

HOUSE BILL NO. 609

INTRODUCED BY RAMIREZ

IN THE HOUSE

February 1, 1985	Introduced and referred to Committee on Judiciary.
February 7, 1985	Committee recommend bill do pass. Report adopted. Bill printed and placed on members' desks.
February 8, 1985	Second reading, do pass.
February 9, 1985	Considered correctly engrossed.
February 11, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 12, 1985	Introduced and referred to Committee on Judiciary.
March 21, 1985	Committee recommend bill be concurrent in. Report adopted.
March 23, 1985	Second reading, concurred in.
March 26, 1985	Third reading, concurred in. Ayes, 45; Noes, 5. Returned to House.

IN THE HOUSE

March 27, 1985

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 609
2 INTRODUCED BY Ramirez
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE POWER OF
5 ATTORNEY PROVISIONS OF THE PROBATE CODE TO PROVIDE FOR
6 DURABLE POWERS OF ATTORNEY; AMENDING SECTIONS 72-5-501 AND
7 72-5-502, MCA."
8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 72-5-501, MCA, is amended to read:

11 "72-5-501. When power of attorney not affected by
12 disability. (1) Whenever A durable power of attorney is a
13 power of attorney by which a principal designates another
14 his attorney-in-fact or agent by--a-power-of-attorney in
15 writing and the writing contains the words, "This power of
16 attorney shall not be affected by subsequent disability or
17 incapacity of the principal or lapse of time" or "This power
18 of attorney shall become effective upon the disability or
19 incapacity of the principal" or similar words showing the
20 intent of the principal that the authority conferred shall
21 be exercisable notwithstanding his-disability,-the-authority
22 of--the--attorney-in-fact--or-agent-is-exercisable-by-him-as
23 provided--in--the--power--on---behalf---of---the---principal
24 notwithstanding--later the principal's subsequent disability
25 or incapacity, of-the-principal-at-law-or-later--uncertainty

1 ~~as--to-whether-the-principal-is-dead-or-alive~~ and, unless it
2 ~~states a time of termination, notwithstanding the lapse of~~
3 ~~time since the execution of the instrument.~~ All acts done by
4 the attorney-in-fact or agent pursuant to the power during
5 any period of disability or incompetence incapacity or
6 uncertainty as to whether the principal is dead or alive
7 have the same effect and inure to the benefit of and bind
8 the principal or and his heirs--devisees--and-personal
9 representative successors in interest as if the principal
10 were alive, competent, and not disabled.

11 (2) If a conservator thereafter is appointed for the
12 principal, the attorney-in-fact or agent, during the
13 continuance of the appointment, ~~shall-account~~ is accountable
14 to the conservator rather--than as well as the principal.
15 The conservator has the same power to revoke or amend the
16 power of attorney that the principal would have had if he
17 were not disabled or ~~incompetent--to--revoke--suspend--or~~
18 ~~terminate-all-or-any-part-of-the-power-of-attorney-or-agency~~
19 incapacitated. A principal may nominate, by a durable power
20 of attorney, the conservator of his estate or guardian of
21 his person for consideration by the court if protective
22 proceedings for the principal's person or estate are
23 thereafter commenced. The court shall make its appointment
24 in accordance with the principal's most recent nomination in
25 a durable power of attorney except for good cause or



1 disqualification."

2 Section 2. Section 72-5-502, MCA, is amended to read:

3 "72-5-502. ~~Other-powers~~ Power of attorney not revoked
4 until ~~knowledge--of--death--or--disability~~ notice. (1) The
5 ~~death, disability, or incompetence~~ of any a principal who
6 has executed a written power of attorney, ~~in-writing-other~~
7 ~~than-a-power-as-described-by-72-5-501~~ durable or otherwise,
8 does not revoke or terminate the agency as to the
9 attorney-in-fact, agent, or other person who, without actual
10 knowledge of the ~~death, disability, or incompetence~~ of the
11 principal, acts in good faith under the power of attorney or
12 agency. Any action so taken, unless otherwise invalid or
13 unenforceable, binds the successors in interest of the
14 principal and---his---heirs,---devisees,---and---personal
15 representatives.

16 (2) The disability or incapacity of a principal who
17 has previously executed a power of attorney that is not a
18 durable power does not revoke or terminate the agency as to
19 the attorney-in-fact or other person who, without actual
20 knowledge of the disability or incapacity of the principal,
21 acts in good faith under the power. Any action so taken,
22 unless otherwise invalid or unenforceable, binds the
23 principal and his successors in interest.

24 (2)(3) An As to acts undertaken in good faith reliance
25 thereon, an affidavit executed by the attorney-in-fact or

1 agent stating that he did not have, at the time of ~~doing--an~~
2 ~~act-pursuant-to-the-power-of-attorney~~ exercise of the power,
3 actual knowledge of the ~~revocation-or~~ termination of the
4 power of-attorney by revocation or of the principal's death,
5 disability, or ~~incompetence~~ incapacity ~~is,--in-the-absence-of~~
6 ~~fraud,~~ conclusive proof of the nonrevocation or
7 nontermination of the power at that time. If the exercise of
8 the power requires execution and delivery of any instrument
9 which is recordable, the affidavit when authenticated for
10 record is likewise recordable.

11 (3)(4) This section ~~shall~~ does not be-construed-to
12 ~~alter-or~~ affect any provision in a power of attorney for its
13 ~~revocation-or~~ termination ~~contained-in-the-power-of-attorney~~
14 by expiration of time or occurrence of an event other than
15 express revocation or a change in the principal's capacity."

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

1 HOUSE BILL NO. 609
2 INTRODUCED BY Ramsey

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE POWER OF
5 ATTORNEY PROVISIONS OF THE PROBATE CODE TO PROVIDE FOR
6 DURABLE POWERS OF ATTORNEY; AMENDING SECTIONS 72-5-501 AND
7 72-5-502, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 72-5-501, MCA, is amended to read:

11 "72-5-501. When power of attorney not affected by
12 disability. (1) Whenever a durable power of attorney is a
13 power of attorney by which a principal designates another
14 his attorney-in-fact or agent by--a-power-of-attorney in
15 writing and the writing contains the words, "This power of
16 attorney shall not be affected by subsequent disability or
17 incapacity of the principal or lapse of time" or "This power
18 of attorney shall become effective upon the disability or
19 incapacity of the principal" or similar words showing the
20 intent of the principal that the authority conferred shall
21 be exercisable notwithstanding his disability, the authority
22 of--the--attorney-in-fact--or-agent-is-exercisable-by-him-as
23 provided--in--the--power--on--behalf--of--the--principal
24 notwithstanding--later the principal's subsequent disability
25 or incapacity, of the principal-at-law-or-later--uncertainty

1 ~~as--to-whether-the-principal-is-dead-or-alive~~ and, unless it
2 states a time of termination, notwithstanding the lapse of
3 time since the execution of the instrument. All acts done by
4 the attorney-in-fact or agent pursuant to the power during
5 any period of disability or incompetence incapacity or
6 uncertainty as to whether the principal is dead or alive
7 have the same effect and inure to the benefit of and bind
8 the principal or and his heirs,--devisees,--and-personal
9 representative successors in interest as if the principal
10 were alive, competent, and not disabled.

11 (2) If a conservator thereafter is appointed for the
12 principal, the attorney-in-fact or agent, during the
13 continuance of the appointment, shall-account is accountable
14 to the conservator ~~rather--than~~ as well as the principal.
15 The conservator has the same power to revoke or amend the
16 power of attorney that the principal would have had if he
17 were not disabled or incompetent--to--revoke,--suspend,--or
18 terminate-all-or-any-part-of-the-power-of-attorney-or-agency
19 incapacitated. A principal may nominate, by a durable power
20 of attorney, the conservator of his estate or guardian of
21 his person for consideration by the court if protective
22 proceedings for the principal's person or estate are
23 thereafter commenced. The court shall make its appointment
24 in accordance with the principal's most recent nomination in
25 a durable power of attorney except for good cause or



1 disqualification."

2 Section 2. Section 72-5-502, MCA, is amended to read:

3 "72-5-502. ~~Other-powers~~ Power of attorney not revoked
4 until ~~knowledge--of--death--or--disability~~ notice. (1) The
5 ~~death, disability, or incompetence~~ of any a principal who
6 has executed a written power of attorney, ~~in-writing-other~~
7 ~~than-a-power-as-described-by-72-5-501~~ durable or otherwise,
8 does not revoke or terminate the agency as to the
9 attorney-in-fact, agent, or other person who, without actual
10 knowledge of the ~~death, disability, or incompetence~~ of the
11 principal, acts in good faith under the power of attorney or
12 agency. Any action so taken, unless otherwise invalid or
13 unenforceable, binds the successors in interest of the
14 principal ~~and---his---heirs,---devisees,---and---personal~~
15 representatives.

16 (2) The disability or incapacity of a principal who
17 has previously executed a power of attorney that is not a
18 durable power does not revoke or terminate the agency as to
19 the attorney-in-fact or other person who, without actual
20 knowledge of the disability or incapacity of the principal,
21 acts in good faith under the power. Any action so taken,
22 unless otherwise invalid or unenforceable, binds the
23 principal and his successors in interest.

24 (2)(3) An As to acts undertaken in good faith reliance
25 thereon, an affidavit executed by the attorney-in-fact or

1 agent stating that he did not have, at the time of doing--an
2 ~~act-pursuant-to-the-power-of-attorney~~ exercise of the power,
3 actual knowledge of the ~~revocation-or~~ termination of the
4 ~~power of-attorney by revocation or of the principal's~~ death,
5 ~~disability, or incompetence~~ incapacity is, in-the-absence-of
6 ~~fraud,~~ conclusive proof of the nonrevocation or
7 nontermination of the power at that time. If the exercise of
8 the power requires execution and delivery of any instrument
9 which is recordable, the affidavit when authenticated for
10 record is likewise recordable.

11 ~~(3)(4)~~ This section ~~shall~~ does not be construed to
12 ~~alter-or~~ affect any provision in a power of attorney for its
13 ~~revocation-or~~ termination ~~contained-in-the-power-of-attorney~~
14 by expiration of time or occurrence of an event other than
15 express revocation or a change in the principal's capacity."

-End-

1 HOUSE BILL NO. 609
2 INTRODUCED BY Ramirez

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE POWER OF
5 ATTORNEY PROVISIONS OF THE PROBATE CODE TO PROVIDE FOR
6 DURABLE POWERS OF ATTORNEY; AMENDING SECTIONS 72-5-501 AND
7 72-5-502, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 72-5-501, MCA, is amended to read:

11 "72-5-501. When power of attorney not affected by
12 disability. (1) Whenever A durable power of attorney is a
13 power of attorney by which a principal designates another
14 his attorney-in-fact or agent by--a-power-of-attorney in
15 writing and the writing contains the words, "This power of
16 attorney shall not be affected by subsequent disability or
17 incapacity of the principal or lapse of time" or "This power
18 of attorney shall become effective upon the disability or
19 incapacity of the principal" or similar words showing the
20 intent of the principal that the authority conferred shall
21 be exercisable notwithstanding ~~his disability, the authority~~
22 ~~of--the--attorney-in-fact--or-agent-is-exercisable-by-him-as~~
23 ~~provided--in--the--power--on--behalf--of--the--principal~~
24 notwithstanding--later the principal's subsequent disability
25 or incapacity, of the principal-at-law-or-later--uncertainty

1 ~~as--to-whether-the-principal-is-dead-or-alive and, unless it~~
2 ~~states a time of termination, notwithstanding the lapse of~~
3 ~~time since the execution of the instrument. All acts done by~~
4 ~~the attorney-in-fact or agent pursuant to the power during~~
5 ~~any period of disability or incompetence incapacity or~~
6 ~~uncertainty as to whether the principal is dead or alive~~
7 ~~have the same effect and inure to the benefit of and bind~~
8 ~~the principal or and his heirs,--devisees,--and-personal~~
9 ~~representative successors in interest as if the principal~~
10 ~~were alive, competent, and not disabled.~~

11 (2) If a conservator thereafter is appointed for the
12 principal, the attorney-in-fact or agent, during the
13 continuance of the appointment, ~~shall-account is accountable~~
14 ~~to the conservator rather--than as well as the principal.~~
15 ~~The conservator has the same power to revoke or amend the~~
16 ~~power of attorney that the principal would have had if he~~
17 ~~were not disabled or ~~incompetent--to--revoke,--suspend,--or~~~~
18 ~~~~terminate-all-or-any-part-of-the-power-of-attorney-or-agency~~~~
19 ~~incapacitated. A principal may nominate, by a durable power~~
20 ~~of attorney, the conservator of his estate or guardian of~~
21 ~~his person for consideration by the court if protective~~
22 ~~proceedings for the principal's person or estate are~~
23 ~~thereafter commenced. The court shall make its appointment~~
24 ~~in accordance with the principal's most recent nomination in~~
25 ~~a durable power of attorney except for good cause or~~



1 disqualification."

2 Section 2. Section 72-5-502, MCA, is amended to read:

3 "72-5-502. ~~Other-powers~~ Power of attorney not revoked
4 until ~~knowledge--of--death--or--disability~~ notice. (1) The
5 ~~death, disability, or incompetence~~ of any a principal who
6 has executed a written power of attorney, ~~in-writing-other~~
7 ~~than-a-power-as-described-by-72-5-501~~ durable or otherwise,
8 does not revoke or terminate the agency as to the
9 attorney-in-fact, agent, or other person who, without actual
10 knowledge of the ~~death, disability, or incompetence~~ of the
11 principal, acts in good faith under the power of attorney or
12 agency. Any action so taken, unless otherwise invalid or
13 unenforceable, binds the successors in interest of the
14 principal and---his---heirs,---devisees,---and---personal
15 representatives.

16 (2) The disability or incapacity of a principal who
17 has previously executed a power of attorney that is not a
18 durable power does not revoke or terminate the agency as to
19 the attorney-in-fact or other person who, without actual
20 knowledge of the disability or incapacity of the principal,
21 acts in good faith under the power. Any action so taken,
22 unless otherwise invalid or unenforceable, binds the
23 principal and his successors in interest.

24 (2)(3) An As to acts undertaken in good faith reliance
25 thereon, an affidavit executed by the attorney-in-fact or

1 agent stating that he did not have, at the time of doing--an
2 ~~act-pursuant-to-the-power-of-attorney~~ exercise of the power,
3 actual knowledge of the ~~revocation or termination~~ of the
4 ~~power of-attorney~~ by revocation or of the principal's death,
5 ~~disability, or incompetence~~ incapacity is, in the absence of
6 ~~fraud,~~ conclusive proof of the nonrevocation or
7 nontermination of the power at that time. If the exercise of
8 the power requires execution and delivery of any instrument
9 which is recordable, the affidavit when authenticated for
10 record is likewise recordable.

11 (3)(4) This section shall does not be construed to
12 ~~alter or affect any provision in a power of attorney for its~~
13 ~~revocation or termination contained in the power of attorney~~
14 by expiration of time or occurrence of an event other than
15 express revocation or a change in the principal's capacity."

-End-

HOUSE BILL NO. 609

INTRODUCED BY RAMIREZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE POWER OF ATTORNEY PROVISIONS OF THE PROBATE CODE TO PROVIDE FOR DURABLE POWERS OF ATTORNEY; AMENDING SECTIONS 72-5-501 AND 72-5-502, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 72-5-501, MCA, is amended to read:

"72-5-501. When power of attorney not affected by disability. (1) Whenever A durable power of attorney is a power of attorney by which a principal designates another his attorney-in-fact or agent ~~by--a-power-of-attorney~~ in writing and the writing contains the words, "This power of attorney shall not be affected by subsequent disability or incapacity of the principal or lapse of time" or "This power of attorney shall become effective upon the disability or incapacity of the principal" or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding ~~his-disability,;the-authority of--the--attorney-in-fact--or-agent-is-exercisable-by-him-as provided--in--the--power--on--behalf---of---the---principal notwithstanding--later~~ the principal's subsequent disability or incapacity, ~~of-the-principal-at-law-or-later--uncertainty~~

~~as--to-whether-the-principai-is-dead-or-alive~~ and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument. All acts done by the attorney-in-fact or agent pursuant to the power during any period of disability or ~~incompetence~~ 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 and his heirs,;--devisees,;and-personal representative~~ successors in interest as if the principal were alive, competent, and not disabled.

(2) If a conservator thereafter is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, ~~shall-account~~ is accountable to the conservator ~~rather--than as well as~~ the principal. The conservator has the same power to revoke or amend the power of attorney that the principal would have had if he were not disabled or ~~incompetent--to--revoke,;--suspend,;--or terminate-all-or-any-part-of-the-power-of-attorney-or-agency incapacitated.~~ A principal may nominate, by a durable power of attorney, the conservator of his estate or guardian of his person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or



1 disqualification."

2 Section 2. Section 72-5-502, MCA, is amended to read:

3 "72-5-502. ~~Other powers~~ Power of attorney not revoked
4 until ~~knowledge--of--death--or--disability~~ notice. (1) The
5 ~~death, disability, or incompetence~~ of any a principal who
6 has executed a written power of attorney, ~~in writing other~~
7 ~~than a power as described by 72-5-501~~ durable or otherwise,
8 does not revoke or terminate the agency as to the
9 attorney-in-fact, agent, or other person who, without actual
10 knowledge of the ~~death, disability, or incompetence~~ of the
11 principal, acts in good faith under the power of attorney or
12 agency. Any action so taken, unless otherwise invalid or
13 unenforceable, binds the successors in interest of the
14 principal and his heirs, devisees, and personal
15 representatives.

16 (2) The disability or incapacity of a principal who
17 has previously executed a power of attorney that is not a
18 durable power does not revoke or terminate the agency as to
19 the attorney-in-fact or other person who, without actual
20 knowledge of the disability or incapacity of the principal,
21 acts in good faith under the power. Any action so taken,
22 unless otherwise invalid or unenforceable, binds the
23 principal and his successors in interest.

24 (2)(3) An As to acts undertaken in good faith reliance
25 thereon, an affidavit executed by the attorney-in-fact or

1 agent stating that he did not have, at the time of doing--an
2 ~~act pursuant to the power of attorney~~ exercise of the power,
3 actual knowledge of the ~~revocation or termination of the~~
4 ~~power of attorney by revocation or of the principal's death,~~
5 ~~disability, or incompetence~~ incapacity is, in the absence of
6 fraud, conclusive proof of the nonrevocation or
7 nontermination of the power at that time. If the exercise of
8 the power requires execution and delivery of any instrument
9 which is recordable, the affidavit when authenticated for
10 record is likewise recordable.

11 (3)(4) This section shall does not be construed to
12 alter or affect any provision in a power of attorney for its
13 revocation or termination contained in the power of attorney
14 by expiration of time or occurrence of an event other than
15 express revocation or a change in the principal's capacity."

-End-