

HOUSE  
BILL NO. 2939

By: Russ of the House

and

Crain of the Senate

An Act relating to probate procedure; amending 58 O.S. 2001, Sections 1072, 1073 and 1074, which relate to the Uniform Durable Power of Attorney Act; modifying scope of durable power of attorney; adding condition for which acts of attorney-in-fact are effective; allowing fiduciary power while principal is on extended absence; defining terms; providing length of time for extended absence; requiring commencement of certain proceedings if extended absence exceeds certain time period; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 58 O.S. 2001, Section 1072, is amended to read as follows:

Section 1072. A durable power of attorney is a power of attorney by which a principal designates another his attorney-in-fact in writing and the writing contains the words "This power of attorney shall not be affected by subsequent disability ~~or~~, incapacity, or extended absence of the principal, or lapse of time", or "This power of attorney shall become effective upon the disability ~~or~~, incapacity, or extended absence of the principal", or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability ~~or~~, incapacity, or extended absence, and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument.

SECTION 2. AMENDATORY 58 O.S. 2001, Section 1073, is amended to read as follows:

Section 1073. All acts done by an attorney-in-fact pursuant to a durable power of attorney during any period of disability ~~or~~, incapacity, or extended absence of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were competent and not disabled, incapacitated, or on an extended absence.

SECTION 3. AMENDATORY 58 O.S. 2001, Section 1074, is amended to read as follows:

Section 1074. A. If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator, guardian of the estate, or other fiduciary charged with the management of all of the principal's property or all of his property except specified exclusions, the attorney-in-fact is accountable to the fiduciary as well as to the principal. The fiduciary has the same power to revoke or amend the power of attorney that the principal would have had if he were not disabled ~~or~~, incapacitated, or on an extended absence.

B. A principal may nominate, by a durable power of attorney, the conservator, guardian 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 disqualification.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1072.3 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. "Extended absence" as used in the Uniform Durable Power of Attorney Act means that a principal has been missing or loses all contact with the designated attorney-in-fact, family members, and friends for a period of more than forty-five (45) days. "Contact" includes but is not limited to face-to-face contact, a communication that can reasonably be verified as having been produced or made by the principal such as a letter, phone call, text message, electronic mail or other electronic communication. If the principal is a member of the Armed Forces of the United States, an extended absence

as defined in this section, shall not exist when the principal is deployed for military service or training or is classified as missing in action or a prisoner of war. A durable power of attorney activated because of an extended absence shall be considered in effect until the principal makes contact with the attorney-in-fact, family members, or friends or until the principal is found.

B. Once a principal's extended absence exceeds the period of time prescribed by Section 941 of Title 58 of the Oklahoma Statutes, the attorney-in-fact shall start proceedings under Section 941 of Title 58 of the Oklahoma Statutes to have the principal declared legally dead.

SECTION 5. This act shall become effective November 1, 2010.

Passed the House of Representatives the 10th day of May, 2010.

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Presiding Officer of the House of  
Representatives

Passed the Senate the 21st day of May, 2010.

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Presiding Officer of the Senate