

SIDE-BY-SIDE

ARTICLE 5- Protection of Persons under disabilities and their property- Part 5

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
Article 5.Part 5. Powers of Attorneys	Article 5.Part 5.
	<p>SECTION 62-5-501.</p> <p>(A) Whenever a principal designates another his attorney in fact by a power of attorney in writing and the writing contains (1) the words ‘This power of attorney is not affected by physical disability or mental incompetence of the principal which renders the principal incapable of managing his own estate’, (2) the words ‘This power of attorney becomes effective upon the physical disability or mental incompetence of the principal’, or (3) similar words showing the intent of the principal that the authority conferred is exercisable notwithstanding his physical disability or mental incompetence or either physical disability or mental incompetence, the authority of the attorney in fact is exercisable by him as provided in the power on behalf of the principal notwithstanding later physical disability or mental incompetence of the principal or later uncertainty as to whether the principal is dead or alive. The power may define ‘physical disability’ or ‘mental incompetence’ and may set forth the procedures for determining whether the principal is physically disabled or mentally incompetent. If no definition of mental incompetence or procedures for determining mental incompetence are set forth, and the authority of the attorney in fact relates solely to health care, mental incompetence is to be determined according to the standards and procedures for inability to consent under Section 44-66-20(6) of the Adult Health Care Consent Act. The authority of the attorney in fact to act on behalf of the principal must be set forth in the power and may relate to any act, power, duty, right, or obligation which the principal has or may acquire relating to the principal or any matter, transaction, or property, including the power to consent or withhold consent on behalf of the principal to health care. The attorney in fact</p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p>has a fiduciary relationship with the principal and is accountable and responsible as a fiduciary. All acts done by the attorney in fact pursuant to the power during a period of physical disability or mental incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees, legatees, and personal representative as if the principal were alive, mentally competent, and not disabled physically.</p> <p>(B) An instrument to which this section is applicable also may provide for successor attorneys in fact and provide conditions for their succession, which may include an authorization for the court to appoint a successor, and the succession may occur whether or not the principal then is physically disabled or mentally incompetent. The appointment of an attorney in fact under this section does not prevent a person or his representative from petitioning the court to have a guardian or conservator appointed. Unless the power of attorney provides otherwise, appointment of a guardian terminates all or part of the power of attorney that relates to matters within the scope of the guardianship, and appointment of a conservator terminates all or part of the power of attorney that relates to matters within the scope of the conservatorship.</p> <p>(C) A power of attorney executed under the provisions of this section must be executed and attested with the same formality and with the same requirements as to witnesses as a will. In addition, the instrument must be recorded in the same manner as a deed in the county where the principal resides at the time the instrument is recorded. After the instrument has been recorded, whether recorded before or after the onset of the principal's physical disability or mental incompetence, it is effective notwithstanding the mental incompetence or physical disability. If the authority of the attorney in fact relates solely to the person of the principal, the instrument is effective without being recorded.</p> <p>(D) A power of attorney as provided for under this section is valid if:</p> <ol style="list-style-type: none"> (1) executed in compliance with this section; or (2) its execution complies with the law at the time of execution of the jurisdiction where the instrument was executed and it is recorded as

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p>required by subsection (C). Notwithstanding the provisions of Section 30-5-30, a valid power of attorney as provided for under this section which is executed in another jurisdiction may be recorded as though it complies with the provisions of subsection (C) of this section.</p> <p>(E) A properly executed durable power of attorney that authorizes an attorney in fact to make health care decisions or other decisions regarding the principal is valid whether or not it was executed after May 14, 1990.</p> <p>(F)(1) A third person in this State who receives or is presented with a valid power of attorney executed pursuant to this section, and has not received actual written notice of its revocation or termination, must not refuse to honor the power of attorney if it contains the following provision or a substantially similar provision:</p> <p style="padding-left: 40px;">‘No person who may act in reliance upon the representations of my attorney in fact for the scope of authority granted to the attorney in fact shall incur any liability as to me or to my estate as a result of permitting the attorney in fact to exercise this authority, nor is any such person who deals with my attorney in fact responsible to determine or ensure the proper application of funds or property.’</p> <p>As used in this subsection, ‘to honor’ a power of attorney means to deal with the attorney in fact as if the attorney in fact were the principal, personally present and acting on his own behalf within the scope of the powers granted to the attorney in fact.</p> <p>(2) Unless the third person actually has received written notice of the revocation or termination of a valid power of attorney executed in accordance with this section, a third person in this State who receives or is presented with a power of attorney:</p> <p style="padding-left: 40px;">(a) does not incur liability to the principal or the principal’s estate by reason of acting upon the authority of it or permitting the attorney in fact to exercise authority;</p> <p style="padding-left: 40px;">(b) is not required to inquire whether the attorney in fact has power to act or is properly exercising the power; or</p> <p style="padding-left: 40px;">(c) is not responsible to determine or ensure the proper application of assets, funds, or property belonging to the principal.</p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p>(3) A 'third person' means an individual, a corporation, an organization, or other legal entity for purposes of this subsection.</p> <p>(G)(1) An attorney in fact is entitled to reimbursement for expenses and compensation for services as provided in the power of attorney. In the absence of a provision in the power of attorney regarding reimbursement or compensation, or both:</p> <p style="padding-left: 40px;">(a) an attorney in fact is entitled to reimbursement for all reasonable costs and expenses actually incurred and paid by the attorney in fact on the principal's behalf;</p> <p style="padding-left: 40px;">(b) an attorney in fact, upon the approval of the probate court, is entitled to reasonable compensation based upon the responsibilities he assumed and the effort he expended; and</p> <p style="padding-left: 40px;">(c) if two or more attorneys in fact are serving together, the compensation paid must be divided by them in a manner as they agree or as determined by a court of competent jurisdiction if they fail to agree.</p> <p>(2) An interested person may petition a court of competent jurisdiction to review the propriety and reasonableness of payment for reimbursement or compensation to the attorney in fact, and an attorney in fact who has received excessive payment may be ordered to make appropriate refunds to the principal.</p> <p>SECTION 62-5-502.</p> <p>(a) The death, disability, or incompetence of any principal who has executed a power of attorney in writing does not revoke or terminate the agency as to the attorney in fact, agent, or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his heirs, devisees, and personal representatives.</p> <p style="padding-left: 40px;">(b) An affidavit, executed by the attorney in fact or agent stating that he did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the</p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p>power of attorney by death, disability, or incompetence, is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.</p> <p>(e) This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney.</p> <p style="text-align: center;"><u>SECTION 62-5-503.</u></p> <p>The probate court has concurrent jurisdiction with the circuit courts of this State over all subject matter related to the creation, exercise, and termination of powers of attorney governed by the provisions of this Part, including the approval of the sale of real and personal property by an attorney in fact.</p> <p style="text-align: center;"><u>SECTION 62-5-504.</u></p> <p>(A) As used in this section:</p> <p>(1) ‘Agent’ or ‘health care agent’ means an individual designated in a health care power of attorney to make health care decisions on behalf of a principal.</p> <p>(2) ‘Declaration of a desire for a natural death’ or ‘declaration’ means a document executed in accordance with the South Carolina Death with Dignity Act or a similar document executed in accordance with the law of another state.</p> <p>(3) ‘Health care’ means a procedure to diagnose or treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin. It also includes the provision of intermediate or skilled nursing care; services for the rehabilitation of injured, disabled, or sick persons; and placement in or removal from a facility that provides these forms of care.</p> <p>(4) ‘Health care power of attorney’ means a durable power of</p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p>attorney executed in accordance with this section.</p> <p>(5) ‘Health care provider’ means a person, health care facility, organization, or corporation licensed, certified, or otherwise authorized or permitted by the laws of this State to administer health care.</p> <p>(6) ‘Life sustaining procedure’ means a medical procedure or intervention which serves only to prolong the dying process. Life sustaining procedures do not include the administration of medication or other treatment for comfort care or alleviation of pain. The principal shall indicate in the health care power of attorney whether the provision of nutrition and hydration through medically or surgically implanted tubes is desired.</p> <p>(7) ‘Permanent unconsciousness’ means a medical diagnosis, consistent with accepted standards of medical practice, that a person is in a persistent vegetative state or some other irreversible condition in which the person has no neocortical functioning, but only involuntary vegetative or primitive reflex functions controlled by the brain stem.</p> <p>(8) ‘Nursing care provider’ means a nursing care facility or an employee of the facility.</p> <p>(9) ‘Principal’ means an individual who executes a health care power of attorney. A principal must be eighteen years of age or older and of sound mind.</p> <p>(10) ‘Separated’ means that the principal and his or her spouse are separated pursuant to one of the following:</p> <ul style="list-style-type: none"> (a) entry of a pendente lite order in a divorce or separate maintenance action; (b) formal signing of a written property or marital settlement agreement; (c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties. <p>(B)(1) A health care power of attorney is a durable power of attorney pursuant to Section 62-5-501. Sections that refer to a durable power of attorney or judicial interpretations of the law relating to durable powers of attorney apply to a health care power of attorney to the extent that</p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p>they are not inconsistent with this section.</p> <p>(2) This section does not affect the right of a person to execute a durable power of attorney relating to health care pursuant to other provisions of law but which does not conform to the requirements of this section. If a durable power of attorney for health care executed under Section 62-5-501 or under the laws of another state does not conform to the requirements of this section, the provisions of this section do not apply to it. However, a court is not precluded from determining that the law applicable to nonconforming durable powers of attorney for health care is the same as the law set forth in this section for health care powers of attorney.</p> <p>(3) To the extent not inconsistent with this section, the provisions of the Adult Health Care Consent Act apply to the making of decisions by a health care agent and the implementation of those decisions by health care providers.</p> <p>(4) In determining the effectiveness of a health care power of attorney, mental incompetence is to be determined according to the standards and procedures for inability to consent under Section 44-66-20(6), except that certification of mental incompetence by the agent may be substituted for certification by a second physician. If the certifying physician states that the principal's mental incompetence precludes the principal from making all health care decisions or all decisions concerning certain categories of health care, and that the principal's mental incompetence is permanent or of extended duration, no further certification is necessary in regard to the stated categories of health care decisions during the stated duration of mental incompetence unless the agent or the attending physician believes the principal may have regained capacity.</p> <p>(C)(1) A health care power of attorney must:</p> <ul style="list-style-type: none"> (a) be substantially in the form set forth in subsection (D) of this section; (b) be dated and signed by the principal or in the principal's name by another person in the principal's presence and by his direction; (c) be signed by at least two persons, each of whom witnessed

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p> either the signing of the health care power of attorney or the principal's acknowledgment of his signature on the health care power of attorney. Each witness must state in an affidavit as set forth in subsection (D) of this section that, at the time of the execution of the health care power of attorney, to the extent the witness has knowledge, the witness is not related to the principal by blood, marriage, or adoption, either as a spouse, lineal ancestor, descendant of the parents of the principal, or spouse of any of them; not directly financially responsible for the principal's medical care; not entitled to any portion of the principal's estate upon his decease under a will of the principal then existing or as an heir by intestate succession; not a beneficiary of a life insurance policy of the principal; and not appointed as health care agent or successor health care agent in the health care power of attorney; and that no more than one witness is an employee of a health facility in which the principal is a patient, no witness is the attending physician or an employee of the attending physician, or no witness has a claim against the principal's estate upon his decease; </p> <p> (d) state the name and address of the agent. A health care agent must be an individual who is eighteen years of age or older and of sound mind. A health care agent may not be a health care provider, or an employee of a provider, with whom the principal has a provider-patient relationship at the time the health care power of attorney is executed, or an employee of a nursing care facility in which the principal resides, or a spouse of the health care provider or employee, unless the health care provider, employee, or spouse is a relative of the principal. </p> <p> (2) The validity of a health care power of attorney is not affected by the principal's failure to initial any of the choices provided in Section 4, 6, or 7 of the Health Care Power of Attorney form or to name successor agents. If the principal fails to indicate either of the statements in Section 7 concerning provision of artificial nutrition and hydration, the agent does not have authority to direct that nutrition and hydration necessary for comfort care or alleviation of pain be withheld or withdrawn. </p>

<p>ARTICLE 5: Part 5- EXISTING CODE LANGUAGE</p>	<p>Bill # S. 1243- Article 5- Part 5</p>
	<p>(D) A health care power of attorney executed on or after January 1, 2007 must be substantially in the following form:</p> <p>INFORMATION ABOUT THIS DOCUMENT</p> <p>THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:</p> <p>1. THIS DOCUMENT GIVES THE PERSON YOU NAME AS YOUR AGENT THE POWER TO MAKE HEALTH CARE DECISIONS FOR YOU IF YOU CANNOT MAKE THE DECISION FOR YOURSELF. THIS POWER INCLUDES THE POWER TO MAKE DECISIONS ABOUT LIFE SUSTAINING TREATMENT. UNLESS YOU STATE OTHERWISE, YOUR AGENT WILL HAVE THE SAME AUTHORITY TO MAKE DECISIONS ABOUT YOUR HEALTH CARE AS YOU WOULD HAVE.</p> <p>2. THIS POWER IS SUBJECT TO ANY LIMITATIONS OR STATEMENTS OF YOUR DESIRES THAT YOU INCLUDE IN THIS DOCUMENT. YOU MAY STATE IN THIS DOCUMENT ANY TREATMENT YOU DO NOT DESIRE OR TREATMENT YOU WANT TO BE SURE YOU RECEIVE. YOUR AGENT WILL BE OBLIGATED TO FOLLOW YOUR INSTRUCTIONS WHEN MAKING DECISIONS ON YOUR BEHALF. YOU MAY ATTACH ADDITIONAL PAGES IF YOU NEED MORE SPACE TO COMPLETE THE STATEMENT.</p> <p>3. AFTER YOU HAVE SIGNED THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE HEALTH CARE DECISIONS FOR YOURSELF IF YOU ARE MENTALLY COMPETENT TO DO SO. AFTER YOU HAVE SIGNED THIS DOCUMENT, NO TREATMENT MAY BE GIVEN TO YOU OR STOPPED OVER YOUR OBJECTION IF YOU ARE MENTALLY COMPETENT TO MAKE THAT DECISION.</p> <p>4. YOU HAVE THE RIGHT TO REVOKE THIS DOCUMENT, AND TERMINATE YOUR AGENT'S AUTHORITY, BY INFORMING EITHER YOUR AGENT OR YOUR HEALTH CARE PROVIDER ORALLY OR IN WRITING.</p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p>5. IF THERE IS ANYTHING IN THIS DOCUMENT THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A SOCIAL WORKER, LAWYER, OR OTHER PERSON TO EXPLAIN IT TO YOU.</p> <p>6. THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS TWO PERSONS SIGN AS WITNESSES. EACH OF THESE PERSONS MUST EITHER WITNESS YOUR SIGNING OF THE POWER OF ATTORNEY OR WITNESS YOUR ACKNOWLEDGMENT THAT THE SIGNATURE ON THE POWER OF ATTORNEY IS YOURS.</p> <p>THE FOLLOWING PERSONS MAY NOT ACT AS WITNESSES:</p> <p>A. YOUR SPOUSE, YOUR CHILDREN, GRANDCHILDREN, AND OTHER LINEAL DESCENDANTS; YOUR PARENTS, GRANDPARENTS, AND OTHER LINEAL ANCESTORS; YOUR SIBLINGS AND THEIR LINEAL DESCENDANTS; OR A SPOUSE OF ANY OF THESE PERSONS.</p> <p>B. A PERSON WHO IS DIRECTLY FINANCIALLY RESPONSIBLE FOR YOUR MEDICAL CARE.</p> <p>C. A PERSON WHO IS NAMED IN YOUR WILL, OR, IF YOU HAVE NO WILL, WHO WOULD INHERIT YOUR PROPERTY BY INTESTATE SUCCESSION.</p> <p>D. A BENEFICIARY OF A LIFE INSURANCE POLICY ON YOUR LIFE.</p> <p>E. THE PERSONS NAMED IN THE HEALTH CARE POWER OF ATTORNEY AS YOUR AGENT OR SUCCESSOR AGENT.</p> <p>F. YOUR PHYSICIAN OR AN EMPLOYEE OF YOUR PHYSICIAN.</p> <p>G. ANY PERSON WHO WOULD HAVE A CLAIM AGAINST ANY PORTION OF YOUR ESTATE (PERSONS TO WHOM YOU OWE MONEY).</p> <p>IF YOU ARE A PATIENT IN A HEALTH FACILITY, NO MORE THAN ONE WITNESS MAY BE AN EMPLOYEE OF THAT FACILITY.</p> <p>7. YOUR AGENT MUST BE A PERSON WHO IS 18 YEARS OLD OR OLDER AND OF SOUND MIND. IT MAY NOT BE YOUR DOCTOR OR ANY OTHER HEALTH CARE PROVIDER THAT IS</p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p>NOW PROVIDING YOU WITH TREATMENT; OR AN EMPLOYEE OF YOUR DOCTOR OR PROVIDER; OR A SPOUSE OF THE DOCTOR, PROVIDER, OR EMPLOYEE; UNLESS THE PERSON IS A RELATIVE OF YOURS.</p> <p>8. YOU SHOULD INFORM THE PERSON THAT YOU WANT HIM OR HER TO BE YOUR HEALTH CARE AGENT. YOU SHOULD DISCUSS THIS DOCUMENT WITH YOUR AGENT AND YOUR PHYSICIAN AND GIVE EACH A SIGNED COPY. IF YOU ARE IN A HEALTH CARE FACILITY OR A NURSING CARE FACILITY, A COPY OF THIS DOCUMENT SHOULD BE INCLUDED IN YOUR MEDICAL RECORD.</p> <p>HEALTH CARE POWER OF ATTORNEY (S.C. STATUTORY FORM)</p> <p>1. DESIGNATION OF HEALTH CARE AGENT</p> <p>I, _____, hereby appoint: (Principal) (Agent's Name) _____ (Agent's Address) _____ Telephone: home: _____ work: _____ mobile: _____ as my agent to make health care decisions for me as authorized in this document.</p> <p>Successor Agent: If an agent named by me dies, becomes legally disabled, resigns, refuses to act, becomes unavailable, or if an agent who is my spouse is divorced or separated from me, I name the following as successors to my agent, each to act alone and successively, in the order named:</p> <p>a. First Alternate Agent: Address: _____ Telephone: home: _____ work: _____ mobile: _____</p> <p>b. Second Alternate Agent: Address: _____ Telephone: home: _____ work: _____ mobile: _____</p> <p>Unavailability of Agent(s): If at any relevant time the agent or successor agents named here are unable or unwilling to make decisions</p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p>concerning my health care, and those decisions are to be made by a guardian, by the Probate Court, or by a surrogate pursuant to the Adult Health Care Consent Act, it is my intention that the guardian, Probate Court, or surrogate make those decisions in accordance with my directions as stated in this document.</p> <p>2. EFFECTIVE DATE AND DURABILITY By this document I intend to create a durable power of attorney effective upon, and only during, any period of mental incompetence, except as provided in Paragraph 3 below.</p> <p>3. HIPAA AUTHORIZATION When considering or making health care decisions for me, all individually identifiable health information and medical records shall be released without restriction to my health care agent(s) and/or my alternate health care agent(s) named above including, but not limited to, (i) diagnostic, treatment, other health care, and related insurance and financial records and information associated with any past, present, or future physical or mental health condition including, but not limited to, diagnosis or treatment of HIV/AIDS, sexually transmitted disease(s), mental illness, and/or drug or alcohol abuse and (ii) any written opinion relating to my health that such health care agent(s) and/or alternate health care agent(s) may have requested. Without limiting the generality of the foregoing, this release authority applies to all health information and medical records governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 USC 1320d and 45 CFR 160-164; is effective whether or not I am mentally competent; has no expiration date; and shall terminate only in the event that I revoke the authority in writing and deliver it to my health care provider.</p> <p>4. AGENT'S POWERS I grant to my agent full authority to make decisions for me regarding my health care. In exercising this authority, my agent shall follow my desires as stated in this document or otherwise expressed by me or known to my agent. In making any decision, my agent shall attempt to discuss the proposed decision with me to determine my desires if I am</p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p>able to communicate in any way. If my agent cannot determine the choice I would want made, then my agent shall make a choice for me based upon what my agent believes to be in my best interests. My agent's authority to interpret my desires is intended to be as broad as possible, except for any limitations I may state below. Accordingly, unless specifically limited by the provisions specified below, my agent is authorized as follows:</p> <p>A. To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation.</p> <p>B. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical damage, addiction, or hasten the moment of, but not intentionally cause, my death.</p> <p>C. To authorize my admission to or discharge, even against medical advice, from any hospital, nursing care facility, or similar facility or service.</p> <p>D. To take any other action necessary to making, documenting, and assuring implementation of decisions concerning my health care, including, but not limited to, granting any waiver or release from liability required by any hospital, physician, nursing care provider, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply.</p> <p>E. The powers granted above do not include the following powers or are subject to the following rules or limitations:</p> <p>== == == ==</p> <p>5. ORGAN DONATION (INITIAL ONLY ONE)</p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p>My agent may ___; may not ___ consent to the donation of all or any of my tissue or organs for purposes of transplantation.</p> <p>6. EFFECT ON DECLARATION OF A DESIRE FOR A NATURAL DEATH (LIVING WILL)</p> <p>I understand that if I have a valid Declaration of a Desire for a Natural Death, the instructions contained in the Declaration will be given effect in any situation to which they are applicable. My agent will have authority to make decisions concerning my health care only in situations to which the Declaration does not apply.</p> <p>7. STATEMENT OF DESIRES CONCERNING LIFE-SUSTAINING TREATMENT</p> <p>With respect to any Life-Sustaining Treatment, I direct the following: (INITIAL-ONLY ONE OF THE FOLLOWING 3 PARAGRAPHS)</p> <p>(1) ___ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged nor do I want life-sustaining treatment to be provided or continued if my agent believes the burdens of the treatment outweigh the expected benefits. I want my agent to consider the relief of suffering, my personal beliefs, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life-sustaining treatment.</p> <p>OR</p> <p>(2) ___ DIRECTIVE TO WITHHOLD OR WITHDRAW TREATMENT. I do not want my life to be prolonged and I do not want life-sustaining treatment:</p> <p>a. if I have a condition that is incurable or irreversible and, without the administration of life-sustaining procedures, expected to result in death within a relatively short period of time; or</p> <p>b. if I am in a state of permanent unconsciousness.</p> <p>OR</p> <p>(3) ___ DIRECTIVE FOR MAXIMUM TREATMENT. I want my life to be prolonged to the greatest extent possible, within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedures.</p> <p>8. STATEMENT OF DESIRES REGARDING TUBE FEEDING</p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p>With respect to Nutrition and Hydration provided by means of a nasogastric tube or tube into the stomach, intestines, or veins, I wish to make clear that in situations where life sustaining treatment is being withheld or withdrawn pursuant to Paragraph 7, (INITIAL ONLY ONE OF THE FOLLOWING 3 PARAGRAPHS):</p> <p>(1) ___ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged by tube feeding if my agent believes the burdens of tube feeding outweigh the expected benefits. I want my agent to consider the relief of suffering, my personal beliefs, the expense involved, and the quality as well as the possible extension of my life in making this decision.</p> <p>OR</p> <p>(2) ___ DIRECTIVE TO WITHHOLD OR WITHDRAW TUBE FEEDING. I do not want my life prolonged by tube feeding.</p> <p>OR</p> <p>(3) ___ DIRECTIVE FOR PROVISION OF TUBE FEEDING. I want tube feeding to be provided within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedure, and without regard to whether other forms of life sustaining treatment are being withheld or withdrawn.</p> <p>IF YOU DO NOT INITIAL ANY OF THE STATEMENTS IN PARAGRAPH 8, YOUR AGENT WILL NOT HAVE AUTHORITY TO DIRECT THAT NUTRITION AND HYDRATION NECESSARY FOR COMFORT CARE OR ALLEVIATION OF PAIN BE WITHDRAWN.</p> <p>9. ADMINISTRATIVE PROVISIONS</p> <p>A. I revoke any prior Health Care Power of Attorney and any provisions relating to health care of any other prior power of attorney.</p> <p>B. This power of attorney is intended to be valid in any jurisdiction in which it is presented.</p> <p>BY SIGNING HERE I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY AGENT.</p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p>I sign my name to this Health Care Power of Attorney on this ____ day of ____, 20 __. My current home address is: ____</p> <p>Principal's Signature: ____ Print Name of Principal: ____</p> <p>I declare, on the basis of information and belief, that the person who signed or acknowledged this document (the principal) is personally known to me, that he/she signed or acknowledged this Health Care Power of Attorney in my presence, and that he/she appears to be of sound mind and under no duress, fraud, or undue influence. I am not related to the principal by blood, marriage, or adoption, either as a spouse, a lineal ancestor, descendant of the parents of the principal, or spouse of any of them. I am not directly financially responsible for the principal's medical care. I am not entitled to any portion of the principal's estate upon his decease, whether under any will or as an heir by intestate succession, nor am I the beneficiary of an insurance policy on the principal's life, nor do I have a claim against the principal's estate as of this time. I am not the principal's attending physician, nor an employee of the attending physician. No more than one witness is an employee of a health facility in which the principal is a patient. I am not appointed as Health Care Agent or Successor Health Care Agent by this document.</p> <p>Witness No. 1 Signature: _____ Date: ____ Print Name: _____ Telephone: ____ Address: ____</p> <p>____</p> <p>Witness No. 2 Signature: _____ Date: ____ Print Name: _____ Telephone: ____ Address: ____</p> <p>____</p> <p>(This portion of the document is optional and is not required to create a valid health care power of attorney.)</p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p>STATE OF SOUTH CAROLINA COUNTY OF ____</p> <p>The foregoing instrument was acknowledged before me by Principal on _____, 20____.</p> <p>Notary Public for South Carolina ____</p> <p>My Commission Expires: ____</p> <p>(E) A health care agent has, in addition to the powers set forth in the health care power of attorney, the following specific powers:</p> <p>(1) to have access to the principal's medical records and information to the same extent that the principal would have access, including the right to disclose the contents to others;</p> <p>(2) to contract on the principal's behalf for placement in a health care or nursing care facility or for health care related services, without the agent incurring personal financial liability for the contract;</p> <p>(3) to hire and fire medical, social service, and other support personnel responsible for the principal's care;</p> <p>(4) to have the same health care facility or nursing care facility visitation rights and privileges of the principal as are permitted to immediate family members or spouses.</p> <p>(F)(1) The agent is not entitled to compensation for services performed under the health care power of attorney, but the agent is entitled to reimbursement for all reasonable expenses incurred as a result of carrying out the health care power of attorney or the authority granted by this section.</p> <p>(2) The agent's consent to health care or to the provision of services to the principal does not cause the agent to be liable for the costs of the care or services.</p> <p>(G) If a principal has been diagnosed as pregnant, life sustaining procedures may not be withheld or withdrawn pursuant to the health care power of attorney during the course of the principal's pregnancy. This subsection does not otherwise affect the agent's authority to make decisions concerning the principal's obstetrical and other health care during the course of the pregnancy.</p> <p>(H) A health care provider or nursing care provider having</p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p>knowledge of the principal's health care power of attorney has a duty to follow directives of the agent that are consistent with the health care power of attorney to the same extent as if they were given by the principal. If it is uncertain whether a directive is consistent with the health care power of attorney, the health care provider, nursing care provider, agent, or other interested person may apply to the probate court for an order determining the authority of the agent to give the directive.</p> <p>(I) An agent acting pursuant to a health care power of attorney shall make decisions concerning the principal's health care in accordance with the principal's directives in the health care power of attorney and with any other statements of intent by the principal that are known to the agent and are not inconsistent with the directives in the health care power of attorney. If a principal has a valid Declaration of a Desire for a Natural Death pursuant to Title 44, Chapter 77, the declaration must be given effect in any situation to which it is applicable. The agent named in the health care power of attorney has authority to make decisions only in situations to which the declaration does not apply. However, nothing herein prevents the principal or a person designated by the principal in the declaration from revoking the declaration as provided in Section 44-77-80.</p> <p>(J)(1) A person who relies in good faith upon a person's representation that he is the person named as agent in a health care power of attorney is not subject to civil or criminal liability or disciplinary action for recognizing the agent's authority.</p> <p>(2) A health care provider or nursing care provider who in good faith relies on a health care decision made by an agent or successor agent is not subject to civil or criminal liability or disciplinary action on account of relying on the decision.</p> <p>(3) An agent who in good faith makes a health care decision pursuant to a health care power of attorney is not subject to civil or criminal liability on account of the substance of the decision.</p> <p>(K)(1) The principal may appoint one or more successor agents in the health care power of attorney in the event an agent dies, becomes</p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p>legally disabled, resigns, refuses to act, is unavailable, or, if the agent is the spouse of the principal, becomes divorced or separated from the principal. A successor agent will succeed to all duties and powers given to the agent in the health care power of attorney.</p> <p>(2) If no agent or successor agent is available, willing, and qualified to make a decision concerning the principal's health care, the decision must be made according to the provisions of and by the person authorized by the Adult Health Care Consent Act.</p> <p>(3) All directives, statements of personal values, or statements of intent made by the principal in the health care power of attorney must be treated as exercises of the principal's right to direct the course of his health care. Decisions concerning the principal's health care made by a guardian, by the probate court, or by a surrogate pursuant to the Adult Health Care Consent Act, must be made in accordance with the directions stated in the health care power of attorney.</p> <p>(L)(1) A health care power of attorney may be revoked in the following ways:</p> <p>(a) by a writing, an oral statement, or any other act constituting notification by the principal to the agent or to a health care provider responsible for the principal's care of the principal's specific intent to revoke the health care power of attorney; or</p> <p>(b) by the principal's execution of a subsequent health care power of attorney or the principal's execution of a subsequent durable power of attorney under Section 62-5-501 if the durable power of attorney states an intention that the health care power of attorney be revoked or if the durable power of attorney is inconsistent with the health care power of attorney.</p> <p>(2) A health care provider who is informed of or provided with a revocation of a health care power of attorney immediately must record the revocation in the principal's medical record and notify the agent, the attending physician, and all other health care providers or nursing care providers who are responsible for the principal's care.</p> <p>(M) The execution and effectuation of a health care power of attorney does not constitute suicide for any purpose.</p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p>(N) No person may be required to sign a health care power of attorney in accordance with this section as a condition for coverage under an insurance contract or for receiving medical treatment or as a condition of admission to a health care or nursing care facility.</p> <p>(O) Nothing in this section may be construed to authorize or approve mercy killing or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.</p> <p>(P) The absence of a health care power of attorney by an adult patient does not give rise to a presumption of his intent to consent to or refuse death prolonging procedures. Nothing in this section impairs other legal rights or legal responsibilities which a person may have to effect the provision or the withholding or withdrawal of life sustaining procedures in a lawful manner.</p> <p>(Q)(1) If a person coerces or fraudulently induces another person to execute a health care power of attorney, falsifies or forges a health care power of attorney, or wilfully conceals, cancels, obliterates, or destroys a revocation of a health care power of attorney, and the principal dies as a result of the withdrawal or withholding of treatment pursuant to the health care power of attorney, that person is subject to prosecution in accordance with the criminal laws of this State.</p> <p>(2) Nothing in this section prohibits a person from informing another person of the existence of this section, delivering to another person a copy of this section or a form for a health care power of attorney, or counseling another person in good faith concerning the execution of a health care power of attorney.</p> <p>(3) If a person wilfully conceals, cancels, defaces, obliterates, or damages a health care power of attorney without the principal's consent, or falsifies or forges a revocation of a health care power of attorney, or otherwise prevents the implementation of the principal's wishes as stated in a health care power of attorney, that person breaches a duty owed to the principal and is responsible for payment of any expenses or other damages incurred as a result of the wrongful act.</p> <p>(R) A physician or health care facility electing for any reason not to follow an agent's instruction that life sustaining procedures be withheld</p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p>or withdrawn as authorized in the health care power of attorney shall make a reasonable effort to locate a physician or health care facility that will follow the instruction and has a duty to transfer the patient to that physician or facility. If a nurse or other employee of a health care provider or nursing care provider gives notice that the employee does not wish to participate in the withholding or withdrawal of life sustaining procedures as directed by an agent, a reasonable effort shall be made by the physician and the health care provider or nursing care provider to effect the withholding or withdrawal of life sustaining procedures without the participation of the employee.</p> <p>(S)(1) Notwithstanding the requirements of subsections (C) and (D) of this section, any document or writing containing the following provisions is deemed to comply with the requirements of this section:</p> <ul style="list-style-type: none"> (a) the name and address of the person who meets the requirements of subsection (C)(1)(d) and is authorized to make health care related decisions if the principal becomes mentally incompetent; (b) the types of health care related decisions that the health care agent is authorized to make; (c) the signature of the principal; (d) the signature of at least two persons who witnessed the principal's signature and who meet the requirements of subsection (C)(1)(e); and (e) the attestation of a notary public. <p>(2) Additionally, any document that meets the requirements of subsection (S)(1) and also provides expressions of the principal's intentions or wishes with respect to the following health care issues authorizes the health care agent to act in accordance with these provisions:</p> <ul style="list-style-type: none"> (a) organ donations; (b) life sustaining treatment; (c) tube feeding; (d) other kinds of medical treatment that the principal wishes to have or not to have; (e) comfort and treatment issues;

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
<p>SECTION 62-5-501. When power of attorney not affected by disability.</p> <p>(A) Whenever a principal designates another his attorney in fact by a power of attorney in writing and the writing contains (1) the words “This power of attorney is not affected by physical disability or mental incompetence of the principal which renders the principal incapable of managing his own estate”, (2) the words “This power of attorney becomes effective upon the physical disability or mental incompetence of the principal”, or (3) similar words showing the intent of the principal that the authority conferred is exercisable notwithstanding his physical disability or mental incompetence or either physical disability or mental incompetence, the authority of the attorney in fact is exercisable by him as provided in the power on behalf of the principal</p>	<p>(f) provisions for interment or disposal of the body after death; and</p> <p>(g) any written statements that the principal may wish to have communicated on his behalf.</p> <p>SOUTH CAROLINA COMMENTS The 2010 amendment revised this subsection (H) to allow the health care provider, nursing care provider, agent, or other interested person to ‘apply,’ rather than ‘petition,’ the probate court for an order. An ‘application’ is defined in §62-1-201(1) and does not require a summons or petition.</p> <p>SECTION 62-5-505.</p> <p>The validity of a durable power of attorney that authorizes an attorney to make health care decisions regarding the principal properly executed pursuant to Section 62-5-501 of the 1976 Code before or after the effective date of this act is not affected by the amendments to Part 5, Article 5, Title 62 of the 1976 Code contained in this act.</p> <p><u>SECTION 62-5-501.</u></p> <p><u>(A) To create a durable power of attorney, a principal must</u></p> <p><u>(1) Designate another as agent in a written instrument,</u></p> <p><u>(2) Provide in the instrument the principal’s intent that the authority conferred is exercisable notwithstanding the incapacity of the principal, using the words ‘This power of attorney is not affected by the incapacity of the principal which renders the principal incapable of managing his own estate’ or the words ‘This power of attorney becomes effective upon the incapacity of the principal’, or words of similar intent,</u></p> <p><u>(3) Execute and attest the durable power of attorney with the same formality and with the same requirements as to witnesses of a will as set forth in Section 62-2-502, and</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
<p>notwithstanding later physical disability or mental incompetence of the principal or later uncertainty as to whether the principal is dead or alive. The power may define “physical disability” or “mental incompetence” and may set forth the procedures for determining whether the principal is physically disabled or mentally incompetent. If no definition of mental incompetence or procedures for determining mental incompetence are set forth, and the authority of the attorney in fact relates solely to health care, mental incompetence is to be determined according to the standards and procedures for inability to consent under Section 44-66-20(6) of the Adult Health Care Consent Act. The authority of the attorney in fact to act on behalf of the principal must be set forth in the power and may relate to any act, power, duty, right, or obligation which the principal has or may acquire relating to the principal or any matter, transaction, or property, including the power to consent or withhold consent on behalf of the principal to health care.</p>	<p><u>(4) Prove or acknowledge the durable power of attorney as set forth in Section 30-5-30.</u></p> <p><u>(B) A principal’s signature on a durable power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgements.</u></p> <p><u>(C) Notwithstanding the provisions of Section 30-5-30, a valid durable power of attorney executed in another jurisdiction may be recorded as though it complies with Section 30-5-30.</u></p> <p><u>(D) A durable power of attorney may be recorded in the same manner as a deed in the county where the principal resides at the time the instrument is recorded. Subject to subsection (E), an instrument that meets the requirements set forth in subsection (A) above is effective notwithstanding the incapacity of the principal, even if that instrument is not recorded.</u></p> <p><u>(E) An instrument meeting the requirements set forth in subsection (A) above must be recorded upon the request of a third party presented with it, except that the recording is not necessary if the instrument is a Health Care Power of Attorney pursuant to Section 62-5-524.</u></p> <p><u>(F) An agent’s good faith exercise of authority under a durable power of attorney prior to its recording relates back to the effective date of such instrument and does not constitute an improper or invalid act solely because the instrument was not recorded prior to the agent’s exercise of authority.</u></p> <p>REPORTER’S COMMENTS:</p> <p>This section applies only to durable powers of attorney. The 2012 amendments reorganized former Section 62-5-501 for purposes of readability and clarity. The amendments differ from the Uniform Power of Attorney Act in that the default rule in the Uniform Act is that a power of attorney is durable unless otherwise provided in the power of attorney. The amendments do not change the long-standing rule in South Carolina that certain words need to be stated in a power of</p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
<p>The attorney in fact has a fiduciary relationship with the principal and is accountable and responsible as a fiduciary. All acts done by the attorney in fact pursuant to the power during a period of physical disability or mental incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees, legatees, and personal representative as if the principal were alive, mentally competent, and not disabled physically.</p> <p>(B) An instrument to which this section is applicable also may provide for successor attorneys in fact and provide conditions for their succession, which may include an authorization for the court to appoint a successor, and the succession may occur whether or not the principal then is physically disabled or mentally incompetent. The appointment of an attorney in fact under this section does not prevent a person or his representative from petitioning the court to have a guardian or conservator appointed. Unless the power of attorney provides otherwise, appointment of a guardian terminates all or part of the power of attorney that relates to matters within the scope of the guardianship, and appointment of a conservator terminates all or part of the power of attorney that relates to matters within the scope of the conservatorship.</p> <p>(C) A power of attorney executed under the provisions of this section must be executed and attested with the same formality and with the</p>	<p>attorney for it to be durable. The term ‘physical disability or mental incompetence’ has been replaced with the term ‘incapacity,’ which is defined in Section 62-5-505. The term ‘attorney in fact’ has been replaced with the term ‘agent.’ This section sets forth the execution requirements for a durable power of attorney. Recordation is not required unless requested by a third party. There are attestation requirements in connection with the proper execution of a durable power of attorney. These requirements are not intended to require a self proving affidavit, as is the case with a will.</p> <p><u>SECTION 62-5-502.</u></p> <p><u>(A) The agent under a durable power of attorney has a fiduciary relationship with the principal and is accountable and responsible as a fiduciary pursuant to the provisions of this part and of South Carolina law.</u></p> <p><u>(B) Except as set forth in this part, the authority of the agent to act on behalf of the principal under a durable power of attorney must be set forth in the power and may relate to any act, power, duty, right, or obligation which the principal has or may acquire relating to the principal or any matter, transaction, or property, including the power to consent or withhold consent on behalf of the principal to health care.</u></p> <p><u>(C) The meaning and effect of a durable power of attorney is determined by the law of the jurisdiction indicated in the durable power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the durable power of attorney was executed.</u></p> <p><u>(D) All acts done by the agent pursuant to a durable power of attorney during a period of the principal’s incapacity or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees, legatees, and personal representative as if the principal were alive and not incapacitated.</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
<p>same requirements as to witnesses as a will. In addition, the instrument must be recorded in the same manner as a deed in the county where the principal resides at the time the instrument is recorded. After the instrument has been recorded, whether recorded before or after the onset of the principal’s physical disability or mental incompetence, it is effective notwithstanding the mental incompetence or physical disability. If the authority of the attorney in fact relates solely to the person of the principal, the instrument is effective without being recorded.</p> <p>(D) A power of attorney as provided for under this section is valid if:</p> <p>(1) executed in compliance with this section; or</p> <p>(2) its execution complies with the law at the time of execution of the jurisdiction where the instrument was executed and it is recorded as required by subsection (C). Notwithstanding the provisions of Section 30-5-30, a valid power of attorney as provided for under this section which is executed in another jurisdiction may be recorded as though it complies with the provisions of subsection (C) of this section.</p> <p>(E) A properly executed durable power of attorney that authorizes an attorney in fact to make health care decisions or other decisions regarding the principal is valid whether or not it was executed after May 14, 1990.</p> <p>(F)(1) A third person in this State who receives or is presented with a valid power of attorney executed pursuant to this section, and has not received actual written notice of its revocation or termination, must not refuse to honor the power of attorney if it contains the following provision or a substantially similar provision:</p> <p>“No person who may act in reliance upon the representations of my attorney-in-fact for the scope of authority granted to the attorney-in-fact shall incur any liability as to me or to my estate as a result of permitting the attorney-in-fact to exercise this authority, nor is any such person who deals with my attorney-in-fact responsible to determine or ensure the proper application of funds or property.”</p> <p>As used in this subsection, “to honor” a power of attorney means to deal with the attorney-in-fact as if the attorney-in-fact were the principal,</p>	<p>REPORTER’S COMMENTS:</p> <p>The 2012 amendments retain in this section portions of former Section 62-5-501(A). The agent’s fiduciary duty is described in greater detail in section 62-5-509. The section also incorporates section 107 of the Uniform Power of Attorney Act.</p> <p><u>SECTION 62-5-503.</u></p> <p><u>(A) A durable power of attorney is effective when executed unless the instrument provides that it becomes effective at a future date or upon the occurrence of a future event or contingency.</u></p> <p><u>(B) If a durable power of attorney becomes effective upon the occurrence of a future event or contingency, the principal may authorize in the instrument itself one or more persons to determine in writing that</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
<p>personally present and acting on his own behalf within the scope of the powers granted to the attorney-in-fact.</p> <p>(2) Unless the third person actually has received written notice of the revocation or termination of a valid power of attorney executed in accordance with this section, a third person in this State who receives or is presented with a power of attorney:</p> <p>(a) does not incur liability to the principal or the principal’s estate by reason of acting upon the authority of it or permitting the attorney-in-fact to exercise authority;</p> <p>(b) is not required to inquire whether the attorney-in-fact has power to act or is properly exercising the power; or</p> <p>(c) is not responsible to determine or ensure the proper application of assets, funds, or property belonging to the principal.</p> <p>(3) A “third person” means an individual, a corporation, an organization, or other legal entity for purposes of this subsection.</p> <p>(G)(1) An attorney-in-fact is entitled to reimbursement for expenses and compensation for services as provided in the power of attorney. In the absence of a provision in the power of attorney regarding reimbursement or compensation, or both:</p> <p>(a) an attorney-in-fact is entitled to reimbursement for all reasonable costs and expenses actually incurred and paid by the attorney-in-fact on the principal’s behalf;</p> <p>(b) an attorney-in-fact, upon the approval of the probate court, is entitled to reasonable compensation based upon the responsibilities he assumed and the effort he expended; and</p> <p>(c) if two or more attorneys-in-fact are serving together, the compensation paid must be divided by them in a manner as they agree or as determined by a court of competent jurisdiction if they fail to agree.</p> <p>(2) An interested person may petition a court of competent jurisdiction to review the propriety and reasonableness of payment for reimbursement or compensation to the attorney-in-fact, and an attorney-in-fact who has received excessive payment may be ordered to make appropriate refunds to the principal.</p>	<p><u>the event or contingency has occurred.</u></p> <p>REPORTER’S COMMENTS:</p> <p>This section is a portion of Section 109 of the Uniform Power of Attorney Act.</p> <p><u>SECTION 62-5-504.</u></p> <p><u>(A) A durable health care power of attorney that relates to health care may be created under the provisions of Section 62-5-524 or may be created pursuant to other provisions of law.</u></p> <p><u>(B) If the durable power of attorney relates solely to health care then it is not required to be recorded as set forth in Section 62-5-501 in order to be effective during the incapacity of the principal.</u></p> <p><u>(C) A properly executed durable power of attorney that authorizes an agent to make health care decisions regarding the principal is valid whether or not it was executed after May 14, 1990.</u></p> <p><u>(D) The validity of a durable power of attorney that authorizes an attorney to make health care decisions regarding the principal properly executed pursuant to Section 62-5-501 of the 1976 Code before or after the effective date of this act is not affected by the amendments to Part 5, Article 5, Title 62 of the 1976 Code contained in this act.</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
<p>SECTION 62-5-502. Other powers of attorney not revoked until notice of death or disability.</p> <p>(a) The death, disability, or incompetence of any principal who has executed a power of attorney in writing does not revoke or terminate the agency as to the attorney-in-fact, agent, or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his heirs, devisees, and personal representatives.</p> <p>(b) An affidavit, executed by the attorney-in-fact or agent stating that he did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, disability, or incompetence, is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.</p> <p>(c) This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney.</p> <p>REPORTER'S COMMENTS Section 62-5-502 supplements Sections 32-11-10 through 32-11-40 of the 1976 Code, providing for the actual death of as well as the disability of the principal, even with respect to powers of attorney not made durable as under Section 62-5-501, so long as the agent is, in good faith, unaware of the death or disability of the principal.</p>	<p><u>SECTION 62-5-505.</u></p> <p><u>(A) The instrument may define 'incapacity' or 'incapacitated' and may set forth the procedures for determining the incapacity of the principal or whether the principal is incapacitated.</u></p> <p><u>(B) If a durable power of attorney becomes effective upon the incapacity of the principal, the principal may authorize one or more persons to determine that the principal is incapacitated. A person authorized by the principal to make such a determination may act as the principal's personal representative as defined in and pursuant to the Health Insurance Portability and Accountability Act, Section 1171 through 1179 of the Social Security Act, 42 U.S.C. 1320d, as amended, and applicable regulations, to obtain access to the principal's health care information and may communicate with the principal's health care providers.</u></p> <p><u>(C) If a durable power of attorney becomes effective upon the incapacity of the principal and the principal has not authorized a person to determine that the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, then the durable</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p><u>power of attorney becomes effective upon a determination in a writing or other record that:</u></p> <p><u>(1) The principal is incapacitated, pursuant to the definitions or procedures set forth in the durable power of attorney for determining the principal’s incapacity, as certified under penalty of perjury by a licensed physician who has personally examined the principal; or</u></p> <p><u>(2) If the durable power of attorney does not define incapacity or incapacitated, then such terms shall mean the inability of an individual to manage property or business affairs because the individual:</u></p> <p><u>(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</u></p> <p><u>(b) is:</u></p> <p><u>(i) missing;</u></p> <p><u>(ii) detained, including incarcerated in a penal system; or</u></p> <p><u>(iii) outside the United States and unable to return.</u></p> <p><u>(D) If no person authorized by the principal is able or willing to determine that the principal is incapacitated, then a person having priority to make health care decisions for the principal pursuant to S.C. Code Section 44-66-30, as amended, may act as the principal’s personal representative as defined in and pursuant to the Health Insurance Portability and Accountability Act, Section 1171 through 1179 of the Social Security Act, 42 U.S.C. 1320d, as amended, and applicable regulations, to obtain access of the principal’s health care information and may communicate with the principal’s health care providers.</u></p> <p><u>(E) No licensed physician who, in good faith, makes a determination as set forth above of the principal’s incapacity shall be subject to liability because of such determination.</u></p> <p>REPORTER’S COMMENTS:</p> <p>This section adopts and modifies a portion of section 109 of the Uniform Power of Attorney Act to set forth provisions regarding the definition of incapacity. The section also provides a safe harbor for a</p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p>physician who in good faith makes a determination as to physical disability or mental incompetence as set forth in this section.</p> <p><u>SECTION 62-5-506.</u></p> <p><u>A durable power of attorney may provide for successor agents to any agent and provide conditions for their succession, which may include an authorization for the court or the agent to appoint a successor, and the succession may occur whether or not the principal is incapacitated when the succession occurs.</u></p> <p>REPORTER’S COMMENTS</p> <p>As part of the reorganization of former Section 62-5-501, the 2012 amendments moved former Section 62-5-501(b) into different sections. This section used to be part of former Section 62-5-501(b) and is now a slightly modified stand-alone section.</p> <p><u>SECTION 62-5-507.</u></p> <p><u>Except as otherwise provided in the durable power of attorney, a person accepts appointment as an agent under a durable power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.</u></p> <p>REPORTER’S COMMENTS</p> <p>The 2012 amendments adopted section 113 of the Uniform Power of Attorney Act to clarify when a person accepts appointment as an agent under a power of attorney. There was no corresponding statute before the amendment.</p> <p><u>SECTION 62-5-508.</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p><u>(A) Unless the durable power of attorney provides a different method for an agent’s resignation, an agent may resign by giving written notice to the principal and, if the principal is incapacitated within the meaning of section 62-5-505, written notice must also be given as follows:</u></p> <ul style="list-style-type: none"> <u>(1) to the conservator or guardian, if one has been appointed for the principal, and a co-agent or successor agent; or</u> <u>(2) if there is no person described in subsection (1), to:</u> <ul style="list-style-type: none"> <u>(a) the principal’s caregiver;</u> <u>(b) another person reasonably believed by the agent to have sufficient interest in the principal’s welfare; or</u> <u>(c) a governmental agency having authority to protect the welfare of the principal.</u> <p><u>(B) Unless the durable power of attorney provides a different method for an agent’s removal by the principal, the principal may remove an agent by giving written notice to the agent.</u></p> <p><u>(C) If the durable power of attorney was recorded, the agent’s written notice of resignation and the principal’s written notice of removal must be recorded in the same manner as a deed in the county where the durable power of attorney was recorded. If the durable power of attorney was not recorded, the agent’s written notice of resignation and the principal’s notice of removal may be recorded in the same manner as a deed in the county where the principal resides at the time of resignation or removal.</u></p> <p><u>(D) Upon such resignation or removal, the attorney shall thereupon be divested of all authority under the durable power of attorney.</u></p> <p><u>(E) An agent’s authority terminates when:</u></p> <ul style="list-style-type: none"> <u>(1) the principal revokes the authority;</u> <u>(2) the principal dies;</u> <u>(3) an action is commenced for divorce, annulment, or for termination of all marital property rights or for equitable distribution as to a spouse named as agent, unless the durable power of attorney otherwise provides; or</u> <u>(4) an agent dies, becomes incapacitated, is removed, or resigns.</u> <p><u>(F) Unless the durable power of attorney provides otherwise, an</u></p>

<p>ARTICLE 5: Part 5- EXISTING CODE LANGUAGE</p>	<p>Bill # S. 1243- Article 5- Part 5</p>
	<p><u>agent's authority is exercisable until the authority terminates under (E), notwithstanding a lapse of time since the execution of the durable power of attorney.</u></p> <p>REPORTER'S COMMENTS</p> <p>The 2012 amendments adopted a modified version of section 118 of the Uniform Power of Attorney Act methods for an agent's resignation and the principal's removal of the agent.</p> <p><u>SECTION 62-5-509.</u></p> <p><u>(A) Notwithstanding provisions in the durable power of attorney, an agent that has accepted appointment is a fiduciary who shall:</u></p> <ul style="list-style-type: none"> <u>(1) act in good faith; and</u> <u>(2) act only within the scope of authority granted in the durable power of attorney.</u> <p><u>(B) Except as otherwise provided in the durable power of attorney, an agent that has accepted appointment shall:</u></p> <ul style="list-style-type: none"> <u>(1) act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest;</u> <u>(2) act loyally for the principal's benefit;</u> <u>(3) act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;</u> <u>(4) act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances;</u> <u>(5) keep a record of all receipts, disbursements, and transactions made on behalf of the principal and account to the principal or the principal's designee upon demand of the principal or the principal's designee;</u> <u>(6) cooperate with a person that has authority to make health-care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise,</u>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p><u>act in the principal's best interest; and</u></p> <p><u>(7) attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:</u></p> <p><u>(a) the value and nature of the principal's property;</u></p> <p><u>(b) the principal's foreseeable obligations and need for maintenance;</u></p> <p><u>(c) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes; and</u></p> <p><u>(d) eligibility for a benefit, a program, or assistance under a statute or regulation.</u></p> <p><u>(C) An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the principal's estate plan.</u></p> <p><u>(D) An agent that acts with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.</u></p> <p><u>(E) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.</u></p> <p><u>(F) Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.</u></p> <p><u>(G) An agent that exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises reasonable care, competence, and diligence in selecting and monitoring the person.</u></p> <p>REPORTER'S COMMENTS</p> <p>The 2012 amendments adopt the bulk of section 114 of the Uniform Power of Attorney Act to set forth the duties of an agent in detail.</p>

<p>ARTICLE 5: Part 5- EXISTING CODE LANGUAGE</p>	<p>Bill # S. 1243- Article 5- Part 5</p>
	<p><u>SECTION 62-5-510.</u></p> <p><u>(A) Subject to subsections (B) (C), (D), (E), and (F), if a durable power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in Sections 62-5-511 through 62-5-514 and any other specific power as expressly provided in the durable power of attorney.</u></p> <p><u>(B) Subject to subsections (A), (C), (D), (E), and (F), if the subjects over which authority is granted in a durable power of attorney are similar or overlap, the broadest authority controls.</u></p> <p><u>(C) Authority granted in a durable power of attorney is exercisable with respect to property that the principal has when the durable power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the authority is exercised or the durable power of attorney is executed in this state.</u></p> <p><u>(D) Notwithstanding anything contained in Section 62-5-511 or anything in this part to the contrary, an agent under a durable power of attorney may do the following on behalf of the principal or with the principal's property only if the durable power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another written agreement or instrument to which the authority or property is subject:</u></p> <ol style="list-style-type: none"> <u>(1) make a gift;</u> <u>(2) create or change rights of survivorship;</u> <u>(3) create or change a beneficiary designation;</u> <u>(4) delegate authority granted under the durable power of attorney;</u> <u>(5) waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;</u> <u>(6) exercise fiduciary powers that the principal has authority to delegate;</u> <u>(7) disclaim property, including a power of appointment;</u> <u>(8) access any safe deposit box rented by the principal; or</u>

<p>ARTICLE 5: Part 5- EXISTING CODE LANGUAGE</p>	<p>Bill # S. 1243- Article 5- Part 5</p>
	<p>(9) <u>create, amend, revoke or terminate a trust.</u></p> <p>(E) <u>Notwithstanding a grant of authority to do an act described in subsection (D), unless the durable power of attorney otherwise expressly provides, an agent that is not an ancestor, spouse, or descendant of the principal may not exercise authority under a durable power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.</u></p> <p>(F) <u>Notwithstanding the foregoing, and notwithstanding anything in this Part to the contrary, a principal may expressly modify, reject, or omit any part or all authority contained in Sections 62-5-512 through 62-5-514.</u></p> <p>REPORTER'S COMMENTS</p> <p>The 2012 amendments modify and adopt section 201 of the Uniform Power of Attorney Act to set forth authority that requires a specific grant and to clarify the effect of a grant of general authority. The general authority includes, but is not limited to, the authority found in sections 62-5-511 through 62-5-514.</p> <p><u>SECTION 62-5-511.</u></p> <p>(A) <u>An agent has authority described in this article if the durable power of attorney expressly refers to general authority with respect to the descriptive term for the subjects stated in Sections 62-5-512 through 62-5-514 or expressly cites the section in which the authority is described.</u></p> <p>(B) <u>An express reference in a durable power of attorney to general authority with respect to the descriptive term for a subject in Sections 62-5-512 through 62-5-514 or an express citation to a section of Sections 62-5-512 through 62-5-514 incorporates the entire section as if it were set out in full in the durable power of attorney.</u></p>

<p>ARTICLE 5: Part 5- EXISTING CODE LANGUAGE</p>	<p>Bill # S. 1243- Article 5- Part 5</p>
	<p><u>(C) Notwithstanding the foregoing, and notwithstanding anything in this Part to the contrary, a principal may expressly modify, reject, or omit any part or all authority contained in Sections 62-5-512 through 62-5-514.</u></p> <p>REPORTER’S COMMENTS</p> <p>The 2012 amendments modify and adopt section 202 of the Uniform Power of Attorney Act relating to the incorporation of certain authority in a power of attorney. This authority includes, but is not limited to, the powers in sections 62-5-512 through 62-5-514, all of which are modified versions of the Uniform Act. Of course, the principal may modify the authority incorporated by reference, and it is the intent to leave the drafting to the drafter.</p> <p><u>SECTION 62-5-512.</u></p> <p><u>By executing a durable power of attorney that incorporates by reference a subject described in Sections 62-5-513 through 62-5-514 or that grants to an agent authority to do all acts that a principal could do pursuant to Section 62-5-510(A), a principal authorizes the agent, with respect to that subject, to:</u></p> <p><u>(1) demand, receive, and obtain by litigation or otherwise, money or another thing of value to which the principal is, may become, or claims to be entitled, and conserve, invest, disburse, or use anything so received or obtained for the purposes intended;</u></p> <p><u>(2) subject to the limitations of 62-5-510(D), contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release, or modify the contract or another contract made by or on behalf of the principal;</u></p> <p><u>(3) execute, acknowledge, seal, deliver, file, or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating at any time a</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p><u>schedule listing some or all of the principal's property and attaching it to the durable power of attorney;</u></p> <p>(4) <u>initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;</u></p> <p>(5) <u>seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the durable power of attorney;</u></p> <p>(6) <u>engage, compensate, and discharge an attorney, accountant, discretionary investment manager, expert witness, or other advisor even though they are associated with the agent to advise or assist him in the performance of his administrative duties; to act upon their recommendation without independent investigation; and instead of acting personally, to employ one or more agents to perform an act of administration, whether or not discretionary;</u></p> <p>(7) <u>prepare, execute, and file a record, report, application, appeal, or other document to safeguard or promote the principal's interest under a statute or regulation;</u></p> <p>(8) <u>communicate with any representative or employee of a government or governmental subdivision, agency, or instrumentality, on behalf of the principal;</u></p> <p>(9) <u>access communications intended for, and communicate on behalf of the principal, whether by mail, electronic transmission, telephone, or other means, and access the principal's files and accounts in electronic format including obtaining the principal's user names and passwords;</u></p> <p>(10) <u>waive, release, or renounce any fiduciary position to which the principal has been appointed.</u></p> <p>(11) <u>deposit money in and withdraw money from accounts in a regulated financial-service institution in the name of the principal, including by automatic withdrawals and electronic debits and other forms of electronic processing;</u></p> <p>(12) <u>subject to the terms of a document or an agreement governing an</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p><u>entity ownership interest, and unless the power of attorney provides otherwise, with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, create and/or continue a business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;</u></p> <p><u>(13) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:</u></p> <p><u>(a) vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;</u></p> <p><u>(b) hold a security in the name of a nominee or in other form so that title may pass by delivery;</u></p> <p><u>(c) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and</u></p> <p><u>(d) deposit the securities with a depository or other regulated financial-service institution;</u></p> <p><u>(14) pay taxes, assessments, compensation of employees and agents of the principal, and other expenses incurred in carrying out the powers given to the agent;</u></p> <p><u>(15) prepare or cause to be prepared and file tax returns for federal, state, and local taxes;</u></p> <p><u>(16) contribute to, and make withdrawals from any employee benefit or retirement plan, annuity, or life insurance owned by the principal and exercise the principal's rights thereunder to roll over, exchange, and transfer the account to a new custodian;</u></p> <p><u>(17) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction for or against the principal;</u></p> <p><u>(18) expend sums for the health, education, maintenance and support of the principal and the principal's dependents;</u></p> <p><u>(19) apply for government benefits for the principal;</u></p> <p><u>(20) file a claim for an elective share or other statutory entitlement in</u></p>

<p>ARTICLE 5: Part 5- EXISTING CODE LANGUAGE</p>	<p>Bill # S. 1243- Article 5- Part 5</p>
	<p><u>any proceeding involving the principal;</u> <u>(21) enter into agreements for the admission, discharge, and care of the principal with any assisted living, nursing home, hospital, rehabilitative, respite, in home, or other care providers, including hiring and firing home health care and other providers of services to the principal;</u> <u>(22) to do any other act necessary, appropriate, incident, or convenient to the exercise of the foregoing powers.</u></p> <p>REPORTER’S COMMENTS</p> <p>The 2012 amendments modify and adopt section 203 of the Uniform Power of Attorney Act. The section has also been modified to incorporate many of the powers available to trustees, guardians, and conservators.</p> <p><u>SECTION 62-5-513.</u></p> <p><u>Subject to the provisions of 62-5-510, language in a durable power of attorney granting general authority with respect to real property authorizes the agent to:</u></p> <p><u>(1) demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property;</u> <u>(2) sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property;</u> <u>(3) pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, or extend</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p><u>the time of payment of a debt of the principal or a debt guaranteed by the principal;</u></p> <p>(4) <u>release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien, or other claim to real property which exists or is asserted;</u></p> <p>(5) <u>manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including:</u></p> <p>(a) <u>insuring against liability or casualty or other loss;</u></p> <p>(b) <u>obtaining or regaining possession of or protecting the interest or right by litigation or otherwise;</u></p> <p>(c) <u>paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with them; and</u></p> <p>(d) <u>purchasing supplies, hiring assistance or labor, and making repairs or alterations to the real property;</u></p> <p>(6) <u>use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;</u></p> <p>(7) <u>participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, and hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including:</u></p> <p>(a) <u>selling or otherwise disposing of them;</u></p> <p>(b) <u>exercising or selling an option, right of conversion, or similar right with respect to them; and</u></p> <p>(c) <u>exercising any voting rights in person or by proxy;</u></p> <p>(8) <u>change the form of title of an interest in or right incident to real property; and</u></p> <p>(9) <u>dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.</u></p> <p>REPORTER'S COMMENTS</p>

<p>ARTICLE 5: Part 5- EXISTING CODE LANGUAGE</p>	<p>Bill # S. 1243- Article 5- Part 5</p>
	<p>This section is a modified version of Section 204 of the Uniform Power of Attorney Act.</p> <p><u>SECTION 62-5-514.</u></p> <p><u>Subject to the provisions of 62-5-510, language in a durable power of attorney granting general authority with respect to tangible personal property authorizes the agent to:</u></p> <p>(1) <u>demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;</u></p> <p>(2) <u>sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; create a security interest in; grant options concerning; lease; sublease; or, otherwise dispose of tangible personal property or an interest in tangible personal property;</u></p> <p>(3) <u>grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;</u></p> <p>(4) <u>release, assign, satisfy, or enforce by litigation or otherwise, a security interest, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property;</u></p> <p>(5) <u>manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including:</u></p> <p>(a) <u>insuring against liability or casualty or other loss;</u></p> <p>(b) <u>obtaining or regaining possession of or protecting the property or interest, by litigation or otherwise;</u></p> <p>(c) <u>paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p><u>taxes or assessments:</u></p> <p style="padding-left: 40px;">(d) <u>moving the property from place to place;</u></p> <p style="padding-left: 40px;">(e) <u>storing the property for hire or on a gratuitous bailment; and</u></p> <p style="padding-left: 40px;">(f) <u>using and making repairs, alterations, or improvements to the property; and</u></p> <p style="padding-left: 40px;">(6) <u>change the form of title of an interest in tangible personal property.</u></p> <p>REPORTER’S COMMENTS</p> <p>This section is a modified version of Section 205 of the Uniform Power of Attorney Act.</p> <p><u>SECTION 62-5-515.</u></p> <p>(A) <u>The death of any principal who has executed a durable power of attorney in writing does not revoke or terminate the agency as to the agent, or other person who, without actual knowledge of the death, of the principal, acts in good faith under the durable power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his heirs, devisees, and personal representatives.</u></p> <p>(B) <u>An affidavit, executed by the agent stating that he did not have, at the time of doing an act pursuant to the durable power of attorney, actual knowledge of the revocation or termination of the durable power of attorney by death is, in the absence of fraud, conclusive proof of the non-revocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.</u></p> <p>(C) <u>This section shall not be construed to alter or affect any provision for revocation or termination contained in the durable power of attorney.</u></p> <p>REPORTER’S COMMENTS</p>

<p>ARTICLE 5: Part 5- EXISTING CODE LANGUAGE</p>	<p>Bill # S. 1243- Article 5- Part 5</p>
	<p>The 2012 amendments incorporate the provisions of former Section 62-5-502.</p> <p><u>SECTION 62-5-516.</u></p> <p><u>(A) As used in this section:</u></p> <p><u>(1) A third person' means an individual, corporation, organization, or other legal entity. A third person that conducts activities through employees is without knowledge of a fact relating to a durable power of attorney, to a principal, or to an agent if the employee conducting the transaction involving the instrument is without the actual knowledge of the fact.</u></p> <p><u>(2) 'To honor' a durable power of attorney means to deal with the agent as if the agent were the principal, personally present and acting on the principal's own behalf within the general scope of the powers granted to the agent under the durable power of attorney.</u></p> <p><u>(B) Subject to subsection (C), a third person that receives or is presented with a durable power of attorney, executed as provided in Section 62-5-501, or a recorded copy thereof, who has not received actual written notice of its revocation or termination, must honor the agent's requested exercise of authority, if such authority is within the general scope of the powers granted to the agent, under any of the following circumstances:</u></p> <p><u>(1) the instrument contains the following provision or a substantially similar provision:</u></p> <p><u>'No person who may act in reliance upon the representations of my agent for the scope of authority granted to the agent shall incur any liability as to me or to my estate as a result of permitting the agent to exercise this authority, nor is any such person who deals with my agent responsible to determine or insure the proper application of funds or property.'; or</u></p> <p><u>(2) the agent signs and presents to the third person a written certificate as provided in Section 62-5-517; or</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p>(3) <u>the instrument does not include language expressly prohibiting or restricting the action the agent desires to take.</u></p> <p>(C) <u>Before honoring a durable power of attorney, a third person may require that:</u></p> <ol style="list-style-type: none"> (1) <u>the instrument <i>have</i> been recorded,</u> (2) <u>the agent sign a written certificate as provided in Section 62-5-517, and</u> (3) <u>an English translation of the durable power of attorney be provided if the durable power of attorney contains, in whole or in part, language other than English.</u> <p>(D) <u>Unless the third person actually has received written notice of the revocation or termination of a durable power of attorney, a third person that honors a durable power of attorney:</u></p> <ol style="list-style-type: none"> (1) <u>does not incur liability to the principal or the principal's estate by reason of acting upon the authority of it or permitting the agent to exercise authority;</u> (2) <u>is not required to inquire whether the agent has the power to exercise the requested authority where such authority is within the general scope of the powers granted under the durable power of attorney; and</u> (3) <u>is not responsible to determine or ensure the proper application of assets, funds, or property belonging to the principal.</u> <p>(E) <u>A third person that wrongfully refuses to honor a durable power of attorney is subject to:</u></p> <ol style="list-style-type: none"> (1) <u>a court order mandating acceptance of the durable power of attorney;</u> (2) <u>liability for reasonable attorney's fees and costs incurred in any action or proceeding that confirms the validity of the durable power of attorney or mandates acceptance of the durable power of attorney; and</u> (3) <u>damages resulting to the principal caused by such refusal to honor the durable power of attorney without reasonable cause.</u> <p>REPORTER'S COMMENTS</p>

<p>ARTICLE 5: Part 5- EXISTING CODE LANGUAGE</p>	<p>Bill # S. 1243- Article 5- Part 5</p>
	<p>This section clarifies the rights of a third party presented with a durable power of attorney as well as the rights of an agent who presents a power of attorney to a third party.</p> <p><i><u>SECTION 62-5-517. The following optional form or a similar form may be used by an agent to certify facts concerning a durable power of attorney.</u></i></p> <p><u>AGENT’S CERTIFICATION AS TO THE VALIDITY OF DURABLE POWER OF ATTORNEY AND AGENT’S AUTHORITY</u></p> <p>State of _____ [County] of _____]</p> <p>I, _____ (Name of Agent), [certify] under penalty of perjury that _____ (Name of Principal) granted me authority as an agent or successor agent in a durable power of attorney dated _____.</p> <p><u>I further [certify] that to my knowledge:</u></p> <p><u>(1) the Principal is alive and has not revoked the durable power of attorney or my authority to act under the durable power of attorney and the durable power of attorney and my authority to act under the durable power of attorney have not terminated;</u></p> <p><u>(2) the authority I am exercising is within the scope of authority granted under the durable power of attorney;</u></p> <p><u>(3) if the durable power of attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred; and</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
<p>The probate court has concurrent jurisdiction with the circuit courts of this State over all subject matter related to the creation, exercise, and termination of powers of attorney governed by the provisions of this Part, including the approval of the sale of real and personal property by an attorney-in-fact.</p> <p>SECTION 62-5-505. Validity of durable power of attorney that authorizes attorney to make health care decisions regarding principal properly executed pursuant to Section 62-5-501.</p> <p>The validity of a durable power of attorney that authorizes an attorney to make health care decisions regarding the principal properly executed</p>	<p><i>that violates the provisions of Section 62-5-501 et seq. is liable to the principal or the principal's successors-in-interest for the amount required to:</i></p> <p><i>— (1) restore the value of the principal's property to what it would have been had the violation not occurred; and</i></p> <p><i>— (2) reimburse the principal or the principal's successors in interest for reasonable attorney's fees and costs paid by the principal or the principal's successors in interest or on the principal's behalf.</i></p> <p>REPORTER'S COMMENTS</p> <p>The 2012 amendments adopt a modified version of section 117 of the Uniform Power of Attorney Act to describe the liability of an agent. These remedies are in addition to other remedies at law or equity.</p> <p><u>SECTION 62-5-519.</u></p> <p><u>(A) Unless the durable power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal and to compensation that is reasonable under the circumstances. If two or more attorneys-in-fact are serving together, the compensation paid must be divided by them in a manner as they agree or as determined by a court of competent jurisdiction if they fail to agree.</u></p> <p><u>(B) An interested person as defined in Section 62-5-520 may petition a court of competent jurisdiction to review the propriety and reasonableness of payment for reimbursement or compensation to the agent, and an agent who has received excessive payment may be ordered to make appropriate refunds to the principal.</u></p> <p>REPORTER'S COMMENTS</p> <p>The 2012 Amendments incorporate the provisions of Uniform Power of Attorney Act Section 112 and former section 62-5-501(G)(1) and (2). The amendments eliminate the need to petition the court for</p>

<p>ARTICLE 5: Part 5- EXISTING CODE LANGUAGE</p>	<p>Bill # S. 1243- Article 5- Part 5</p>
<p>pursuant to Section 62-5-501 of the 1976 Code before or after the effective date of this act is not affected by the amendments to Part 5, Article 5, Title 62 of the 1976 Code contained in this act.</p>	<p>reimbursement and compensation unless the power of attorney provides otherwise. The amendments also clarify who is an interested person for purposes of petitioning the court for review of reimbursement or compensation.</p> <p><u>SECTION 62-5-520.</u></p> <p><u>(A) The following persons may petition a court of competent jurisdiction to construe a durable power of attorney, to review the agent’s conduct, and to grant appropriate relief:</u></p> <ul style="list-style-type: none"> <u>(1) the principal or the agent;</u> <u>(2) a guardian, conservator, or other fiduciary acting for the principal;</u> <u>(3) a person authorized to make health-care decisions for the principal;</u> <u>(4) the principal’s spouse, parent, or adult descendant;</u> <u>(5) an individual who would qualify as an intestate heir of the principal;</u> <u>(6) a person named as a beneficiary to receive any property, benefit, or contractual right on the principal’s death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal’s estate;</u> <u>(7) a governmental agency having regulatory authority to protect the welfare of the principal;</u> <u>(8) the principal’s caregiver or another person that demonstrates sufficient interest in the principal’s welfare; and</u> <u>(9) a person asked to accept the durable power of attorney.</u> <p><u>(B) Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent’s authority or the durable power of attorney.</u></p> <p>REPORTER’S COMMENTS</p>

<p>ARTICLE 5: Part 5- EXISTING CODE LANGUAGE</p>	<p>Bill # S. 1243- Article 5- Part 5</p>
	<p>The 2012 amendments incorporate the provisions of section 116 of the Uniform Power of Attorney Act. The amendments expand the provisions regarding judicial relief and define those interested persons who may petition the court for such relief. The section also describes when a petition may be dismissed on the principal’s motion.</p> <p><u>SECTION 62-5-521.</u></p> <p><u>The probate court has concurrent jurisdiction with the circuit courts of this State over all subject matter related to the creation, exercise, and termination of powers of attorney governed by the provisions of this Part.</u></p> <p>REPORTER’S COMMENTS</p> <p>The 2012 amendments retained this portion of former Section 62-5-503. The amendments delete the reference in the former statute to the approval of the sale of real or personal property. Depending on the wording of the power of attorney, such approval may or may not be necessary, but it is not required under all circumstances.</p> <p><u>SECTION 62-5-522.</u></p> <p><u>The appointment of an agent in a durable power of attorney does not prevent the agent, any other person or his representative from applying to the court for the appointment of a guardian or conservator for the principal. To the extent the court determines that the appointment of a guardian or conservator is appropriate, appointment of a guardian suspends or terminates all or part of the durable power of attorney that relates to matters within the scope of the guardianship pursuant to Section 62-5-307(C), and appointment of a conservator suspends or terminates all or part of the durable power of attorney that relates to matters within the scope of the conservatorship pursuant to 62-5-407(B).</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
	<p>REPORTER’S COMMENTS</p> <p>The 2012 amendments incorporate and slightly modify a portion of former Section 62-5-501(b).</p> <p><u>SECTION 62-5-523.</u></p> <p><u>(A) A durable power of attorney executed in this state after the effective date of this section, is valid if executed in compliance with Section 62-5-501.</u></p> <p><u>(B) A durable power of attorney executed in this state before the effective date of this section is valid if its execution complied with the laws of this state as they existed at the time of execution.</u></p> <p><u>(C) A durable power of attorney executed other than in this state is valid in this state if, when the durable power of attorney was executed, the execution complied with:</u></p> <p><u>(1) the law of the jurisdiction that determines the meaning and effect of the durable power of attorney pursuant to Section 62-5-502; or</u></p> <p><u>(2) the requirements for a military durable power of attorney pursuant to 10 U.S.C. Section 1044b, as amended.</u></p> <p><u>(D) Except as otherwise provided by statute other than this part, a photocopy or electronically transmitted copy of an original recorded durable power of attorney has the same effect as the original recorded durable power of attorney .</u></p> <p>REPORTER’S COMMENTS:</p> <p>The 2012 amendments clarify the rules regarding validity of durable powers of attorney. The amendments incorporate section 62-5-501(d) and section 106 of the uniform power of attorney act. The amendments also confirm that a copy of an original recorded durable power of attorney has the same effect as the original.</p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
<p>SECTION 62-5-504. Health care power of attorney; definitions; form.</p> <p>(A) As used in this section:</p> <p>(1) “Agent” or “health care agent” means an individual designated in a health care power of attorney to make health care decisions on behalf of a principal.</p> <p>(2) “Declaration of a desire for a natural death” or “declaration” means a document executed in accordance with the South Carolina Death with Dignity Act or a similar document executed in accordance with the law of another state.</p> <p>(3) “Health care” means a procedure to diagnose or treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin. It also includes the provision of intermediate or skilled nursing care; services for the rehabilitation of injured, disabled, or sick persons; and placement in or removal from a facility that provides these forms of care.</p> <p>(4) “Health care power of attorney” means a durable power of attorney executed in accordance with this section.</p> <p>(5) “Health care provider” means a person, health care facility, organization, or corporation licensed, certified, or otherwise authorized or permitted by the laws of this State to administer health care.</p> <p>(6) “Life-sustaining procedure” means a medical procedure or intervention which serves only to prolong the dying process. Life-sustaining procedures do not include the administration of medication or other treatment for comfort care or alleviation of pain. The principal shall indicate in the health care power of attorney whether the provision of nutrition and hydration through medically or surgically implanted tubes is desired.</p> <p>(7) “Permanent unconsciousness” means a medical diagnosis, consistent with accepted standards of medical practice, that a person is in a persistent vegetative state or some other irreversible condition in which the person has no neocortical functioning, but only involuntary vegetative or primitive reflex functions controlled by the brain stem.</p> <p>(8) “Nursing care provider” means a nursing care facility or an</p>	<p><u>SECTION 62-5-524.</u></p> <p>(A) <u>As used in this section:</u></p> <p>(1) <u>‘Agent’ or ‘health care agent’ means an individual designated in a health care power of attorney to make health care decisions on behalf of a principal.</u></p> <p>(2) <u>‘Declaration of a desire for a natural death’ or ‘declaration’ means a document executed in accordance with the South Carolina Death with Dignity Act or a similar document executed in accordance with the law of another state.</u></p> <p>(3) <u>‘Health care’ means a procedure to diagnose or treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin. It also includes the provision of intermediate or skilled nursing care; services for the rehabilitation of injured, disabled, or sick persons; and placement in or removal from a facility that provides these forms of care.</u></p> <p>(4) <u>‘Health care power of attorney’ means a durable power of attorney executed in accordance with this section.</u></p> <p>(5) <u>‘Health care provider’ means a person, health care facility, organization, or corporation licensed, certified, or otherwise authorized or permitted by the laws of this State to administer health care.</u></p> <p>(6) <u>‘Life-sustaining procedure’ means a medical procedure or intervention which serves only to prolong the dying process. Life-sustaining procedures do not include the administration of medication or other treatment for comfort care or alleviation of pain. The principal shall indicate in the health care power of attorney whether the provision of nutrition and hydration through medically or surgically implanted tubes is desired.</u></p> <p>(7) <u>‘Permanent unconsciousness’ means a medical diagnosis, consistent with accepted standards of medical practice, that a person is in a persistent vegetative state or some other irreversible condition in which the person has no neocortical functioning, but only involuntary vegetative or primitive reflex functions controlled by the brain stem.</u></p> <p>(8) <u>‘Nursing care provider’ means a nursing care facility or an</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
<p>employee of the facility.</p> <p>(9) “Principal” means an individual who executes a health care power of attorney. A principal must be eighteen years of age or older and of sound mind.</p> <p>(10) “Separated” means that the principal and his or her spouse are separated pursuant to one of the following:</p> <p>(a) entry of a pendente lite order in a divorce or separate maintenance action;</p> <p>(b) formal signing of a written property or marital settlement agreement;</p> <p>(c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties.</p> <p>(B)(1) A health care power of attorney is a durable power of attorney pursuant to Section 62-5-501. Sections that refer to a durable power of attorney or judicial interpretations of the law relating to durable powers of attorney apply to a health care power of attorney to the extent that they are not inconsistent with this section.</p> <p>(2) This section does not affect the right of a person to execute a durable power of attorney relating to health care pursuant to other provisions of law but which does not conform to the requirements of this section. If a durable power of attorney for health care executed under Section 62-5-501 or under the laws of another state does not conform to the requirements of this section, the provisions of this section do not apply to it. However, a court is not precluded from determining that the law applicable to nonconforming durable powers of attorney for health care is the same as the law set forth in this section for health care powers of attorney.</p> <p>(3) To the extent not inconsistent with this section, the provisions of the Adult Health Care Consent Act apply to the making of decisions by a health care agent and the implementation of those decisions by health care providers.</p> <p>(4) In determining the effectiveness of a health care power of attorney, mental incompetence is to be determined according to the standards and</p>	<p><u>employee of the facility.</u></p> <p><u>(9) ‘Principal’ means an individual who executes a health care power of attorney. A principal must be eighteen years of age or older and of sound mind.</u></p> <p><u>(10) ‘Separated’ means that the principal and his or her spouse are separated pursuant to one of the following:</u></p> <p><u>(a) entry of a pendente lite order in a divorce or separate maintenance action;</u></p> <p><u>(b) formal signing of a written property or marital settlement agreement;</u></p> <p><u>(c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties.</u></p> <p><u>(B)(1) A health care power of attorney is a durable power of attorney pursuant to Section 62-5-501. Sections that refer to a durable power of attorney or judicial interpretations of the law relating to durable powers of attorney apply to a health care power of attorney to the extent that they are not inconsistent with this section.</u></p> <p><u>(2) This section does not affect the right of a person to execute a durable power of attorney relating to health care pursuant to other provisions of law but which does not conform to the requirements of this section. If a durable power of attorney for health care executed under Section 62-5-501 or under the laws of another state does not conform to the requirements of this section, the provisions of this section do not apply to it. However, a court is not precluded from determining that the law applicable to nonconforming durable powers of attorney for health care is the same as the law set forth in this section for health care powers of attorney.</u></p> <p><u>(3) To the extent not inconsistent with this section, the provisions of the South Carolina Adult Health Care Consent Act apply to the making of decisions by a health care agent and the implementation of those decisions by health care providers.</u></p> <p><u>(4) In determining the effectiveness of a health care power of attorney, mental incompetence is to be determined according to the</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
<p>procedures for inability to consent under Section 44-66-20(6), except that certification of mental incompetence by the agent may be substituted for certification by a second physician. If the certifying physician states that the principal's mental incompetence precludes the principal from making all health care decisions or all decisions concerning certain categories of health care, and that the principal's mental incompetence is permanent or of extended duration, no further certification is necessary in regard to the stated categories of health care decisions during the stated duration of mental incompetence unless the agent or the attending physician believes the principal may have regained capacity.</p> <p>(C)(1) A health care power of attorney must:</p> <p>(a) be substantially in the form set forth in subsection (D) of this section;</p> <p>(b) be dated and signed by the principal or in the principal's name by another person in the principal's presence and by his direction;</p> <p>(c) be signed by at least two persons, each of whom witnessed either the signing of the health care power of attorney or the principal's acknowledgment of his signature on the health care power of attorney. Each witness must state in an affidavit as set forth in subsection (D) of this section that, at the time of the execution of the health care power of attorney, to the extent the witness has knowledge, the witness is not related to the principal by blood, marriage, or adoption, either as a spouse, lineal ancestor, descendant of the parents of the principal, or spouse of any of them; not directly financially responsible for the principal's medical care; not entitled to any portion of the principal's estate upon his decease under a will of the principal then existing or as an heir by intestate succession; not a beneficiary of a life insurance policy of the principal; and not appointed as health care agent or successor health care agent in the health care power of attorney; and that no more than one witness is an employee of a health facility in which the principal is a patient, no witness is the attending physician or an employee of the attending physician, or no witness has a claim against the principal's estate upon his decease;</p>	<p><u>standards and procedures for inability to consent under Section 44-66-20(6), except that certification of mental incompetence by the agent may be substituted for certification by a second physician. If the certifying physician states that the principal's mental incompetence precludes the principal from making all health care decisions or all decisions concerning certain categories of health care, and that the principal's mental incompetence is permanent or of extended duration, no further certification is necessary in regard to the stated categories of health care decisions during the stated duration of mental incompetence unless the agent or the attending physician believes the principal may have regained capacity.</u></p> <p><u>(C)(1) A health care power of attorney must:</u></p> <p><u>(a) be substantially in the form set forth in subsection (D) of this section;</u></p> <p><u>(b) be dated and signed by the principal or in the principal's name by another person in the principal's presence and by his direction;</u></p> <p><u>(c) be signed by at least two persons, each of whom witnessed either the signing of the health care power of attorney or the principal's acknowledgment of his signature on the health care power of attorney. Each witness must declare as set forth in subsection (D) of this section that, at the time of the execution of the health care power of attorney, to the extent the witness has knowledge, the witness is not related to the principal by blood, marriage, or adoption, either as a spouse, lineal ancestor, descendant of the parents of the principal, or spouse of any of them; not directly financially responsible for the principal's medical care; not entitled to any portion of the principal's estate upon his decease under a will of the principal then existing or as an heir by intestate succession; not a beneficiary of a life insurance policy of the principal; and not appointed as health care agent or successor health care agent in the health care power of attorney; and that no more than one witness is an employee of a health facility in which the principal is a patient, no witness is the attending physician or an employee of the attending physician, or no witness has a claim against the principal's estate upon his decease;</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
<p>(d) state the name and address of the agent. A health care agent must be an individual who is eighteen years of age or older and of sound mind. A health care agent may not be a health care provider, or an employee of a provider, with whom the principal has a provider-patient relationship at the time the health care power of attorney is executed, or an employee of a nursing care facility in which the principal resides, or a spouse of the health care provider or employee, unless the health care provider, employee, or spouse is a relative of the principal.</p> <p>(2) The validity of a health care power of attorney is not affected by the principal's failure to initial any of the choices provided in Section 4, 6, or 7 of the Health Care Power of Attorney form or to name successor agents. If the principal fails to indicate either of the statements in Section 7 concerning provision of artificial nutrition and hydration, the agent does not have authority to direct that nutrition and hydration necessary for comfort care or alleviation of pain be withheld or withdrawn.</p> <p>(D) A health care power of attorney executed on or after January 1, 2007 must be substantially in the following form:</p> <p>INFORMATION ABOUT THIS DOCUMENT</p> <p>THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:</p> <p>1. THIS DOCUMENT GIVES THE PERSON YOU NAME AS YOUR AGENT THE POWER TO MAKE HEALTH CARE DECISIONS FOR YOU IF YOU CANNOT MAKE THE DECISION FOR YOURSELF. THIS POWER INCLUDES THE POWER TO MAKE DECISIONS ABOUT LIFE-SUSTAINING TREATMENT. UNLESS YOU STATE OTHERWISE, YOUR AGENT WILL HAVE THE SAME AUTHORITY TO MAKE DECISIONS ABOUT YOUR HEALTH CARE AS YOU WOULD HAVE.</p>	<p><u>(d) state the name and address of the agent. A health care agent must be an individual who is eighteen years of age or older and of sound mind. A health care agent may not be a health care provider, or an employee of a provider, with whom the principal has a provider-patient relationship at the time the health care power of attorney is executed, or an employee of a nursing care facility in which the principal resides, or a spouse of the health care provider or employee, unless the health care provider, employee, or spouse is a relative of the principal.</u></p> <p><u>(2) The validity of a health care power of attorney is not affected by the principal's failure to initial any of the choices provided in Section 4, 6, or 7 of the Health Care Power of Attorney form or to name successor agents. If the principal fails to indicate either of the statements in Section 7 concerning provision of artificial nutrition and hydration, the agent does not have authority to direct that nutrition and hydration necessary for comfort care or alleviation of pain be withheld or withdrawn.</u></p> <p><u>(D) A health care power of attorney executed on or after January 1, 2007 must be substantially in the following form:</u></p> <p><u>INFORMATION ABOUT THIS DOCUMENT</u></p> <p><u>THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:</u></p> <p><u>1. THIS DOCUMENT GIVES THE PERSON YOU NAME AS YOUR AGENT THE POWER TO MAKE HEALTH CARE DECISIONS FOR YOU IF YOU CANNOT MAKE THE DECISION FOR YOURSELF. THIS POWER INCLUDES THE POWER TO MAKE DECISIONS ABOUT LIFE-SUSTAINING TREATMENT. UNLESS YOU STATE OTHERWISE, YOUR AGENT WILL HAVE THE SAME AUTHORITY TO MAKE DECISIONS ABOUT YOUR HEALTH CARE AS YOU WOULD HAVE.</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
<p>2. THIS POWER IS SUBJECT TO ANY LIMITATIONS OR STATEMENTS OF YOUR DESIRES THAT YOU INCLUDE IN THIS DOCUMENT. YOU MAY STATE IN THIS DOCUMENT ANY TREATMENT YOU DO NOT DESIRE OR TREATMENT YOU WANT TO BE SURE YOU RECEIVE. YOUR AGENT WILL BE OBLIGATED TO FOLLOW YOUR INSTRUCTIONS WHEN MAKING DECISIONS ON YOUR BEHALF. YOU MAY ATTACH ADDITIONAL PAGES IF YOU NEED MORE SPACE TO COMPLETE THE STATEMENT.</p> <p>3. AFTER YOU HAVE SIGNED THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE HEALTH CARE DECISIONS FOR YOURSELF IF YOU ARE MENTALLY COMPETENT TO DO SO. AFTER YOU HAVE SIGNED THIS DOCUMENT, NO TREATMENT MAY BE GIVEN TO YOU OR STOPPED OVER YOUR OBJECTION IF YOU ARE MENTALLY COMPETENT TO MAKE THAT DECISION.</p> <p>4. YOU HAVE THE RIGHT TO REVOKE THIS DOCUMENT, AND TERMINATE YOUR AGENT’S AUTHORITY, BY INFORMING EITHER YOUR AGENT OR YOUR HEALTH CARE PROVIDER ORALLY OR IN WRITING.</p> <p>5. IF THERE IS ANYTHING IN THIS DOCUMENT THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A SOCIAL WORKER, LAWYER, OR OTHER PERSON TO EXPLAIN IT TO YOU.</p> <p>6. THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS TWO PERSONS SIGN AS WITNESSES. EACH OF THESE PERSONS MUST EITHER WITNESS YOUR SIGNING OF THE POWER OF ATTORNEY OR WITNESS YOUR ACKNOWLEDGMENT THAT THE SIGNATURE ON THE POWER OF ATTORNEY IS YOURS.</p>	<p><u>2. THIS POWER IS SUBJECT TO ANY LIMITATIONS OR STATEMENTS OF YOUR DESIRES THAT YOU INCLUDE IN THIS DOCUMENT. YOU MAY STATE IN THIS DOCUMENT ANY TREATMENT YOU DO NOT DESIRE OR TREATMENT YOU WANT TO BE SURE YOU RECEIVE. YOUR AGENT WILL BE OBLIGATED TO FOLLOW YOUR INSTRUCTIONS WHEN MAKING DECISIONS ON YOUR BEHALF. YOU MAY ATTACH ADDITIONAL PAGES IF YOU NEED MORE SPACE TO COMPLETE THE STATEMENT.</u></p> <p><u>3. AFTER YOU HAVE SIGNED THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE HEALTH CARE DECISIONS FOR YOURSELF IF YOU ARE MENTALLY COMPETENT TO DO SO. AFTER YOU HAVE SIGNED THIS DOCUMENT, NO TREATMENT MAY BE GIVEN TO YOU OR STOPPED OVER YOUR OBJECTION IF YOU ARE MENTALLY COMPETENT TO MAKE THAT DECISION.</u></p> <p><u>4. YOU HAVE THE RIGHT TO REVOKE THIS DOCUMENT, AND TERMINATE YOUR AGENT’S AUTHORITY, BY INFORMING EITHER YOUR AGENT OR YOUR HEALTH CARE PROVIDER ORALLY OR IN WRITING.</u></p> <p><u>5. IF THERE IS ANYTHING IN THIS DOCUMENT THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A SOCIAL WORKER, LAWYER, OR OTHER PERSON TO EXPLAIN IT TO YOU.</u></p> <p><u>6. THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS TWO PERSONS SIGN AS WITNESSES. EACH OF THESE PERSONS MUST EITHER WITNESS YOUR SIGNING OF THE POWER OF ATTORNEY OR WITNESS YOUR ACKNOWLEDGMENT THAT THE SIGNATURE ON THE POWER OF ATTORNEY IS YOURS.</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
<p>THE FOLLOWING PERSONS MAY NOT ACT AS WITNESSES:</p> <p>A. YOUR SPOUSE, YOUR CHILDREN, GRANDCHILDREN, AND OTHER LINEAL DESCENDANTS; YOUR PARENTS, GRANDPARENTS, AND OTHER LINEAL ANCESTORS; YOUR SIBLINGS AND THEIR LINEAL DESCENDANTS; OR A SPOUSE OF ANY OF THESE PERSONS.</p> <p>B. A PERSON WHO IS DIRECTLY FINANCIALLY RESPONSIBLE FOR YOUR MEDICAL CARE.</p> <p>C. A PERSON WHO IS NAMED IN YOUR WILL, OR, IF YOU HAVE NO WILL, WHO WOULD INHERIT YOUR PROPERTY BY INTESTATE SUCCESSION.</p> <p>D. A BENEFICIARY OF A LIFE INSURANCE POLICY ON YOUR LIFE.</p> <p>E. THE PERSONS NAMED IN THE HEALTH CARE POWER OF ATTORNEY AS YOUR AGENT OR SUCCESSOR AGENT.</p> <p>F. YOUR PHYSICIAN OR AN EMPLOYEE OF YOUR PHYSICIAN.</p> <p>G. ANY PERSON WHO WOULD HAVE A CLAIM AGAINST ANY PORTION OF YOUR ESTATE (PERSONS TO WHOM YOU OWE MONEY).</p> <p>IF YOU ARE A PATIENT IN A HEALTH FACILITY, NO MORE THAN ONE WITNESS MAY BE AN EMPLOYEE OF THAT FACILITY.</p> <p>7. YOUR AGENT MUST BE A PERSON WHO IS 18 YEARS OLD OR OLDER AND OF SOUND MIND. IT MAY NOT BE YOUR DOCTOR OR ANY OTHER HEALTH CARE PROVIDER THAT IS</p>	<p><u>THE FOLLOWING PERSONS MAY NOT ACT AS WITNESSES:</u></p> <p><u>A. YOUR SPOUSE, YOUR CHILDREN, GRANDCHILDREN, AND OTHER LINEAL DESCENDANTS; YOUR PARENTS, GRANDPARENTS, AND OTHER LINEAL ANCESTORS; YOUR SIBLINGS AND THEIR LINEAL DESCENDANTS; OR A SPOUSE OF ANY OF THESE PERSONS.</u></p> <p><u>B. A PERSON WHO IS DIRECTLY FINANCIALLY RESPONSIBLE FOR YOUR MEDICAL CARE.</u></p> <p><u>C. A PERSON WHO IS NAMED IN YOUR WILL, OR, IF YOU HAVE NO WILL, WHO WOULD INHERIT YOUR PROPERTY BY INTESTATE SUCCESSION.</u></p> <p><u>D. A BENEFICIARY OF A LIFE INSURANCE POLICY ON YOUR LIFE.</u></p> <p><u>E. THE PERSONS NAMED IN THE HEALTH CARE POWER OF ATTORNEY AS YOUR AGENT OR SUCCESSOR AGENT.</u></p> <p><u>F. YOUR PHYSICIAN OR AN EMPLOYEE OF YOUR PHYSICIAN.</u></p> <p><u>G. ANY PERSON WHO WOULD HAVE A CLAIM AGAINST ANY PORTION OF YOUR ESTATE (PERSONS TO WHOM YOU OWE MONEY).</u></p> <p><u>IF YOU ARE A PATIENT IN A HEALTH FACILITY, NO MORE THAN ONE WITNESS MAY BE AN EMPLOYEE OF THAT FACILITY.</u></p> <p><u>7. YOUR AGENT MUST BE A PERSON WHO IS 18 YEARS OLD OR OLDER AND OF SOUND MIND. IT MAY NOT BE YOUR</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
<p>NOW PROVIDING YOU WITH TREATMENT; OR AN EMPLOYEE OF YOUR DOCTOR OR PROVIDER; OR A SPOUSE OF THE DOCTOR, PROVIDER, OR EMPLOYEE; UNLESS THE PERSON IS A RELATIVE OF YOURS.</p> <p>8. YOU SHOULD INFORM THE PERSON THAT YOU WANT HIM OR HER TO BE YOUR HEALTH CARE AGENT. YOU SHOULD DISCUSS THIS DOCUMENT WITH YOUR AGENT AND YOUR PHYSICIAN AND GIVE EACH A SIGNED COPY. IF YOU ARE IN A HEALTH CARE FACILITY OR A NURSING CARE FACILITY, A COPY OF THIS DOCUMENT SHOULD BE INCLUDED IN YOUR MEDICAL RECORD.</p> <p>HEALTH CARE POWER OF ATTORNEY (S.C. STATUTORY FORM)</p> <p>1. DESIGNATION OF HEALTH CARE AGENT</p> <p>I, _____, hereby appoint:</p> <p>(Principal) (Agent's Name) ____ (Agent's Address) ____ Telephone: home: _____ work: _____ mobile: _____ as my agent to make health care decisions for me as authorized in this document.</p> <p>Successor Agent: If an agent named by me dies, becomes legally disabled, resigns, refuses to act, becomes unavailable, or if an agent who is my spouse is divorced or separated from me, I name the following as successors to my agent, each to act alone and successively, in the order named:</p> <p>a. First Alternate Agent: Address: ____ Telephone: home: _____ work: _____ mobile: _____</p>	<p><u>DOCTOR OR ANY OTHER HEALTH CARE PROVIDER THAT IS NOW PROVIDING YOU WITH TREATMENT; OR AN EMPLOYEE OF YOUR DOCTOR OR PROVIDER; OR A SPOUSE OF THE DOCTOR, PROVIDER, OR EMPLOYEE; UNLESS THE PERSON IS A RELATIVE OF YOURS.</u></p> <p><u>8. YOU SHOULD INFORM THE PERSON THAT YOU WANT HIM OR HER TO BE YOUR HEALTH CARE AGENT. YOU SHOULD DISCUSS THIS DOCUMENT WITH YOUR AGENT AND YOUR PHYSICIAN AND GIVE EACH A SIGNED COPY. IF YOU ARE IN A HEALTH CARE FACILITY OR A NURSING CARE FACILITY, A COPY OF THIS DOCUMENT SHOULD BE INCLUDED IN YOUR MEDICAL RECORD.</u></p> <p><u>HEALTH CARE POWER OF ATTORNEY (S.C. STATUTORY FORM)</u></p> <p><u>1. DESIGNATION OF HEALTH CARE AGENT</u></p> <p><u>I, _____, hereby appoint:</u></p> <p><u>(Principal)</u> <u>(Agent's Name)</u> <u>(Agent's Address)</u> <u>Telephone: home: _____ work: _____ mobile: _____ as my agent to make health care decisions for me as authorized in this document.</u></p> <p><u>Successor Agent: If an agent named by me dies, becomes incapacitated, resigns, refuses to act, becomes unavailable, or if an agent who is my spouse is divorced or separated from me, I name the following as successors to my agent, each to act alone and successively, in the order named:</u></p> <p><u>A. First Alternate Agent:</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
<p>b. Second Alternate Agent: Address: ____ Telephone: home: ____ work: ____ mobile: ____ Unavailability of Agent(s): If at any relevant time the agent or successor agents named here are unable or unwilling to make decisions concerning my health care, and those decisions are to be made by a guardian, by the Probate Court, or by a surrogate pursuant to the Adult Health Care Consent Act, it is my intention that the guardian, Probate Court, or surrogate make those decisions in accordance with my directions as stated in this document.</p> <p>2. EFFECTIVE DATE AND DURABILITY By this document I intend to create a durable power of attorney effective upon, and only during, any period of mental incompetence, except as provided in Paragraph 3 below.</p> <p>3. HIPAA AUTHORIZATION When considering or making health care decisions for me, all individually identifiable health information and medical records shall be released without restriction to my health care agent(s) and/or my alternate health care agent(s) named above including, but not limited to, (i) diagnostic, treatment, other health care, and related insurance and financial records and information associated with any past, present, or future physical or mental health condition including, but not limited to, diagnosis or treatment of HIV/AIDS, sexually transmitted disease(s), mental illness, and/or drug or alcohol abuse and (ii) any written opinion relating to my health that such health care agent(s) and/or alternate health care agent(s) may have requested. Without limiting the</p>	<p><u>Address:</u> <u>Telephone: home: _____ work: _____ mobile: _____</u></p> <p><u>B. Second Alternate Agent:</u> <u>Address:</u> <u>Telephone: home: _____ work: _____ mobile: _____</u></p> <p><u>Unavailability of Agent(s): If at any relevant time the agent or successor agents named here are unable or unwilling to make decisions concerning my health care, and those decisions are to be made by a guardian, by the Probate Court, or by a surrogate pursuant to the Adult Health Care Consent Act, it is my intention that the guardian, Probate Court, or surrogate make those decisions in accordance with my directions as stated in this document.</u></p> <p><u>2. EFFECTIVE DATE AND DURABILITY</u> <u>By this document I intend to create a durable power of attorney effective upon, and only during, any period of mental incompetence, except as provided in Paragraph 3 below.</u></p> <p><u>3. HIPAA AUTHORIZATION</u> <u>When considering or making health care decisions for me, all individually identifiable health information and medical records shall be released without restriction to my health care agent(s) and/or my alternate health care agent(s) named above including, but not limited to, (i) diagnostic, treatment, other health care, and related insurance and financial records and information associated with any past, present, or future physical or mental health condition including, but not limited to,</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
<p>generality of the foregoing, this release authority applies to all health information and medical records governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 USC 1320d and 45 CFR 160-164; is effective whether or not I am mentally competent; has no expiration date; and shall terminate only in the event that I revoke the authority in writing and deliver it to my health care provider.</p> <p>4. AGENT’S POWERS I grant to my agent full authority to make decisions for me regarding my health care. In exercising this authority, my agent shall follow my desires as stated in this document or otherwise expressed by me or known to my agent. In making any decision, my agent shall attempt to discuss the proposed decision with me to determine my desires if I am able to communicate in any way. If my agent cannot determine the choice I would want made, then my agent shall make a choice for me based upon what my agent believes to be in my best interests. My agent’s authority to interpret my desires is intended to be as broad as possible, except for any limitations I may state below.</p> <p>Accordingly, unless specifically limited by the provisions specified below, my agent is authorized as follows:</p> <p>A. To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation.</p> <p>B. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical</p>	<p><u>diagnosis or treatment of HIV/AIDS, sexually transmitted disease(s), mental illness, and/or drug or alcohol abuse and (ii) any written opinion relating to my health that such health care agent(s) and/or alternate health care agent(s) may have requested. Without limiting the generality of the foregoing, this release authority applies to all health information and medical records governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 USC 1320d and 45 CFR 160-164; is effective whether or not I am mentally competent; has no expiration date; and shall terminate only in the event that I revoke the authority in writing and deliver it to my health care provider.</u></p> <p><u>4. AGENT’S POWERS</u> <u>I grant to my agent full authority to make decisions for me regarding my health care. In exercising this authority, my agent shall follow my desires as stated in this document or otherwise expressed by me or known to my agent. In making any decision, my agent shall attempt to discuss the proposed decision with me to determine my desires if I am able to communicate in any way. If my agent cannot determine the choice I would want made, then my agent shall make a choice for me based upon what my agent believes to be in my best interests. My agent’s authority to interpret my desires is intended to be as broad as possible, except for any limitations I may state below.</u></p> <p><u>Accordingly, unless specifically limited by the provisions specified below, my agent is authorized as follows:</u></p> <p><u>A. To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation.</u></p> <p><u>B. To authorize, or refuse to authorize, any medication or procedure</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
<p>damage, addiction, or hasten the moment of, but not intentionally cause, my death.</p> <p>C. To authorize my admission to or discharge, even against medical advice, from any hospital, nursing care facility, or similar facility or service.</p> <p>D. To take any other action necessary to making, documenting, and assuring implementation of decisions concerning my health care, including, but not limited to, granting any waiver or release from liability required by any hospital, physician, nursing care provider, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply.</p> <p>E. The powers granted above do not include the following powers or are subject to the following rules or limitations:</p> <p>5. ORGAN DONATION (INITIAL ONLY ONE) My agent may ___; may not ___ consent to the donation of all or any of my tissue or organs for purposes of transplantation.</p> <p>6. EFFECT ON DECLARATION OF A DESIRE FOR A NATURAL DEATH (LIVING WILL)</p> <p>I understand that if I have a valid Declaration of a Desire for a Natural Death, the instructions contained in the Declaration will be given effect in any situation to which they are applicable. My agent will have authority to make decisions concerning my health care only in situations to which the Declaration does not apply.</p>	<p><u>intended to relieve pain, even though such use may lead to physical damage, addiction, or hasten the moment of, but not intentionally cause, my death.</u></p> <p><u>C. To authorize my admission to or discharge, even against medical advice, from any hospital, nursing care facility, or similar facility or service.</u></p> <p><u>D. To take any other action necessary to making, documenting, and assuring implementation of decisions concerning my health care, including, but not limited to, granting any waiver or release from liability required by any hospital, physician, nursing care provider, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply.</u></p> <p><u>E. The powers granted above do not include the following powers or are subject to the following rules or limitations:</u></p> <p><u>5. ORGAN DONATION (INITIAL ONLY ONE)</u> <u>My agent may ___; may not ___ consent to the donation of all or any of my tissue or organs for purposes of transplantation.</u></p> <p><u>6. EFFECT ON DECLARATION OF A DESIRE FOR A NATURAL DEATH (LIVING WILL)</u></p> <p><u>I understand that if I have a valid Declaration of a Desire for a Natural Death, the instructions contained in the Declaration will be given effect in any situation to which they are applicable. However, if the terms of the Declaration of a Desire for a Natural Death conflict with the Health Care Power of Attorney, the terms of the Declaration of a</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
<p>7. STATEMENT OF DESIRES CONCERNING LIFE-SUSTAINING TREATMENT</p> <p>With respect to any Life-Sustaining Treatment, I direct the following: (INITIAL ONLY ONE OF THE FOLLOWING 3 PARAGRAPHS)</p> <p>(1) ___ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged nor do I want life-sustaining treatment to be provided or continued if my agent believes the burdens of the treatment outweigh the expected benefits. I want my agent to consider the relief of suffering, my personal beliefs, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life-sustaining treatment.</p> <p>OR</p> <p>(2) ___ DIRECTIVE TO WITHHOLD OR WITHDRAW TREATMENT. I do not want my life to be prolonged and I do not want life-sustaining treatment:</p> <p>a. if I have a condition that is incurable or irreversible and, without the administration of life-sustaining procedures, expected to result in death within a relatively short period of time; or</p> <p>b. if I am in a state of permanent unconsciousness.</p> <p>OR</p> <p>(3) ___ DIRECTIVE FOR MAXIMUM TREATMENT. I want my life to be prolonged to the greatest extent possible, within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedures.</p> <p>8. STATEMENT OF DESIRES REGARDING TUBE FEEDING</p> <p>With respect to Nutrition and Hydration provided by means of a</p>	<p><u>Desire for a Natural Death shall control if it is signed at the same time as or after this Health Care Power of Attorney. My agent will have authority to make decisions concerning my health care only in situations to which the Declaration does not apply.</u></p> <p><u>7. STATEMENT OF DESIRES CONCERNING LIFE-SUSTAINING TREATMENT</u></p> <p><u>With respect to any Life-Sustaining Treatment, I direct the following: (INITIAL ONLY ONE OF THE FOLLOWING 3 PARAGRAPHS)</u></p> <p><u>A. ___ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged nor do I want life-sustaining treatment to be provided or continued if my agent believes the burdens of the treatment outweigh the expected benefits. I want my agent to consider the relief of suffering, my personal beliefs, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life-sustaining treatment.</u></p> <p><u>OR</u></p> <p><u>B. ___ DIRECTIVE TO WITHHOLD OR WITHDRAW TREATMENT. I do not want my life to be prolonged and I do not want life-sustaining treatment:</u></p> <p><u>1. if I have a condition that is incurable or irreversible and, without the administration of life-sustaining procedures, expected to result in death within a relatively short period of time; or</u></p> <p><u>2. if I am in a state of permanent unconsciousness.</u></p> <p><u>OR</u></p> <p><u>C. ___ DIRECTIVE FOR MAXIMUM TREATMENT. I want my life to be prolonged to the greatest extent possible, within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedures.</u></p> <p><u>8. STATEMENT OF DESIRES REGARDING TUBE FEEDING</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
<p>nasogastric tube or tube into the stomach, intestines, or veins, I wish to make clear that in situations where life-sustaining treatment is being withheld or withdrawn pursuant to Paragraph 7, (INITIAL ONLY ONE OF THE FOLLOWING 3 PARAGRAPHS):</p> <p>(1) ___ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged by tube feeding if my agent believes the burdens of tube feeding outweigh the expected benefits. I want my agent to consider the relief of suffering, my personal beliefs, the expense involved, and the quality as well as the possible extension of my life in making this decision.</p> <p>OR</p> <p>(2) ___ DIRECTIVE TO WITHHOLD OR WITHDRAW TUBE FEEDING. I do not want my life prolonged by tube feeding.</p> <p>OR</p> <p>(3) ___ DIRECTIVE FOR PROVISION OF TUBE FEEDING. I want tube feeding to be provided within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedure, and without regard to whether other forms of life-sustaining treatment are being withheld or withdrawn.</p> <p>IF YOU DO NOT INITIAL ANY OF THE STATEMENTS IN PARAGRAPH 8, YOUR AGENT WILL NOT HAVE AUTHORITY TO DIRECT THAT NUTRITION AND HYDRATION NECESSARY FOR COMFORT CARE OR ALLEVIATION OF PAIN BE WITHDRAWN.</p> <p>9. ADMINISTRATIVE PROVISIONS</p>	<p><u>With respect to Nutrition and Hydration provided by means of a nasogastric tube or tube into the stomach, intestines, or veins, I wish to make clear that in situations where life-sustaining treatment is being withheld or withdrawn pursuant to Paragraph 7, (INITIAL ONLY ONE OF THE FOLLOWING 3 PARAGRAPHS):</u></p> <p><u>A. ___ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged by tube feeding if my agent believes the burdens of tube feeding outweigh the expected benefits. I want my agent to consider the relief of suffering, my personal beliefs, the expense involved, and the quality as well as the possible extension of my life in making this decision.</u></p> <p><u>OR</u></p> <p><u>B. ___ DIRECTIVE TO WITHHOLD OR WITHDRAW TUBE FEEDING. I do not want my life prolonged by tube feeding.</u></p> <p><u>OR</u></p> <p><u>C. ___ DIRECTIVE FOR PROVISION OF TUBE FEEDING. I want tube feeding to be provided within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedure, and without regard to whether other forms of life-sustaining treatment are being withheld or withdrawn.</u></p> <p><u>IF YOU INITIAL ANY OF THE STATEMENTS IN PARAGRAPH 8, YOUR AGENT WILL STILL HAVE AUTHORITY TO DIRECT THAT NUTRITION AND HYDRATION NECESSARY FOR COMFORT, CARE OR ALLEVIATION OF PAIN BE WITHDRAWN.</u></p>

<p>ARTICLE 5: Part 5- EXISTING CODE LANGUAGE</p>	<p>Bill # S. 1243- Article 5- Part 5</p>
<p>A. I revoke any prior Health Care Power of Attorney and any provisions relating to health care of any other prior power of attorney.</p> <p>B. This power of attorney is intended to be valid in any jurisdiction in which it is presented.</p> <p>BY SIGNING HERE I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY AGENT.</p> <p>I sign my name to this Health Care Power of Attorney on this ___ day of ___, 20 __. My current home address is: _____</p> <p>Principal's Signature: ____ Print Name of Principal: ____</p> <p>I declare, on the basis of information and belief, that the person who signed or acknowledged this document (the principal) is personally known to me, that he/she signed or acknowledged this Health Care Power of Attorney in my presence, and that he/she appears to be of sound mind and under no duress, fraud, or undue influence. I am not related to the principal by blood, marriage, or adoption, either as a spouse, a lineal ancestor, descendant of the parents of the principal, or spouse of any of them. I am not directly financially responsible for the principal's medical care. I am not entitled to any portion of the principal's estate upon his decease, whether under any will or as an heir by intestate succession, nor am I the beneficiary of an insurance policy on the principal's life, nor do I have a claim against the principal's estate as of this time. I am not the principal's attending physician, nor an employee of the attending physician. No more than one witness is an employee of a health facility in which the principal is a patient. I am not appointed as Health Care Agent or Successor Health Care Agent by this document.</p> <p>Witness No. 1 Signature: _____ Date: _____</p>	<p><u>9. ADMINISTRATIVE PROVISIONS</u></p> <p><u>A. I revoke any prior Health Care Power of Attorney and any provisions relating to health care of any other prior power of attorney.</u></p> <p><u>B. This power of attorney is intended to be valid in any jurisdiction in which it is presented.</u></p> <p><u>BY SIGNING HERE I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY AGENT.</u></p> <p><u>I sign my name to this Health Care Power of Attorney on this ___ day of ___, 20 __. My current home address is:</u></p> <p><u>Principal's Signature:</u> <u>Print Name of Principal:</u></p> <p><u>I declare, on the basis of information and belief, that the person who signed or acknowledged this document (the principal) is personally known to me, that he/she signed or acknowledged this Health Care Power of Attorney in my presence, and that he/she appears to be of sound mind and under no duress, fraud, or undue influence. I am not related to the principal by blood, marriage, or adoption, either as a spouse, a lineal ancestor, descendant of the parents of the principal, or spouse of any of them. I am not directly financially responsible for the principal's medical care. I am not entitled to any portion of the principal's estate upon his decease, whether under any will or as an heir by intestate succession, nor am I the beneficiary of an insurance policy on the principal's life, nor do I have a claim against the principal's estate as of this time. I am not the principal's attending physician, nor an employee of the attending physician. No more than one witness is an employee of a health facility in which the principal is a patient. I am not appointed as Health Care Agent or Successor Health Care Agent by this</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
<p>Print Name: _____ Telephone: ____ Address: ____ ____ Witness No. 2 Signature: _____ Date: ____ Print Name: _____ Telephone: ____ Address: ____</p> <p>(This portion of the document is optional and is not required to create a valid health care power of attorney.) STATE OF SOUTH CAROLINA COUNTY OF ____</p> <p>The foregoing instrument was acknowledged before me by Principal on _____, 20 ____.</p> <p>Notary Public for South Carolina ____ My Commission Expires: ____</p> <p>(E) A health care agent has, in addition to the powers set forth in the health care power of attorney, the following specific powers: (1) to have access to the principal’s medical records and information to the same extent that the principal would have access, including the right to disclose the contents to others; (2) to contract on the principal’s behalf for placement in a health care or nursing care facility or for health care related services, without the agent incurring personal financial liability for the contract; (3) to hire and fire medical, social service, and other support personnel responsible for the principal’s care; (4) to have the same health care facility or nursing care facility visitation rights and privileges of the principal as are permitted to immediate family members or spouses. (F)(1) The agent is not entitled to compensation for services performed under the health care power of attorney, but the agent is entitled to</p>	<p><u>document.</u> <u>Witness No. 1</u> <u>Signature: _____ Date: _____</u> <u>Print Name: _____ Telephone: _____</u> <u>Address: _____</u></p> <p><u>Witness No. 2</u> <u>Signature: _____ Date: _____</u> <u>Print Name: _____ Telephone: _____</u> <u>Address: _____</u></p> <p><u>(This portion of the document is optional and is not required to create a valid health care power of attorney.)</u></p> <p><u>STATE OF SOUTH CAROLINA</u> <u>COUNTY OF _____</u></p> <p><u>The foregoing instrument was acknowledged before me by Principal on _____, 20 ____.</u></p> <p><u>Notary Public for South Carolina _____</u> <u>My Commission Expires: _____</u></p> <p><u>(E) A health care agent has, in addition to the powers set forth in the health care power of attorney, the following specific powers:</u> <u>(1) to have access to the principal’s medical records and information to the same extent that the principal would have access, including the right to disclose the contents to others;</u> <u>(2) to contract on the principal’s behalf for placement in a health care or nursing care facility or for health care related services, without the agent incurring personal financial liability for the contract;</u> <u>(3) to hire and fire medical, social service, and other support personnel responsible for the principal’s care;</u> <u>(4) to have the same health care facility or nursing care facility visitation rights and privileges of the principal as are permitted to</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
<p>reimbursement for all reasonable expenses incurred as a result of carrying out the health care power of attorney or the authority granted by this section.</p> <p>(2) The agent’s consent to health care or to the provision of services to the principal does not cause the agent to be liable for the costs of the care or services.</p> <p>(G) If a principal has been diagnosed as pregnant, life-sustaining procedures may not be withheld or withdrawn pursuant to the health care power of attorney during the course of the principal’s pregnancy. This subsection does not otherwise affect the agent’s authority to make decisions concerning the principal’s obstetrical and other health care during the course of the pregnancy.</p> <p>(H) A health care provider or nursing care provider having knowledge of the principal’s health care power of attorney has a duty to follow directives of the agent that are consistent with the health care power of attorney to the same extent as if they were given by the principal. If it is uncertain whether a directive is consistent with the health care power of attorney, the health care provider, nursing care provider, agent, or other interested person may apply to the probate court for an order determining the authority of the agent to give the directive.</p> <p>(I) An agent acting pursuant to a health care power of attorney shall make decisions concerning the principal’s health care in accordance with the principal’s directives in the health care power of attorney and with any other statements of intent by the principal that are known to the agent and are not inconsistent with the directives in the health care power of attorney. If a principal has a valid Declaration of a Desire for a Natural Death pursuant to Title 44, Chapter 77, the declaration must be given effect in any situation to which it is applicable. The agent named in the health care power of attorney has authority to make decisions only in situations to which the declaration does not apply. However, nothing herein prevents the principal or a person designated by the principal in the declaration from revoking the declaration as provided in Section 44-77-80.</p>	<p><u>immediate family members or spouses.</u></p> <p><u>(F)(1) The agent is not entitled to compensation for services performed under the health care power of attorney, but the agent is entitled to reimbursement for all reasonable expenses incurred as a result of carrying out the health care power of attorney or the authority granted by this section.</u></p> <p><u>(2) The agent’s consent to health care or to the provision of services to the principal does not cause the agent to be liable for the costs of the care or services.</u></p> <p><u>(G) If a principal has been diagnosed as pregnant, life-sustaining procedures may not be withheld or withdrawn pursuant to the health care power of attorney during the course of the principal’s pregnancy. This subsection does not otherwise affect the agent’s authority to make decisions concerning the principal’s obstetrical and other health care during the course of the pregnancy.</u></p> <p><u>(H) A health care provider or nursing care provider having knowledge of the principal’s health care power of attorney has a duty to follow directives of the agent that are consistent with the health care power of attorney to the same extent as if they were given by the principal. If it is uncertain whether a directive is consistent with the health care power of attorney, the health care provider, nursing care provider, agent, or other interested person may petition the probate court for an order determining the authority of the agent to give the directive.</u></p> <p><u>(I) An agent acting pursuant to a health care power of attorney shall make decisions concerning the principal’s health care in accordance with the principal’s directives in the health care power of attorney and with any other statements of intent by the principal that are known to the agent and are not inconsistent with the directives in the health care power of attorney. If a principal has a valid Declaration of a Desire for a Natural Death pursuant to Title 44, Chapter 77, the declaration must be given effect in any situation to which it is applicable. The agent named in the health care power of attorney has authority to make decisions only in situations to which the declaration does not apply. To the extent</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
<p>(J)(1) A person who relies in good faith upon a person’s representation that he is the person named as agent in a health care power of attorney is not subject to civil or criminal liability or disciplinary action for recognizing the agent’s authority.</p> <p>(2) A health care provider or nursing care provider who in good faith relies on a health care decision made by an agent or successor agent is not subject to civil or criminal liability or disciplinary action on account of relying on the decision.</p> <p>(3) An agent who in good faith makes a health care decision pursuant to a health care power of attorney is not subject to civil or criminal liability on account of the substance of the decision.</p> <p>(K)(1) The principal may appoint one or more successor agents in the health care power of attorney in the event an agent dies, becomes legally disabled, resigns, refuses to act, is unavailable, or, if the agent is the spouse of the principal, becomes divorced or separated from the principal. A successor agent will succeed to all duties and powers given to the agent in the health care power of attorney.</p> <p>(2) If no agent or successor agent is available, willing, and qualified to make a decision concerning the principal’s health care, the decision must be made according to the provisions of and by the person authorized by the Adult Health Care Consent Act.</p> <p>(3) All directives, statements of personal values, or statements of intent made by the principal in the health care power of attorney must be treated as exercises of the principal’s right to direct the course of his health care. Decisions concerning the principal’s health care made by a guardian, by the probate court, or by a surrogate pursuant to the Adult Health Care Consent Act, must be made in accordance with the directions stated in the health care power of attorney.</p> <p>(L)(1) A health care power of attorney may be revoked in the following ways:</p>	<p><u>that the terms of a Declaration of a Desire for a Natural Death and a health care power of attorney conflict, the terms of the later executed document shall control, provided that the terms of a Declaration of a Desire for a Natural Death shall control if the two documents are executed simultaneously. However, nothing herein prevents the principal or a person designated by the principal in the declaration from revoking the declaration as provided in Section 44-77-80.</u></p> <p><u>(J)(1) A person who relies in good faith upon a person’s representation that he is the person named as agent in a health care power of attorney is not subject to civil or criminal liability or disciplinary action for recognizing the agent’s authority.</u></p> <p><u>(2) A health care provider or nursing care provider who in good faith relies on a health care decision made by an agent or successor agent is not subject to civil or criminal liability or disciplinary action on account of relying on the decision.</u></p> <p><u>(3) An agent who in good faith makes a health care decision pursuant to a health care power of attorney is not subject to civil or criminal liability on account of the substance of the decision.</u></p> <p><u>(K)(1) The principal may appoint one or more successor agents in the health care power of attorney in the event an agent dies, becomes legally disabled, resigns, refuses to act, is unavailable, or, if the agent is the spouse of the principal, becomes divorced or separated from the principal. A successor agent will succeed to all duties and powers given to the agent in the health care power of attorney.</u></p> <p><u>(2) If no agent or successor agent is available, willing, and qualified to make a decision concerning the principal’s health care, the decision must be made according to the provisions of and by the person authorized by the South Carolina Adult Health Care Consent Act.</u></p> <p><u>(3) All directives, statements of personal values, or statements of intent made by the principal in the health care power of attorney must be treated as exercises of the principal’s right to direct the course of his health care. Decisions concerning the principal’s health care made by a guardian, by the probate court, or by a surrogate pursuant to the South Carolina Adult Health Care Consent Act, must be made in accordance</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
<p>(a) by a writing, an oral statement, or any other act constituting notification by the principal to the agent or to a health care provider responsible for the principal's care of the principal's specific intent to revoke the health care power of attorney; or</p> <p>(b) by the principal's execution of a subsequent health care power of attorney or the principal's execution of a subsequent durable power of attorney under Section 62-5-501 if the durable power of attorney states an intention that the health care power of attorney be revoked or if the durable power of attorney is inconsistent with the health care power of attorney.</p> <p>(2) A health care provider who is informed of or provided with a revocation of a health care power of attorney immediately must record the revocation in the principal's medical record and notify the agent, the attending physician, and all other health care providers or nursing care providers who are responsible for the principal's care.</p> <p>(M) The execution and effectuation of a health care power of attorney does not constitute suicide for any purpose.</p> <p>(N) No person may be required to sign a health care power of attorney in accordance with this section as a condition for coverage under an insurance contract or for receiving medical treatment or as a condition of admission to a health care or nursing care facility.</p> <p>(O) Nothing in this section may be construed to authorize or approve mercy killing or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.</p> <p>(P) The absence of a health care power of attorney by an adult patient does not give rise to a presumption of his intent to consent to or refuse death prolonging procedures. Nothing in this section impairs other legal rights or legal responsibilities which a person may have to effect the provision or the withholding or withdrawal of life-sustaining procedures in a lawful manner.</p> <p>(Q)(1) If a person coerces or fraudulently induces another person to execute a health care power of attorney, falsifies or forges a health care power of attorney, or wilfully conceals, cancels, obliterates, or destroys a revocation of a health care power of attorney, and the principal dies as</p>	<p><u>with the directions stated in the health care power of attorney.</u></p> <p><u>(L)(1) A health care power of attorney may be revoked in the following ways:</u></p> <p><u>(a) by a writing, an oral statement, or any other act constituting notification by the principal to the agent or to a health care provider responsible for the principal's care of the principal's specific intent to revoke the health care power of attorney; or</u></p> <p><u>(b) by the principal's execution of a subsequent health care power of attorney or the principal's execution of a subsequent durable power of attorney under Section 62-5-501 if the durable power of attorney states an intention that the health care power of attorney be revoked or if the durable power of attorney is inconsistent with the health care power of attorney.</u></p> <p><u>(2) A health care provider who is informed of or provided with a revocation of a health care power of attorney immediately must record the revocation in the principal's medical record and notify the agent, the attending physician, and all other health care providers or nursing care providers who are responsible for the principal's care.</u></p> <p><u>(M) The execution and effectuation of a health care power of attorney does not constitute suicide for any purpose.</u></p> <p><u>(N) No person may be required to sign a health care power of attorney in accordance with this section as a condition for coverage under an insurance contract or for receiving medical treatment or as a condition of admission to a health care or nursing care facility.</u></p> <p><u>(O) Nothing in this section may be construed to authorize or approve mercy killing or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.</u></p> <p><u>(P) The absence of a health care power of attorney by an adult patient does not give rise to a presumption of his intent to consent to or refuse death prolonging procedures. Nothing in this section impairs other legal rights or legal responsibilities which a person may have to effect the provision or the withholding or withdrawal of life-sustaining procedures in a lawful manner.</u></p> <p><u>(Q)(1) If a person coerces or fraudulently induces another person to</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
<p>a result of the withdrawal or withholding of treatment pursuant to the health care power of attorney, that person is subject to prosecution in accordance with the criminal laws of this State.</p> <p>(2) Nothing in this section prohibits a person from informing another person of the existence of this section, delivering to another person a copy of this section or a form for a health care power of attorney, or counseling another person in good faith concerning the execution of a health care power of attorney.</p> <p>(3) If a person willfully conceals, cancels, defaces, obliterates, or damages a health care power of attorney without the principal's consent, or falsifies or forges a revocation of a health care power of attorney, or otherwise prevents the implementation of the principal's wishes as stated in a health care power of attorney, that person breaches a duty owed to the principal and is responsible for payment of any expenses or other damages incurred as a result of the wrongful act.</p> <p>(R) A physician or health care facility electing for any reason not to follow an agent's instruction that life-sustaining procedures be withheld or withdrawn as authorized in the health care power of attorney shall make a reasonable effort to locate a physician or health care facility that will follow the instruction and has a duty to transfer the patient to that physician or facility. If a nurse or other employee of a health care provider or nursing care provider gives notice that the employee does not wish to participate in the withholding or withdrawal of life-sustaining procedures as directed by an agent, a reasonable effort shall be made by the physician and the health care provider or nursing care provider to effect the withholding or withdrawal of life-sustaining procedures without the participation of the employee.</p> <p>(S)(1) Notwithstanding the requirements of subsections (C) and (D) of this section, any document or writing containing the following provisions is deemed to comply with the requirements of this section:</p> <p>(a) the name and address of the person who meets the requirements of subsection (C)(1)(d) and is authorized to make health care related decisions if the principal becomes mentally incompetent;</p> <p>(b) the types of health care related decisions that the health care agent is</p>	<p><u>execute a health care power of attorney, falsifies or forges a health care power of attorney, or willfully conceals, cancels, obliterates, or destroys a revocation of a health care power of attorney, and the principal dies as a result of the withdrawal or withholding of treatment pursuant to the health care power of attorney, that person is subject to prosecution in accordance with the criminal laws of this State.</u></p> <p><u>(2) Nothing in this section prohibits a person from informing another person of the existence of this section, delivering to another person a copy of this section or a form for a health care power of attorney, or counseling another person in good faith concerning the execution of a health care power of attorney.</u></p> <p><u>(3) If a person willfully conceals, cancels, defaces, obliterates, or damages a health care power of attorney without the principal's consent, or falsifies or forges a revocation of a health care power of attorney, or otherwise prevents the implementation of the principal's wishes as stated in a health care power of attorney, that person breaches a duty owed to the principal and is responsible for payment of any expenses or other damages incurred as a result of the wrongful act.</u></p> <p><u>(R) A physician or health care facility electing for any reason not to follow an agent's instruction that life-sustaining procedures be withheld or withdrawn as authorized in the health care power of attorney shall make a reasonable effort to locate a physician or health care facility that will follow the instruction and has a duty to transfer the patient to that physician or facility. If a nurse or other employee of a health care provider or nursing care provider gives notice that the employee does not wish to participate in the withholding or withdrawal of life-sustaining procedures as directed by an agent, a reasonable effort shall be made by the physician and the health care provider or nursing care provider to effect the withholding or withdrawal of life-sustaining procedures without the participation of the employee.</u></p> <p><u>(S)(1) Notwithstanding the requirements of subsections (C) and (D) of this section, any document or writing containing the following provisions is deemed to comply with the requirements of this section:</u></p> <p><u>(a) the name and address of the person who meets the</u></p>

ARTICLE 5: Part 5- EXISTING CODE LANGUAGE	Bill # S. 1243- Article 5- Part 5
<p>authorized to make;</p> <p>(c) the signature of the principal;</p> <p>(d) the signature of at least two persons who witnessed the principal’s signature and who meet the requirements of subsection (C)(1)(c); and</p> <p>(e) the attestation of a notary public.</p> <p>(2) Additionally, any document that meets the requirements of subsection (S)(1) and also provides expressions of the principal’s intentions or wishes with respect to the following health care issues authorizes the health care agent to act in accordance with these provisions:</p> <p>(a) organ donations;</p> <p>(b) life-sustaining treatment;</p> <p>(c) tube feeding;</p> <p>(d) other kinds of medical treatment that the principal wishes to have or not to have;</p> <p>(e) comfort and treatment issues;</p> <p>(f) provisions for interment or disposal of the body after death; and</p> <p>(g) any written statements that the principal may wish to have communicated on his behalf.</p>	<p><u>requirements of subsection (C)(1)(d) and is authorized to make health care related decisions if the principal becomes mentally incompetent;</u></p> <p><u>(b) the types of health care related decisions that the health care agent is authorized to make;</u></p> <p><u>(c) the signature of the principal;</u></p> <p><u>(d) the signature of at least two persons who witnessed the principal’s signature and who meet the requirements of subsection (C)(1)(c); and</u></p> <p><u>(e) the attestation of a notary public.</u></p> <p><u>(2) Additionally, any document that meets the requirements of subsection (S)(1) and also provides expressions of the principal’s intentions or wishes with respect to the following health care issues authorizes the health care agent to act in accordance with these provisions:</u></p> <p><u>(a) organ donations;</u></p> <p><u>(b) life-sustaining treatment;</u></p> <p><u>(c) tube feeding;</u></p> <p><u>(d) other kinds of medical treatment that the principal wishes to have or not to have;</u></p> <p><u>(e) comfort and treatment issues;</u></p> <p><u>(f) provisions for interment or disposal of the body after death;</u></p> <p><u>and</u></p> <p><u>(g) any written statements that the principal may wish to have communicated on his behalf.</u></p> <p>REPORTER’S COMMENTS</p> <p>The 2012 amendments changed former Section 62-5-504 to provide that in case of a conflict between a health care power of attorney and a Declaration of Desire for a Natural Death, the later executed document shall control. If the two documents are executed contemporaneously, then the terms of the Declaration shall control.</p>

