

## HB0183S01 compared with HB0183

~~{deleted text}~~ shows text that was in HB0183 but was deleted in HB0183S01.

inserted text shows text that was not in HB0183 but was inserted into HB0183S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative V. Lowry Snow proposes the following substitute bill:

### UNIFORM POWERS OF APPOINTMENT ACT

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: V. Lowry Snow**

Senate Sponsor: \_\_\_\_\_

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#### 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;

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- addressing disclaimer or release and the contract to appoint or not appoint;
  - addressing the rights of a powerholder's creditors in appointive property; and
  - miscellaneous provisions; and
- ▶ makes technical and conforming amendments.

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

None

### **Utah Code Sections Affected:**

#### AMENDS:

**75-2-608**, as repealed and reenacted by Laws of Utah 1998, Chapter 39

#### REPEALS AND REENACTS:

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

#### ENACTS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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75-9-602, Utah Code Annotated 1953  
75-9-603, Utah Code Annotated 1953

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

Section 1. Section **75-2-608** is amended to read:

**75-2-608. Exercise of power of appointment.**

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

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

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

Section 2. Section **75-2-704** is repealed and reenacted to read:

**75-2-704. Power of appointment -- Compliance with specific reference requirement.**

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

- (1) the powerholder knows of and intends to exercise the power; and
- (2) the powerholder's manner of attempted exercise does not impair a material purpose of the donor imposing the requirement.

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

### CHAPTER 9. UNIFORM POWERS OF APPOINTMENT ACT

#### Part 1. General Provisions

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

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

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

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

As used in this chapter:

- (1) "Appointee" means a person to which a powerholder makes an appointment of appointive property.
- (2) "Appointive property" means the property or property interest subject to a power of appointment.
- (3) "Blanket-exercise clause" means a clause in an instrument that exercises a power of appointment and is not a specific-exercise clause. The term includes a clause that:
  - (a) expressly uses the words "any power" in exercising any power of appointment the powerholder has;
  - (b) expressly uses the words "any property" in appointing any property over which the powerholder has a power of appointment; or
  - (c) disposes of all property subject to disposition by the powerholder.

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

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

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

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

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

(9) "Instrument" means a record.

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

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

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

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

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

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

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

(i) the occurrence of the specified event;

(ii) the satisfaction of the ascertainable standard; or

(iii) the passage of the specified time; and

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

(16) "Record" means information that is inscribed on a tangible medium or that is

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stored in an electronic or other medium and is retrievable in perceivable form.

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

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

(19) "Terms of the instrument" means the manifestation of the intent of the maker of the instrument regarding the instrument's provisions as expressed in the instrument or as may be established by other evidence that would be admissible in a legal proceeding.

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

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

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

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

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

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

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

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

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

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

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

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

(a) the instrument creating the power:

(i) is valid under applicable law; and

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

and

(b) the terms of the instrument creating the power manifest the donor's intent to create

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in a powerholder a power of appointment over the appointive property exercisable in favor of a permissible appointee.

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

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

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

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

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

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

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

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

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

- (1) presently exercisable;
- (2) exclusionary; and
- (3) except as otherwise provided in Section 75-9-204, general.

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

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

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

- (1) the power is exercisable only at the powerholder's death; and
- (2) the permissible appointees of the power are a defined and limited class that does not include the powerholder's estate, the powerholder's creditors, or the creditors of the powerholder's estate.

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

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

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

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powerholder, or a creditor of the powerholder's estate.

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

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

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

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

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

(1) the instrument creating the power is revocable by the donor; or

(2) the donor reserves a power of revocation or amendment in the instrument creating the power of appointment.

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

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

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

A power of appointment is exercised only:

(1) if the instrument exercising the power is valid under applicable law;

(2) if the terms of the instrument exercising the power:

(a) manifest the powerholder's intent to exercise the power; and

(b) subject to Section 75-9-304, satisfy the requirements of exercise, if any, imposed by the donor; and

(3) to the extent the appointment is a permissible exercise of the power.

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

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

(1) As used in this section:

(a) "Residuary clause" does not include a residuary clause containing a blanket-exercise clause or a specific-exercise clause.

(b) "Will" includes a codicil and a testamentary instrument that revises another will.

(2) A residuary clause in a powerholder's will, or a comparable clause in the powerholder's revocable trust, manifests the powerholder's intent to exercise a power of appointment only if:

(a) the terms of the instrument containing the residuary clause do not manifest a

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contrary intent:

(b) the power is a general power exercisable in favor of the powerholder's estate;

(c) there is no gift-in-default clause or the clause is ineffective; and

(d) the powerholder did not release the power.

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

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

Unless the terms of the instrument exercising a power of appointment manifest a contrary intent:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) the gift-in-default clause controls the disposition of the ineffectively appointed

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property; or

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

(a) passes to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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unappointed property:

(a) passes to the permissible appointees if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The provisions of this section do not apply to an exercise of a power of appointment if the exercise was executed prior to May 13, 2015, and the powerholder may revoke or amend a prior exercise of a power of appointment unless the instrument creating the

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power or the instrument exercising the power provided the exercise was irrevocable or could not be amended.

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

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

#### **75-9-401. Disclaimer.**

As provided by Section 75-2-801:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) not to exercise the power; or

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

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

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

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

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

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

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

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

The remedy for a powerholder's breach of a contract to appoint or not to appoint appointive property is limited to damages payable out of the appointive property or, if appropriate, specific performance of the contract.

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

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

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

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

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

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

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

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powerholder is subject to a claim of a creditor of:

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

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

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

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

(1) ~~{Except as otherwise provided in Subsection (2), appointive}~~ The property subject to a general power of appointment not created by ~~{a person other than}~~ the powerholder is ~~{subject}~~ available to ~~{a claim of a creditor of:~~

~~—— (a) the powerholder, to the extent}~~ the powerholder's ~~{property is insufficient,}~~ creditors only if the power is ~~{presently exercisable; and~~

~~—— (b) }~~ exercised. The powerholder of such a power may not be compelled to exercise it, nor may the powerholder's ~~{estate, to the extent the estate is insufficient, subject to the right of a decedent to direct the source from which liabilities are paid}~~ creditors acquire the power. A court may not exercise or require the powerholder to exercise the power of appointment.

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

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

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

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

(2) On the lapse, release, or waiver of a power to withdraw property from a trust, the power is treated as a presently exercisable general power of appointment only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount

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specified in 26 U.S.C. Sec. 2041(b)(2) and 26 U.S.C. Sec. 2514(e) or the amount specified in 26 U.S.C. Sec. 2503(b).

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

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

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

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

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

(4) The powerholder of a nongeneral power of appointment may not be compelled to exercise it, nor may the powerholder's creditors acquire the power. A court may not exercise or require the powerholder to exercise the power of appointment.

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

### **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.**

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(1) Except as otherwise provided in this chapter, on and after May 13, 2015:

(a) this chapter applies to a power of appointment created before, on, or after May 13, 2015;

(b) this chapter applies to a judicial proceeding concerning a power of appointment commenced on or after May 13, 2015;

(c) this chapter applies to a judicial proceeding concerning a power of appointment commenced before May 13, 2015, 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, 2015, 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, 2015, 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, 2015, the law continues to apply to the right.

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**Legislative Review Note**

~~as of 12-15-14 1:21 PM~~

~~Office of Legislative Research and General Counsel~~