

HB1198_L.007

SENATE COMMITTEE OF REFERENCE REPORT

 Chairman of Committee

 Date
Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB09-1198 be amended as follows:

1 Amend reengrossed bill, page 2, line 9, strike "IN" and substitute "EXCEPT
2 AS OTHERWISE PROVIDED, IN".

3 Page 5, after line 23, insert the following:

4 "(2.5) IT SHALL NOT BE INFERRED FROM THE PORTION OF THE
5 DEFINITION OF "INCAPACITY" IN SECTION 15-14-702 (5) (b) THAT AN
6 INDIVIDUAL WHO IS EITHER INCARCERATED IN A PENAL SYSTEM OR
7 OTHERWISE DETAINED OR OUTSIDE OF THE UNITED STATES AND UNABLE
8 TO RETURN LACKS THE CAPACITY TO EXECUTE A POWER OF ATTORNEY AS
9 A CONSEQUENCE OF SUCH DETENTION OR INABILITY TO RETURN."

10 Page 6, line 8, after the period, add "NOTHING IN THIS SUBSECTION (4)
11 SHALL PRECLUDE A THIRD PARTY RELYING UPON A POWER OF ATTORNEY
12 FROM REQUESTING THE ORIGINAL DOCUMENT."

13 Page 8, line 12, before "PURPOSE", insert "EXPRESS";

14 after line 17, insert the following:

15 "(1.5) IN THE CASE OF A POWER OF ATTORNEY IN EXISTENCE ON
16 DECEMBER 31, 2009, "INCAPACITATED" SHALL MEAN AN INDIVIDUAL WITH
17 AN INCAPACITY AS SPECIFIED IN SECTION 15-14-702 (5) (a) AND NOT AS
18 SPECIFIED IN SECTION 15-14-702 (5) (b) UNLESS, ON THAT DATE, THIS PART
19 7 APPLIES TO THE POWER OF ATTORNEY AS PROVIDED IN SECTION
20 15-14-745 (2)."



1 Page 13, line 3, after "AUTHORITY", insert "PROVIDED IN THE POWER OF
2 ATTORNEY".

3 Page 16, line 1, strike "AN" and substitute "A PURPORTEDLY";

4 line 5, strike "AN" and substitute "A PURPORTEDLY";

5 line 27, strike "TRANSLATION" and substitute "TRANSLATION, AN AGENT'S
6 CERTIFICATION,".

7 Page 17, strike lines 2 and 3 and substitute the following:

8 "EXPENSE."

9 Page 18, line 2, strike "CIRCUMSTANCES;" and substitute
10 "CIRCUMSTANCES, INCLUDING, WITHOUT LIMITATION, THE
11 CIRCUMSTANCES SET FORTH IN PARAGRAPHS (a.3) AND (a.5) OF THIS
12 SUBSECTION (1);";

13 after line 2, insert the following:

14 "(a.3) THE AGENT SEEKS TO ESTABLISH A CUSTOMER
15 RELATIONSHIP UNDER THE POWER OF ATTORNEY AND THE PRINCIPAL IS
16 NOT CURRENTLY A CUSTOMER;

17 (a.5) THE AGENT SEEKS SERVICES UNDER THE POWER OF
18 ATTORNEY THAT THE PERSON DOES NOT OFFER;";

19 strike lines 4 and 5 and substitute the following:

20 "PRINCIPAL IN THE SAME CIRCUMSTANCES OR ACCEPTANCE OF THE POWER
21 OF ATTORNEY IN THE SAME CIRCUMSTANCES WOULD BE INCONSISTENT
22 WITH ANY FEDERAL OR STATE LAW, RULE, OR REGULATION OTHER THAN
23 AS SET FORTH IN THIS PART 7;";

24 after line 21, insert the following:

25 "(f.5) THE PERSON HAS AN APPREHENSION, FORMED IN GOOD
26 FAITH, THAT THE AGENT OR PERSON ACTING FOR OR WITH THE AGENT HAS
27 ACTED OR IS ACTING, IN ANY CAPACITY, EITHER UNLAWFULLY OR NOT IN
28 GOOD FAITH IN DEALING WITH THE PERSON AND THE PERSON IS



1 INVESTIGATING IN GOOD FAITH TO DETERMINE WHETHER THE PERSON MAY,
2 BASED ON THE RESULTS OF THE INVESTIGATION, FORM A GOOD FAITH
3 BELIEF THAT THE PRINCIPAL MAY BE SUBJECT TO FINANCIAL ABUSE,
4 NEGLECT, EXPLOITATION, OR ABANDONMENT BY THE AGENT OR A PERSON
5 ACTING FOR OR WITH THE AGENT."

6 Page 20, strike lines 5 and 6, and substitute the following:

7 "(g) EXERCISE:

8 (I) A POWER HELD BY THE PRINCIPAL IN A FIDUCIARY CAPACITY;

9 (II) A POWER TO NOMINATE, APPOINT, OR REMOVE A FIDUCIARY OR
10 TO CONSENT, VETO, OR OTHERWISE PARTICIPATE IN THE DESIGNATION OR
11 CHANGING OF A FIDUCIARY; OR

12 (III) A POWER TO DIRECT A FIDUCIARY IN THE EXERCISE OF A
13 POWER OF THE FIDUCIARY WITH RESPECT TO PROPERTY SUBJECT TO THE
14 FIDUCIARY RELATIONSHIP, INCLUDING, BUT NOT LIMITED TO, A POWER TO
15 DIRECT INVESTMENTS, OR TO CONSENT, VETO, OR OTHERWISE PARTICIPATE
16 IN CONTROLLING THE EXERCISE OF SUCH A POWER."

17 Page 32, line 10, strike "DEPENDENTS, AND" and substitute
18 "DEPENDENTS,";

19 strike line 11, and substitute the following:

20 "TYPE OF INSURANCE OR ANNUITY, AND MODE OF PAYMENT, AND
21 DESIGNATE A BENEFICIARY THAT WILL BE THE ESTATE OF THE PRINCIPAL;"

22 Page 33, line 17, after "ENTITLED", insert "AS A BENEFICIARY".

23 Page 40, line 26, strike "NAME;" and substitute "NAME AND DESIGNATE A
24 BENEFICIARY THAT WILL BE THE ESTATE OF THE PRINCIPAL;"

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