

1 AN ACT relating to power of attorney.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. KRS CHAPTER 457 IS ESTABLISHED AND A NEW  
4 SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

5 *This chapter may be cited as the Uniform Power of Attorney Act (2006).*

6 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO  
7 READ AS FOLLOWS:

8 *As used in this chapter:*

9 *(1) "Agent" means a person granted authority to act for a principal under a power of*  
10 *attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term*  
11 *includes an original agent, coagent, successor agent, and a person to which an*  
12 *agent's authority is delegated;*

13 *(2) "Durable," with respect to a power of attorney, means not terminated by the*  
14 *principal's incapacity;*

15 *(3) "Electronic" means relating to technology having electrical, digital, magnetic,*  
16 *wireless, optical, electromagnetic, or similar capabilities;*

17 *(4) "Good faith" means honesty in fact;*

18 *(5) "Incapacity" means inability of an individual to manage property or business*  
19 *affairs because the individual:*

20 *(a) Has an impairment in the ability to receive and evaluate information or*  
21 *make or communicate decisions even with the use of technological*  
22 *assistance; or*

23 *(b) Is:*

24 *1. Missing;*

25 *2. Detained, including incarcerated in a penal system; or*

26 *3. Outside the United States and unable to return;*

27 *(6) "Person" means an individual, corporation, business trust, estate, trust,*

1 partnership, limited liability company, association, joint venture, public  
2 corporation, government or governmental subdivision, agency, or  
3 instrumentality, or any other legal or commercial entity;

4 (7) "Power of attorney" means a writing or other record that grants authority to an  
5 agent to act in the place of the principal, whether or not the term power of  
6 attorney is used;

7 (8) "Principal" means an individual who grants authority to an agent in a power of  
8 attorney;

9 (9) "Property" means anything that may be the subject of ownership, whether real or  
10 personal, or legal or equitable, or any interest or right therein;

11 (10) "Record" means information that is inscribed on a tangible medium or that is  
12 stored in an electronic or other medium and is retrievable in perceivable form;

13 (11) "Sign" means, with present intent to authenticate or adopt a record:

14 (a) To execute or adopt a tangible symbol; or

15 (b) To attach to or logically associate with the record an electronic sound,  
16 symbol, or process;

17 (12) "State" means a state of the United States, the District of Columbia, Puerto Rico,  
18 the United States Virgin Islands, or any territory or insular possession subject to  
19 the jurisdiction of the United States; and

20 (13) "Stocks and bonds" means stocks, bonds, mutual funds, and all other types of  
21 securities and financial instruments, whether held directly, indirectly, or in any  
22 other manner. The term does not include commodity futures contracts and call or  
23 put options on stocks or stock indexes.

24 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO  
25 READ AS FOLLOWS:

26 This chapter applies to all powers of attorney except:

27 (1) A power to the extent it is coupled with an interest in the subject of the power,

- 1 including a power given to or for the benefit of a creditor in connection with a  
 2 credit transaction;
- 3 (2) A power to make health-care decisions including but not limited to health-care  
 4 decisions outlined in KRS 311.621 to 311.643, unless the power of attorney  
 5 otherwise provides;
- 6 (3) Proxy or other delegation to exercise voting rights or management rights with  
 7 respect to an entity, unless the power of attorney otherwise provides;
- 8 (4) A power created on a form prescribed by a government or governmental  
 9 subdivision, agency, or instrumentality for a governmental purpose, unless the  
 10 power of attorney otherwise provides;
- 11 (5) A power for reciprocal insurers as detailed in Subtitle 27 of KRS Chapter 304;
- 12 (6) A power given by a member of the United States Armed Forces, a person serving  
 13 as a merchant seaman, or a person outside the United States in connection with  
 14 war activities as detailed in KRS Chapter 384; and
- 15 (7) A power for the temporary delegation of parental rights as detailed in KRS  
 16 403.352 and 403.353.

17 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO  
 18 READ AS FOLLOWS:

19 A power of attorney created under this chapter is durable unless it expressly provides  
 20 that it is terminated by the incapacity of the principal.

21 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO  
 22 READ AS FOLLOWS:

23 (1) A power of attorney must be signed in the presence of two (2) disinterested  
 24 witnesses by the principal or in the principal's conscious presence by another  
 25 individual directed by the principal to sign the principal's name on the power of  
 26 attorney. If signed in the principal's conscious presence by another individual,  
 27 the reason for this method of signing shall be stated in the power of attorney.

1 (2) A signature on a power of attorney is presumed to be genuine if the principal  
 2 acknowledges the signature before a notary public or other individual authorized  
 3 by law to take acknowledgments.

4 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO  
 5 READ AS FOLLOWS:

6 (1) A power of attorney executed in this state on or after the effective date of this Act  
 7 is valid if its execution complies with Section 5 of this Act.

8 (2) A power of attorney executed in this state before the effective date of this Act is  
 9 valid if its execution complied with the law of this state as it existed at the time of  
 10 execution.

11 (3) A power of attorney executed other than in this state is valid in this state if, when  
 12 the power of attorney was executed, the execution complied with:

13 (a) The law of the jurisdiction that determines the meaning and effect of the  
 14 power of attorney pursuant to Section 7 of this Act; or

15 (b) The requirements for a military power of attorney pursuant to 10 U.S.C.  
 16 sec. 1044b, as amended.

17 (4) Except as otherwise provided by statute, a photocopy or electronically transmitted  
 18 copy of an original power of attorney has the same effect as the original.

19 (5) Except as otherwise provided by statute, a power of attorney that complies with  
 20 this chapter is valid.

21 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO  
 22 READ AS FOLLOWS:

23 The meaning and effect of a power of attorney is determined by the law of the  
 24 jurisdiction indicated in the power of attorney and, in the absence of an indication of  
 25 jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

26 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO  
 27 READ AS FOLLOWS:

1 (1) In a power of attorney, a principal may nominate a limited conservator,  
 2 conservator, limited guardian, or guardian of the principal's estate or a limited  
 3 guardian or guardian of the principal's person for consideration by the court if  
 4 protective proceedings for the principal's estate or person are begun after the  
 5 principal executes the power of attorney. As outlined in KRS 387.600, the  
 6 nomination shall be treated as an indication of the principal's preference as to  
 7 the person or entity to be appointed as his or her limited conservator, conservator,  
 8 limited guardian, or guardian, and the court shall give the preference due  
 9 consideration.

10 (2) If, after a principal executes a power of attorney, a court appoints a limited  
 11 conservator, conservator, limited guardian, or guardian of the principal's estate  
 12 or other fiduciary charged with the management of some or all of the principal's  
 13 property, the power of attorney shall terminate unless the court specifically  
 14 provides that it shall remain in effect.

15 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO  
 16 READ AS FOLLOWS:

17 (1) A power of attorney is effective when executed unless the principal provides in  
 18 the power of attorney that it becomes effective at a future date or upon the  
 19 occurrence of a future event or contingency.

20 (2) If a power of attorney becomes effective upon the occurrence of a future event or  
 21 contingency, the principal, in the power of attorney, may authorize one (1) or  
 22 more persons to determine in a writing or other record that the event or  
 23 contingency has occurred.

24 (3) If a power of attorney becomes effective upon the principal's incapacity and the  
 25 principal has not authorized a person to determine whether the principal is  
 26 incapacitated, or the person authorized is unable or unwilling to make the  
 27 determination, the power of attorney becomes effective upon a determination in a

1 writing or other record by:

2 (a) A physician, an advanced practice registered nurse, a psychologist licensed  
 3 or certified under the provisions of KRS Chapter 319, or a person licensed  
 4 or certified as a social worker or an employee of the Cabinet for Health and  
 5 Family Services who meets the qualifications of KRS 335.080(1)(a), (b), and  
 6 (c) or 335.090(1)(a), (b), and (c), that the principal is incapacitated within  
 7 the meaning of subsection (5)(a) of Section 2 of this Act; or

8 (b) An attorney-at-law or a judge that the principal is incapacitated within the  
 9 meaning of subsection (5)(b) of Section 2 of this Act.

10 (4) A person authorized by the principal in the power of attorney to determine that  
 11 the principal is incapacitated may act as the principal's personal representative  
 12 pursuant to the Health Insurance Portability and Accountability Act, Sections  
 13 1171 to 1179 of the Social Security Act, 42 U.S.C. sec. 1320d, as amended, and  
 14 applicable regulations, to obtain access to the principal's health-care information  
 15 and communicate with the principal's health-care provider.

16 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO  
 17 READ AS FOLLOWS:

18 (1) A power of attorney terminates when:

19 (a) The principal dies;

20 (b) The principal becomes incapacitated, if the power of attorney is not  
 21  durable;

22 (c) A court appoints a limited conservator, conservator, limited guardian, or  
 23  guardian of the principal's estate or other fiduciary charged with the  
 24  management of some or all of the principal's property, unless the court  
 25  specifically provides that the power of attorney shall remain in effect;

26 (d) The principal revokes the power of attorney or, if the power of attorney was  
 27  filed, the principal revokes the power of attorney in accordance with KRS

1           382.370;

2           (e) The power of attorney provides that it terminates;

3           (f) The purpose of the power of attorney is accomplished; or

4           (g) The principal revokes the agent's authority or the agent dies, becomes  
5           incapacitated, or resigns, and the power of attorney does not provide for  
6           another agent to act under the power of attorney.

7           (2) An agent's authority terminates when:

8           (a) The principal revokes the authority;

9           (b) The agent dies, becomes incapacitated, or resigns;

10          (c) An action is filed for the dissolution or annulment of the agent's marriage  
11          to the principal or their legal separation, unless the power of attorney  
12          otherwise provides; or

13          (d) The power of attorney terminates.

14          (3) Unless the power of attorney otherwise provides, an agent's authority is  
15          exercisable until the authority terminates under subsection (2) of this section,  
16          notwithstanding a lapse of time since the execution of the power of attorney.

17          (4) Termination of an agent's authority or of a power of attorney is not effective as to  
18          the agent or another person that, without actual knowledge of the termination,  
19          acts in good faith under the power of attorney. An act so performed, unless  
20          otherwise invalid or unenforceable, binds the principal and the principal's  
21          successors in interest.

22          (5) Incapacity of the principal of a power of attorney that is not durable does not  
23          revoke or terminate the power of attorney as to an agent or other person that,  
24          without actual knowledge of the incapacity, acts in good faith under the power of  
25          attorney. An act so performed, unless otherwise invalid or unenforceable, binds  
26          the principal and the principal's successors in interest.

27          (6) The execution of a power of attorney does not revoke a power of attorney

1 previously executed by the principal unless the subsequent power of attorney  
2 provides that the previous power of attorney is revoked or that all other powers of  
3 attorney are revoked.

4 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO  
5 READ AS FOLLOWS:

6 (1) If a principal designates two (2) or more persons to act as coagents, each coagent  
7 may exercise its authority independently unless the power of attorney otherwise  
8 provides.

9 (2) A principal may designate one (1) or more successor agents to act if an agent  
10 resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve.  
11 A principal may grant authority to designate one (1) or more successor agents to  
12 an agent or other person designated by name, office, or function. Unless the  
13 power of attorney otherwise provides, a successor agent:

14 (a) Has the same authority as that granted to the original agent; and

15 (b) May not act until all predecessor agents have resigned, died, become  
16 incapacitated, are no longer qualified to serve, or have declined to serve.

17 (3) Except as otherwise provided in the power of attorney and subsection (4) of this  
18 section, an agent that does not participate in or conceal a breach of fiduciary duty  
19 committed by another agent, including a predecessor agent, is not liable for the  
20 actions of the other agent.

21 (4) An agent that has actual knowledge of a breach or imminent breach of fiduciary  
22 duty by another agent of the same principal shall notify the principal and, if the  
23 principal is incapacitated, take any action reasonably appropriate in the  
24 circumstances to safeguard the principal's best interest. An agent that fails to  
25 notify the principal or take action as required by this subsection is liable for the  
26 reasonably foreseeable damages that could have been avoided if the agent had  
27 notified the principal or taken such action.



1           ➔SECTION 12. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO  
2 READ AS FOLLOWS:

3           *Unless the power of attorney otherwise provides, an agent is entitled to reimbursement*  
4           *of expenses reasonably incurred on behalf of the principal and to compensation that is*  
5           *reasonable under the circumstances.*

6           ➔SECTION 13. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO  
7 READ AS FOLLOWS:

8           *Except as otherwise provided in the power of attorney, a person accepts appointment as*  
9           *an agent under a power of attorney by exercising authority or performing duties as an*  
10           *agent or by any other assertion or conduct indicating acceptance.*

11           ➔SECTION 14. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO  
12 READ AS FOLLOWS:

13           *(1) Notwithstanding provisions in the power of attorney, an agent that has accepted*  
14           *appointment shall:*

15           *(a) Act in accordance with the principal's reasonable expectations to the extent*  
16           *actually known by the agent and, otherwise, in the principal's best interest;*

17           *(b) Act in good faith; and*

18           *(c) Act only within the scope of authority granted in the power of attorney.*

19           *(2) Except as otherwise provided in the power of attorney, an agent that has accepted*  
20           *appointment shall:*

21           *(a) Act loyally for the principal's benefit;*

22           *(b) Act so as not to create a conflict of interest that impairs the agent's ability to*  
23           *act impartially in the principal's best interest;*

24           *(c) Act with the care, competence, and diligence ordinarily exercised by agents*  
25           *in similar circumstances;*

26           *(d) Keep a record of all receipts, disbursements, and transactions made on*  
27           *behalf of the principal;*

- 1        (e) Cooperate with a person that has authority to make health-care decisions  
2        for the principal to carry out the principal's reasonable expectations to the  
3        extent actually known by the agent and, otherwise, act in the principal's  
4        best interest; and
- 5        (f) Attempt to preserve the principal's estate plan, to the extent actually known  
6        by the agent, if preserving the plan is consistent with the principal's best  
7        interest based on all relevant factors, including:
- 8            1. The value and nature of the principal's property;  
9            2. The principal's foreseeable obligations and need for maintenance;  
10          3. Minimization of taxes, including income, estate, inheritance,  
11          generation-skipping transfer, and gift taxes; and  
12          4. Eligibility for a benefit, a program, or assistance under a statute or  
13          regulation.
- 14        (3) An agent that acts in good faith is not liable to any beneficiary of the principal's  
15        estate plan for failure to preserve the plan.
- 16        (4) An agent that acts with care, competence, and diligence for the best interest of the  
17        principal is not liable solely because the agent also benefits from the act or has  
18        an individual or conflicting interest in relation to the property or affairs of the  
19        principal.
- 20        (5) If an agent is selected by the principal because of special skills or expertise  
21        possessed by the agent or in reliance on the agent's representation that the agent  
22        has special skills or expertise, the special skills or expertise must be considered in  
23        determining whether the agent has acted with care, competence, and diligence  
24        under the circumstances.
- 25        (6) Absent a breach of duty to the principal, an agent is not liable if the value of the  
26        principal's property declines.
- 27        (7) An agent that exercises authority to delegate to another person the authority

1 granted by the principal or that engages another person on behalf of the  
 2 principal is not liable for an act, error of judgment, or default of that person if  
 3 the agent exercises care, competence, and diligence in selecting and monitoring  
 4 the person.

5 (8) Except as otherwise provided in the power of attorney, an agent is not required to  
 6 disclose receipts, disbursements, or transactions conducted on behalf of the  
 7 principal unless ordered by a court or requested by the principal, a guardian, a  
 8 conservator, another fiduciary acting for the principal, a governmental agency  
 9 having authority to protect the welfare of the principal, or, upon the death of the  
 10 principal, by the personal representative or successor in interest of the principal's  
 11 estate. If so requested, within thirty (30) days the agent shall comply with the  
 12 request or provide a writing or other record substantiating why additional time is  
 13 needed and shall comply with the request within an additional thirty (30) days.

14 ➔SECTION 15. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO  
 15 READ AS FOLLOWS:

16 A provision in a power of attorney relieving an agent of liability for breach of duty is  
 17 binding on the principal and the principal's successors in interest except to the extent  
 18 the provision:

19 (1) Relieves the agent of liability for breach of duty committed dishonestly, with an  
 20 improper motive, or with reckless indifference to the purposes of the power of  
 21 attorney or the best interest of the principal; or

22 (2) Was inserted as a result of an abuse of a confidential or fiduciary relationship  
 23 with the principal.

24 ➔SECTION 16. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO  
 25 READ AS FOLLOWS:

26 (1) The following persons may petition a District Court to construe a power of  
 27 attorney or review the agent's conduct, and grant appropriate relief:

- 1        (a) The principal or the agent;  
 2        (b) A guardian, conservator, or other fiduciary acting for the principal;  
 3        (c) A person authorized to make health-care decisions for the principal;  
 4        (d) The principal's spouse, parent, or descendant;  
 5        (e) An individual who would qualify as a presumptive heir of the principal;  
 6        (f) A person named as a beneficiary to receive any property, benefit, or  
 7        contractual right on the principal's death or as a beneficiary of a trust  
 8        created by or for the principal that has a financial interest in the principal's  
 9        estate;  
 10       (g) A governmental agency having regulatory authority to protect the welfare of  
 11       the principal;  
 12       (h) The principal's caregiver or another person that demonstrates sufficient  
 13       interest in the principal's welfare; and  
 14       (i) A person asked to accept the power of attorney.  
 15       (2) Upon motion by the principal, the court shall dismiss a petition filed under this  
 16       section, unless the court finds that the principal lacks capacity to revoke the  
 17       agent's authority or the power of attorney.

18       ➔SECTION 17. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO  
 19 READ AS FOLLOWS:

20       An agent that violates this chapter is liable to the principal or the principal's  
 21       successors in interest for the amount required to:

22       (1) Restore the value of the principal's property to what it would have been had the  
 23       violation not occurred; and

24       (2) Reimburse the principal or the principal's successors in interest for the attorney's  
 25       fees and costs paid on the agent's behalf.

26       ➔SECTION 18. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO  
 27 READ AS FOLLOWS:

1 Unless the power of attorney provides a different method for an agent's resignation, an  
 2 agent may resign by giving notice to the principal and, if the principal is incapacitated:

3 (1) To the conservator or guardian, if one has been appointed for the principal, and  
 4 a coagent or successor agent; or

5 (2) If there is no person described in subsection (1) of this section, to:

6 (a) The principal's caregiver;

7 (b) Another person listed in the power of attorney as having sufficient interest  
 8 in the principal's welfare to receive the resignation; or

9 (c) A governmental agency having authority to protect the welfare of the  
 10 principal.

11 ➔SECTION 19. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO  
 12 READ AS FOLLOWS:

13 (1) For purposes of this section and Section 20 of this Act, "acknowledged" means  
 14 purportedly verified before a notary public or other individual authorized to take  
 15 acknowledgements.

16 (2) A person that in good faith accepts an acknowledged power of attorney without  
 17 actual knowledge that the signature is not genuine may rely upon the  
 18 presumption under Section 5 of this Act that the signature is genuine.

19 (3) A person that in good faith accepts an acknowledged power of attorney without  
 20 actual knowledge that the power of attorney is void, invalid, or terminated, that  
 21 the purported agent's authority is void, invalid, or terminated, or that the agent is  
 22 exceeding or improperly exercising the agent's authority may rely upon the power  
 23 of attorney as if the power of attorney were genuine, valid, and still in effect, the  
 24 agent's authority were genuine, valid, and still in effect, and the agent had not  
 25 exceeded and had properly exercised the authority.

26 (4) A person that is asked to accept an acknowledged power of attorney may request,  
 27 and rely upon, without further investigation:

1 (a) An agent's certification under penalty of perjury of any factual matter  
 2 concerning the principal, agent, or power of attorney;

3 (b) An English translation of the power of attorney if the power of attorney  
 4 contains, in whole or in part, language other than English; and

5 (c) An opinion of counsel as to any matter of law concerning the power of  
 6 attorney if the person making the request provides in a writing or other  
 7 record the reason for the request.

8 (5) An English translation or an opinion of counsel requested under this section  
 9 must be provided at the principal's expense unless the request is made more than  
 10 seven (7) business days after the power of attorney is presented for acceptance.

11 (6) For purposes of this section and Section 20 of this Act, a person that conducts  
 12 activities through employees is without actual knowledge of a fact relating to a  
 13 power of attorney, a principal, or an agent if the employee conducting the  
 14 transaction involving the power of attorney is without actual knowledge of the  
 15 fact.

16 ➔SECTION 20. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO  
 17 READ AS FOLLOWS:

18 (1) Except as otherwise provided in subsection (2) of this section:

19 (a) A person shall either accept an acknowledged power of attorney or request  
 20 a certification, a translation, or an opinion of counsel under subsection (4)  
 21 of Section 19 of this Act no later than seven (7) business days after  
 22 presentation of the power of attorney for acceptance;

23 (b) If a person requests a certification, a translation, or an opinion of counsel  
 24 under subsection (4) of Section 19 of this Act, the person shall accept the  
 25 power of attorney no later than five (5) business days after receipt of the  
 26 certification, translation, or opinion of counsel; and

27 (c) A person may not require an additional or different form of power of

1 attorney for authority granted in the power of attorney presented.

2 (2) A person is not required to accept an acknowledged power of attorney if:

3 (a) The person is not otherwise required to engage in a transaction with  
4 the principal in the same circumstances;

5 (b) Engaging in a transaction with the agent or the principal in the same  
6 circumstances would be inconsistent with federal law;

7 (c) The person has actual knowledge of the termination of the agent's  
8 authority or of the power of attorney before exercise of the power;

9 (d) A request for a certification, a translation, or an opinion of counsel  
10 under subsection (4) of Section 19 of this Act is refused;

11 (e) The person in good faith believes that the power is not valid or that the  
12 agent does not have the authority to perform the act requested,  
13 whether or not a certification, a translation, or an opinion of counsel  
14 under subsection (4) of Section 19 of this Act has been requested or  
15 provided; or

16 (f) The person makes, or has actual knowledge that another person has  
17 made, a report to the Cabinet for Health and Family Services stating a  
18 good faith belief that the principal may be subject to physical or  
19 financial abuse, neglect, exploitation, or abandonment by the agent or  
20 a person acting for or with the agent.

21 (3) A person that refuses in violation of this section to accept an acknowledged power  
22 of attorney is subject to:

23 (a) A court order mandating acceptance of the power of attorney; and

24 (b) Liability for reasonable attorney's fees and costs incurred in any action or  
25 proceeding that confirms the validity of the power of attorney or mandates  
26 acceptance of the power of attorney.

27 (4) A person that accepts a power of attorney pursuant to this section shall not be

1        liable for his or her good faith reliance on the agent's representation of the scope  
2        of authority granted to the agent by the power of attorney. In addition, the person  
3        shall not be responsible to determine or ensure the proper application of funds or  
4        property by the agent.

5        ➔SECTION 21. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO  
6        READ AS FOLLOWS:

7        Unless displaced by a provision of this chapter, the principles of law and equity  
8        supplement this chapter.

9        ➔SECTION 22. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO  
10       READ AS FOLLOWS:

11       This chapter does not supersede any other law applicable to financial institutions or  
12       other entities, and the other law controls if inconsistent with this chapter.

13       ➔SECTION 23. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO  
14       READ AS FOLLOWS:

15       The remedies under this chapter are not exclusive and do not abrogate any right or  
16       remedy under the law of this state other than this chapter.

17       ➔SECTION 24. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO  
18       READ AS FOLLOWS:

19       In applying and construing this uniform act, consideration must be given to the need to  
20       promote uniformity of the law with respect to its subject matter among the states that  
21       enact it.

22       ➔SECTION 25. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO  
23       READ AS FOLLOWS:

24       This chapter modifies, limits, and supersedes the federal Electronic Signatures in  
25       Global and National Commerce Act, 15 U.S.C. secs. 7001 et seq., but does not modify,  
26       limit, or supersede sec. 101(c) of that act, 15 U.S.C. sec. 7001(c), or authorize  
27       electronic delivery of any of the notices described in sec. 103(b) of that act, 15 U.S.C.



1 Section 7003(b).

2       ➔SECTION 26. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO  
3 READ AS FOLLOWS:

4 *Except as otherwise provided in this chapter, on the effective date of this Act:*

5 *(1) This chapter applies to a power of attorney created before, on, or after the*  
6 *effective date of this Act;*

7 *(2) This chapter applies to a judicial proceeding concerning a power of attorney*  
8 *commenced on or after the effective date of this Act;*

9 *(3) This chapter applies to a judicial proceeding concerning a power of attorney*  
10 *commenced before the effective date of this Act unless the court finds that*  
11 *application of a provision of this chapter would substantially interfere with the*  
12 *effective conduct of the judicial proceeding or prejudice the rights of a party, in*  
13 *which case that provision does not apply and the superseded law applies; and*

14 *(4) An act done before the effective date of this Act is not affected by this chapter.*

15       ➔Section 27. KRS 367.93103 is amended to read as follows:

16 (1) A person who is of sound mind and is at least eighteen (18) years of age may  
17 execute a declaration.

18 (2) *(a)* A declaration shall not be included in:

19       ~~1. (a)~~ A will;

20       ~~2. (b)~~ A power of attorney; or

21       ~~3. (c)~~ A similar document.

22 *(b) If a declaration is included in any of the documents listed in paragraph (a)*  
23 *of this subsection, it shall not invalidate the document but the declaration*  
24 *contained therein is not enforceable.*

25 (3) A declaration shall designate an individual to serve as the designee, or if no  
26 designee is designated shall provide instruction concerning funeral services,  
27 ceremonies, and the disposition of remains after death.

- 1 (4) A declaration, at a minimum, shall be:
- 2 (a) Voluntary;
- 3 (b) In writing;
- 4 (c) Signed by the declarant or by another person in the declarant's presence and at
- 5 the direction of the declarant;
- 6 (d) Dated;
- 7 (e) Signed in the presence of at least two (2) competent witnesses who are at least
- 8 eighteen (18) years of age at the time they sign the declaration; and
- 9 (f) Acknowledged before a notary public or other person authorized to administer
- 10 oaths.
- 11 (5) A declaration is not binding upon a funeral home, a cemetery, or any person
- 12 engaged in the business of providing funeral services, selling merchandise or grave
- 13 markers, or providing a service or other property subject to the declaration until the
- 14 funeral home, cemetery, or person receives full payment for the service,
- 15 merchandise, or other property.
- 16 (6) A person is not considered to be entitled to any part of the declarant's estate solely
- 17 by virtue of being designated by the declarant to serve as his or her designee.
- 18 (7) Unless an individual is related to the declarant by birth, marriage, or adoption, a
- 19 declarant shall not designate an individual to be his or her designee or alternate
- 20 designee who is:
- 21 (a) A provider of funeral or cemetery services; or
- 22 (b) Employed by any entity that is responsible for providing funeral or cemetery
- 23 services or disposing of the declarant's remains.
- 24 (8) The following shall not be a witness to a declaration:
- 25 (a) The person who signed the declaration on behalf of and at the direction of the
- 26 declarant; or
- 27 (b) The person identified as the designee.

1       ➔Section 28. KRS 372.140 is amended to read as follows:

2       (1) *Except as provided in Section 15 of this Act,* any power of attorney to confess  
3 judgment or to suffer judgment to pass by default or otherwise, and any release of  
4 errors, given before an action is instituted, is void.

5       (2) No person shall appear for a defendant under any such power in any court in this  
6 state.

7       ➔Section 29. KRS 387.530 is amended to read as follows:

8       (1) A petition for a determination of partial disability or disability and the appointment  
9 of a limited guardian, guardian, limited conservator, or conservator may be filed by  
10 any interested person or by an individual needing guardianship or conservatorship.  
11 The petition shall set forth the following:

12       (a) The name and address of the respondent;

13       (b) The date of birth of the respondent, if known;

14       (c) The nature and degree of the alleged disability of the respondent;

15       (d) The facts and reasons supporting the need for guardianship or  
16 conservatorship;

17       (e) A description and approximation of the value of the respondent's financial  
18 resources, including government benefits, insurance entitlements, and  
19 anticipated yearly income, if known;

20       (f) The names and addresses of the respondent's next of kin, if known;

21       (g) The name and address of the individual or facility, if any, having custody of  
22 the respondent;

23       (h) The name, address and interest of the petitioner;

24       (i) The name and address of the petitioner's attorney, if any; and

25       (j) The name and address of any person or entity appointed by the respondent as  
26 respondent's attorney in fact under a durable power of attorney~~[-as defined in~~  
27 ~~KRS 386.093(1),]~~ or as respondent's surrogate to make health care decisions

1           under an advance directive.

2   (2) The petition shall be accompanied by a verified application of the person or entity  
3       desiring appointment as limited guardian, guardian, limited conservator, or  
4       conservator. The application shall state the name, address, and qualifications of the  
5       applicant and his relationship to the respondent. If it is proposed that a standby  
6       limited guardian, guardian, limited conservator, or conservator be designated, the  
7       petition shall also be accompanied by the application of the person or entity desiring  
8       to be so designated. Additional petitions may be filed prior to the date of the hearing  
9       by other persons desiring appointment.

10       ➔Section 30. The following KRS section is repealed:

11   386.093 Effect of disability, incapacity, or death on power of attorney, durable or  
12       otherwise.