



# SENATE BILL 569: Uniform Power of Attorney Act.

2017-2018 General Assembly

<b>Committee:</b>	House Judiciary I	<b>Date:</b>	June 23, 2017
<b>Introduced by:</b>	Sens. Daniel, Newton	<b>Prepared by:</b>	Bill Patterson
<b>Analysis of:</b>	PCS to Third Edition S569-CSTG-35		Committee Co-Counsel

**OVERVIEW:** *The PCS for Senate Bill 569 would adopt the North Carolina Uniform Power of Attorney Act which, except for specifically exempted powers (including powers to make health care decisions) would replace current law governing the creation, interpretation, and application of powers of attorney (POAs) executed on or after the act's effective date, and would apply to POAs executed before the effective date that do not contain unless they contain a clear indication of contrary intent or application of the act would substantially impair the rights of a party. The bill also makes conforming changes to related statutory provisions and repeals the existing provisions that it would replace.*

*The PCS would require an agent who knows of a breach or imminent breach of fiduciary duty by another agent to notify the principal and, if the principal is incapacitated, take appropriate action to safeguard the principal's best interest, require financial institutions to honor a POA's requirement that coagents act jointly, and modify statutory forms to provide additional information to the principal and agent. The PCS also deletes redundant provisions and makes other technical, conforming, and clarifying changes to the bill.*

**CURRENT LAW:** A power of attorney is a written document by which one person can appoint another person to act as his or her agent. Statutory provisions governing powers of attorney are set forth in the following Articles of Chapter 32A of the General Statutes:

- 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
- Article 5, Enforcement of Power of Attorney

**BILL ANALYSIS:** Section 1 of the bill would enact new Chapter 32C, the "North Carolina Power of Attorney Act" (NCUPOAA). Chapter 32C would govern all aspect of the creation, interpretation, and application of powers of attorney, but would not apply to:

- 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.

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# Senate PCS 569

Page 2

New Chapter 32C would comprise four articles:

- Article 1, "Definitions and General Provisions," would set forth general provisions governing the creation and use of a power of attorney, including the definition of terms used in the NCPOAA. These provisions would generally apply in the absence of contrary terms contained in the power of attorney, except for certain mandatory provisions intended to protect the principal, agent, and persons asked to rely on the agent's authority.
- Article 2, "Authority," sets forth provisions governing the construction of powers of attorney and would specify 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, certain acts authorized by the court, and digital assets.
- Article 3, "Statutory Forms" would set forth forms to be used in creating a power of attorney with the meaning and effect prescribed by the NCPOAA.
- Article 4, "Miscellaneous Provisions," would provide, among other things, that Chapter 32C 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** of the bill would repeal the articles of the General Statutes being superseded by new Chapter 32C and would make conforming changes to provisions in the following chapters of the General Statutes: Chapter 30 (surviving spouses); Chapter 47 (probate and registration); Chapter 50 (divorce and alimony); Chapter 90 (informed consent and right to natural death); and Chapter 122C (mental health clients advance instructions).

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

**BACKGROUND:** Senate Bill 569 is the product of several years of work by members of the North Carolina Bar Association's Estate Planning and Fiduciary Law Committee. New Chapter 32C is a revised version of the Uniform Power of Attorneys Act approved in 2006 by the Uniform Laws Commission, a non-profit unincorporated association with the stated goal of improving state laws by drafting uniform state laws on subjects where uniformity is desirable and practicable.