House Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

CHAPTER 138

HOUSE BILL 2317

AN ACT

AMENDING SECTIONS 14-5501 AND 14-5651, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 11, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-10819; AMENDING SECTIONS 36-3221 AND 36-3223, ARIZONA REVISED STATUTES; RELATING TO FIDUCIARIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 14-5501, Arizona Revised Statutes, is amended to read:

14-5501. Durable power of attorney; creation; validity

A. A durable power of attorney is a written instrument by which a principal designates another person as the principal's agent. The instrument shall contain words that demonstrate the principal's intent that the authority conferred in the durable power of attorney may be exercised:

1. If the principal is subsequently disabled or incapacitated.

2. Regardless of how much time has elapsed, unless the instrument states a definite termination time.

B. The written instrument may demonstrate the principal's intent required by subsection A of this section using either of the following statements or similar language:

1. "This power of attorney is not affected by subsequent disability or incapacity of the principal or lapse of time."

2. "This power of attorney is effective on the disability or incapacity of the principal."

C. A power of attorney executed in another jurisdiction of the United States is valid in this state if the power of attorney was validly executed in the jurisdiction in which it was created.

D. ~~From and after August 1, 1998,~~ Except as provided in section 28-370, an adult, known as the principal, may designate another adult, known as the agent, to make financial decisions on the principal's behalf by executing a written power of attorney that satisfies all of the following requirements:

1. Contains language that clearly indicates that the principal intends to create a power of attorney and clearly identifies the agent.

2. Is signed or marked by the principal or signed in the principal's name by some other individual in the principal's conscious presence and at the principal's direction.

3. Is witnessed by a person other than the agent, the agent's spouse, the agent's children or the notary public.

4. Is executed and attested by its acknowledgment by the principal and by an affidavit of the witness before A notary public and evidenced by the notary public's certificate, under official seal, in substantially the following form:

> I, _____, the principal, sign my name to this power of attorney this _____ day of _____ and, being first duly sworn, do declare to the undersigned authority that I sign and execute this instrument as my power of attorney and that I sign it willingly, or willingly direct another to sign for me, that I execute it as my free and voluntary act for the purposes expressed in the power of attorney and that I am eighteen years

of age or older, of sound mind and under no constraint or undue influence.

_____

Principal

I, _____, the witness, sign my name to the foregoing power of attorney being first duly sworn and do declare to the undersigned authority that the principal signs and executes this instrument as ~~his/her~~ THE PRINCIPAL'S power of attorney and that ~~he/she~~ THE PRINCIPAL signs it willingly, or willingly directs another to sign for ~~him/her~~ THE PRINCIPAL, and that I, in the presence and hearing of the principal, sign this power of attorney as witness to the principal's signing and that to the best of my knowledge the principal is eighteen years of age or older, of sound mind and under no constraint or undue influence.

_____

Witness

The state of _____

County of _____

Subscribed, sworn to and acknowledged before me by _____, the principal, and subscribed and sworn to before me by _____, witness, this _____ day of _____.

(seal)

(signed) _____

_____

(notary public)

E. The execution requirements for the creation of a power of attorney provided in subsection D of this section do not apply if the principal creating the power of attorney is:

1. A person other than a natural person.

2. Any person, if the power of attorney to be created is a power coupled with an interest. For the purposes of this paragraph, "power coupled with an interest" means a power that forms a part of a contract and is security for money or for the performance of a valuable act.

F. A PERSON WHOSE LICENSE AS A FIDUCIARY HAS BEEN SUSPENDED OR REVOKED PURSUANT TO SECTION 14-5651 MAY NOT SERVE AS AN AGENT UNDER A POWER OF ATTORNEY IN ANY CAPACITY UNLESS THE PERSON IS RELATED TO THE PRINCIPAL BY BLOOD, ADOPTION OR MARRIAGE. THIS PROHIBITION DOES NOT APPLY IF THE PERSON'S LICENSE HAS BEEN REINSTATED AND IS IN GOOD STANDING.

Sec. 2. Section 14-5651, Arizona Revised Statutes, is amended to read:

14-5651. Fiduciaries; licensure; qualifications; conduct; removal; exemption; definitions

A. Except as provided by subsection G of this section, the superior court shall not appoint a fiduciary unless that person is ~~certified~~ LICENSED by the supreme court. The supreme court shall administer the ~~certification~~ LICENSURE program and shall adopt rules and establish and collect fees

necessary for its implementation. The supreme court shall deposit, pursuant to sections 35-146 and 35-147, the monies collected pursuant to this subsection in the confidential intermediary and fiduciary fund established by section 8-135. At a minimum the rules adopted pursuant to this subsection shall include the following:

1. A code of conduct.

2. A requirement that fiduciaries post a cash deposit or surety bond with the supreme court.

3. Minimum qualifications.

4. Biennial renewal of ~~certification~~ LICENSURE.

B. As a condition of appointment, the supreme court shall require each applicant for the position of fiduciary to submit a full set of fingerprints to the supreme court for the purpose of obtaining a state and federal criminal records check to determine the suitability of the applicant pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

C. An applicant for ~~certification shall~~ LICENSURE MUST:

1. Be at least twenty-one years of age.

2. Be a citizen of this country.

3. Not have been convicted of a felony.

4. Attest that the applicant has not been found civilly liable in an action that involved fraud, misrepresentation, material omission, misappropriation, theft or conversion.

5. Attend an initial session and thereafter biennial training sessions prescribed by the supreme court on the duties of a fiduciary.

6. Consent in the application form to the jurisdiction of the courts of this state for all actions arising under this article or article 6 of this chapter and appoint the fiduciary program coordinator as the lawful agent for the purpose of accepting service of process in any action, suit or proceeding that relates to the duties of a fiduciary. The program coordinator shall transmit by registered mail to the person's last known address the lawful service of process accepted by the program coordinator. Notwithstanding the provisions of this paragraph, service of process on a public fiduciary or the department of veterans' services shall be made pursuant to the Arizona rules of civil procedure.

D. The superior court shall, and any person may, notify the supreme court if it appears that a fiduciary has violated a rule adopted under this section. The supreme court shall then conduct an investigation and hearing pursuant to its rules. If the supreme court determines that the fiduciary committed the violation it may revoke the fiduciary's ~~certification~~ LICENSE or impose other sanctions, including civil penalties, and shall notify the superior court in each county of this action. The supreme court may then also require the fiduciary to forfeit a cash deposit or surety bond to the extent necessary to compensate the court for the expenses it incurred to conduct the investigation and hearing.

E. A person who in good faith provides information or testimony regarding a fiduciary's misconduct or lack of professionalism is not subject to civil liability.

F. Persons appointed by the chief justice to serve in an advisory capacity to the fiduciary program, staff of the fiduciary program, hearing officers and employees of the administrative office of the courts who participate in the fiduciary program are immune from civil liability for conduct in good faith that relates to their official duties.

G. The requirements of this section do not apply to a financial institution. This exemption does not prevent the superior court from appointing a financial institution as a fiduciary. The supreme court may exempt a fiduciary from the requirements of this section for good cause.

H. This section does not grant any fiduciary or any applicant for a ~~certificate~~ LICENSE as a fiduciary the right to a direct appeal to the supreme court.

I. The supreme court may receive and expend monies from the confidential intermediary and fiduciary fund established ~~pursuant to~~ BY section 8-135 for the purposes of performing the duties related to fiduciaries pursuant to this section.

J. THIS SECTION APPLIES TO ANY SUPREME COURT LICENSED FIDUCIARY WHO IS ACTING AS A GUARDIAN, CONSERVATOR, PERSONAL REPRESENTATIVE, TRUSTEE OR AGENT UNDER A POWER OF ATTORNEY, WHETHER OR NOT THAT PERSON IS ACTING PURSUANT TO COURT APPOINTMENT.

~~J.~~ K. For the purposes of this section:

1. "Fiduciary" means:

(a) A person who for a fee serves as a court appointed guardian or conservator for one or more persons who are unrelated to the fiduciary.

(b) A person who for a fee serves as a court appointed personal representative and who is not related to the decedent, is not nominated in a will or by a power conferred in a will and is not a devisee in the will.

(c) A public fiduciary appointed pursuant to section 14-5601.

(d) The department of veterans' services.

2. "Financial institution" means a bank that is insured by the federal deposit insurance corporation and chartered under the laws of the United States or any state, a trust company that is owned by a bank holding company that is regulated by the federal reserve board or a trust company that is chartered under the laws of the United States or this state.

Sec. 3. Title 14, chapter 11, article 8, Arizona Revised Statutes, is amended by adding section 14-10819, to read:

14-10819. <u>Fiduciaries; service as trustee; limitation</u>

A PERSON WHOSE LICENSE AS A FIDUCIARY HAS BEEN SUSPENDED OR REVOKED PURSUANT TO SECTION 14-5651 MAY NOT SERVE AS A TRUSTEE IN ANY CAPACITY UNLESS THE PERSON IS RELATED TO THE BENEFICIARY BY BLOOD, ADOPTION OR MARRIAGE. THIS PROHIBITION DOES NOT APPLY IF THE PERSON'S LICENSE HAS BEEN REINSTATED AND IS IN GOOD STANDING.

1 Sec. 4. Section 36-3221, Arizona Revised Statutes, is amended to read:
2 36-3221. Health care power of attorney; scope; requirements;
3 limitations; fiduciaries
4 A. A person who is an adult may designate another adult individual or
5 other adult individuals to make health care decisions on that person's behalf
6 or to provide funeral and disposition arrangements in the event of the
7 person's death by executing a written health care power of attorney that
8 meets all of the following requirements:
9 1. Contains language that clearly indicates that the person intends to
10 create a health care power of attorney.
11 2. Except as provided under subsection B OF THIS SECTION, is dated and
12 signed or marked by the person who is the subject of the health care power of
13 attorney.
14 3. Is notarized or is witnessed in writing by at least one adult who
15 affirms that the notary or witness was present when the person dated and
16 signed or marked the health care power of attorney, except as provided under
17 subsection B, and that the person appeared to be of sound mind and free from
18 duress at the time of execution of the health care power of attorney.
19 B. If a person is physically unable to sign or mark a health care
20 power of attorney, the notary or each witness shall verify on the document
21 that the person directly indicated to the notary or witness that the power of
22 attorney expressed the person's wishes and that the person intended to adopt
23 the power of attorney at that time.
24 C. A notary or witness shall not be any of the following:
25 1. A person designated to make medical decisions on the principal's
26 behalf.
27 2. A person directly involved with the provision of health care to the
28 principal at the time the health care power of attorney is executed.
29 D. If a health care power of attorney is witnessed by only one person,
30 that person may not be related to the principal by blood, marriage or
31 adoption and may not be entitled to any part of the principal's estate by
32 will or by operation of law at the time that the power of attorney is
33 executed.
34 E. A PERSON WHOSE LICENSE AS A FIDUCIARY HAS BEEN SUSPENDED OR REVOKED
35 PURSUANT TO SECTION 14-5651 MAY NOT SERVE AS AN AGENT UNDER A POWER OF
36 ATTORNEY IN ANY CAPACITY UNLESS THE PERSON IS RELATED TO THE PRINCIPAL BY
37 BLOOD, ADOPTION OR MARRIAGE. THIS PROHIBITION DOES NOT APPLY IF THE PERSON'S
38 LICENSE HAS BEEN REINSTATED AND IS IN GOOD STANDING.
39 Sec. 5. Section 36-3223, Arizona Revised Statutes, is amended to read:
40 36-3223. Agents; powers and duties; removal; responsibility;
41 fiduciaries
42 A. The individual designated in a health care power of attorney to
43 make health care decisions is an agent entitled to make and communicate these
44 decisions while the principal is unable to do so.

1 B. An agent's authority to make health care decisions on behalf of the
2 principal is limited only by the express language of the health care power of
3 attorney or by court order as prescribed under section 36-3206.
4 C. The appointment of a person to act as an agent is effective until
5 that authority is revoked by the principal or by court order.
6 D. A PERSON WHOSE LICENSE AS A FIDUCIARY HAS BEEN SUSPENDED OR REVOKED
7 PURSUANT TO SECTION 14-5651 MAY NOT SERVE AS AN AGENT UNDER A POWER OF
8 ATTORNEY IN ANY CAPACITY UNLESS THE PERSON IS RELATED TO THE PRINCIPAL BY
9 BLOOD, ADOPTION OR MARRIAGE. THIS PROHIBITION DOES NOT APPLY IF THE PERSON'S
10 LICENSE HAS BEEN REINSTATED AND IS IN GOOD STANDING.

APPROVED BY THE GOVERNOR JULY 13, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 13, 2009.

Passed the House June 9, 20 09

by the following vote: 58 Ayes,

1 Nays, 1 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate July 1, 20 09

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

1st day of July, 20 09

at 8:25 o'clock A. M.

Susan K Myers
Secretary to the Governor

Approved this 13th day of

July 2009

at 9:13 o'clock A M.

Janice K. Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 13 day of July, 20 09

at 3:20 o'clock P. M.

Secretary of State

H.B. 2317