designated recipient may
24 apply to the court for an order directing compliance.

25 (2) An order under subsection (1) of this section directing
26 compliance must contain a finding that compliance is not in violation
27 of 18 U.S.C. Sec. 2702, as it existed on the effective date of this
28 section.

29 (3) A custodian may notify the user that a request for disclosure
30 or to terminate an account was made under this chapter.

31 (4) A custodian may deny a request under this chapter from a
32 fiduciary or designated recipient for disclosure of digital assets or
33 to terminate an account if the custodian is aware of any lawful
34 access to the account following the receipt of the fiduciary's
35 request.

36 (5) This section does not limit a custodian's ability to obtain
37 or require a fiduciary or designated recipient requesting disclosure
38 or termination under this chapter to obtain a court order which:

1 (a) Specifies that an account belongs to the incapacitated
2 person, trustor, decedent, or principal;

3 (b) Specifies that there is sufficient consent from the
4 incapacitated person, trustor, decedent, or principal to support the
5 requested disclosure; and

6 (c) Contains a finding required by law other than this chapter.

7 (6) A custodian and its officers, employees, and agents are
8 immune from liability for an act or omission done in good faith in
9 compliance with this chapter.

10 NEW SECTION. **Sec. 17.** UNIFORMITY OF APPLICATION AND
11 CONSTRUCTION. In applying and construing this chapter, consideration
12 must be given to the need to promote uniformity of the law with
13 respect to its subject matter among states that enact it.

14 NEW SECTION. **Sec. 18.** RELATION TO ELECTRONIC SIGNATURES IN
15 GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, or
16 supersedes the electronic signatures in global and national commerce
17 act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or
18 supersede 15 U.S.C. Sec. 7001(c) or authorize electronic delivery of
19 any of the notices described in 15 U.S.C. Sec. 7003(b).

20 NEW SECTION. **Sec. 19.** SEVERABILITY. If any provision of this
21 act or its application to any person or circumstance is held invalid,
22 the remainder of the act or the application of the provision to other
23 persons or circumstances is not affected.

24 NEW SECTION. **Sec. 20.** Sections 1 through 19 of this act
25 constitute a new chapter in Title 11 RCW.

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