

UNIFORM POWERS OF APPOINTMENT ACT

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill modifies provisions related to powers of appointment.

Highlighted Provisions:

This bill:

- ▶ addresses exercise of power of appointment;
- ▶ addresses compliance with specific reference requirements;
- ▶ enacts the Uniform Powers of Appointment Act, including:
 - general provisions, such as definitions, governing law, and the relationship of common law and principles of equity;
 - providing for the creation, revocation, and amendment of the power of appointment;
 - addressing the exercise of a power of appointment;
 - addressing disclaimer or release and the contract to appoint or not appoint;
 - addressing the rights of a powerholder's creditors in appointive property; and
 - including miscellaneous provisions; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **75-2-608**, as repealed and reenacted by Laws of Utah 1998, Chapter 39

31 REPEALS AND REENACTS:

32 **75-2-704**, as enacted by Laws of Utah 1998, Chapter 39

33 ENACTS:

34 **75-9-101**, Utah Code Annotated 1953

35 **75-9-102**, Utah Code Annotated 1953

36 **75-9-103**, Utah Code Annotated 1953

37 **75-9-104**, Utah Code Annotated 1953

38 **75-9-201**, Utah Code Annotated 1953

39 **75-9-202**, Utah Code Annotated 1953

40 **75-9-203**, Utah Code Annotated 1953

41 **75-9-204**, Utah Code Annotated 1953

42 **75-9-205**, Utah Code Annotated 1953

43 **75-9-206**, Utah Code Annotated 1953

44 **75-9-301**, Utah Code Annotated 1953

45 **75-9-302**, Utah Code Annotated 1953

46 **75-9-303**, Utah Code Annotated 1953

47 **75-9-304**, Utah Code Annotated 1953

48 **75-9-305**, Utah Code Annotated 1953

49 **75-9-306**, Utah Code Annotated 1953

50 **75-9-307**, Utah Code Annotated 1953

51 **75-9-308**, Utah Code Annotated 1953

52 **75-9-309**, Utah Code Annotated 1953

53 **75-9-310**, Utah Code Annotated 1953

54 **75-9-311**, Utah Code Annotated 1953

55 **75-9-312**, Utah Code Annotated 1953

56 **75-9-313**, Utah Code Annotated 1953

57 **75-9-314**, Utah Code Annotated 1953

58 **75-9-401**, Utah Code Annotated 1953

- 59 [75-9-402](#), Utah Code Annotated 1953
- 60 [75-9-403](#), Utah Code Annotated 1953
- 61 [75-9-404](#), Utah Code Annotated 1953
- 62 [75-9-405](#), Utah Code Annotated 1953
- 63 [75-9-406](#), Utah Code Annotated 1953
- 64 [75-9-407](#), Utah Code Annotated 1953
- 65 [75-9-501](#), Utah Code Annotated 1953
- 66 [75-9-502](#), Utah Code Annotated 1953
- 67 [75-9-503](#), Utah Code Annotated 1953
- 68 [75-9-504](#), Utah Code Annotated 1953
- 69 [75-9-601](#), Utah Code Annotated 1953
- 70 [75-9-602](#), Utah Code Annotated 1953
- 71 [75-9-603](#), Utah Code Annotated 1953



73 *Be it enacted by the Legislature of the state of Utah:*

74 Section 1. Section [75-2-608](#) is amended to read:

75 **[75-2-608. Exercise of power of appointment.](#)**

76 In the absence of a requirement that a power of appointment be exercised by a
77 reference, or by an express or specific reference, to the power, a general residuary clause in a
78 will, or a will making general disposition of all of the testator's property, expresses an intention
79 to exercise a power of appointment held by the testator only if:

80 (1) the power is a general power exercisable in favor of the powerholder's estate and
81 the creating instrument does not contain [a] an effective gift if the power is not exercised; or

82 (2) the testator's will manifests an intention to include the property subject to the
83 power.

84 Section 2. Section [75-2-704](#) is repealed and reenacted to read:

85 **[75-2-704. Power of appointment -- Compliance with specific reference](#)**
86 **requirement.**

87 A powerholder's substantial compliance with a formal requirement of appointment
88 imposed in a governing instrument by the donor, including a requirement that the instrument
89 exercising the power of appointment make reference or specific reference to the power, is

90 sufficient if:

91 (1) the powerholder knows of and intends to exercise the power; and

92 (2) the powerholder's manner of attempted exercise does not impair a material purpose
93 of the donor imposing the requirement.

94 Section 3. Section **75-9-101** is enacted to read:

95 **CHAPTER 9. UNIFORM POWERS OF APPOINTMENT ACT**

96 **Part 1. General Provisions**

97 **75-9-101. Title.**

98 This chapter is known as the "Uniform Powers of Appointment Act."

99 Section 4. Section **75-9-102** is enacted to read:

100 **75-9-102. Definitions.**

101 As used in this chapter:

102 (1) "Appointee" means a person to which a powerholder makes an appointment of
103 appointive property.

104 (2) "Appointive property" means the property or property interest subject to a power of
105 appointment.

106 (3) "Blanket-exercise clause" means a clause in an instrument that exercises a power of
107 appointment and is not a specific-exercise clause. The term includes a clause that:

108 (a) expressly uses the words "any power" in exercising any power of appointment the
109 powerholder has;

110 (b) expressly uses the words "any property" in appointing any property over which the
111 powerholder has a power of appointment; or

112 (c) disposes of all property subject to disposition by the powerholder.

113 (4) "Donor" means a person that creates a power of appointment.

114 (5) "Exclusionary power of appointment" means a power of appointment exercisable in
115 favor of any one or more of the permissible appointees to the exclusion of the other permissible
116 appointees.

117 (6) "General power of appointment" means a power of appointment exercisable in
118 favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor
119 of the powerholder's estate.

120 (7) "Gift-in-default clause" means a clause identifying a taker in default of

121 appointment.

122 (8) "Impermissible appointee" means a person that is not a permissible appointee.

123 (9) "Instrument" means a record.

124 (10) "Nongeneral power of appointment" means a power of appointment that is not a
125 general power of appointment.

126 (11) "Permissible appointee" means a person in whose favor a powerholder may
127 exercise a power of appointment.

128 (12) "Person" means an individual, estate, trust, business or nonprofit entity, public
129 corporation, government or governmental subdivision, agency, or instrumentality, or other
130 legal entity.

131 (13) "Powerholder" means a person in whom a donor creates a power of appointment.

132 (14) "Power of appointment" means a power that enables a powerholder acting in a
133 nonfiduciary capacity to designate a recipient of an ownership interest in, or another power of
134 appointment over, the appointive property. The term does not include a power of attorney.

135 (15) "Presently exercisable power of appointment" means a power of appointment
136 exercisable by the powerholder at a relevant time. The term:

137 (a) includes a power of appointment not exercisable until the occurrence of a specified
138 event, the satisfaction of an ascertainable standard, or the passage of a specified time only after:

139 (i) the occurrence of the specified event;

140 (ii) the satisfaction of the ascertainable standard; or

141 (iii) the passage of the specified time; and

142 (b) does not include a power exercisable only at the powerholder's death.

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

145 (17) "Specific-exercise clause" means a clause in an instrument that specifically refers
146 to and exercises a particular power of appointment.

147 (18) "Taker in default of appointment" means a person that takes all or part of the
148 appointive property to the extent the powerholder does not effectively exercise the power of
149 appointment.

150 (19) "Terms of the instrument" means the manifestation of the intent of the maker of
151 the instrument regarding the instrument's provisions as expressed in the instrument or as may

152 be established by other evidence that would be admissible in a legal proceeding.

153 Section 5. Section **75-9-103** is enacted to read:

154 **75-9-103. Governing law.**

155 Unless the terms of the instrument creating a power of appointment manifest a contrary
156 intent:

157 (1) the creation, revocation, or amendment of the power is governed by the law of the
158 donor's domicile at the relevant time; and

159 (2) the exercise, release, or disclaimer of the power, or the revocation or amendment of
160 the exercise, release, or disclaimer of the power, is governed by the law of the powerholder's
161 domicile at the relevant time.

162 Section 6. Section **75-9-104** is enacted to read:

163 **75-9-104. Common law and principles of equity.**

164 The common law and principles of equity supplement this chapter, except to the extent
165 modified by this chapter or laws of this state other than this chapter.

166 Section 7. Section **75-9-201** is enacted to read:

167 **Part 2. Creation, Revocation, and Amendment of Power of Appointment**

168 **75-9-201. Creation of power of appointment.**

169 (1) A power of appointment is created only if:

170 (a) the instrument creating the power:

171 (i) is valid under applicable law; and

172 (ii) except as otherwise provided in Subsection (2), transfers the appointive property;

173 and

174 (b) the terms of the instrument creating the power manifest the donor's intent to create
175 in a powerholder a power of appointment over the appointive property exercisable in favor of a
176 permissible appointee.

177 (2) Subsection (1)(a)(ii) does not apply to the creation of a power of appointment by
178 the exercise of a power of appointment.

179 (3) A power of appointment may not be created in a deceased individual.

180 (4) Subject to an applicable rule against perpetuities, a power of appointment may be
181 created in an unborn or unascertained powerholder.

182 Section 8. Section **75-9-202** is enacted to read:

183 **75-9-202. Nontransferability.**

184 A powerholder may not transfer a power of appointment. If a powerholder dies without
185 exercising or releasing a power, the power lapses.

186 Section 9. Section **75-9-203** is enacted to read:

187 **75-9-203. Presumption of unlimited authority.**

188 Subject to Section **75-9-205**, and unless the terms of the instrument creating a power of
189 appointment manifest a contrary intent, the power is:

190 (1) presently exercisable;

191 (2) exclusionary; and

192 (3) except as otherwise provided in Section **75-9-204**, general.

193 Section 10. Section **75-9-204** is enacted to read:

194 **75-9-204. Exception to presumption of unlimited authority.**

195 Unless the terms of the instrument creating a power of appointment manifest a contrary
196 intent, the power is nongeneral if:

197 (1) the power is exercisable only at the powerholder's death; and

198 (2) the permissible appointees of the power are a defined and limited class that does
199 not include the powerholder's estate, the powerholder's creditors, or the creditors of the
200 powerholder's estate.

201 Section 11. Section **75-9-205** is enacted to read:

202 **75-9-205. Rules of classification.**

203 (1) In this section, "adverse party" means a person with a substantial beneficial interest
204 in property that would be affected adversely by a powerholder's exercise or nonexercise of a
205 power of appointment in favor of the powerholder, the powerholder's estate, a creditor of the
206 powerholder, or a creditor of the powerholder's estate.

207 (2) If a powerholder may exercise a power of appointment only with the consent or
208 joinder of an adverse party, the power is nongeneral.

209 (3) If the permissible appointees of a power of appointment are not defined and
210 limited, the power is exclusionary.

211 Section 12. Section **75-9-206** is enacted to read:

212 **75-9-206. Power to revoke or amend.**

213 A donor may revoke or amend a power of appointment only to the extent that:

- 214 (1) the instrument creating the power is revocable by the donor; or
- 215 (2) the donor reserves a power of revocation or amendment in the instrument creating
- 216 the power of appointment.

217 Section 13. Section 75-9-301 is enacted to read:

218 **Part 3. Exercise of Power of Appointment**

219 **75-9-301. Requisites for exercise of power of appointment.**

220 A power of appointment is exercised only:

- 221 (1) if the instrument exercising the power is valid under applicable law;
- 222 (2) if the terms of the instrument exercising the power:
 - 223 (a) manifest the powerholder's intent to exercise the power; and
 - 224 (b) subject to Section 75-9-304, satisfy the requirements of exercise, if any, imposed by
 - 225 the donor; and
 - 226 (3) to the extent the appointment is a permissible exercise of the power.

227 Section 14. Section 75-9-302 is enacted to read:

228 **75-9-302. Intent to exercise -- Determining intent from residuary clause.**

- 229 (1) As used in this section:
 - 230 (a) "Residuary clause" does not include a residuary clause containing a
 - 231 blanket-exercise clause or a specific-exercise clause.
 - 232 (b) "Will" includes a codicil and a testamentary instrument that revises another will.
 - 233 (2) A residuary clause in a powerholder's will, or a comparable clause in the
 - 234 powerholder's revocable trust, manifests the powerholder's intent to exercise a power of
 - 235 appointment only if:
 - 236 (a) the terms of the instrument containing the residuary clause do not manifest a
 - 237 contrary intent;
 - 238 (b) the power is a general power exercisable in favor of the powerholder's estate;
 - 239 (c) there is no gift-in-default clause or the clause is ineffective; and
 - 240 (d) the powerholder did not release the power.

241 Section 15. Section 75-9-303 is enacted to read:

242 **75-9-303. Intent to exercise -- After-acquired power.**

243 Unless the terms of the instrument exercising a power of appointment manifest a

244 contrary intent:

245 (1) except as otherwise provided in Subsection (2), a blanket-exercise clause extends to
246 a power acquired by the powerholder after executing the instrument containing the clause; and

247 (2) if the powerholder is also the donor of the power, the clause does not extend to the
248 power unless there is no gift-in-default clause or the gift-in-default clause is ineffective.

249 Section 16. Section **75-9-304** is enacted to read:

250 **75-9-304. Substantial compliance with donor-imposed formal requirement.**

251 A powerholder's substantial compliance with a formal requirement of appointment
252 imposed by the donor, including a requirement that the instrument exercising the power of
253 appointment make reference or specific reference to the power, is sufficient if:

254 (1) the powerholder knows of and intends to exercise the power; and

255 (2) the powerholder's manner of attempted exercise of the power does not impair a
256 material purpose of the donor in imposing the requirement.

257 Section 17. Section **75-9-305** is enacted to read:

258 **75-9-305. Permissible appointment.**

259 (1) A powerholder of a general power of appointment that permits appointment to the
260 powerholder or the powerholder's estate may make any appointment, including an appointment
261 in trust or creating a new power of appointment, that the powerholder could make in disposing
262 of the powerholder's own property.

263 (2) A powerholder of a general power of appointment that permits appointment only to
264 the creditors of the powerholder or of the powerholder's estate may appoint only to those
265 creditors.

266 (3) Unless the terms of the instrument creating a power of appointment manifest a
267 contrary intent, the powerholder of a nongeneral power may:

268 (a) make an appointment in any form, including an appointment in trust, in favor of a
269 permissible appointee;

270 (b) create a general power in a permissible appointee; or

271 (c) create a nongeneral power in any person appoint one or more of the permissible
272 appointees of the original nongeneral power.

273 Section 18. Section **75-9-306** is enacted to read:

274 **75-9-306. Appointment to deceased appointee or permissible appointee's**
275 **descendant.**

276 (1) Subject to Sections 75-2-603 and 75-2-604, an appointment to a deceased appointee
277 is ineffective.

278 (2) Unless the terms of the instrument creating a power of appointment manifest a
279 contrary intent, a powerholder of a nongeneral power may exercise the power in favor of, or
280 create a new power of appointment in, a descendant of a deceased permissible appointee
281 whether or not the descendant is described by the donor as a permissible appointee.

282 Section 19. Section 75-9-307 is enacted to read:

283 **75-9-307. Impermissible appointment.**

284 (1) Except as otherwise provided in Section 75-9-306, an exercise of a power of
285 appointment in favor of an impermissible appointee is ineffective.

286 (2) An exercise of a power of appointment in favor of a permissible appointee is
287 ineffective to the extent the appointment is a fraud on the power.

288 Section 20. Section 75-9-308 is enacted to read:

289 **75-9-308. Elective allocation doctrine.**

290 If a powerholder exercises a power of appointment in a disposition that also disposes of
291 property the powerholder owns, the owned property and the appointive property shall be
292 allocated in the permissible manner that best carries out the powerholder's intent.

293 Section 21. Section 75-9-309 is enacted to read:

294 **75-9-309. Capture doctrine -- Disposition of ineffectively appointed property**
295 **under general power.**

296 To the extent a powerholder of a general power of appointment, other than a power to
297 withdraw property from, revoke, or amend a trust, makes an ineffective appointment:

298 (1) the gift-in-default clause controls the disposition of the ineffectively appointed
299 property; or

300 (2) if there is no gift-in-default clause or to the extent the clause is ineffective, the
301 ineffectively appointed property:

302 (a) passes to:

303 (i) the powerholder if the powerholder is a permissible appointee and is living; or

304 (ii) if the powerholder is an impermissible appointee or is deceased, the powerholder's
305 estate if the estate is a permissible appointee; or

306 (b) if there is no taker under Subsection (2)(a), passes under a reversionary interest to

307 the donor or the donor's transferee or successor in interest.

308 Section 22. Section **75-9-310** is enacted to read:

309 **75-9-310. Disposition of unappointed property under released or unexercised**
310 **general power.**

311 To the extent a powerholder releases or fails to exercise a general power of appointment
312 other than a power to withdraw property from, revoke, or amend a trust:

313 (1) the gift-in-default clause controls the disposition of the unappointed property; or

314 (2) if there is no gift-in-default clause or to the extent the clause is ineffective:

315 (a) except as otherwise provided in Subsection (2)(b), the unappointed property passes
316 to:

317 (i) the powerholder if the powerholder is a permissible appointee and is living; or

318 (ii) if the powerholder is an impermissible appointee or is deceased, the powerholder's
319 estate if the estate is a permissible appointee; or

320 (b) to the extent the powerholder released the power, or if there is no taker under
321 Subsection (2)(a), the unappointed property passes under a reversionary interest to the donor or
322 the donor's transferee or successor in interest.

323 Section 23. Section **75-9-311** is enacted to read:

324 **75-9-311. Disposition of unappointed property under released or unexercised**
325 **nongeneral power.**

326 To the extent a powerholder releases, ineffectively exercises, or fails to exercise a
327 nongeneral power of appointment:

328 (1) the gift-in-default clause controls the disposition of the unappointed property; or

329 (2) if there is no gift-in-default clause or to the extent the clause is ineffective, the
330 unappointed property:

331 (a) passes to the permissible appointees if:

332 (i) the permissible appointees are defined and limited; and

333 (ii) the terms of the instrument creating the power do not manifest a contrary intent; or

334 (b) if there is no taker under Subsection (2)(a), passes under a reversionary interest to
335 the donor or the donor's transferee or successor in interest.

336 Section 24. Section **75-9-312** is enacted to read:

337 **75-9-312. Disposition of unappointed property if partial appointment to taker in**

338 **default.**

339 Unless the terms of the instrument creating or exercising a power of appointment
340 manifest a contrary intent, if the powerholder makes a valid partial appointment to a taker in
341 default of appointment, the taker in default of appointment may share fully in unappointed
342 property.

343 Section 25. Section **75-9-313** is enacted to read:

344 **75-9-313. Appointment to taker in default.**

345 If a powerholder makes an appointment to a taker in default of appointment and the
346 appointee would have taken the property under a gift-in-default clause had the property not
347 been appointed, the power of appointment is considered not to have been exercised and the
348 appointee takes under the clause.

349 Section 26. Section **75-9-314** is enacted to read:

350 **75-9-314. Powerholder's authority to revoke or amend exercise.**

351 A powerholder may revoke or amend an exercise of a power of appointment only to the
352 extent that:

353 (1) the powerholder reserves a power of revocation or amendment in the instrument
354 exercising the power of appointment and, if the power is nongeneral, the terms of the
355 instrument creating the power of appointment do not prohibit the reservation; or

356 (2) the terms of the instrument creating the power of appointment provide that the
357 exercise is revocable or amendable.

358 Section 27. Section **75-9-401** is enacted to read:

359 **Part 4. Disclaimer or Release - Contract to Appoint or Not to Appoint.**

360 **75-9-401. Disclaimer.**

361 As provided by Section **75-2-801**:

362 (1) A powerholder may disclaim all or part of a power of appointment.

363 (2) A permissible appointee, an appointee, or a taker in default of appointment may
364 disclaim all or part of an interest in appointive property.

365 Section 28. Section **75-9-402** is enacted to read:

366 **75-9-402. Authority to release.**

367 A powerholder may release a power of appointment, in whole or in part, except to the
368 extent the terms of the instrument creating the power prevent the release.

369 Section 29. Section **75-9-403** is enacted to read:

370 **75-9-403. Method of release.**

371 A powerholder of a releasable power of appointment may release the power in whole or
372 in part:

373 (1) by substantial compliance with a method provided in the terms of the instrument
374 creating the power; or

375 (2) if the terms of the instrument creating the power do not provide a method or the
376 method provided in the terms of the instrument is not expressly made exclusive, by a record
377 manifesting the powerholder's intent by clear and convincing evidence.

378 Section 30. Section **75-9-404** is enacted to read:

379 **75-9-404. Revocation or amendment of release.**

380 A powerholder may revoke or amend a release of a power of appointment only to the
381 extent that:

382 (1) the instrument of release is revocable by the powerholder; or

383 (2) the powerholder reserves a power of revocation or amendment in the instrument of
384 release.

385 Section 31. Section **75-9-405** is enacted to read:

386 **75-9-405. Power to contract -- Presently exercisable power of appointment.**

387 A powerholder of a presently exercisable power of appointment may contract:

388 (1) not to exercise the power; or

389 (2) to exercise the power if the contract when made does not confer a benefit on an
390 impermissible appointee.

391 Section 32. Section **75-9-406** is enacted to read:

392 **75-9-406. Power to contract -- Power of appointment not presently exercisable.**

393 A powerholder of a power of appointment that is not presently exercisable may contract
394 to exercise or not to exercise the power only if the powerholder:

395 (1) is also the donor of the power; and

396 (2) has reserved the power in a revocable trust.

397 Section 33. Section **75-9-407** is enacted to read:

398 **75-9-407. Remedy for breach of contract to appoint or not to appoint.**

399 The remedy for a powerholder's breach of a contract to appoint or not to appoint

400 appointive property is limited to damages payable out of the appointive property or, if
401 appropriate, specific performance of the contract.

402 Section 34. Section **75-9-501** is enacted to read:

403 **Part 5. Rights of Powerholder's Creditors in Appointive Property**

404 **75-9-501. Creditor claim -- General power created by powerholder.**

405 (1) In this section, "power of appointment created by the powerholder" includes a
406 power of appointment created in a transfer by another person to the extent the powerholder
407 contributed value to the transfer.

408 (2) Appointive property subject to a general power of appointment created by the
409 powerholder is subject to a claim of a creditor of the powerholder or of the powerholder's estate
410 to the extent provided in Title 25, Chapter 6, Uniform Fraudulent Transfer Act.

411 (3) Subject to Subsection (2), appointive property subject to a general power of
412 appointment created by the powerholder is not subject to a claim of a creditor of the
413 powerholder or the powerholder's estate to the extent the powerholder irrevocably appointed
414 the property in favor of a person other than the powerholder or the powerholder's estate.

415 (4) Subject to Subsections (2) and (3), and notwithstanding the presence of a
416 spendthrift provision or whether the claim arose before or after the creation of the power of
417 appointment, appointive property subject to a general power of appointment created by the
418 powerholder is subject to a claim of a creditor of:

419 (a) the powerholder, to the same extent as if the powerholder owned the appointive
420 property, if the power is presently exercisable; and

421 (b) the powerholder's estate, to the extent the estate is insufficient to satisfy the claim
422 and subject to the right of a decedent to direct the source from which liabilities are paid, if the
423 power is exercisable at the powerholder's death.

424 Section 35. Section **75-9-502** is enacted to read:

425 **75-9-502. Creditor claim -- General power not created by powerholder.**

426 (1) Except as otherwise provided in Subsection (2), appointive property subject to a
427 general power of appointment created by a person other than the powerholder is subject to a
428 claim of a creditor of:

429 (a) the powerholder, to the extent the powerholder's property is insufficient, if the
430 power is presently exercisable; and

431 (b) the powerholder's estate, to the extent the estate is insufficient, subject to the right
432 of a decedent to direct the source from which liabilities are paid.

433 (2) Subject to Subsection 75-9-504(3), a power of appointment created by a person
434 other than the powerholder which is subject to an ascertainable standard relating to an
435 individual's health, education, support, or maintenance within the meaning of 26 U.S.C. Sec.
436 2041(b)(1)(A) or 26 U.S.C. Sec. 2514(c)(1), is treated for purposes of this part as a nongeneral
437 power.

438 Section 36. Section 75-9-503 is enacted to read:

439 **75-9-503. Power to withdraw.**

440 (1) For purposes of this part, and except as otherwise provided in Subsection (2), a
441 power to withdraw property from a trust is treated, during the time the power may be exercised,
442 as a presently exercisable general power of appointment to the extent of the property subject to
443 the power to withdraw.

444 (2) On the lapse, release, or waiver of a power to withdraw property from a trust, the
445 power is treated as a presently exercisable general power of appointment only to the extent the
446 value of the property affected by the lapse, release, or waiver exceeds the greater of the amount
447 specified in 26 U.S.C. Sec. 2041(b)(2) and 26 U.S.C. Sec. 2514(e) or the amount specified in
448 26 U.S.C. Sec. 2503(b).

449 Section 37. Section 75-9-504 is enacted to read:

450 **75-9-504. Creditor claim -- Nongeneral power.**

451 (1) Except as otherwise provided in Subsections (2) and (3), appointive property
452 subject to a nongeneral power of appointment is exempt from a claim of a creditor of the
453 powerholder or the powerholder's estate.

454 (2) Appointive property subject to a nongeneral power of appointment is subject to a
455 claim of a creditor of the powerholder or the powerholder's estate to the extent that the
456 powerholder owned the property and, reserving the nongeneral power, transferred the property
457 in violation of Title 25, Chapter 6, Uniform Fraudulent Transfer Act.

458 (3) If the initial gift in default of appointment is to the powerholder or the
459 powerholder's estate, a nongeneral power of appointment is treated for purposes of this part as
460 a general power.

461 Section 38. Section 75-9-601 is enacted to read:

462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492

Part 6. Miscellaneous Provisions

75-9-601. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 39. Section **75-9-602** is enacted to read:

75-9-602. Relation to Electronic Signatures in Global and National Commerce

Act.

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

Section 40. Section **75-9-603** is enacted to read:

75-9-603. Application to existing relationships.

(1) Except as otherwise provided in this chapter, on and after May 13, 2014:

(a) this chapter applies to a power of appointment created before, on, or after May 13, 2014;

(b) this chapter applies to a judicial proceeding concerning a power of appointment commenced on or after May 13, 2014;

(c) this chapter applies to a judicial proceeding concerning a power of appointment commenced before May 13, 2014, unless the court finds that application of a particular provision of this chapter would interfere substantially with the effective conduct of the judicial proceeding or prejudice a right of a party, in which case the particular provision of this chapter does not apply and the superseded law applies; and

(d) a rule of construction or presumption provided in this chapter applies to an instrument executed before May 13, 2014, unless there is a clear indication of a contrary intent in the terms of the instrument.

(2) Except as otherwise provided in Subsections (1)(a) through (d), an action done before May 13, 2014, is not affected by this chapter.

(3) If a right is acquired, extinguished, or barred on the expiration of a prescribed period that commenced under law of this state other than this chapter before May 13, 2014, the law continues to apply to the right.

Legislative Review Note
as of 2-28-14 1:55 PM

Office of Legislative Research and General Counsel