

28-LS1057\U
Bannister
3/6/14

CS FOR HOUSE BILL NO. 254()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES HUGHES AND GRUENBERG

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to powers of attorney; relating to the uniform probate code; and**
2 **providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 13.06.050(1) is repealed and reenacted to read:

5 (1) "agent" means a person granted authority to act for a principal
6 under a power of attorney, whether denominated an agent, attorney-in-fact, or
7 otherwise; "agent" includes an original agent, coagent, successor agent, and a person
8 to which an agent's authority is delegated;

9 *** Sec. 2.** AS 13.06.050(46) is amended to read:

10 (46) "state" means a state of the United States, the District of
11 Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or a
12 territory or insular possession subject to the jurisdiction of the United States;

13 *** Sec. 3.** AS 13.06.050 is amended by adding new paragraphs to read:

14 (57) "durable," with respect to a power of attorney, means not

terminated by the principal's incapacity; in this paragraph, "incapacity" has the meaning given in AS 13.26.359;

(58) "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(59) "power of attorney" means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term "power of attorney" is used;

(60) "principal" means an individual who grants authority to an agent in a power of attorney;

(61) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(62) "sign" means, with present intent to authenticate or adopt a record,

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic sound, symbol, or process.

* **Sec. 4.** AS 13.26.332 is amended to read:

Sec. 13.26.332. Statutory form power of attorney. A person who wishes to designate another as [ATTORNEY-IN-FACT OR] agent by a power of attorney may execute a statutory power of attorney set out in substantially the following form:

GENERAL POWER OF ATTORNEY

THE POWERS GRANTED FROM THE PRINCIPAL TO THE AGENT OR AGENTS IN THE FOLLOWING DOCUMENT ARE VERY BROAD. THEY MAY INCLUDE THE POWER TO DISPOSE, SELL, CONVEY, AND ENCUMBER YOUR REAL AND PERSONAL PROPERTY. ACCORDINGLY, THE FOLLOWING DOCUMENT SHOULD ONLY BE USED AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS DOCUMENT, YOU SHOULD SEEK COMPETENT ADVICE.

YOU MAY REVOKE THIS POWER OF ATTORNEY AT

ANY TIME.

Pursuant to AS 13.26.338 - 13.26.359 [AS 13.26.338 - 13.26.353], I, (Name of principal), of (Address of principal), do hereby appoint (Name and address of agent or agents), my agent(s) [ATTORNEY(S)-IN-FACT] to act as indicated below in my name, place, and stead in any way which I myself could do, if I were personally present, with respect to the following matters, as each of them is defined in AS 13.26.344, to the full extent that I am permitted by law to act through an agent:

INITIAL THE BOXES BELOW TO INDICATE THE POWERS YOU WANT TO GIVE YOUR AGENT OR AGENTS. INITIAL THE BOX FOR "YES" THAT IS OPPOSITE A CATEGORY BELOW TO GIVE YOUR AGENT OR AGENTS THE POWER IN THAT CATEGORY. INITIAL THE BOX FOR "NO" THAT IS OPPOSITE A CATEGORY BELOW TO INDICATE THAT YOU ARE NOT GIVING YOUR AGENT OR AGENTS THE POWER IN THAT CATEGORY. INITIAL A BOX FOR EVERY CATEGORY [THE AGENT OR AGENTS YOU HAVE APPOINTED WILL HAVE ALL THE POWERS LISTED BELOW UNLESS YOU DRAW A LINE THROUGH A CATEGORY, AND INITIAL THE BOX OPPOSITE THAT CATEGORY].

	<u>YES</u>	<u>NO</u>
(A) real estate transactions	()	<u>()</u>
(B) transactions involving tangible personal property, chattels, and goods	()	<u>()</u>
(C) bonds, shares, and commodities transactions	()	<u>()</u>
(D) banking transactions	()	<u>()</u>
(E) business operating transactions	()	<u>()</u>
(F) insurance transactions	()	<u>()</u>
(G) estate transactions	()	<u>()</u>

(H) [GIFT TRANSACTIONS ()
 (I)] claims and litigation ()
(J) [(J)] personal relationships and affairs ()
(J) [(K)] benefits from government programs
 and civil or military service ()
(K) [(L)] records, reports, and statements ()
(L) [(M)] delegation ()
(M) [(N)] voter registration and absentee
 ballot requests ()
(N) retirement plans
 (O) all other matters, including those
 specified as follows: ()

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

The agent or agents you have appointed WILL NOT have the power to do any of the following acts UNLESS you INITIAL the box opposite that category:

() create, amend, revoke, or terminate an inter vivos trust;
() make a gift, subject to the limitations of AS 13.26.344(h) and
any special instructions in this power of attorney;
() create or change a beneficiary designation.

IF YOU HAVE APPOINTED MORE THAN ONE AGENT,
CHECK ONE OF THE FOLLOWING:

() Each agent may exercise the powers conferred separately, without
 the consent of any other agent.
 () All agents shall exercise the powers conferred jointly, with the
 consent of all other agents.

TO INDICATE WHEN THIS DOCUMENT SHALL
BECOME EFFECTIVE, CHECK ONE OF THE FOLLOWING:

() This document shall become effective upon the date of my signature.

() This document shall become effective upon the date of my incapacity [DISABILITY] and shall not otherwise be affected by my incapacity [DISABILITY].

IF YOU HAVE INDICATED THAT THIS DOCUMENT SHALL BECOME EFFECTIVE ON THE DATE OF YOUR SIGNATURE, CHECK ONE OF THE FOLLOWING:

() This document shall not be affected by my subsequent incapacity [DISABILITY].

() This document shall be revoked by my subsequent incapacity [DISABILITY].

IF YOU HAVE INDICATED THAT THIS DOCUMENT SHALL BECOME EFFECTIVE UPON THE DATE OF YOUR SIGNATURE AND WANT TO LIMIT THE TERM OF THIS DOCUMENT, COMPLETE THE FOLLOWING:

This document shall only continue in effect for _____ () years from the date of my signature.

NOTICE OF REVOCATION OF THE POWERS GRANTED IN THIS DOCUMENT

You may revoke one or more of the powers granted in this document. Unless otherwise provided in this document, you may revoke a specific power granted in this power of attorney by completing a special power of attorney that includes the specific power in this document that you want to revoke. Unless otherwise provided in this document, you may revoke all the powers granted in this power of attorney by completing a subsequent power of attorney.

NOTICE TO THIRD PARTIES

A third party who relies on the reasonable representations of an agent [ATTORNEY-IN-FACT] as to a matter relating to a power granted by a properly executed statutory form power of attorney does not incur

any liability to the principal or to the principal's heirs, assigns, or estate as a result of permitting the agent [ATTORNEY-IN-FACT] to exercise the authority granted by the power of attorney. A third party who fails to honor a properly executed statutory form power of attorney may be liable to the principal, the agent [ATTORNEY-IN-FACT], the principal's heirs, assigns, or estate for a civil penalty, plus damages, costs, and fees associated with the failure to comply with the statutory form power of attorney. If the power of attorney is one which becomes effective upon the incapacity [DISABILITY] of the principal, the incapacity [DISABILITY] of the principal is established by an affidavit, as required by law.

IN WITNESS WHEREOF, I have hereunto signed my name
this ____ day of _____, ____.

Signature of Principal

Acknowledged before me at _____
_____ on _____.

Signature of Officer or Notary

* **Sec. 5.** AS 13.26.335 is amended to read:

Sec. 13.26.335. Additional optional provisions to statutory form power of attorney. Each of the following provisions may be included in a statutory form power of attorney:

(1) [REPEALED.

(2)] YOU MAY DESIGNATE AN ALTERNATE AGENT [ATTORNEY-IN-FACT]. ANY ALTERNATE YOU DESIGNATE WILL BE ABLE TO EXERCISE THE SAME POWERS AS THE AGENT(S) YOU NAMED AT THE BEGINNING OF THIS DOCUMENT. IF YOU WISH TO DESIGNATE AN ALTERNATE OR ALTERNATES, COMPLETE THE FOLLOWING:
If the agent(s) named at the beginning of this document is unable or unwilling to serve or continue to serve, then I appoint the following

agent to serve with the same powers:

First alternate or successor agent [ATTORNEY-IN-FACT]

(Name and address of alternate)

Second alternate or successor agent [ATTORNEY-IN-FACT]

(Name and address of alternate)

(3) YOU MAY NOMINATE A GUARDIAN OR CONSERVATOR. IF YOU WISH TO NOMINATE A GUARDIAN OR CONSERVATOR, COMPLETE THE FOLLOWING:

In the event that a court decides that it is necessary to appoint a guardian or conservator for me, I hereby nominate (Name and address of person nominated) to be considered by the court for appointment to serve as my guardian or conservator, or in any similar representative capacity.

* **Sec. 6.** AS 13.26.341 is amended to read:

Sec. 13.26.341. Applicability of provisions of statutory form power of attorney.

In the instrument set out in AS 13.26.332 - 13.26.335,

(1) if the principal has appointed more than one person to act as [ATTORNEY-IN-FACT OR] agent and failed to check whether the agents may act "jointly" or "severally," the agents are required to act jointly;

(2) if the principal has failed to indicate when the instrument shall become effective, the instrument shall become effective upon the date of the principal's signature;

(3) if the principal has indicated that the instrument shall become effective upon the date of the principal's signature or has failed to indicate when the instrument shall become effective and has failed to indicate the effect of the principal's subsequent incapacity [DISABILITY] on the instrument, the instrument shall be revoked by the subsequent incapacity [DISABILITY] of the principal;

(4) if the principal has failed to indicate a specific term for the instrument, the instrument shall continue in effect until revoked.

* **Sec. 7.** AS 13.26.344(a) is amended to read:

(a) In a statutory form power of attorney, the language conferring general authority with respect to real estate transactions shall be construed to mean that, as to an estate or interest in land of the principal, whether in the estate or elsewhere, the principal authorizes the agent to

(1) accept as a gift or as security for a loan, demand, buy, lease, receive, or otherwise acquire either ownership or possession of any estate or interest in land;

(2) sell, exchange, convey, quitclaim, release, surrender, mortgage, encumber, partition or consent to the partitioning, [REVOKE, CREATE OR MODIFY A TRUST,] grant options concerning, lease or sublet, or otherwise to dispose of, an estate or interest in land;

(3) release in whole or in part, assign the whole or a part of, satisfy in whole or in part, and enforce a mortgage, encumbrance, lien, or other claim to land that exists, or is claimed to exist, in favor of the principal;

(4) do any act of management or of conservation with respect to an estate or interest in land owned, or claimed to be owned, by the principal, including by way of illustration, but not of restriction, power to insure against any casualty, liability, or loss, obtain or regain possession or protect the estate or interest, pay, compromise, or contest taxes or assessments, or apply for refunds in connection with a payment, compromise, or tax, purchase supplies, hire assistance of labor, and make repairs or alterations in the structures or land;

(5) use, develop, modify, alter, replace, remove, erect, or install structures or other improvements on land in which the principal has, or claims to have, an estate or interest;

(6) demand, receive, or obtain money or any other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of an interest in land or of one or more of the transactions enumerated in this subsection; conserve, invest, disburse, or use anything so received for purposes enumerated in this

subsection; and reimburse the agent for an expenditure properly made in the execution of the powers conferred by the statutory form power of attorney;

(7) participate in any reorganization with respect to real property and receive and hold any shares of stock or instrument of similar character received under a plan of reorganization, and act with respect to a plan of reorganization, including by way of illustration, but not of restriction, power to sell or otherwise to dispose of shares, to exercise or to sell an option, conversion, or similar right, and to vote in person by the granting of a proxy;

(8) agree and contract, in any manner, and with any person and on any terms that the agent may select, for the accomplishment of any of the purposes enumerated in this subsection, and perform, rescind, reform, release, or modify an agreement or contract made by or on behalf of the principal;

(9) execute, acknowledge, seal, and deliver a deed, [REVOCATION, DECLARATION OR MODIFICATION OF TRUST,] mortgage, lease, notice, check, or other instrument that the agent considers useful for the accomplishment of any of the purposes enumerated in this subsection;

(10) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to, a claim existing in favor of, or against, the principal based on or involving a real estate transaction or intervene in any related action;

(11) hire, discharge, and compensate an attorney, accountant, expert witness, or assistant when the agent considers that action to be desirable for the proper execution of a power described in this subsection, and for the keeping of records about that action; and

(12) do any other act or acts that the principal can do through an agent with respect to any estate or interest in land.

* **Sec. 8.** AS 13.26.344(b) is amended to read:

(b) In a statutory form power of attorney, the language conferring general authority with respect to tangible personal property, chattels, and goods transactions shall be construed to mean that, as to tangible personal property, chattels, or goods owned by the principal, whether located in the state or elsewhere, the principal

authorizes the agent to

(1) accept as a gift, or as a security for a loan, reject, demand, buy, receive, or otherwise acquire either ownership or possession of chattels or goods or an interest in the tangible personal property, chattels, or goods;

(2) sell, exchange, convey, release, surrender, mortgage, encumber, pledge, hypothecate, pawn, [REVOKE, CREATE, OR MODIFY A TRUST,] grant options concerning, lease or sublet to others, or otherwise dispose of tangible personal property, chattels, or goods or an interest in them;

(3) release in whole or in part, assign the whole or a part of, satisfy in whole or in part, and enforce a mortgage, encumbrance, lien, or other claim that exists, or is claimed to exist, in favor of the principal with respect to any tangible personal property, chattels, or goods or an interest in them;

(4) do any act of management or of conservation with respect to any tangible personal property, chattels, or goods or to an interest in any tangible personal property, chattels, or goods owned, or claimed to be owned, by the principal, including by way of illustration, but not of restriction, power to insure against any casualty, liability, or loss, obtain or regain possession, or protect the tangible personal property, chattels, or goods or an interest in them, pay, compromise, or contest taxes or assessments, apply for refunds in connection with a payment, compromise, or tax, move from place to place, store for hire or on a gratuitous bailment, use, alter, and make repairs or alterations of any tangible personal property, chattels, or goods, or an interest in them;

(5) demand, receive, and obtain money or any other thing of value to which the principal is, or may become, or may claim to be, entitled as the proceeds of any tangible personal property, chattels, or goods or of an interest in them, or of one or more of the transactions enumerated in this subsection, conserve, invest, disburse, or use anything so received for purposes enumerated in this subsection, and reimburse the agent for any expenditures properly made in the execution of the powers conferred by the power of attorney;

(6) agree and contract, in any manner, and with any person and on any terms that the agent may select, for the accomplishment of the purposes enumerated in

1 this subsection, and perform, rescind, reform, release, or modify any agreement or
2 contract or any other similar agreement or contract made by or on behalf of the
3 principal;

4 (7) execute, acknowledge, seal, and deliver a conveyance,
5 [REVOCAION, DECLARATION OR MODIFICATION OF TRUST,] mortgage,
6 lease, notice, check or other instrument that the agent considers useful for the
7 accomplishment of the purposes enumerated in this subsection;

8 (8) prosecute, defend, submit to arbitration, settle, and propose or
9 accept a compromise with respect to, a claim existing in favor of, or against, the
10 principal based on or involving a transaction involving tangible personal property,
11 chattels, or goods, or intervene in an action or proceeding;

12 (9) hire, discharge, and compensate an attorney, accountant, expert
13 witness, or assistant when the agent considers the action to be desirable to the proper
14 execution of a power described in this subsection, and for the keeping of records about
15 that action;

16 (10) do any other act or acts that the principal can do through an agent
17 with respect to any chattels or goods or interest in any tangible personal property,
18 chattels, or goods.

19 * **Sec. 9.** AS 13.26.344(c) is amended to read:

20 (c) In a statutory form power of attorney, the language conferring general
21 authority with respect to bonds, shares, and commodities transactions shall be
22 construed to mean that, with respect to a bond, share, or commodity of the principal,
23 whether in the state or elsewhere, the principal authorizes the agent to

24 (1) accept as a gift, or as a security for a loan, reject, demand, buy,
25 receive, or otherwise acquire either ownership or possession of, a bond, share, or
26 instrument of similar character including, by way of illustration, but not of restriction,
27 stock in a corporation organized under 43 U.S.C. 1601 et seq. (Alaska Native Claims
28 Settlement Act), commodity interest, or an instrument with respect to a bond, share, or
29 instruments of similar character, together with the interest, dividends, proceeds, or
30 other distributions connected with a bond, share, or instrument of a similar character;

31 (2) sell, exchange, transfer, release, surrender, hypothecate, pledge,

[REVOKE, CREATE, OR MODIFY A TRUST,] grant options concerning, loan, trade in, or otherwise dispose of a bond, share, instrument of similar character, commodity interest, or a related instrument;

(3) release, assign the whole or part of, satisfy in whole or in part, and enforce a pledge, encumbrance, lien, or other claim as to a bond, share, instrument of similar character, commodity interest, or a related interest, when the pledge, encumbrance, lien, or other claim is owned, or claimed to be owned, by the principal;

(4) do any act of management or of conservation with respect to a bond, share, instrument of similar character, commodity interest, or a related instrument, owned or claimed to be owned by the principal or in which the principal has or claims to have an interest, including by way of illustration, but not of restriction, power to insure against a casualty, liability, or loss, obtain or regain possession or protect the principal's interest, pay, compromise, or contest taxes or assessments, apply for a refund in connection with a payment, compromise, or tax, consent to and participate in a reorganization, recapitalization, liquidation, merger, consolidation, sale or lease or other change in or revival of a corporation or other association, or in the financial structure of a corporation or other association, or in the priorities, voting rights, or other special rights with respect to a corporation or association, become a depositor with a protective, reorganization or similar committee of the bond, share, other instrument of similar character, commodity interest or a related instrument, belonging to the principal, make a payment reasonably incident to them, and exercise or sell an option, conversion, or similar right, or vote in person or by the granting of a proxy for the accomplishment of the purposes enumerated in this subsection;

(5) carry in the name of a nominee selected by the agent evidence of the ownership of a bond, share, other instrument of similar character, commodity interest, or related instrument belonging to the principal;

(6) employ, in any way believed to be desirable by the agent, a bond, share, other instrument of similar character, commodity interest, or a related instrument, in which the principal has or claims to have an interest, for the protection or continued operation of a speculative or margin transaction personally begun or

personally guaranteed, in whole or in part, by the principal;

(7) demand, receive, or obtain money or any other thing of value to which the principal is, or may claim to be, entitled as the proceeds of an interest in a bond, share, other instrument of similar character, commodity interest or a related instrument, or of one or more of the transactions enumerated in this subsection, conserve, invest, disburse, or use anything so received for purposes enumerated in this subsection; and reimburse the agent for an expenditure properly made in the execution of the powers conferred by the statutory form power of attorney;

(8) agree and contract, in any manner, and with a broker or other person, and on terms that the agent may select, for the accomplishment of the purposes enumerated in this subsection, and perform, rescind, reform, release, or modify the agreement or contract or other similar agreement made by or on behalf of the principal;

(9) execute, acknowledge, seal, and deliver a consent, agreement, authorization, assignment, [REVOCATION, DECLARATION OR MODIFICATION OF TRUST,] notice, waiver of notice, check, or other instrument that the agent considers useful for the accomplishment of the purposes enumerated in this subsection;

(10) execute, acknowledge and file a report or certificate required by law or regulation;

(11) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to, a claim existing in favor of, or against, the principal based on or involving a bond, share, or commodity transactions, or intervene in a related action or proceeding;

(12) hire, discharge, and compensate an attorney, accountant, expert witness, or assistant when the agent considers that action to be desirable for the proper execution of the powers described in this subsection, and for the keeping of records about that action; and

(13) do any other act or acts that the principal can do through an agent, with respect to an interest in a bond, share, or other instrument of similar character, commodity, or instrument with respect to a commodity.

1 * **Sec. 10.** AS 13.26.344(d) is amended to read:

2 (d) In a statutory form power of attorney, the language conferring general
3 authority with respect to banking transactions shall be construed to mean that, as to a
4 banking transaction engaged in by the principal, whether in the state or elsewhere, the
5 principal authorizes the agent to

6 (1) continue, modify, or terminate a deposit account or other banking
7 arrangement made by or on the behalf of the principal before the execution of the
8 power of attorney;

9 (2) open, either in the name of the agent alone or in the name of the
10 principal alone, or in both their names jointly, a deposit account of any type in a
11 financial institution selected by the agent, hire a safe deposit box or vault space, and
12 enter into contracts for the procuring of other services made available by the
13 institution that the agent considers desirable;

14 (3) make, sign, and deliver checks or drafts for any purpose, and
15 withdraw funds or property of the principal deposited with or left in the custody of a
16 financial institution, wherever located, either before or after the execution of the
17 power of attorney;

18 (4) prepare financial statements concerning the assets and liabilities or
19 income and expenses of the principal, and deliver the statements to a financial
20 institution or person whom the agent believes to be reasonably entitled to them;

21 (5) receive statements, vouchers, notices, or other documents from a
22 financial institution and act with respect to them;

23 (6) have free access to a safe deposit box or vault to which the
24 principal would have access if personally present;

25 (7) borrow money as the agent may determine, give security out of the
26 assets of the principal as the agent considers necessary for the borrowing, and pay,
27 renew, or extend the time of payment of a financial institution by any other procedure
28 made available by the institution;

29 (8) make, assign, endorse, discount, guarantee, use, and negotiate
30 promissory notes, bills of exchange, checks, drafts, **credit and debit cards, electronic**
31 **transaction authorizations**, or other negotiable or nonnegotiable paper of the

principal, or payable to the principal or to the principal's order, receive the cash or other proceeds of them; and accept any bill of exchange or draft drawn by any person upon the principal, and pay it when due;

(9) receive for the principal and deal in and with a negotiable or nonnegotiable instrument in which the principal has or claims to have an interest;

(10) apply for and receive letters of credit or traveler's checks from a banker or banking institution selected by the agent, giving indemnity or other agreements in connection with the applications or receipts that the agent considers desirable or necessary;

(11) consent to an extension in the time of payment with respect to commercial paper or a banking transaction in which the principal has an interest or by which the principal is, or might be, affected in any way;

(12) pay, compromise, or contest taxes or assessments and apply for refunds in connection with the payment, compromise, or contest;

(13) demand, receive, or obtain money or any other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of any banking transaction conducted by the principal or by the agent in the execution of the powers described in this subsection, or partly by the principal and partly by the agent; conserve, invest, disburse, or use anything received for purposes enumerated in this subsection, and reimburse the agent for an expenditure properly made in the execution of the powers conferred by the statutory form power of attorney;

(14) execute, acknowledge, seal, and deliver an instrument, in the name of the principal or otherwise, that the agent considers useful for the accomplishment of a purpose enumerated in this subsection;

(15) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to, a claim existing in favor of, or against, the principal based on or involving a banking transaction, or intervene in an action or proceeding relating to a banking transaction;

(16) hire, discharge, and compensate an attorney, accountant, expert witness, or assistant when the agent considers that the action is desirable for the proper execution of the powers described in this subsection, and for the keeping of records

about that action; and

(17) do any other act or acts that the principal can do through an agent in connection with a banking transaction that does or might in any way affect the financial or other interests of the principal.

* **Sec. 11.** AS 13.26.344(e) is amended to read:

(e) In a statutory form power of attorney, the language conferring general authority with respect to business operating transactions shall be construed to mean that, with respect to a business in which the principal has an interest, whether in the state or elsewhere, the principal authorizes the agent

(1) to the extent that an agent is permitted by law to act for a principal, to discharge and perform any duty or liability and exercise any right, power, privilege, or option that the principal has, or claims to have, under a contract of partnership, whether as a general or special partner, enforce the terms of the partnership agreement for the protection of the principal that the agent considers desirable or necessary, and defend, submit to arbitration, settle, or compromise an action to which the principal is a party because of membership in a partnership;

(2) to exercise in person or by proxy or enforce a right, power, privilege, or option that the principal has as the holder of a bond, share, or other instrument of similar character, and defend, submit to arbitration, settle, or compromise an action to which the principal is a party because of a bond, share, or other instrument of similar character;

(3) with respect to a business enterprise that is owned solely by the principal, to

(A) continue, modify, renegotiate, extend and terminate a contractual arrangement made with a person, firm, association, or corporation by or on behalf of the principal;

(B) determine the policy of the enterprise as to the location of the site or sites to be used for its operation, the nature and extent of the business to be undertaken by it, the methods of manufacturing, selling, merchandising, financing, accounting, and advertising to be employed in its operation, the amount and types of insurance to be carried, the mode of

1 securing compensation and dealing with accountants, attorneys, and employees
2 required for its operation, agree and contract, in any manner, and with any
3 person and on any terms, that the agent considers desirable or necessary to
4 carry out any or all of the decisions of the agent as to policy, and perform,
5 rescind, reform, release, or modify an agreement or contract or any other
6 similar agreement or contract made by or on behalf of the principal;

7 (C) change the name or form of organization under which the
8 business is operated and enter into a partnership agreement with others or
9 organize a corporation to take over the operation of the business, or any part of
10 it, that the agent considers desirable or necessary;

11 (D) demand and receive all money that is or may become due
12 to the principal, or that may be claimed by the principal or on the principal's
13 behalf, in the operation of the enterprise, and control and disburse the funds in
14 the operation of the enterprise in any way that the agent considers desirable or
15 necessary, and engage in banking transactions that the agent considers
16 desirable or necessary to carry out the execution of the powers of the agent
17 described in this subparagraph;

18 (4) to prepare, sign, file, and deliver all reports, compilations of
19 information, returns, and other papers with respect to a business operating transaction
20 of the principal that is required by a government agency or that the agent considers
21 desirable or necessary for any purpose, and make any payments with respect to the
22 agency;

23 (5) to pay, compromise, or contest taxes or assessments and do any act
24 or acts that the agent considers desirable or necessary to protect the principal from
25 illegal or unnecessary taxation, fines, penalties, or assessments in connection with the
26 business operations;

27 (6) to demand, receive, or obtain money or any other thing of value to
28 which the principal is or may claim to be entitled as the proceeds of a business
29 operation of the principal, conserve, invest, disburse, and use anything so received for
30 purposes enumerated in this subsection, and reimburse the agent for expenditures
31 properly made in the execution of the powers conferred by the statutory form power of

attorney;

(7) **to** execute, acknowledge, seal, and deliver a deed, assignment, mortgage, lease, notice, consent, agreement, authorization check, or other instrument that the agent considers useful for the accomplishment of any of the purposes enumerated in this subsection;

(8) **to** prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to, a claim existing in favor of, or against, the principal based on or involving a business operating transaction or intervene in a related action;

(9) **to** hire, discharge, and compensate an attorney, accountant, expert witness, or assistant when the agent reasonably believes that the action is desirable for the proper execution of the powers described in this subsection, and for the keeping of records about that action;

(10) to operate, buy, sell, enlarge, reduce, or terminate an ownership interest;

(11) to put additional capital into an entity or business in which the principal has an interest;

(12) to join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business;

(13) to sell or liquidate all or part of an entity or business; and

(14) to establish the value of an entity or business under a buy-out agreement to which the principal is a party; and

(15) [AND (10)] **to** do any other act or acts that the principal can do through an agent in connection with a business operated by the principal that the agent considers desirable or necessary for the furtherance or protection of the interests of the principal.

* **Sec. 12.** AS 13.26.344(f) is amended to read:

(f) In a statutory form power of attorney, the language conferring general authority with respect to insurance transactions shall be construed to mean that, as to a contract of insurance in which the principal has an interest, whether in the state or elsewhere, the principal authorizes the agent to

(1) continue, pay the premium or assessment on, modify, rescind, release, or terminate any contract of life, accident, health, disability, or liability insurance, or any combination of insurance, procured by or on behalf of the principal before the creation of the agency that insures either the principal or any other person without regard to whether the principal is or is not a beneficiary under the insurance coverage;

(2) procure new, different, or additional contracts on the life of the principal or protecting the principal with respect to ill health, disability, accident, or liability of any sort, select the amount, the type of insurance contract, and the mode of payment under each policy, pay the premium or assessment on, modify, rescind, release, or terminate a contract so procured by the agent; and designate the beneficiary of the contract of insurance, except that the agent cannot be the beneficiary unless the agent is spouse, child, grandchild, parent, brother, or sister of the principal;

(3) apply for and receive a loan on the security of the contract of insurance, whether for the payment of a premium or for the procuring of cash; surrender and receive the cash surrender value; exercise an election as to beneficiary or mode of payment, change the manner of paying premiums, change or convert the type of insurance contract with respect to any insurance that the principal has, or claims to have, as to any power described in this subsection; and change the beneficiary of a contract of insurance, except that the agent cannot be the new beneficiary unless the agent is spouse, child, grandchild, parent, brother, or sister of the principal;

(4) demand, receive, or obtain money or any other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of a contract of insurance or of one or more of the transactions enumerated in this subsection; conserve, invest, disburse, or use anything received for purposes enumerated in this subsection and reimburse the agent for expenditures properly made in the execution of the powers conferred by the statutory form power of attorney;

(5) apply for and procure available government aid in the guaranteeing or paying of premiums of a contract of insurance on the life of the principal;

(6) sell, assign, hypothecate, borrow upon, or pledge the interest of the

principal in any contract of insurance;

(7) pay, from the proceeds of an insurance contract or otherwise, compromise, or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or the proceeds of or liability accruing by reason of a tax or assessment;

(8) agree and contract, in any manner and with any person and on any terms that the agent may select, for the accomplishment of the purposes enumerated in this subsection, and perform, rescind, reform, release, or modify any agreement or contract;

(9) execute, acknowledge, seal, and deliver any consent, demand, request, application, agreement, indemnity, authorization, assignment, pledge, notice, check, receipt, waiver, or other instrument that the agent considers useful for the accomplishment of a purpose enumerated in this subsection;

(10) continue, procure, pay the premium or assessment on, modify, rescind, release, terminate, or otherwise deal with any contract of insurance, other than those enumerated in (1) and (2) of this subsection, or any combination of insurance; and do any act with respect to the contract or with respect to its proceeds or enforcement that the agent considers desirable or necessary for the promotion or protection of the interests of the principal;

(11) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to a claim existing in favor of, or against, the principal based on or involving an insurance transaction, or intervene in an action relating to an insurance transaction;

(12) hire, discharge, and compensate an attorney, accountant, expert witness, or assistant when the agent considers the action to be desirable for the proper execution of a power described in this subsection, and for the keeping of records about that action; [AND]

(13) **exercise investment powers available under a contract of insurance or annuity; and**

(14) do any other act or acts that the principal can do through an agent in connection with procuring, supervising, managing, modifying, enforcing, and

1 terminating contracts of insurance in which the principal is the insured or has an
2 interest.

3 * **Sec. 13.** AS 13.26.344(h) is repealed and reenacted to read:

4 (h) In a statutory form power of attorney, unless the power of attorney
5 otherwise provides, the language conferring specific authority with respect to gift
6 transactions shall be construed to mean that the principal authorizes the agent only

7 (1) to make a gift of the principal's property only as the agent
8 determines is consistent with the principal's objectives if actually known by the agent
9 and, if unknown, as the agent determines is consistent with the principal's best interest
10 based on all relevant factors, including

11 (A) the value and nature of the principal's property;

12 (B) the principal's foreseeable obligations and need for
13 maintenance;

14 (C) minimization of taxes, including income, estate,
15 inheritance, generation-skipping transfer, and gift taxes;

16 (D) eligibility for a benefit, a program, or assistance under a
17 statute or regulation; and

18 (E) the principal's personal history of making or joining in
19 making gifts;

20 (2) subject to (1) of this subsection, to make outright to, or for the
21 benefit of, a person, a gift of any of the principal's property, including by the exercise
22 of a presently exercisable general power of appointment held by the principal, in an
23 amount for each donee not to exceed the annual dollar limits of the federal gift tax
24 exclusion under 26 U.S.C. 2503(b) (Internal Revenue Code), as amended, without
25 regard to whether the federal gift tax exclusion applies to the gift, or if the principal's
26 spouse agrees to consent to a split gift under 26 U.S.C. 2513 (Internal Revenue Code),
27 as amended, in an amount for each donee not to exceed twice the annual federal gift
28 tax exclusion limit; in this paragraph, "presently exercisable general power of
29 appointment," with respect to property or a property interest subject to a power of
30 appointment, means power exercisable at the time in question to vest absolute
31 ownership in the principal individually, the principal's estate, the principal's creditors,

or the creditors of the principal's estate; the term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period; the term does not include a power exercisable in a fiduciary capacity or only by will; and

(3) subject to (1) of this subsection, to consent, under 26 U.S.C. 2513 (Internal Revenue Code), as amended, to the splitting of a gift made by the principal's spouse in an amount for each donee not to exceed the aggregate annual gift tax exclusions for both spouses.

* **Sec. 14.** AS 13.26.344(j) is amended to read:

(j) In a statutory form power of attorney, the language conferring general authority with respect to personal relationships **is neither dependent on, nor limited by, authority that an agent may or may not have with respect to gifts under AS 13.26.332 - 13.26.359, and** shall be construed to mean that, as to real and personal property owned by the principal, whether in the state or elsewhere, the principal authorizes the agent to

(1) do all acts necessary to maintain the customary standard of living of the spouse, children, [AND] other dependents of the principal, **whether living when the power of attorney is executed or later born, and individuals whom the principal has customarily supported or indicated the intent to support,** including by way of illustration and not by way of restriction, power to provide living quarters by purchase, **by** lease, or by other contract, or by any payment of the operating costs, including interest, amortization payments, repairs, and taxes, of premises owned by the principal and occupied by the principal's family or dependents, to provide normal domestic help for the operation of the household, to provide usual vacations and usual travel expenses, to provide usual educational facilities, [AND] to provide funds for all the current living costs of the spouse, children, and other dependents, including, among other things, shelter, clothing, food, and incidentals, **and to make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party;**

1 (2) provide, whenever necessary, medical, dental, and surgical care,
2 hospitalization, and custodial care for the spouse, children, and other dependents of the
3 principal;

4 (3) continue whatever provision has been made by the principal for the
5 principal's spouse, children, and other dependents, with respect to automobiles, or
6 other means of transportation, including by way of illustration, but not by way of
7 restriction, power to license, insure, and replace automobiles owned by the principal
8 and customarily used by the spouse, children, or other dependents of the principal;

9 (4) continue whatever charge accounts have been opened for the
10 convenience of the principal's spouse, children, or other dependents, open any new
11 accounts that the agent considers desirable to accomplish the purposes enumerated in
12 this subsection, and pay the items charged on these accounts by a person authorized or
13 permitted by the principal to make the charges;

14 (5) continue the discharge of any services or duties assumed by the
15 principal to a parent, relative, or friend of the principal;

16 (6) supervise, enforce, defend, or settle any claim by or against the
17 principal arising out of property damages or personal injuries suffered by or caused by
18 the principal, or under any circumstance that the resulting loss will or may fall on the
19 principal;

20 (7) continue payments incidental to the membership or affiliation of
21 the principal in a church, club, society, order, or other organization, or continue
22 contributions to the organization;

23 (8) demand, receive, or obtain money or any other thing of value to
24 which the principal is or may become or may claim to be entitled as remuneration for
25 services performed, or as a stock dividend or distribution, or as interest or principal
26 upon indebtedness, or as a periodic distribution of profits from any partnership or
27 business in which the principal has or claims an interest, and endorse, collect, or
28 otherwise realize upon an instrument for the payment received;

29 (9) prepare, execute, and file all tax, social security, unemployment
30 insurance, and information returns required by the laws of the United States or of any
31 state or subdivision, or of any foreign government; prepare, execute, and file all other

papers and instruments that the agent considers desirable or necessary for the safeguarding of the principal against excess or illegal taxation or against penalties imposed for claimed violation of a law or regulation; and pay, compromise, or contest or apply for refunds in connection with a tax or assessment for which the principal is or may be liable;

(10) use an asset of the principal to perform a power enumerated in this subsection, including by way of illustration and not by way of restriction, power to draw money by check or otherwise from a bank deposit of the principal, to sell land or a chattel, bond, share, commodity interest, or other asset of the principal, to borrow money, and to pledge as security for the loan any asset, including insurance, that belongs to the principal;

(11) execute, acknowledge, verify, seal, file, and deliver an application, consent, petition, notice, release, waiver, agreement, or other instrument that the agent considers useful to accomplish a purpose enumerated in this subsection;

(12) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to a claim existing in favor of, or against, the principal based on or involving a transaction enumerated in this subsection, or intervene in any action or proceeding related to a transaction;

(13) hire, discharge, and compensate an attorney, accountant, expert witness, or assistant when the agent considers the action to be desirable for the proper execution of any of the powers described in this subsection, and for the keeping of records, about that action; [AND]

(14) do any other act or acts that the principal can do through an agent, for the welfare of the spouse, children, or dependents of the principal or for the preservation and maintenance of the other personal relationships of the principal to a parent, relative, friend, or organization; and

(15) act as the principal's personal representative under 42 U.S.C. 1320d (Health Insurance Portability and Accountability Act and secs. 1171 - 1179, Social Security Act), as amended, and applicable regulations, in making decisions related to the past, present, or future payment for the provision of health care consented to by the principal or anyone authorized under the law of

this state to consent to health care on behalf of the principal.

* **Sec. 15.** AS 13.26.344(k) is amended to read:

(k) In a statutory form power of attorney, the language conferring general authority with respect to benefits from government programs **or civil or** [AND] military service shall be construed to mean that, whether the benefits from the government programs or **civil or** military service have accrued to the principal in the state or elsewhere, the principal authorizes the agent to

(1) prepare and execute vouchers, applications, requests, forms, and other legal documents in the name of the principal for all benefits, bonuses, dividends, allowances, and reimbursements payable under any government program or military service of the United States, a state, or a subdivision, **including allowances and reimbursements for transportation of the individuals described in (j)(1) of this section, and for shipment of their household effects,** and receive, endorse, and collect the proceeds of a check payable to the order of the principal drawn on the treasurer or other fiscal officer or depository of the United States, a state, or a subdivision;

(2) take possession and order the removal and shipment of property of the principal from any post, warehouse, depot, dock, or other place or storage or safekeeping and execute and deliver any release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument that the agent considers desirable or necessary for that purpose;

(3) prepare, file, and prosecute the claim of the principal to any benefit or assistance to which the principal is, or claims to be, entitled under the provisions of a statute or regulation of the United States, a state, or a subdivision;

(4) receive the financial proceeds of a claim of the type described in this subsection; conserve, invest, disburse or use anything received for purposes enumerated in this subsection; and reimburse the agent for expenditures properly made in the execution of the powers conferred by the statutory form power of attorney;

(5) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to a claim existing in favor of, or against, the principal based on or involving a benefit from a government program or military

service, or intervene in an action relating to a claim;

(6) hire, discharge, or compensate an attorney, accountant, expert witness, or assistant when the agent considers that action to be desirable for the proper execution of any of the powers described in this subsection; [AND]

(7) enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's behalf, a benefit or program; and

(8) do any other act or acts that the principal can do through an agent, and that [WHICH] the agent considers desirable or necessary to assure to the principal and to the dependents of the principal [,] the maximum possible benefit from the government programs or civil or military service of the United States, a state, or a subdivision.

* **Sec. 16.** AS 13.26.344 is amended by adding a new subsection to read:

(q) In a statutory form power of attorney, the language conferring authority with respect to retirement plans shall be construed to mean that the principal authorizes the agent to

(1) select the form and timing of payments under a retirement plan and withdraw benefits from a plan;

(2) make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another;

(3) establish a retirement plan in the principal's name;

(4) make contributions to a retirement plan;

(5) exercise investment powers available under a retirement plan; and

(6) borrow from, sell assets to, or purchase assets from a retirement plan.

* **Sec. 17.** AS 13.26 is amended by adding a new section to read:

Sec. 13.26.346. Validity of power of attorney executed in another state. A power of attorney executed other than in this state is valid in this state if, when the power of attorney was executed, the execution complied with

(1) the law of the jurisdiction where the power of attorney was executed; or

(2) the requirements for a military power of attorney under 10 U.S.C.

1044b, as amended.

* **Sec. 18.** AS 13.26.347 is amended to read:

Sec. 13.26.347. Validity of modified statutory form power of attorney. A power of attorney that satisfies the requirements of AS 13.26.332 - 13.26.344 is not prevented from being a statutory form power of attorney by the fact that it also contains additional language that

(1) eliminates from the power of attorney one or more of the powers enumerated in one or more of the subsections of AS 13.26.344 with respect to a section of the statutory form power of attorney that is not eliminated by the principal;

(2) supplements one or more of the powers enumerated in one or more of the subsections of AS 13.26.344 with respect to a section of the statutory form power of attorney that is not eliminated by the principal by specifically listing additional powers of the agent; [OR]

(3) makes an additional provision that is not substantially inconsistent with the other provisions of the statutory form power of attorney; or

(4) relieves an agent of liability for breach of a duty under AS 13.26.349, except to the extent the provision

(A) relieves the agent of liability for breach of duty committed dishonestly, with an improper motive, or with reckless indifference to the purposes of the power of attorney or the best interest of the principal; or

(B) was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

* **Sec. 19.** AS 13.26 is amended by adding new sections to read:

Sec. 13.26.348. Agent's acceptance and liability. (a) Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.

(b) An agent that violates a provision in AS 13.26.332 - 13.26.359 is liable to the principal or the principal's successors in interest for the amount required to

(1) restore the value of the principal's property to what it would have

1 been had the violation not occurred; and

2 (2) reimburse the principal or the principal's successors in interest for
3 the attorney fees and costs paid on the agent's behalf.

4 **Sec. 13.26.349. Agent's duties.** (a) Notwithstanding provisions in the power of
5 attorney, an agent that has accepted appointment shall

6 (1) act in accordance with the principal's reasonable expectations to the
7 extent actually known by the agent and, otherwise, in the principal's best interest;

8 (2) act in good faith; and

9 (3) act only within the scope of authority granted in the power of
10 attorney.

11 (b) Except as otherwise provided in the power of attorney, an agent that has
12 accepted appointment shall

13 (1) act loyally for the principal's benefit;

14 (2) act so as not to create a conflict of interest that impairs the agent's
15 ability to act impartially in the principal's best interest;

16 (3) act with the care, competence, and diligence ordinarily exercised
17 by agents in similar circumstances;

18 (4) keep a record of all receipts, disbursements, and transactions made
19 on behalf of the principal;

20 (5) cooperate with a person that has authority to make health care
21 decisions for the principal to carry out the principal's reasonable expectations to the
22 extent actually known by the agent and, otherwise, act in the principal's best interest;
23 and

24 (6) attempt to preserve the principal's estate plan, to the extent actually
25 known by the agent, if preserving the plan is consistent with the principal's best
26 interest based on all relevant factors, including

27 (A) the value and nature of the principal's property;

28 (B) the principal's foreseeable obligations and need for
29 maintenance;

30 (C) minimization of taxes, including income, estate,
31 inheritance, generation-skipping transfer, and gift taxes; and

(D) eligibility for a benefit, a program, or assistance under a statute or regulation.

(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 plan.

(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.

(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.

(f) Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.

(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 care, competence, and diligence in selecting and monitoring the person.

(h) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, or, upon the death of the principal, the personal representative or successor in interest of the principal's estate. If so requested, within 30 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.

* **Sec. 20.** AS 13.26.350 is amended to read:

Sec. 13.26.350. When statutory form power of attorney is not affected by

1 **incapacity** [DISABILITY OR INCOMPETENCE] of principal. (a) The
2 subsequent **incapacity** [DISABILITY OR INCOMPETENCE] of a principal does not
3 revoke or terminate the authority of an **agent** [ATTORNEY-IN-FACT] who acts
4 under a power of attorney in a writing executed by a principal if the writing contains
5 the words "This power of attorney shall become effective upon the **incapacity**
6 [DISABILITY] of the principal," or contains the words "This power of attorney shall
7 not be affected by the subsequent **incapacity** [DISABILITY] of the principal," or
8 words substantially similar showing the intent of the principal that the authority
9 conferred shall be exercisable notwithstanding the principal's subsequent **incapacity**
10 [DISABILITY, INCOMPETENCE,] or uncertainty as to whether the principal is dead
11 or alive.

12 (b) An act done by an **agent** [ATTORNEY-IN-FACT] under a power granted
13 in a power of attorney under AS 13.26.332 - 13.26.344 during a period of **incapacity**
14 [DISABILITY, INCOMPETENCE,] or uncertainty as to whether the principal is dead
15 or alive has the same effect and enures to the benefit of and binds a principal and the
16 principal's distributees, devisees, legatees, and personal representatives as if **there**
17 **were no incapacity of** the principal [WERE COMPETENT AND NOT DISABLED].
18 If a conservator is later appointed for the principal, during the continuance of the
19 appointment, **the agent is accountable to the conservator as well as to the principal**
20 [THE ATTORNEY-IN-FACT SHALL ACCOUNT TO THE CONSERVATOR
21 RATHER THAN TO THE PRINCIPAL]. The conservator has the same power **to**
22 **revoke, suspend, or terminate the power of attorney that** the principal would have
23 if **there was no incapacity of** the principal [WERE NOT DISABLED OR
24 INCOMPETENT TO REVOKE, SUSPEND, OR TERMINATE THE POWER OF
25 ATTORNEY].

26 * **Sec. 21.** AS 13.26 is amended by adding new sections to read:

27 **Sec. 13.26.351. Judicial relief.** (a) The following persons may petition a court
28 in accordance with the provisions of AS 13.26.165 - 13.26.324 to construe a power of
29 attorney, review the agent's conduct, and grant appropriate relief:

- 30 (1) the principal or the agent;
31 (2) the principal's attorney or other legal representative;

- (3) a guardian, conservator, or other fiduciary acting for the principal;
- (4) a person authorized to make health care decisions for the principal;
- (5) the principal's spouse, parent, or descendant;
- (6) an individual who would qualify as a presumptive heir of the principal;
- (7) 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;
- (8) the Department of Health and Social Services, the Department of Administration, or other governmental agency having statutory authority to protect the welfare of the principal;
- (9) the principal's caregiver, custodian, or another person that demonstrates sufficient interest in the principal's welfare; and
- (10) a person asked to accept the power of attorney.

(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 power of attorney.

Sec. 13.26.352. Relationship to other laws. (a) AS 13.26.332 - 13.26.359 do not supersede any other law applicable to a financial institution or other entity, and the other law controls if inconsistent with AS 13.26.332 - 13.26.359.

(b) The remedies in AS 13.26.332 - 13.26.359 are not exclusive and do not abrogate any right or remedy under the law of this state.

* **Sec. 22.** AS 13.26.353(a) is repealed and reenacted to read:

(a) For purposes of AS 13.26.332 - 13.26.344,

(1) the incapacity of a principal shall be established by affidavit stating that the principal is unable to manage property or business affairs because the principal

(A) has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance, and this impairment is the result of mental illness, mental deficiency, physical illness, physical disability, advanced age, use of

1 drugs, chronic intoxication, or other similar medical or psychological reason,
2 to such an extent that the principal is unable to manage the principal's property
3 or affairs; or

4 (B) is

5 (i) missing;

6 (ii) detained, including incarcerated in a penal system;

7 or

8 (iii) outside the United States and unable to return; and

9 (2) if the incapacity is based on (1)(A) of this subsection, two
10 physicians or similarly qualified medical professionals who have personally examined
11 the principal shall sign the affidavit; however, the affidavit may be signed by only one
12 physician or similarly qualified medical professional if only one physician or similarly
13 qualified medical professional is available and the affidavit executed by the person
14 states that only one physician or similarly qualified medical professional is available.

15 * **Sec. 23.** AS 13.26.353(b) is amended to read:

16 (b) A third party who relies on the reasonable representations of an **agent**
17 [ATTORNEY-IN-FACT] designated under **AS 13.26.332 - 13.26.347** [AS 13.26.332 -
18 13.26.344] as to a matter relating to a power granted by a properly executed statutory
19 form power of attorney does not incur a liability to the principal or the principal's
20 heirs, assigns, or estate as a result of permitting the **agent** [ATTORNEY-IN-FACT] to
21 exercise the authority granted by the power of attorney.

22 * **Sec. 24.** AS 13.26 is amended by adding a new section to read:

23 **Sec. 13.26.354. Acceptance of power of attorney.** (a) A third party asked to
24 accept a power of attorney may request, and rely upon, without further investigation

25 (1) an agent's certification under penalty of perjury of any factual
26 matter concerning the principal, agent, or power of attorney;

27 (2) an English translation of the power of attorney if the power of
28 attorney contains, in whole or in part, language other than English; and

29 (3) an opinion of counsel as to any matter of law concerning the power
30 of attorney if the person making the request provides in a writing or other record the
31 reason for the request.

1 (b) An English translation or an opinion of counsel requested under this
2 section must be provided at the principal's expense unless the request is made more
3 than seven business days after the power of attorney is presented for acceptance.

4 (c) For purposes of this section, a person that conducts activities through
5 employees is without actual knowledge of a fact relating to a principal, agent, or
6 power of attorney if the employee conducting the transaction involving the power of
7 attorney is without actual knowledge of the fact.

8 (d) Except as otherwise provided in (e) of this section,

9 (1) a person shall accept an acknowledged power of attorney or request
10 a certification, a translation, or an opinion of counsel under (a) of this section not later
11 than seven business days after presentation of the power of attorney for acceptance;

12 (2) if a person requests a certification, a translation, or an opinion of
13 counsel under (a) of this section, the person shall accept the power of attorney not later
14 than five business days after receipt of the certification, translation, or opinion of
15 counsel; and

16 (3) a person may not require an additional or different form of power
17 of attorney for authority granted in the power of attorney presented.

18 (e) A person is not required to accept an acknowledged power of attorney if

19 (1) the person is not otherwise required to engage in a transaction with
20 the principal in the same circumstances;

21 (2) engaging in a transaction with the agent or principal in the same
22 circumstances would be inconsistent with federal law;

23 (3) the person has actual knowledge of the termination of the agent's
24 authority or of the power of attorney before exercise of the power;

25 (4) a request for a certification, a translation, or an opinion of counsel
26 under (a) of this section is refused;

27 (5) the person in good faith believes that the power is not valid or that
28 the agent does not have the authority to perform the act requested, whether or not a
29 certification, a translation, or an opinion of counsel under (a) of this section has been
30 requested or provided; or

31 (6) the person makes, or has actual knowledge that another person has

made, a report to Department of Health and Social Services or other governmental agency, stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

(f) A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to

(1) a court order mandating acceptance of the power of attorney; and

(2) liability for reasonable attorney fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.

* **Sec. 25.** AS 13.26 is amended by adding a new section to read:

Sec. 13.26.355. Termination of power of attorney; agent's resignation;

notice. (a) Except as provided in AS 13.26.356, a power of attorney terminates when

(1) the principal dies;

(2) there is an incapacity of the principal, if the power of attorney is not durable;

(3) the principal revokes the power of attorney;

(4) the power of attorney provides that it terminates;

(5) the purpose of the power of attorney is accomplished; or

(6) the principal revokes the agent's authority, there is an incapacity of the agent, the agent dies, or the agent resigns, and the power of attorney does not provide for another agent to act under the power of attorney.

(b) Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal and, if there is an incapacity of the principal,

(1) to the conservator or guardian, if one has been appointed for the principal, and a coagent or successor agent; or

(2) if there is no person described in (1) of this subsection, to

(A) the principal's custodian or caregiver;

(B) another person reasonably believed by the agent to have sufficient interest in the principal's welfare; or

(C) a governmental agency having statutory authority to protect the welfare of the principal.

* **Sec. 26.** AS 13.26.356 is amended to read:

Sec. 13.26.356. Powers of attorney not revoked until notice of death or incapacity [DISABILITY]. (a) The death [, DISABILITY] or incapacity [INCOMPETENCE] of a 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 incapacity [INCOMPETENCE] of the principal, acts in good faith under the power of attorney [OR AGENCY]. Action so taken, unless otherwise invalid or unenforceable, binds the principal and the heirs, devisees, and personal representatives of the principal.

(b) An affidavit executed by the [ATTORNEY-IN-FACT OR] agent stating that the [ATTORNEY-IN-FACT OR] agent did not have, at the time of doing an act under the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death [, DISABILITY] or incapacity [INCOMPETENCE], is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power of attorney at that time. If the exercise of the power of attorney requires execution and delivery of an instrument that is recordable, the affidavit when authenticated for record is likewise recordable.

(c) A special power of attorney created before September 4, 1988, shall be construed to grant the agent [ATTORNEY-IN-FACT] the powers set out in that special power of attorney.

* **Sec. 27.** AS 13.26.358(a) is amended to read:

(a) A public home care provider may not accept a designation as [ATTORNEY-IN-FACT OR] agent by general or special power of attorney for an individual to whom the provider furnishes services unless the designation is held jointly with another individual who is not a public home care provider.

* **Sec. 28.** AS 13.26 is amended by adding a new section to article 5 to read:

Sec. 13.26.359. Definitions. In AS 13.26.332 - 13.26.359,

(1) "benefits from government programs or civil or military service"

means a benefit, a program, or assistance provided under a statute or regulation, including Social Security, Medicare, and Medicaid; and

(2) "good faith" means honesty in fact;

(3) "incapacity" means inability of an individual to manage property or business affairs because the individual

(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

(B) is

(i) missing;

(ii) detained, including incarcerated in a penal system;

or

(iii) outside the United States and unable to return; and

(4) "retirement plan" means a plan or account created by an employer, the principal, or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary, or owner, including a plan or account under the following sections of 26 U.S.C. (Internal Revenue Code):

(A) an individual retirement account under 26 U.S.C. 408 (Internal Revenue Code), as amended;

(B) a Roth IRA under 26 U.S.C. 408A (Internal Revenue Code), as amended;

(C) an individual retirement account under 26 U.S.C. 408(q) (Internal Revenue Code), as amended;

(D) an annuity or custodial account under 26 U.S.C. 403(b) (Internal Revenue Code), as amended;

(E) a pension, profit-sharing, stock bonus, or other retirement plan qualified under 26 U.S.C. 401(a) (Internal Revenue Code), as amended;

(F) a plan under 26 U.S.C. 457(b) (Internal Revenue Code), as amended; and

(G) a nonqualified deferred compensation plan under 26 U.S.C. 409A (Internal Revenue Code), as amended.

1 * **Sec. 29.** AS 13.26.338(a) and 13.26.353(c) are repealed.

2 * **Sec. 30.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 **APPLICABILITY.** This Act

5 (1) applies to a power of attorney created on or after the effective date of this
6 Act;

7 (2) applies to a judicial proceeding concerning a power of attorney
8 commenced on or after the effective date of this Act;

9 (3) applies to a judicial proceeding concerning a power of attorney
10 commenced before the effective date of this Act, unless the court finds that application of a
11 provision of this Act would substantially interfere with the effective conduct of the judicial
12 proceeding or prejudice the rights of a party, in which case, that provision does not apply, and
13 the superseded law applies; and

14 (4) does not apply to an act done before the effective date of this Act.

15 * **Sec. 31.** This Act takes effect January 1, 2015.