

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

HOUSE BILL 3343

By: Worthen

AS INTRODUCED

An Act relating to power of attorney; enacting the Medical Uniform Durable Power of Attorney Act of 2022; providing applicability to all powers of attorney concerning health and medical care decisions executed in conformity with the requirements of this act; providing that all powers of attorney concerning health and medical care decisions validly executed prior to the effective date are valid and enforceable according to the statutory provisions in effect at the time of execution; providing that all powers of attorney for health and medical care decisions in accordance with a certain statute after and before a specified date are valid and enforceable; defining term; identifying permissible contents of durable power of attorney; identifying scope of the durable power of attorney; providing procedures by which a durable power of attorney may be executed; providing form; establishing presumption upon execution; avoiding recordation; specifying method of execution after a certain date; validating certain powers of attorney; providing rule of construction; providing length of time for extended absence; requiring commencement of certain proceedings if extended absence exceeds certain time period; making durable power of attorney not affected by disability, incapacity, or extended absence of the principal; stating relation of attorney-in-fact to court-appointed fiduciary; providing that a power of attorney not be revoked until notice; stating effect of affidavit of attorney-in-fact; providing for uniformity of application and construction; amending 58 O.S. 2021, Section 3045, which relates to the Uniform Power of Attorney Act of 2021; clarifying

1 effective date; providing for codification; providing
2 an effective date; and declaring an emergency.

3
4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

5 SECTION 1. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 3050 of Title 58, unless there
7 is created a duplication in numbering, reads as follows:

8 A. Sections 1 through 10 of this act shall be known and may be
9 cited as the "Medical Uniform Durable Power of Attorney Act of
10 2022".

11 B. The provisions of this act shall be applicable to all powers
12 of attorney for health and medical care decisions executed in
13 conformity with the requirements this act.

14 C. All powers of attorney for health and medical care decisions
15 validly executed prior to the effective date of this act shall be
16 valid and enforceable according to the statutory provisions in
17 effect at the time the powers of attorney for health and medical
18 care decisions were executed.

19 D. All powers of attorney for health and medical care decisions
20 executed on or after November 1, 2021, but no later than the
21 effective date of this act, that were executed in accordance with
22 the requirements of Section 1071 et seq. of Title 58 of the Oklahoma
23 Statutes are valid and enforceable according to those statutes.

24

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3051 of Title 58, unless there
3 is created a duplication in numbering, reads as follows:

4 A durable power of attorney is a power of attorney by which a
5 principal designates another his attorney-in-fact in writing and the
6 writing contains the words "This power of attorney shall not be
7 affected by subsequent disability, incapacity, or extended absence
8 of the principal, or lapse of time", or "This power of attorney
9 shall become effective upon the disability, incapacity, or extended
10 absence of the principal", or similar words showing the intent of
11 the principal that the authority conferred shall be exercisable
12 notwithstanding the principal's subsequent disability, incapacity,
13 or extended absence, and, unless it states a time of termination,
14 notwithstanding the lapse of time since the execution of the
15 instrument.

16 SECTION 3. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 3052 of Title 58, unless there
18 is created a duplication in numbering, reads as follows:

19 A. The durable power of attorney may show or state:

20 1. The fact of execution under the provisions of the Medical
21 Uniform Durable Power of Attorney Act;

22 2. The time and conditions under which the power is to become
23 effective;

24 3. The extent and scope of the powers conferred; and

1 4. Who is to exercise the power, including any successor
2 attorney-in-fact, if a prior appointed attorney-in-fact dies, ceases
3 to act, refuses or is unable to serve, or resigns.

4 B. The power may grant complete or limited authority with
5 respect to the principal's:

6 1. Person, including, but not limited to, health and medical
7 care decisions and a do-not-resuscitate consent on the principal's
8 behalf, but excluding:

9 a. the execution, on behalf of the principal, of a
10 Directive to Physicians, an Advance Directive for
11 Health Care, Living Will, or other document, except an
12 Oklahoma standardized format physician orders for
13 life-sustaining treatment form in accordance with the
14 provisions of this act, purporting to authorize life-
15 sustaining treatment decisions, and

16 b. the making of life-sustaining treatment decisions
17 unless the power complies with the requirements for a
18 health care proxy under the Oklahoma Advance Directive
19 Act or the Oklahoma Do-Not-Resuscitate Act; and

20 2. Property, including homestead property, whether real,
21 personal, intangible, or mixed.

22 SECTION 4. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 3053 of Title 58, unless there
24 is created a duplication in numbering, reads as follows:

1 A. A durable power of attorney may be executed in accordance
2 with the following provisions; provided, however, failure to execute
3 a power of attorney as prescribed in this section shall not be
4 construed to diminish the effect or validity of an otherwise
5 properly executed durable power of attorney:

6 1. The principal shall sign the power of attorney at its end,
7 or, if the principal is unable, some other person shall subscribe
8 his or her name thereto in his or her presence and by his or her
9 direction. The principal, or such other person, shall sign in the
10 presence of two witnesses, each of whom shall sign his or her name
11 in the presence of the principal and each other;

12 2. The witnesses shall not be:

- 13 a. under eighteen (18) years of age,
- 14 b. related to the principal by blood or marriage, or
- 15 c. the attorney-in-fact or anyone related to the
- 16 attorney-in-fact by blood or marriage; and

17 3. The execution of the power of attorney shall be in
18 substantially the following form:

19 Signed: _____

20 (Principal's signature)

21 City, County, and State of Residence

22 _____
23 _____

1 The principal is personally known to me and I believe the
2 principal to be of sound mind. I am eighteen (18) years of age
3 or older. I am not related to the principal by blood or
4 marriage, or related to the attorney-in-fact by blood or
5 marriage. The principal has declared to me that this instrument
6 is his or her power of attorney granting to the named attorney-
7 in-fact the power and authority specified herein, and that he or
8 she has willingly made and executed it as his or her free and
9 voluntary act for the purposes herein expressed.

10 Witness: _____

11 Witness: _____

12 STATE OF OKLAHOMA)
13) SS.

14 COUNTY OF _____)

15 Before me, the undersigned authority, on this
16 ____ day of _____, 20__, personally appeared
17 _____ (principal),
18 _____ (witness), and
19 _____ (witness),

20 whose names are subscribed to the foregoing instrument in their
21 respective capacities, and all of said persons being by me duly
22 sworn, the principal declared to me and to the said witnesses in
23 my presence that the instrument is his or her power of attorney,
24 and that the principal has willingly and voluntarily made and

1 executed it as the free act and deed of the principal for the
2 purposes therein expressed, and the witnesses declared to me
3 that they were each eighteen (18) years of age or older, and
4 that neither of them is related to the principal by blood or
5 marriage, or related to the attorney-in-fact by blood or
6 marriage.

7 _____
8 Notary Public

9 My Commission Expires:
10 _____

11 B. Execution of a durable power of attorney in substantially
12 the form prescribed by this section shall create a presumption that
13 the principal understands the nature and purpose of the power of
14 attorney and has executed the same while being of sound mind, and of
15 his or her free will. A person dealing with the attorney-in-fact
16 shall not be required to inquire into the validity or adequacy of
17 the execution of the power of attorney, nor shall any such person be
18 required to inquire into the validity or propriety of any act of an
19 attorney-in-fact apparently authorized by a power of attorney
20 executed pursuant to this section.

21 C. Notwithstanding the provisions of Section 26 of Title 16 of
22 the Oklahoma Statutes, county clerks shall record any durable power
23 of attorney executed in substantially the form prescribed in
24 subsection A of this section.

1 D. A power of attorney executed in another state shall be
2 considered valid for purposes of the Uniform Durable Power of
3 Attorney Act if the power of attorney and the execution of the power
4 of attorney substantially comply with the requirements of the
5 Medical Uniform Durable Power of Attorney Act.

6 E. Nothing in this section shall be construed to affect powers
7 of attorney established pursuant to common law.

8 SECTION 5. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 3054 of Title 58, unless there
10 is created a duplication in numbering, reads as follows:

11 A. "Extended absence" as used in the Medical Uniform Durable
12 Power of Attorney Act means that a principal has been missing or
13 loses all contact with the designated attorney-in-fact, family
14 members, and friends for a period of more than forty-five (45) days.
15 "Contact" includes, but is not limited to, face-to-face contact, a
16 communication that can reasonably be verified as having been
17 produced or made by the principal such as a letter, phone call, text
18 message, electronic mail, or other electronic communication. If the
19 principal is a member of the Armed Forces of the United States, an
20 extended absence, as defined in this section, shall not exist when
21 the principal is deployed for military service or training or is
22 classified as missing in action or a prisoner of war. A durable
23 power of attorney activated because of an extended absence shall be
24 considered in effect until the principal makes contact with the

1 attorney-in-fact, family members, or friends or until the principal
2 is found.

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

8 SECTION 6. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 3055 of Title 58, unless there
10 is created a duplication in numbering, reads as follows:

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

17 SECTION 7. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 3056 of Title 58, unless there
19 is created a duplication in numbering, reads as follows:

20 A. If, following execution of a durable power of attorney, a
21 court of the principal's domicile appoints a conservator, guardian
22 of the estate, or other fiduciary charged with the management of all
23 of the principal's property or all of the principal's property
24 except specified exclusions, the attorney-in-fact is accountable to

1 the fiduciary as well as to the principal. The fiduciary has the
2 same power to revoke or amend the power of attorney that the
3 principal would have had if the principal were not disabled or
4 incapacitated.

5 B. A principal may nominate, by a durable power of attorney,
6 the conservator, guardian of his or her estate, or guardian of his
7 or her person for consideration by the court if protective
8 proceedings for the principal's person or estate are thereafter
9 commenced. The court shall make its appointment in accordance with
10 the principal's most recent nomination in a durable power of
11 attorney except for good cause or disqualification.

12 SECTION 8. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 3057 of Title 58, unless there
14 is created a duplication in numbering, reads as follows:

15 A. Death of the principal revokes and terminates the power of
16 attorney; provided, however, the death of a principal who has
17 executed a written power of attorney, durable or otherwise, does not
18 revoke or terminate the agency as to the attorney-in-fact or other
19 person, who, without actual knowledge of the death of the principal,
20 acts in good faith under the power. Any action so taken, unless
21 otherwise invalid or unenforceable, binds successors in interest of
22 the principal.

23 B. The disability or incapacity of a principal who has
24 previously executed a written power of attorney that is not a

1 durable power does not revoke or terminate the agency as to the
2 attorney-in-fact or other person, who, without actual knowledge of
3 the disability or incapacity of the principal, acts in good faith
4 under the power. Any action so taken, unless otherwise invalid or
5 unenforceable, binds the principal and his successors in interest.

6 C. If a durable power of attorney is recorded with the clerk in
7 any county of this state, in the event of revocation of such durable
8 power of attorney, notice of the revocation shall be filed in each
9 county or counties where the durable power of attorney was recorded.
10 Until such notice is recorded, any person or entity may rely on the
11 recorded authority of the attorney-in-fact with respect to matters
12 covered by the records of the county clerk, and the acts of the
13 attorney-in-fact shall be binding on the principal or the
14 principal's successors in interest.

15 SECTION 9. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 3058 of Title 58, unless there
17 is created a duplication in numbering, reads as follows:

18 As to acts undertaken in good-faith reliance thereon, an
19 affidavit executed by the attorney-in-fact under a power of
20 attorney, durable or otherwise, stating that he or she did not have
21 at the time of exercise of the power actual knowledge of the
22 termination of the power by revocation or of the principal's death,
23 disability, or incapacity is conclusive proof of the nonrevocation
24 or nontermination of the power at that time. If the exercise of the

1 power of attorney requires execution and delivery of any instrument
2 that is recordable, the affidavit when authenticated for record is
3 likewise recordable. This section does not affect any provision in
4 a power of attorney for its termination by expiration of time or
5 occurrence of an event other than express revocation or a change in
6 the principal's capacity.

7 SECTION 10. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 3059 of Title 58, unless there
9 is created a duplication in numbering, reads as follows:

10 The Medical Uniform Durable Power of Attorney Act shall be
11 applied and construed to effectuate its general purpose to make
12 uniform the law with respect to the subject of this act among states
13 enacting it.

14 SECTION 11. AMENDATORY 58 O.S. 2021, Section 3045, is
15 amended to read as follows:

16 Except as otherwise provided in this act, on the effective date
17 of this act:

18 1. This act applies to a power of attorney created ~~before~~, on
19 or after the effective date of this act;

20 2. This act applies to a judicial proceeding concerning a power
21 of attorney commenced on or after the effective date of this act;

22 3. This act applies to a judicial proceeding concerning a power
23 of attorney commenced before the effective date of this act unless
24 the court finds that application of a provision of this act would

1 substantially interfere with the effective conduct of the judicial
2 proceeding or prejudice the rights of a party, in which case that
3 provision does not apply and the superseded law applies; and

4 4. A power of attorney created before the effective date of
5 this act is not affected by this act.

6 SECTION 12. This act shall become effective July 1, 2022.

7 SECTION 13. It being immediately necessary for the preservation
8 of the public peace, health or safety, an emergency is hereby
9 declared to exist, by reason whereof this act shall take effect and
10 be in full force from and after its passage and approval.

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12 58-2-9025 JL 01/17/22
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