

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 A power of attorney must be signed by the principal or in the principal's conscious
 24 presence by another individual directed by the principal to sign the principal's name
 25 on the power of attorney. A signature on a power of attorney is presumed to be genuine
 26 if the principal acknowledges the signature before a notary public or other individual
 27 authorized by law to take acknowledgments.

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

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

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

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

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

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

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

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

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

20 *The meaning and effect of a power of attorney is determined by the law of the*
21 *jurisdiction indicated in the power of attorney and, in the absence of an indication of*
22 *jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.*

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

25 *(1) In a power of attorney, a principal may nominate a limited conservator,*
26 *conservator, limited guardian, or guardian of the principal's estate or a limited*
27 *guardian or guardian of the principal's person for consideration by the court if*

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

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

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

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

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

21 (3) If a power of attorney becomes effective upon the principal's incapacity and the
22 principal has not authorized a person to determine whether the principal is
23 incapacitated, or the person authorized is unable or unwilling to make the
24 determination, the power of attorney becomes effective upon a determination in a
25 writing or other record by:

26 (a) A physician, an advanced practice registered nurse, a psychologist licensed
27 or certified under the provisions of KRS Chapter 319, or a person licensed

1 or certified as a social worker or an employee of the Cabinet for Health and
 2 Family Services who meets the qualifications of KRS 335.080(1)(a), (b), and
 3 (c) or 335.090(1)(a), (b), and (c), that the principal is incapacitated within
 4 the meaning of subsection (5)(a) of Section 2 of this Act; or
 5 (b) An attorney-at-law or a judge that the principal is incapacitated within the
 6 meaning of subsection (5)(b) of Section 2 of this Act.

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

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

15 (1) A power of attorney terminates when:

16 (a) The principal dies;

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

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

23 (d) The principal revokes the power of attorney or, if the power of attorney was
 24 filed, the principal revokes the power of attorney in accordance with KRS
 25 382.370;

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

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

- 1 (g) The principal revokes the agent's authority or the agent dies, becomes
2 incapacitated, or resigns, and the power of attorney does not provide for
3 another agent to act under the power of attorney.
- 4 (2) An agent's authority terminates when:
- 5 (a) The principal revokes the authority;
6 (b) The agent dies, becomes incapacitated, or resigns;
7 (c) An action is filed for the dissolution or annulment of the agent's marriage
8 to the principal or their legal separation, unless the power of attorney
9 otherwise provides; or
10 (d) The power of attorney terminates.
- 11 (3) Unless the power of attorney otherwise provides, an agent's authority is
12 exercisable until the authority terminates under subsection (2) of this section,
13 notwithstanding a lapse of time since the execution of the power of attorney.
- 14 (4) Termination of an agent's authority or of a power of attorney is not effective as to
15 the agent or another person that, without actual knowledge of the termination,
16 acts in good faith under the power of attorney. An act so performed, unless
17 otherwise invalid or unenforceable, binds the principal and the principal's
18 successors in interest.
- 19 (5) Incapacity of the principal of a power of attorney that is not durable does not
20 revoke or terminate the power of attorney as to an agent or other person that,
21 without actual knowledge of the incapacity, acts in good faith under the power of
22 attorney. An act so performed, unless otherwise invalid or unenforceable, binds
23 the principal and the principal's successors in interest.
- 24 (6) The execution of a power of attorney does not revoke a power of attorney
25 previously executed by the principal unless the subsequent power of attorney
26 provides that the previous power of attorney is revoked or that all other powers of
27 attorney are revoked.

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

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

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

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

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

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

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

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

27 *Unless the power of attorney otherwise provides, an agent is entitled to reimbursement*

1 of expenses reasonably incurred on behalf of the principal and to compensation that is
2 reasonable under the circumstances.

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

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

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

10 (1) Notwithstanding provisions in the power of attorney, an agent that has accepted
11 appointment shall:

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

14 (b) Act in good faith; and

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

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

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

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

21 (c) Act with the care, competence, and diligence ordinarily exercised by agents
22 in similar circumstances;

23 (d) Keep a record of all receipts, disbursements, and transactions made on
24 behalf of the principal;

25 (e) Cooperate with a person that has authority to make health-care decisions
26 for the principal to carry out the principal's reasonable expectations to the
27 extent actually known by the agent and, otherwise, act in the principal's

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

1 the person.

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

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

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

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

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

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

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

25 (a) The principal or the agent;

26 (b) A guardian, conservator, or other fiduciary acting for the principal;

27 (c) A person authorized to make health-care decisions for the principal;

- 1 (d) The principal's spouse, parent, or descendant;
 2 (e) An individual who would qualify as a presumptive heir of the principal;
 3 (f) A person named as a beneficiary to receive any property, benefit, or
 4 contractual right on the principal's death or as a beneficiary of a trust
 5 created by or for the principal that has a financial interest in the principal's
 6 estate;
 7 (g) A governmental agency having regulatory authority to protect the welfare of
 8 the principal;
 9 (h) The principal's caregiver or another person that demonstrates sufficient
 10 interest in the principal's welfare; and
 11 (i) A person asked to accept the power of attorney.

- 12 (2) Upon motion by the principal, the court shall dismiss a petition filed under this
 13 section, unless the court finds that the principal lacks capacity to revoke the
 14 agent's authority or the power of attorney.

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

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

- 19 (1) Restore the value of the principal's property to what it would have been had the
 20 violation not occurred; and
 21 (2) Reimburse the principal or the principal's successors in interest for the attorney's
 22 fees and costs paid on the agent's behalf.

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

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

- 27 (1) To the conservator or guardian, if one has been appointed for the principal, and

1 *a coagent or successor agent; or*

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

3 *(a) The principal's caregiver;*

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

6 *(c) A governmental agency having authority to protect the welfare of the*
 7 *principal.*

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

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

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

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

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

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

27 *(b) An English translation of the power of attorney if the power of attorney*

1 contains, in whole or in part, language other than English; and
 2 (c) An opinion of counsel as to any matter of law concerning the power of
 3 attorney if the person making the request provides in a writing or other
 4 record the reason for the request.

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

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

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

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

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

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

24 (c) A person may not require an additional or different form of power of
 25 attorney for authority granted in the power of attorney presented.

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

27 (a) The person is not otherwise required to engage in a transaction with

- 1 *the principal in the same circumstances;*
- 2 *(b) Engaging in a transaction with the agent or the principal in the same*
- 3 *circumstances would be inconsistent with federal law;*
- 4 *(c) The person has actual knowledge of the termination of the agent's*
- 5 *authority or of the power of attorney before exercise of the power;*
- 6 *(d) A request for a certification, a translation, or an opinion of counsel*
- 7 *under subsection (4) of Section 19 of this Act is refused;*
- 8 *(e) The person in good faith believes that the power is not valid or that the*
- 9 *agent does not have the authority to perform the act requested,*
- 10 *whether or not a certification, a translation, or an opinion of counsel*
- 11 *under subsection (4) of Section 19 of this Act has been requested or*
- 12 *provided; or*
- 13 *(f) The person makes, or has actual knowledge that another person has*
- 14 *made, a report to the Cabinet for Health and Family Services stating a*
- 15 *good faith belief that the principal may be subject to physical or*
- 16 *financial abuse, neglect, exploitation, or abandonment by the agent or*
- 17 *a person acting for or with the agent.*
- 18 *(3) A person that refuses in violation of this section to accept an acknowledged power*
- 19 *of attorney is subject to:*
- 20 *(a) A court order mandating acceptance of the power of attorney; and*
- 21 *(b) Liability for reasonable attorney's fees and costs incurred in any action or*
- 22 *proceeding that confirms the validity of the power of attorney or mandates*
- 23 *acceptance of the power of attorney.*
- 24 *(4) A person that accepts a power of attorney pursuant to this section shall not be*
- 25 *liable for his or her good faith reliance on the agent's representation of the scope*
- 26 *of authority granted to the agent by the power of attorney. In addition, the person*
- 27 *shall not be responsible to determine or ensure the proper application of funds or*

1 property by the agent.

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

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

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

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

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

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

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

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

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

21 This chapter modifies, limits, and supersedes the federal Electronic Signatures in
22 Global and National Commerce Act, 15 U.S.C. secs. 7001 et seq., but does not modify,
23 limit, or supersede sec. 101(c) of that act, 15 U.S.C. sec. 7001(c), or authorize
24 electronic delivery of any of the notices described in sec. 103(b) of that act, 15 U.S.C.
25 Section 7003(b).

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

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

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

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

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

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

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

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

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

16 *1.{(a)}* A will;

17 *2.{(b)}* A power of attorney; or

18 *3.{(c)}* A similar document.

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

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

25 (4) A declaration, at a minimum, shall be:

26 (a) Voluntary;

27 (b) In writing;

- 1 (c) Signed by the declarant or by another person in the declarant's presence and at
2 the direction of the declarant;
- 3 (d) Dated;
- 4 (e) Signed in the presence of at least two (2) competent witnesses who are at least
5 eighteen (18) years of age at the time they sign the declaration; and
- 6 (f) Acknowledged before a notary public or other person authorized to administer
7 oaths.
- 8 (5) A declaration is not binding upon a funeral home, a cemetery, or any person
9 engaged in the business of providing funeral services, selling merchandise or grave
10 markers, or providing a service or other property subject to the declaration until the
11 funeral home, cemetery, or person receives full payment for the service,
12 merchandise, or other property.
- 13 (6) A person is not considered to be entitled to any part of the declarant's estate solely
14 by virtue of being designated by the declarant to serve as his or her designee.
- 15 (7) Unless an individual is related to the declarant by birth, marriage, or adoption, a
16 declarant shall not designate an individual to be his or her designee or alternate
17 designee who is:
- 18 (a) A provider of funeral or cemetery services; or
- 19 (b) Employed by any entity that is responsible for providing funeral or cemetery
20 services or disposing of the declarant's remains.
- 21 (8) The following shall not be a witness to a declaration:
- 22 (a) The person who signed the declaration on behalf of and at the direction of the
23 declarant; or
- 24 (b) The person identified as the designee.
- 25 ➔Section 28. KRS 372.140 is amended to read as follows:
- 26 (1) **Except as provided in Section 15 of this Act,** any power of attorney to confess
27 judgment or to suffer judgment to pass by default or otherwise, and any release of

1 errors, given before an action is instituted, is void.

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

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

5 (1) A petition for a determination of partial disability or disability and the appointment
6 of a limited guardian, guardian, limited conservator, or conservator may be filed by
7 any interested person or by an individual needing guardianship or conservatorship.

8 The petition shall set forth the following:

- 9 (a) The name and address of the respondent;
- 10 (b) The date of birth of the respondent, if known;
- 11 (c) The nature and degree of the alleged disability of the respondent;
- 12 (d) The facts and reasons supporting the need for guardianship or
13 conservatorship;
- 14 (e) A description and approximation of the value of the respondent's financial
15 resources, including government benefits, insurance entitlements, and
16 anticipated yearly income, if known;
- 17 (f) The names and addresses of the respondent's next of kin, if known;
- 18 (g) The name and address of the individual or facility, if any, having custody of
19 the respondent;
- 20 (h) The name, address and interest of the petitioner;
- 21 (i) The name and address of the petitioner's attorney, if any; and
- 22 (j) The name and address of any person or entity appointed by the respondent as
23 respondent's attorney in fact under a durable power of attorney~~[-as defined in~~
24 ~~KRS 386.093(1),]~~ or as respondent's surrogate to make health care decisions
25 under an advance directive.

26 (2) The petition shall be accompanied by a verified application of the person or entity
27 desiring appointment as limited guardian, guardian, limited conservator, or

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

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

8 386.093 Effect of disability, incapacity, or death on power of attorney, durable or
9 otherwise.