



Sen. Ann Gillespie

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10300SB3421sam001

LRB103 37783 JRC 69923 a

1 AMENDMENT TO SENATE BILL 3421

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 3421 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Power of Attorney Act is amended  
5 by changing Section 2-8 as follows:

6 (755 ILCS 45/2-8) (from Ch. 110 1/2, par. 802-8)

7 Sec. 2-8. Reliance on document purporting to establish an  
8 agency.

9 (a) Any person who acts in good faith reliance on a copy of  
10 a document purporting to establish an agency will be fully  
11 protected and released to the same extent as though the  
12 reliant had dealt directly with the named principal as a  
13 fully-competent person. The named agent shall furnish an  
14 affidavit or Agent's Certification and Acceptance of Authority  
15 to the reliant on demand stating that the instrument relied on  
16 is a true copy of the agency and that, to the best of the named

1 agent's knowledge, the named principal is alive and the  
 2 relevant powers of the named agent have not been altered or  
 3 terminated; but good faith reliance on a document purporting  
 4 to establish an agency will protect the reliant without the  
 5 affidavit or Agent's Certification and Acceptance of  
 6 Authority.

7 (b) Upon request, the named agent in a power of attorney  
 8 shall furnish an Agent's Certification and Acceptance of  
 9 Authority to the reliant in substantially the following form:

10 AGENT'S CERTIFICATION AND ACCEPTANCE OF AUTHORITY

11 I, ..... (insert name of agent), certify that the  
 12 attached is a true copy of a power of attorney naming the  
 13 undersigned as agent or successor agent for .....  
 14 (insert name of principal).

15 I certify that to the best of my knowledge the principal  
 16 had the capacity to execute the power of attorney, is alive,  
 17 and has not revoked the power of attorney; that my powers as  
 18 agent have not been altered or terminated; and that the power  
 19 of attorney remains in full force and effect.

20 I accept appointment as agent under this power of  
 21 attorney.

22 This certification and acceptance is made under penalty of  
 23 perjury.\*

24 Dated: .....

1 .....  
 2 (Agent's Signature)  
 3 .....  
 4 (Print Agent's Name)  
 5 .....  
 6 (Agent's Address)

7 \* (NOTE: Perjury is defined in Section 32-2 of the Criminal  
 8 Code of 2012, and is a Class 3 felony.)

9 (c) Any person dealing with an agent named in a copy of a  
 10 document purporting to establish an agency may presume, in the  
 11 absence of actual knowledge to the contrary, that the document  
 12 purporting to establish the agency was validly executed, that  
 13 the agency was validly established, that the named principal  
 14 was competent at the time of execution, and that, at the time  
 15 of reliance, the named principal is alive, the agency was  
 16 validly established and has not terminated or been amended,  
 17 the relevant powers of the named agent were properly and  
 18 validly granted and have not terminated or been amended, and  
 19 the acts of the named agent conform to the standards of this  
 20 Act. No person relying on a copy of a document purporting to  
 21 establish an agency shall be required to see to the  
 22 application of any property delivered to or controlled by the  
 23 named agent or to question the authority of the named agent.

24 (d) Each person to whom a direction by the named agent in  
 25 accordance with the terms of the copy of the document

1 purporting to establish an agency is communicated shall comply  
2 with that direction, and any person who fails to comply  
3 arbitrarily or without reasonable cause shall be subject to  
4 civil liability for any damages resulting from noncompliance.  
5 A health care provider who complies with Section 4-7 shall not  
6 be deemed to have acted arbitrarily or without reasonable  
7 cause.

8 (e) Unreasonable cause to refuse to honor. It shall be  
9 deemed unreasonable for a third party to refuse to honor an  
10 Illinois statutory short form power of attorney properly  
11 executed in accordance with the laws in effect at the time of  
12 its execution, if the only reason for the refusal is any of the  
13 following: (1) the power of attorney is not on a form the third  
14 party receiving such power prescribes, regardless of any form  
15 the terms of any account agreement between the account holder  
16 and third party requires; (2) there has been a lapse of time  
17 since the execution of the power of attorney; (3) on the face  
18 of the statutory short form power of attorney, there is a lapse  
19 of time between the date of acknowledgment of the signature of  
20 the principal and the date of the acceptance by the agent; (4)  
21 the document provided does not bear an original signature,  
22 original witness, or original notarization but is accompanied  
23 by a properly executed Agent's Certification and Acceptance of  
24 Authority or Successor Agent's Certification and Acceptance of  
25 Authority bearing the original signature of the named agent;  
26 or (5) the document appoints an entity as the agent. Nothing in

1 this Section shall be interpreted as prohibiting or limiting a  
2 third party from requiring the named agent to furnish a  
3 properly executed Agent's Certification and Acceptance of  
4 Authority, Successor Agent's Certification and Acceptance of  
5 Authority, or Co-Agent's Certification and Acceptance of  
6 Authority under this Act.

7 (f) Reasonable cause to refuse to honor. Reasons for which  
8 it shall be deemed reasonable cause for a third party to refuse  
9 to honor a power of attorney for property include, but are not  
10 limited to, the following:

11 (1) the refusal by the agent to provide an affidavit  
12 or Agent's Certification and Acceptance of Authority;

13 (2) the refusal by the agent to provide a copy of the  
14 original document that is certified to be valid by an  
15 attorney, a court order, or governmental entity;

16 (3) the person's good faith referral of the principal  
17 and the agent or a person acting for or with the agent to  
18 the local adult protective services unit;

19 (4) actual knowledge or a reasonable basis for  
20 believing in the existence of a report having been made by  
21 any person to the local adult protective services unit  
22 alleging physical or financial abuse, neglect,  
23 exploitation, or abandonment of the principal by the agent  
24 or a person acting for the agent;

25 (5) actual knowledge of the principal's death or a  
26 reasonable basis for believing the principal has died;

1           (6) actual knowledge of the incapacity of the  
2           principal or a reasonable basis for believing the  
3           principal is incapacitated;

4           (7) actual knowledge or a reasonable basis for  
5           believing that the principal was incapacitated at the time  
6           the power of attorney was executed;

7           (8) actual knowledge or a reasonable basis for  
8           believing: (A) the power of attorney was procured through  
9           fraud, duress, or undue influence, or (B) the agent is  
10           engaged in fraud or abuse of the principal;

11           (9) actual notice of the termination or revocation of  
12           the power of attorney or a reasonable basis for believing  
13           that the power of attorney has been terminated or revoked;

14           (10) the refusal by a title insurance company to  
15           underwrite title insurance for a gift of real property  
16           made pursuant to a statutory short form power of attorney  
17           that does not contain express instructions or purposes of  
18           the principal with respect to gifts in paragraph 3 of the  
19           statutory short form power of attorney;

20           (11) the refusal of the principal's attorney to  
21           provide a certificate that the power of attorney is valid;

22           (12) a missing or incorrect signature, an invalid  
23           notarization, or an unacceptable power of attorney  
24           identification;

25           (13) the third party: (A) has filed a suspicious  
26           activity report as described by 31 U.S.C. 5318(g) with

1       respect to the principal or agent; (B) believes in good  
2       faith that the principal or agent has a prior criminal  
3       history involving financial crimes; or (C) has had a  
4       previous, unsatisfactory business relationship with the  
5       agent due to or resulting in material loss to the third  
6       party, financial mismanagement by the agent, or litigation  
7       between the third party and the agent alleging substantial  
8       damages; or

9       (14) the third party has reasonable cause to suspect  
10       the abuse, abandonment, neglect, or financial exploitation  
11       of the principal, if the principal is an eligible adult  
12       under the Adult Protective Services Act.

13       (Source: P.A. 96-1195, eff. 7-1-11; 97-1150, eff. 1-25-13.)".