

March 7, 2005

H 510. ENFORCEMENT OF POWER OF ATTORNEY. TO ENCOURAGE THIRD PARTIES TO ACCEPT THE AUTHORITY GRANTED UNDER POWERS OF ATTORNEY. Adds new Article 5, Enforcement of Power of Attorney, to GS Chapter 32A, Powers of Attorney. Specifies that any third party that acts in good-faith reliance on a writing that is duly acknowledged and regular on its face, and that purports to convey a power of attorney (POA), is protected to the extent of the powers granted in that writing, unless the third party has actual knowledge that the writing is not valid. A third party so dealing with attorney-in-fact is not responsible for the misapplication of any money or other property that is paid or transferred as directed by the attorney-in-fact pursuant to the POA.

Authorizes third party at any time to request an affidavit from the attorney-in-fact under a POA, in which attorney-in-fact specifies that he or she did not have, at the time of presenting the writing to the third party, actual knowledge that the power had been revoked or of facts that would cause the attorney-in-fact to question the POA. Such an affidavit is conclusive proof to the third party of the nonrevocation and the authenticity and validity of the POA as of the affidavit's date. Affidavit is recordable, if the exercise of the POA requires execution and delivery of an instrument that is recordable. Bill provides a non-exclusive example of an affidavit that meets the statutory standard.

A third party that unreasonably refuses to accept a POA is liable for reasonable attorney fees and costs in any action or proceeding needed to confirm the POA's validity or to implement it, and is subject to an injunction requiring acceptance of the valid POA and to other legal remedies. A third party is not required to honor the authority of, or conduct business with, the attorney-in-fact, if (1) the third party is not required to conduct business with the principal in the same circumstances; (2) the attorney-in-fact has previously breached any agreement with the third party; or (3) the third party has reasonable cause to question the POA's authenticity or validity. A third party that refuses to accept a power of attorney may promptly initiate a special proceeding under GS Chapter 1, Article 33, to request determination of the POA's validity.

Effective October 1, 2005, but applies to powers of attorney created before and after that date.

Intro. by Stam, Martin.

Ref. to Judiciary I

GS 32A

April 4, 2005

H 510. ENFORCEMENT OF POWER OF ATTORNEY. Intro. 3/7/05. House committee substitute makes the following changes to 1st edition. Amends GS 32A-35(b) to provide that affidavit meeting subsection's requirement is sufficient proof (was, conclusive) of a power of attorney's validity. Further provides that affidavit may also be used under GS 32A-13(c). Amends GS 32A-37(f) to authorize a principal, the attorney-in-fact, or a person to initiate a special proceeding to determine the validity of a power of attorney (was, a third party). Enacts new GS 32A-38 to provide that article applies to any portion of a document executed under Articles 1, 2, or 2A of GS Chapter 32A. Makes technical changes.

June 15, 2005

H 510. ENFORCEMENT OF POWER OF ATTORNEY. Intro. 3/7/05. Senate committee substitute makes the following changes to 2nd edition. Amends proposed GS 32A-35(a) (which protects third parties who act in good faith reliance on certain writings purporting to convey a power of attorney) to exclude from that protection cases in which action taken is beyond the apparent power or authority granted in the writing. Provides that persons who rely in good faith on specified writings are protected to the full extent of the powers and authority that "reasonably appear to be granted" (was, "granted") in the writing. Specifies that protection extends to breach of fiduciary duty by attorney-in-fact, including breach of loyalty, acts of self-dealing, or misapplication of money or other property paid or transferred as directed by attorney-in-fact. Amends definition of "acceptance of a power of attorney" in proposed GS 32A-36 to mean (i) acknowledging validity and authenticity of document and (ii) allowing attorney-in-fact to conduct business in "accordance with the powers that reasonably appear to be granted" (was, "in accordance with the terms") in

document. Modifies proposed GS 32A-37(c) to provide that a person presented with a power-of-attorney is not deemed to have unreasonably refused to accept the power of attorney solely because of failure to accept within seven (was, five) business days. Makes technical changes.

July 14, 2005

SL 2005-178 (H 510). ENFORCEMENT POWER OF ATTORNEY. AN ACT TO ENCOURAGE PERSONS TO ACCEPT THE AUTHORITY GRANTED UNDER POWERS OF ATTORNEY. Summarized in *Daily Bulletin* 3/7/05, 4/4/05, and 6/15/05. Enacted July 12, 2005. Effective October 1, 2005, and applies to powers of attorney created before, on, or after that date.