

DRAFT – FOR DISCUSSION ONLY

Tentative Report

# The Uniform Powers of Appointment Act

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2013 Secretary of State Business Law Reform Study Groups

**Uniform Powers of Appointment Act Study Group**

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November 14, 2013

## Introduction

The Uniform Powers of Appointment Study Group (“Study Group”) recommends favorable consideration of the Uniform Powers of Appointment Act for Mississippi. Powers of appointment are commonly used by estate planners to give a third party the authority to direct the disposition of a donor’s property to specified eligible recipients.

## Statement of the problem area

The power of appointment is a staple of modern estate-planning practice. However, many jurisdictions have very little statutory or case law on powers of appointment. While Mississippi has provisions adopted in the 1940s governing release of powers of appointment<sup>1</sup>, there is no statutory law governing the creation and use of powers of appointment.

## History of the project

In July 2013, the National Conference of Commissioners on Uniform State Laws (“the ULC”) unanimously adopted a uniform act intended to codify the patchwork of state court cases that constitute the common law on powers of appointment. The Act was developed by a ULC drafting committee comprised of some of the country’s leading trust and estates practitioners and professors. The Act also received extensive input from the American College of Trust and Estate Counsel (ACTEC) and the American Bar Association Section on Real Property, Trust and Estate Law (ABA-RPTE).

Following the ULC’s approval, the Mississippi Secretary of State’s Office volunteered to facilitate a study group to review the Act and issue a recommendation to the Legislature. Serving on the Study Group were Representative Mark Baker; Rick Courtney, Frascogna Courtney, PLLC; Anthony Sherman, Trustmark; Gray Edmondson, Barnes Law Firm; Senator Briggs Hopson; Len Martin, Baker Donelson Bearman Caldwell & Berkowitz, P.C.; Don Nichols, Wise Carter Child & Caraway, P.A.; Jack Nichols, Butler Snow LLP; Ben Sones, Taggart, Rimes & Graham, PLLC; Will Wilkins, Mississippi Law Research Institute; Jack Wilson, Chief Counsel to Governor Phil Bryant; and Jimmy Young, Wells Marble & Hurst, PLLC.

The Study Group held an initial conference call with University of Iowa Professor Thomas Gallanis, the reporter for the ULC drafting committee that prepared the Act, and drafting committee chair Turney Berry to get a general overview of the act.

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<sup>1</sup> See Miss. Stat. Ann. § 91-15-1 et seq.

Since Mississippi has existing law governing the release of powers of appointment, the Group was asked to decide whether to preserve those provisions or weave them into the new act. The proposal includes Mississippi-specific customizations to the Uniform Act and conforming amendments to the release of powers of appointment statutes.

## **Summary of Proposal**

Article 1 includes definitions and other general provisions. Article 2 provides rules for the creation, revocation, and amendment of powers of appointment. Article 3 governs the exercise of powers by the powerholder and the distribution of appointive property. Article 4 is concerned with disclaimers, releases, and contracts between a powerholder and permissible beneficiary to appoint or not to appoint property. Article 5 outlines the rights of a powerholder's creditors in appointive property. Finally, Article 6 contains boilerplate provisions common to uniform acts. The act's highlights are summarized below.

### **Article 1**

The Uniform Powers of Appointment Act defines three specific roles: The person who creates a power of appointment is the "Donor." The person who may exercise the power is the "Powerholder" (rather than the more confusing "donee"). A person who may receive appointive property is a "Permissible appointee" (or just an "Appointee" following receipt). The uniform act defines a "Power of appointment" as "a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appoint over the appointive property." Other definitions describe different types of powers and different methods of exercising a power.

### **Article 2**

Section 201 provides a permissive standard governing creation of powers of appointment: the power must be in a valid governing instrument that transfers the appointive property and must use terms showing the donor's intent to create a power to appoint property. Other provisions state that a power is nontransferable and provide rules and presumptions as to the extent of the power, which are applicable if the terms of the power are not sufficiently clear. Finally, Section 206 states that a power may not be revoked or amended unless either i) the instrument creating the power is revocable, or ii) the donor reserves a power of revocation or amendment.

### **Article 3**

Section 301 sets out the rules for exercising a power of appointment, and sections 302 - 304 apply if the powerholder's intent is unclear. Section 305 clarifies that a powerholder may, unless otherwise prohibited, make an appointment to a permissible appointee in any form, including in trust or by creating a general power of appointment. Other sections govern

appointments to deceased or impermissible appointees, disposition of unappointed property, and a powerholder's ability to revoke or amend an exercise of power.

#### **Article 4**

Section 401 provides that a state's general law on disclaimers applies to both powerholders and permissible appointees. Section 402 gives a powerholder authority to release a power unless prohibited by the donor, Section 403 provides a method for releasing powers of appointment, and Section 404 provides rules for revoking or amending a release. Finally, Sections 405 and 406 govern contracts to exercise, or not to exercise, a power of appointment.

#### **Article 5**

This article governs creditor claims on appointive property. The rules depend on whether the powerholder also created the power, and whether the powerholder has a power to withdraw property from a trust.

#### **Amendments to Chapter 15**

The amendments to Title 91, Chapter 15 harmonize the definitions used in the release of powers of appointment statutes with the definitions used in the Uniform Act.

### **Conclusion**

The proposed Uniform Powers of Appointment Act preserves existing Mississippi law on release of powers of appointment, while providing needed statutory guidance on the creation and exercise of powers of appointment. Both attorneys and their clients will benefit from the certainty provided by the act. The Study Group sees no reason to oppose its adoption.

## Appendix

### Proposed Mississippi Uniform Powers of Appointment Act

1  
2 AN ACT TO CREATE THE MISSISSIPPI UNIFORM POWERS OF  
3 APPOINTMENT ACT, WHICH SHALL BE CODIFIED IN TITLE 91, CHAPTER 14,  
4 MISSISSIPPI CODE OF 1972, TO CREATE NEW SECTION 91-14-  
5 101, MISSISSIPPI CODE OF 1972, TO ENACT SHORT TITLE; TO CREATE NEW  
6 SECTION 91-14-102, MISSISSIPPI CODE OF 1972, TO PROVIDE  
7 DEFINITIONS; TO CREATE NEW SECTION 91-14-103, MISSISSIPPI CODE OF  
8 1972, TO PROVIDE GOVERNING LAW; TO CREATE NEW SECTION 91-14-104,  
9 MISSISSIPPI CODE OF 1972, ACT SUPPLEMENTS COMMON LAW; TO CREATE  
10 NEW SECTION 91-14-201, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR  
11 CREATION OF POWERS OF APPOINTMENT; TO CREATE NEW SECTION 91-14-  
12 202, MISSISSIPPI CODE OF 1972, POWERS ARE NONTRANSFERABLE; TO  
13 CREATE NEW SECTION 91-14-203, MISSISSIPPI CODE OF 1972, FOR  
14 PRESUMPTION OF UNLIMITED AUTHORITY; TO CREATE NEW SECTION 91-14-  
15 204, MISSISSIPPI CODE OF 1972, TO PROVIDE EXCEPTION TO  
16 PRESUMPTION; TO CREATE NEW SECTION 91-14-205, MISSISSIPPI CODE OF  
17 1972, FOR THE RULES OF CLASSIFICATION; TO CREATE NEW SECTION 91-  
18 14-206, MISSISSIPPI CODE OF 1972, TO PROVIDE THE POWER TO REOVKE  
19 OR AMEND; TO CREATE NEW SECTION 91-14-301, MISSISSIPPI CODE OF  
20 1972, FOR REQUISITES FOR EXERCISE OF POWER; TO CREATE NEW SECTION  
21 91-14-302, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR DETERMINING  
22 INTENT TO EXERCISE; TO CREATE NEW SECTION 91-14-303, MISSISSIPPI  
23 CODE OF 1972, FOR INTENT AND AFTER-ACQUIRED POWER; TO CREATE NEW  
24 SECTION 91-14-304, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR  
25 COMPLIANCE WITH DONOR-IMPOSED REQUIREMENTS; TO CREATE NEW SECTION  
26 91-14-305, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR PERMISSIBLE  
27 APPOINTMENTS; TO CREATE NEW SECTION 91-14-306, MISSISSIPPI CODE OF  
28 1972, FOR APPOINTMENTS TO DECEASED APPOINTEES OR DECENDANTS; TO  
29 CREATE NEW SECTION 91-14-307, MISSISSIPPI CODE OF 1972, TO ADDRESS  
30 IMPERMISSIBLE APPOINTMENTS; TO CREATE NEW SECTION 91-14-308,  
31 MISSISSIPPI CODE OF 1972, FOR THE APPLICATION OF THE SELECTIVE  
32 ALLOCATION DOCTRINE; TO CREATE NEW SECTION 91-14-309, MISSISSIPPI  
33 CODE OF 1972, TO PROVIDE FOR APPLICATION OF THE CAPTURE DOCTRINE;  
34 TO CREATE NEW SECTION 91-14-310, MISSISSIPPI CODE OF 1972, TO  
35 GOVERN DISPOSITION OF UNAPPOINTED PROPERTY; TO CREATE NEW SECTION  
36 91-14-311, MISSISSIPPI CODE OF 1972, TO GOVERN DISPOSITION OF  
37 UNAPPOINTED PROPERTY; TO CREATE NEW SECTION 91-14-312, MISSISSIPPI  
38 CODE OF 1972, FOR DISPOSITION WHERE PARTIAL APPOINTMENT MADE TO  
39 TAKER IN DEFAULT; TO CREATE NEW SECTION 91-14-313, MISSISSIPPI  
40 CODE OF 1972, TO PROVIDE FOR APPOINTMENT TO TAKER IN DEFAULT; TO  
41 CREATE NEW SECTION 91-14-314, MISSISSIPPI CODE OF 1972, TO PROVIDE  
42 POWERHODER'S AUTHORITY TO REVOKE OR AMEND EXERCISE; TO CREATE NEW  
43 SECTION 91-14-401, MISSISSIPPI CODE OF 1972, TO GOVERN DISCLAIMER;  
44 TO CREATE NEW SECTION 91-14-402, MISSISSIPPI CODE OF 1972, TO

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# PROPOSED MISSISSIPPI UNIFORM POWERS OF APPOINTMENT ACT

45 ALLOW RELEASE OF POWER; TO CREATE NEW SECTION 91-14-403,  
46 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR METHOD OF RELEASE; TO  
47 CREATE NEW SECTION 91-14-404, MISSISSIPPI CODE OF 1972, TO GOVERN  
48 REVOCATION OR AMENDMENT OF RELEASE; TO CREATE NEW SECTION 91-14-  
49 405, MISSISSIPPI CODE OF 1972, FOR THE POWER TO CONTRACT A  
50 PRESENTLY EXERCISABLE POWER; TO CREATE NEW SECTION 91-14-406,  
51 MISSISSIPPI CODE OF 1972, FOR THE POWER TO CONTRACT A NOT  
52 PRESENTLY EXERCISABLE POWER; TO CREATE NEW SECTION 91-14-407,  
53 MISSISSIPPI CODE OF 1972, TO PROVIDE REMEDY FOR BREACH OF  
54 CONTRACT; TO CREATE NEW SECTION 91-14-501, MISSISSIPPI CODE OF  
55 1972, TO ADDRESS CREDITORS CLAIMS WHEN GENERAL POWER CREATED; TO  
56 CREATE NEW SECTION 91-14-502, MISSISSIPPI CODE OF 1972, TO ADDRESS  
57 CREDITORS CLAIMS WHEN GENERAL POWER NOT CREATED; TO CREATE NEW  
58 SECTION 91-14-503, MISSISSIPPI CODE OF 1972, TO PROVIDE THE POWER  
59 TO WITHDRAW; TO CREATE NEW SECTION 91-14-504, MISSISSIPPI CODE OF  
60 1972, TO ADDRESS CREDITOR CLAIMS AND NONGENERAL POWERS; TO CREATE  
61 NEW SECTION 91-14-601, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR  
62 UNIFORMITY AMONG THE STATES; TO CREATE NEW SECTION 91-14-602,  
63 MISSISSIPPI CODE OF 1972, TO ADDRESS ELECTRONIC SIGNATURES; TO  
64 CREATE NEW SECTION 91-14-603, MISSISSIPPI CODE OF 1972, FOR  
65 APPLICATION TO EXISTING RELATIONSHIPS; TO RESERVE NEW SECTION 91-  
66 14-604, MISSISSIPPI CODE OF 1972; TO CREATE NEW SECTION 91-14-605,  
67 MISSISSIPPI CODE OF 1972, TO PROVIDE EFFECTIVE DATE; TO AMEND  
68 SECTION 91-15-3, MISSISSIPPI CODE OF 1972, TO CONFORM; TO AMEND  
69 SECTION 91-15-5, MISSISSIPPI CODE OF 1972, TO CONFORM; TO AMEND  
70 SECTION 91-15-7, MISSISSIPPI CODE OF 1972, TO CONFORM; TO AMEND  
71 SECTION 91-15-11, MISSISSIPPI CODE OF 1972, TO CONFORM; TO AMEND  
72 SECTION 91-15-13, MISSISSIPPI CODE OF 1972, TO CONFORM; TO AMEND  
73 SECTION 91-15-17, MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR  
74 RELATED PURPOSES.

75 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

76 **Section 1.** The following shall be codified as Chapter 14,  
77 Title 91, Mississippi Code of 1972:

## 78 **ARTICLE 1**

### 79 **GENERAL PROVISIONS**

80 91-14-101. **Short title.** This chapter may be cited as  
81 the Uniform Powers of Appointment Act.

82 91-14-102. **Definitions.** In this chapter:

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83 (1) "Appointee" means a person to which a powerholder makes  
84 an appointment of appointive property.

85 (2) "Appointive property" means the property or property  
86 interest subject to a power of appointment.

87 (3) "Blanket-exercise clause" means a clause in an instrument  
88 which exercises a power of appointment and is not a specific-  
89 exercise clause. The term includes a clause that:

90 (A) expressly uses the words "any power" in exercising any  
91 power of appointment the powerholder has;

92 (B) expressly uses the words "any property" in appointing any  
93 property over which the powerholder has a power of appointment; or

94 (C) disposes of all property subject to disposition by the  
95 powerholder.

96 (4) "Donor" means a person that creates a power of  
97 appointment.

98 (5) "Exclusionary power of appointment" means a power of  
99 appointment exercisable in favor of any one or more of the  
100 permissible appointees to the exclusion of the other permissible  
101 appointees.

102 (6) "General power of appointment" means a power of  
103 appointment exercisable in favor of the powerholder, the  
104 powerholder's estate, a creditor of the powerholder, or a creditor  
105 of the powerholder's estate.

106 (7) "Gift-in-default clause" means a clause identifying a  
107 taker in default of appointment.

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108 (8) "Impermissible appointee" means a person that is not a  
109 permissible appointee.

110 (9) "Instrument" means a writing.

111 (10) "Nongeneral power of appointment" means a power of  
112 appointment that is not a general power of appointment.

113 (11) "Permissible appointee" means a person in whose favor a  
114 powerholder may exercise a power of appointment.

115 (12) "Person" means an individual, estate, trust, business or  
116 nonprofit entity, public corporation, government or governmental  
117 subdivision, agency, or instrumentality, or other legal entity.

118 (13) "Power of appointment" means a power that enables a  
119 powerholder acting in a nonfiduciary capacity to designate a  
120 recipient of an ownership interest in or another power of  
121 appointment over the appointive property. The term does not  
122 include a power of attorney.

123 (14) "Powerholder" means a person in which a donor creates a  
124 power of appointment.

125 (15) "Presently exercisable power of appointment" means a  
126 power of appointment exercisable by the powerholder at the  
127 relevant time. The term:

128 (A) includes a power of appointment not exercisable until the  
129 occurrence of a specified event, the satisfaction of an  
130 ascertainable standard, or the passage of a specified time only  
131 after:

132 (i) the occurrence of the specified event;



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133 (ii) the satisfaction of the ascertainable standard; or

134 (iii) the passage of the specified time; and

135 (B) does not include a power exercisable only at the  
136 powerholder's death.

137 (16) "Specific-exercise clause" means a clause in an  
138 instrument which specifically refers to and exercises a particular  
139 power of appointment.

140 (17) "Taker in default of appointment" means a person that  
141 takes all or part of the appointive property to the extent the  
142 powerholder does not effectively exercise the power of  
143 appointment.

144 (18) "Terms of the instrument" means the manifestation of the  
145 intent of the maker of the instrument regarding the instrument's  
146 provisions as expressed in the instrument or as may be established  
147 by other evidence that would be admissible in a legal proceeding.

148 91-14-103. **Governing Law.** Unless the terms of  
149 the instrument creating a power of appointment manifest a contrary  
150 intent:

151 (1) the creation, revocation, or amendment of the power is  
152 governed by the law of the donor's domicile at the relevant time;  
153 and

154 (2) the exercise, release, or disclaimer of the power, or the  
155 revocation or amendment of the exercise, release, or disclaimer of  
156 the power, is governed by the law of the powerholder's domicile at  
157 the relevant time.

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158            91-14-104.            **Common law and principles of equity.**

159            The common law and principles of equity supplement this  
160 chapter, except to the extent modified by this chapter or law of  
161 this state other than this chapter.

162            **ARTICLE 2**

163            **CREATION, REVOCATION, AND AMENDMENT OF POWER OF APPOINTMENT**

164            91-14-201.            **Creation of power of appointment.**    (a) A

165 power of appointment is created only if:

166            (1) the instrument creating the power:

167            (A) is valid under applicable law; and

168            (B) except as otherwise provided in subsection (b), transfers  
169 the appointive property; and

170            (2) the terms of the instrument creating the power manifest  
171 the donor's intent to create in a powerholder a power of  
172 appointment over the appointive property exercisable in favor of a  
173 permissible appointee.

174            (b) Subsection (a) (1) (B) does not apply to the creation of a  
175 power of appointment by the exercise of a power of appointment.

176            (c) A power of appointment may not be created in a deceased  
177 individual.

178            (d) Subject to an applicable rule against perpetuities, a  
179 power of appointment may be created in an unborn or unascertained  
180 powerholder.

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181            91-14-202.            **Nontransferability.**            A powerholder  
182 may not transfer a power of appointment. If a powerholder dies  
183 without exercising or releasing a power, the power lapses.

184            91-14-203 .            **Presumption of unlimited authority.**

185            Subject to Section 205, and unless the terms of the  
186 instrument creating a power of appointment manifest a contrary  
187 intent, the power is:

188            (1) presently exercisable;

189            (2) exclusionary; and

190            (3) except as otherwise provided in Section 204, general.

191            91-14-204.            **Exception to presumption of unlimited**

192 **authority.**            Unless the terms of the instrument creating a power  
193 of appointment manifest a contrary intent, the power is nongeneral  
194 if:

195            (1) the power is exercisable only at the powerholder's death;

196 and

197            (2) the permissible appointees of the power are a defined and  
198 limited class that does not include the powerholder's estate, the  
199 powerholder's creditors, or the creditors of the powerholder's  
200 estate.

201            91-14-205.            **Rules of classification.** (a) In this section,

202 "adverse party" means a person with a substantial beneficial

203 interest in property which would be affected adversely by a

204 powerholder's exercise or nonexercise of a power of appointment in

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205 favor of the powerholder, the powerholder's estate, a creditor of  
206 the powerholder, or a creditor of the powerholder's estate.

207 (b) If a powerholder may exercise a power of appointment only  
208 with the consent or joinder of an adverse party, the power is  
209 nongeneral.

210 (c) If the permissible appointees of a power of appointment  
211 are not defined and limited, the power is exclusionary.

212 91-14-206. **Power to revoke or amend.** A donor may  
213 revoke or amend a power of appointment only to the extent that:

214 (1) the instrument creating the power is revocable by the  
215 donor; or

216 (2) the donor reserves a power of revocation or amendment in  
217 the instrument creating the power of appointment.

218 **ARTICLE 3**

219 **EXERCISE OF POWER OF APPOINTMENT**

220 91-14-301. **Requisites for exercise of power of**  
221 **appointment.** A power of appointment is exercised only:

222 (1) if the instrument exercising the power is valid under  
223 applicable law;

224 (2) if the terms of the instrument exercising the power:

225 (A) manifest the powerholder's intent to exercise the power;

226 and

227 (B) subject to Section 304, satisfy the requirements of  
228 exercise, if any, imposed by the donor; and

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229 (3) to the extent the appointment is a permissible exercise  
230 of the power.

231 91-14-302. **Intent to exercise: Determining intent from**  
232 **residuary clause.** (a) In this section:

233 (1) "Residuary clause" does not include a residuary clause  
234 containing a blanket-exercise clause or a specific-exercise  
235 clause.

236 (2) "Will" includes a codicil and a testamentary instrument  
237 that revises another will.

238 (b) A residuary clause in a powerholder's will, or a  
239 comparable clause in the powerholder's revocable trust, manifests  
240 the powerholder's intent to exercise a power of appointment only  
241 if:

242 (1) the terms of the instrument containing the residuary  
243 clause do not manifest a contrary intent;

244 (2) the power is a general power exercisable in favor of the  
245 powerholder's estate;

246 (3) there is no gift-in-default clause or the clause is  
247 ineffective; and

248 (4) the powerholder did not release the power.

249 91-14-303. **Intent to exercise: After-acquired power.**

250

251 Unless the terms of the instrument exercising a power of  
252 appointment manifest a contrary intent:

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253 (1) except as otherwise provided in paragraph (2), a  
254 blanket-exercise clause extends to a power acquired by the  
255 powerholder after executing the instrument containing the clause;  
256 and

257 (2) if the powerholder is also the donor of the power,  
258 the clause does not extend to the power unless there is no gift-  
259 in-default clause or the gift-in-default clause is ineffective.

260 **91-14-304. Substantial compliance with donor-imposed**  
261 **formal requirement.** A powerholder's substantial compliance with a  
262 formal requirement of appointment imposed by the donor, including  
263 a requirement that the instrument exercising the power of  
264 appointment make reference or specific reference to the power, is  
265 sufficient if:

266 (1) the powerholder knows of and intends to exercise the  
267 power; and

268 (2) the powerholder's manner of attempted exercise of the  
269 power does not impair a material purpose of the donor in imposing  
270 the requirement.

271 **91-14-305. Permissible appointment.** (a) A  
272 powerholder of a general power of appointment that permits  
273 appointment to the powerholder or the powerholder's estate may  
274 make any appointment, including an appointment in trust or  
275 creating a new power of appointment, that the powerholder could  
276 make in disposing of the powerholder's own property.

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277 (b) A powerholder of a general power of appointment that  
278 permits appointment only to the creditors of the powerholder or of  
279 the powerholder's estate may appoint only to those creditors.

280 (c) Unless the terms of the instrument creating a power of  
281 appointment manifest a contrary intent, the powerholder of a  
282 nongeneral power may:

283 (1) make an appointment in any form, including an appointment  
284 in trust, in favor of a permissible appointee;

285 (2) create a general power in a permissible appointee; or

286 (3) create a nongeneral power in any person to appoint to one  
287 or more of the permissible appointees of the original nongeneral  
288 power.

289 91-14-306. **Appointment to deceased appointee or**  
290 **permissible appointee's descendant.** (a) Subject to Section 91-  
291 5-7, an appointment to a deceased appointee is ineffective.

292 (b) Unless the terms of the instrument creating a power of  
293 appointment manifest a contrary intent, a powerholder of a  
294 nongeneral power may exercise the power in favor of, or create a  
295 new power of appointment in, a descendant of a deceased  
296 permissible appointee whether or not the descendant is described  
297 by the donor as a permissible appointee.

298 91-14-307. **Impermissible appointment.** (a) Except  
299 as otherwise provided in Section 306, an exercise of a power of  
300 appointment in favor of an impermissible appointee is ineffective.

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301 (b) An exercise of a power of appointment in favor of a  
302 permissible appointee is ineffective to the extent the appointment  
303 is a fraud on the power.

304 91-14-308. **Selective allocation doctrine.** If a  
305 powerholder exercises a power of appointment in a disposition that  
306 also disposes of property the powerholder owns, the owned property  
307 and the appointive property must be allocated in the permissible  
308 manner that best carries out the powerholder's intent.

309 91-14-309. **Capture Doctrine: Disposition of**  
310 **ineffectively appointed property under general power.** To the  
311 extent a powerholder of a general power of appointment, other than  
312 a power to withdraw property from, revoke, or amend a trust, makes  
313 an ineffective appointment:

314 (1) the gift-in-default clause controls the disposition of  
315 the ineffectively appointed property; or

316 (2) if there is no gift-in-default clause or to the extent  
317 the clause is ineffective, the ineffectively appointed property:

318 (A) passes to:

319 (i) the powerholder if the powerholder is a permissible  
320 appointee and living; or

321 (ii) if the powerholder is an impermissible appointee or  
322 deceased, the powerholder's estate if the estate is a permissible  
323 appointee; or



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324 (B) if there is no taker under subparagraph (A), passes under  
325 a reversionary interest to the donor or the donor's transferee or  
326 successor in interest.

327 91-14-310. **Disposition of unappointed property under**  
328 **released or unexercised general power.** To the extent a  
329 powerholder releases or fails to exercise a general power of  
330 appointment other than a power to withdraw property from, revoke,  
331 or amend a trust:

332 (1) the gift-in-default clause controls the disposition of  
333 the unappointed property; or

334 (2) if there is no gift-in-default clause or to the extent  
335 the clause is ineffective:

336 (A) except as otherwise provided in subparagraph (B), the  
337 unappointed property passes to:

338 (i) the powerholder if the powerholder is a permissible  
339 appointee and living; or

340 (ii) if the powerholder is an impermissible appointee or  
341 deceased, the powerholder's estate if the estate is a permissible  
342 appointee; or

343 (B) to the extent the powerholder released the power, or if  
344 there is no taker under subparagraph (A), the unappointed property  
345 passes under a reversionary interest to the donor or the donor's  
346 transferee or successor in interest.

347 91-14- **311.** **Disposition of unappointed property under**  
348 **released or unexercised nongeneral power.** To the extent a

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349 powerholder releases, ineffectively exercises, or fails to  
350 exercise a nongeneral power of appointment:

351 (1) the gift-in-default clause controls the disposition of  
352 the unappointed property; or

353 (2) if there is no gift-in-default clause or to the extent  
354 the clause is ineffective, the unappointed property:

355 (A) passes to the permissible appointees if:

356 (i) the permissible appointees are defined and limited; and

357 (ii) the terms of the instrument creating the power do not  
358 manifest a contrary intent; or

359 (B) if there is no taker under subparagraph (A), passes under  
360 a reversionary interest to the donor or the donor's transferee or  
361 successor in interest.

362 91-14- 312. **Disposition of unappointed property if**  
363 **partial appointment to taker in default.** Unless the terms of  
364 the instrument creating or exercising a power of appointment  
365 manifest a contrary intent, if the powerholder makes a valid  
366 partial appointment to a taker in default of appointment, the  
367 taker in default of appointment may share fully in unappointed  
368 property.

369 91-14-313. **Appointment to taker in default.** If a  
370 powerholder makes an appointment to a taker in default of  
371 appointment and the appointee would have taken the property under  
372 a gift-in-default clause had the property not been appointed, the

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373 power of appointment is deemed not to have been exercised and the  
374 appointee takes under the clause.

375 91-14-314. **Powerholder's authority to revoke or**  
376 **amend exercise.** A powerholder may revoke or amend an exercise  
377 of a power of appointment only to the extent that:

378 (1) the powerholder reserves a power of revocation or  
379 amendment in the instrument exercising the power of appointment  
380 and, if the power is nongeneral, the terms of the instrument  
381 creating the power of appointment do not prohibit the reservation;  
382 or

383 (2) the terms of the instrument creating the power of  
384 appointment provide that the exercise is revocable or amendable.

385 **ARTICLE 4**

386 **DISCLAIMER OR RELEASE; CONTRACT TO APPOINT OR NOT TO APPOINT**

387 91-14-401. Disclaimer. As provided by Section 89-  
388 21-1, et seq.:

389 (1) A powerholder may disclaim all or part of a power of  
390 appointment.

391 (2) A permissible appointee, appointee, or taker in default  
392 of appointment may disclaim all or part of an interest in  
393 appointive property.

394 91-14-402. **Authority to release.** A powerholder  
395 may release a power of appointment, in whole or in part, as  
396 provided in Section 91-15-5.

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397           91-14-403.           **Method of release.**   A powerholder of a  
398   releasable power of appointment may release the power in whole or  
399   in part as provided in Section 91-15-7.

400           91-14-404.           **Revocation or amendment of release.**       A  
401   powerholder may revoke or amend a release of a power of  
402   appointment only to the extent that:

403           (1) the instrument of release is revocable by the  
404   powerholder; or

405           (2) the powerholder reserves a power of revocation or  
406   amendment in the instrument of release.

407           91-14-405.           **Power to contract: Presently exercisable**  
408   **power of appointment.**   A powerholder of a presently exercisable  
409   power of appointment may contract:

410           (1) not to exercise the power; or

411           (2) to exercise the power if the contract when made does not  
412   confer a benefit on an impermissible appointee.

413           91-14-406.           **Power to contract: Power of appointment**  
414   **not presently exercisable.**   A powerholder of a power of  
415   appointment that is not presently exercisable may contract to  
416   exercise or not to exercise the power only if the powerholder:

417           (1) is also the donor of the power; and

418           (2) has reserved the power in a revocable trust.

419           91-14-407.           **Remedy for breach of contract to appoint**  
420   **or not to appoint.**   The remedy for a powerholder's breach of a  
421   contract to appoint or not to appoint appointive property is

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422 limited to damages payable out of the appointive property or, if  
423 appropriate, specific performance of the contract.

424 **ARTICLE 5**

425 **RIGHTS OF POWERHOLDER'S CREDITORS IN APPOINTIVE PROPERTY**

426 **91-14-501. Creditor claim: General power created by**  
427 **powerholder.** (a) In this section, "power of appointment

428 created by the powerholder" includes a power of appointment  
429 created in a transfer by another person to the extent the  
430 powerholder contributed value to the transfer.

431 (b) Appointive property subject to a general power of  
432 appointment created by the powerholder is subject to a claim of a  
433 creditor of the powerholder or of the powerholder's estate to the  
434 extent provided in Section 15-3-101, et seq.

435 (c) Subject to subsection (b), appointive property subject to  
436 a general power of appointment created by the powerholder is not  
437 subject to a claim of a creditor of the powerholder or the  
438 powerholder's estate to the extent the powerholder irrevocably  
439 appointed the property in favor of a person other than the  
440 powerholder or the powerholder's estate.

441 (d) Subject to subsections (b) and (c), and notwithstanding  
442 the presence of a spendthrift provision or whether the claim arose  
443 before or after the creation of the power of appointment,  
444 appointive property subject to a general power of appointment  
445 created by the powerholder is subject to a claim of a creditor of:

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446 (1) the powerholder, to the same extent as if the powerholder  
447 owned the appointive property, if the power is presently  
448 exercisable; and

449 (2) the powerholder's estate, to the extent the estate is  
450 insufficient to satisfy the claim and subject to the right of a  
451 decedent to direct the source from which liabilities are paid, if  
452 the power is exercisable at the powerholder's death.

453 **91-14-502. Creditor claim: General power not created**  
454 **by powerholder.** (a) Except as otherwise provided in subsection  
455 (b), appointive property subject to a general power of appointment  
456 created by a person other than the powerholder is subject to a  
457 claim of a creditor of:

458 (1) the powerholder, to the extent the powerholder's property  
459 is insufficient, if the power is presently exercisable; and

460 (2) the powerholder's estate, to the extent the estate is  
461 insufficient, subject to the right of a decedent to direct the  
462 source from which liabilities are paid.

463 (b) Subject to Section 504(c), a power of appointment created  
464 by a person other than the powerholder which is subject to an  
465 ascertainable standard relating to an individual's health,  
466 education, support, or maintenance within the meaning of 26 U.S.C.  
467 Section 2041(b)(1)(A) or 26 U.S.C. Section 2514(c)(1), as amended,  
468 is treated for purposes of this article as a nongeneral power.

469 **91-14-503. Power to withdraw.** (a) For purposes of  
470 this article, and except as otherwise provided in subsection (b),

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471 a power to withdraw property from a trust is treated, during the  
472 time the power may be exercised, as a presently exercisable  
473 general power of appointment to the extent of the property subject  
474 to the power to withdraw.

475 (b) On the lapse, release, or waiver of a power to withdraw  
476 property from a trust, the power is treated as a presently  
477 exercisable general power of appointment only to the extent the  
478 value of the property affected by the lapse, release, or waiver  
479 exceeds the greater of the amount specified in 26 U.S.C. Section  
480 2041(b) (2) and 26 U.S.C. Section 2514(e) or the amount specified  
481 in 26 U.S.C. Section 2503(b), as amended.

482 91-14-504. **Creditor claim: Nongeneral power.**

483 (a) Except as otherwise provided in subsections (b) and (c),  
484 appointive property subject to a nongeneral power of appointment  
485 is exempt from a claim of a creditor of the powerholder or the  
486 powerholder's estate.

487 (b) Appointive property subject to a nongeneral power of  
488 appointment is subject to a claim of a creditor of the powerholder  
489 or the powerholder's estate to the extent that the powerholder  
490 owned the property and, reserving the nongeneral power,  
491 transferred the property in violation of Section 15-3-101, et seq.

492 (c) If the initial gift in default of appointment is to the  
493 powerholder or the powerholder's estate, a nongeneral power of  
494 appointment is treated for purposes of this article as a general  
495 power.

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496           **ARTICLE 6**

497           **MISCELLANEOUS PROVISIONS**

498           **91-14-601.**           **Uniformity of application and construction.**

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

502           **91-14-602.**           **Relation to electronic signatures in global**

503 **and national commerce act.** This chapter modifies, limits, or  
504 supersedes the Electronic Signatures in Global and National  
505 Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify,  
506 limit, or supersede Section 101(c) of that act, 15 U.S.C. Section  
507 7001(c), or authorize electronic delivery of any of the notices  
508 described in Section 103(b) of that act, 15 U.S.C. Section  
509 7003(b).

510           **91-14-603.**           **Application to existing relationships.** (a)

511 Except as otherwise provided in this chapter, on and after the  
512 effective date of this chapter:

513           (1) this chapter applies to a power of appointment created  
514 before, on, or after the effective date of this chapter;

515           (2) this chapter applies to a judicial proceeding concerning  
516 a power of appointment commenced on or after the effective date of  
517 this chapter;

518           (3) this chapter applies to a judicial proceeding concerning  
519 a power of appointment commenced before the effective date of this  
520 chapter unless the court finds that application of a particular



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521 provision of this chapter would interfere substantially with the  
522 effective conduct of the judicial proceeding or prejudice a right  
523 of a party, in which case the particular provision of this chapter  
524 does not apply and the superseded law applies;

525 (4) a rule of construction or presumption provided in this  
526 chapter applies to an instrument executed before the effective  
527 date of this chapter unless there is a clear indication of a  
528 contrary intent in the terms of the instrument; and

529 (5) except as otherwise provided in paragraphs (1) through  
530 (4), an action done before the effective date of this chapter is  
531 not affected by this chapter.

532 (b) If a right is acquired, extinguished, or barred on the  
533 expiration of a prescribed period that commenced under law of this  
534 state other than this chapter before the effective date of this  
535 chapter, the law continues to apply to the right.

536 **91-14-604. Reserved**

537 **91-14-605. Effective date.** This chapter takes effect  
538 July 1, 2014.

539 **Section 2.** Section 91-15-3, Mississippi Code of  
540 1972, is amended as follows:

541 91-15-3. **Definitions.**

542 When used in this chapter, unless the context otherwise  
543 requires:

544 (a) "Power" includes any power to appoint or designate to  
545 whom appointive property shall go, any power to invade property,

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546 any power to alter, amend, or revoke any instrument under which an  
547 estate or trust is held or created or to terminate any right or  
548 interest thereunder, and any power remaining where one or more  
549 partial releases have heretofore or hereafter been made with  
550 respect to a power, whether heretofore or hereafter created or  
551 reserved, whether vested, contingent, or conditional, and whether  
552 classified in law or known as a power in gross, a power appendant,  
553 a power appurtenant, a collateral power, a general, special, or  
554 limited power, exclusive or nonexclusive power, or otherwise, and  
555 irrespective of when, in what manner, or in whose favor it may be  
556 exercised.

557 (b) "~~Donee~~Powerholder" means any person, whether resident or  
558 nonresident of this state, who, either alone or with another, has  
559 the right to exercise a power a person in which a donor creates a  
560 power of appointment.

561 (c) "~~Objects~~Permissible appointee" when used in connection  
562 with a power means the person in whose favor the power may be  
563 exercised means a person in whose favor a powerholder may exercise  
564 a power of appointment.

565 (d) "Appointive P~~e~~roperty" when used in connection with a  
566 power means any and all property, whether real or personal, any  
567 and all interest in property, and any and all income from  
568 property, which is subject to the power, and includes any part of  
569 the property, any part of the interest in property, and any part

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570 of the income from property means the property or property  
571 interest subject to a power of appointment.

572 (e) "Release" means renunciation, relinquishment, surrender,  
573 refusal to accept, extinguishment, and any other form of release.

574 **Section 3.** Section 91-15-5, Mississippi Code of  
575 1972, is amended as follows:

576 91-15-5. **Authority to release**

577 Unless the instrument creating the power specifically  
578 provides to the contrary, the ~~donee~~powerholder of a power, whether  
579 now existing or hereafter created, may:

580 (a) At any time completely release his power.

581 (b) At any time or times release his power: (one) as to any  
582 appointive property which is subject thereto; (two) as to any one  
583 or more of the ~~objects~~permissible appointees thereof; or (three)  
584 so as to limit in any other respect the extent to which it may be  
585 exercised.

586 **Section 4.** Section 91-15-7, Mississippi Code of  
587 1972, is amended as follows:

588 91-15-7. **Procedure to release**

589 A release of a power, whether partial or complete, shall be  
590 valid and effective with or without a consideration when the  
591 ~~donee~~powerholder executes an instrument evidencing an intent to  
592 make the release, signed and acknowledged in the manner prescribed  
593 for the execution of deeds, and delivers the instrument or causes  
594 it to be delivered, either:

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595 (a) To an adult person who may take any of the appointive  
596 property which is subject to the power in the event of its non-  
597 exercise, or to one in whose favor it may be exercised after such  
598 partial release; or

599 (b) To any trustee or any co-trustee of the appointive  
600 property which is subject to the power; or

601 (c) By filing the same for recordation in the chancery  
602 clerk's office in the county and judicial district thereof in  
603 which any of the appointive property is located, or in which  
604 either the ~~donee~~powerholder or the trustee in control of the  
605 appointive property resides, or in which the trustee has its  
606 principal office, or in which the instrument creating the power is  
607 probated or recorded.

608 **Section 5.** Section 91-15-11, Mississippi Code of  
609 1972, is amended as follows:

610 91-15-11. **Chapter supplemental, not exclusive**

611 The rights and means provided in this chapter for the release  
612 of a power are not exclusive, but are in addition to all other  
613 rights and means of a ~~donee~~powerholder to release a power in whole  
614 or in part.

615 **Section 6.** Section 91-15-13, Mississippi Code of  
616 1972, is amended as follows:

617 91-15-13. **Notice of release by delivery**

618 Any fiduciary or other person, association, or corporation  
619 having the possession or control of any appointive property

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620 subject to a power of appointment shall be deemed to have notice  
621 of a release of the power when the original or a copy of the  
622 release is delivered to such fiduciary or other person,  
623 association, or corporation.

624           **Section 7.**       Section 91-15-17, Mississippi Code of  
625 1972, is amended as follows:

626           91-15-17. Recording procedures

627           Clerks of chancery courts are authorized and directed to  
628 record releases of powers of appointment in the books provided for  
629 the recordation of deeds, to index the same in the current and  
630 general indexes, the name of the ~~donee~~powerholder being entered on  
631 the grantor index, and to charge therefor at the rate applicable  
632 to deeds.

633