



# SENATE BILL 569: Uniform Power of Attorney Act.

2017-2018 General Assembly

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<b>Committee:</b>		<b>Date:</b>	August 15, 2017
<b>Introduced by:</b>		<b>Prepared by:</b>	Bill Patterson Staff Attorney
<b>Analysis of:</b>	S.L. 2017-153		

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**OVERVIEW:** *S.L. 2017-153 adopts the North Carolina Uniform Power of Attorney Act (UPAA), largely replacing existing law governing the creation, interpretation, and application of powers of attorney. With limited exceptions, the UPAA applies to powers of attorney created before, on, or after the effective date of the act, unless its terms clearly express a contrary intent, or unless application of the act would substantially impair the rights of a party. S.L. 2017-153 also repeals superseded statutory provisions and makes conforming changes to related provisions of law.*

*This act becomes effective January 1, 2018.*

**CURRENT LAW:** A power of attorney is a written document by which a person is appointed to act on the behalf of another person. Provisions governing powers of attorney are set forth in various articles of Chapter 32A of the General Statutes.<sup>1</sup>

**BILL ANALYSIS:** Section 1 enacts new Chapter 32C, the "North Carolina Uniform Power of Attorney Act" (UPAA), which governs all aspect of the creation, interpretation, and application of powers of attorney, with the exception of the following powers that are expressly exempt from the UPAA:

- Health care powers of attorney under Article 3 of Chapter 32A.
- Authorizations to provide health care to a minor under Article 4 of Chapter 32A.
- A power of attorney to the extent it is coupled with an interest in the subject of the power.
- A proxy to exercise voting or management rights with respect to an entity.
- A power created by a government-prescribed form for a governmental purpose.

The UPAA is organized into four articles:

- Article 1 sets forth general provisions governing the creation and use of a power of attorney, which generally apply in the absence of contrary terms contained in the power of attorney. However, the terms of the power of attorney cannot override certain mandatory provisions of the UPAA intended to protect the principal, agent, and persons asked to rely on the agent's authority.

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<sup>1</sup> These include:

Article 1, Statutory Short Form Power of Attorney;  
Article 2, Durable Power of Attorney;  
Article 2A, Authority of Attorney-In-Fact to Make Gifts and to Renounce;  
Article 2B, Gifts Authorized by Court Order;  
Article 3, Health Care Powers of Attorney;  
Article 4, Consent to Health Care for Minor; and  
Article 5, Enforcement of Power of Attorney.

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- Article 2 sets forth provisions governing the construction of powers of attorney and specifies things an agent can do on behalf of a principal only if the power of attorney expressly grants that authority. In addition, Article 2 contains provisions governing an agent's authority to act with respect to real property, tangible personal property, stocks and bonds, commodities and options, banks and other financial institutions, the operation of an entity, insurance and annuities, estates and trusts, claims and litigation, government or military service benefits, retirement plans, taxes, gifts, and certain acts authorized by the courts.
- Article 3 sets forth forms to be used in creating a power of attorney having the meaning and effect prescribed by the UPAA.
- Article 4 provides, among other things, that the UPAA applies to powers of attorney created before, on, or after the effective date of the act, in the absence of a clear indication of contrary intent in the terms of the power of attorney or unless applying a particular provision of the new law would substantially impair the rights of a party.

**Section 2** repeals statutory provisions superseded by the UPAA and makes conforming changes to provisions concerning surviving spouses, probate and registration, divorce and alimony, informed consent and right to natural death, and mental health clients advance instructions.

**EFFECTIVE DATE:** This act becomes effective January 1, 2018.

**BACKGROUND:** New Chapter 32C is a product of several years of work by members of the North Carolina Bar Association's Estate Planning and Fiduciary Law Committee, and is a revised version of the Uniform Power of Attorneys Act approved in 2006 by the Uniform Laws Commission.