

AMENDED IN ASSEMBLY AUGUST 22, 2000

AMENDED IN ASSEMBLY JUNE 13, 2000

AMENDED IN SENATE MAY 24, 2000

AMENDED IN SENATE MAY 2, 2000

SENATE BILL

No. 1869

Introduced by Senator Solis

February 24, 2000

An act to amend ~~Sections 4121, 4128, 4264, and 4401~~ *Section 4128* of the Probate Code, relating to ~~powers~~ *power* of attorney.

LEGISLATIVE COUNSEL'S DIGEST

SB 1869, as amended, Solis. ~~Powers~~ *Power* of attorney.

Existing law provides that a power of attorney may not be construed to grant authority to an attorney-in-fact to make or revoke a gift of the principal's property in trust or otherwise unless expressly authorized in the power of attorney. Existing law also provides ~~a Uniform Statutory Form Power Of Attorney which enumerates specific powers a principal may grant to an attorney-in-fact, as specified~~ *that a printed form of a durable power of attorney that is distributed for use by a person who does not have the advice of legal counsel shall contain a specified warning statement.*

This bill would ~~provide that a principal, subsequent to executing a power of attorney, may execute another document either acknowledged before a notary public or signed by at least 2 witnesses, as specified, authorizing the~~

~~principal's attorney-in-fact to accept or receive a gift of the principal's property, in trust or otherwise, or to accept or receive any of principal's property as payment for services rendered. The bill would also revise the Uniform Statutory Form Power Of Attorney by adding provisions in which the attorney in fact acknowledges with his or her signature before a notary public~~ *revise the above-described warning statement to include a provision indicating that the person executing the durable power of attorney must specifically authorize his or her agent to receive a gift. This bill would also add a provision to the warning statement that provides notice to the person accepting an appointment under a power of attorney that describes his or her fiduciary and other legal responsibilities under the appointment and the limitations thereon, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 4121 of the Probate Code is~~
- 2 ~~amended to read:~~
- 3 ~~4121. A power of attorney is legally sufficient if all of~~
- 4 ~~the following requirements are satisfied:~~
- 5 ~~(a) The power of attorney contains the date of its~~
- 6 ~~execution.~~
- 7 ~~(b) The power of attorney is signed either (1) by the~~
- 8 ~~principal or (2) in the principal's name by another adult~~
- 9 ~~in the principal's presence and at the principal's~~
- 10 ~~direction.~~
- 11 ~~(c) The power of attorney is either (1) acknowledged~~
- 12 ~~before a notary public or (2) signed by at least two~~
- 13 ~~witnesses who satisfy the requirements of Section 4122.~~
- 14 ~~(d) The power of attorney contains the following~~
- 15 ~~warning:~~
- 16 ~~If you give your agent or attorney-in-fact the power to~~
- 17 ~~make gifts to himself or herself, the agent or~~
- 18 ~~attorney in fact may be able to take your property, keep~~
- 19 ~~it, and not be required to return it to you. In order to give~~
- 20 ~~your agent or attorney in fact the power to make gifts to~~



1 ~~himself or herself, or to transfer property to himself or~~
2 ~~herself as payment for reasonable fees for services~~
3 ~~rendered by the agent or attorney-in-fact, you must~~
4 ~~execute a separate document that meets the~~
5 ~~requirements of subdivision (b) of Section 4264.~~

6 ~~SEC. 2.~~

7 SECTION 1. Section 4128 of the Probate Code is
8 amended to read:

9 4128. (a) Subject to subdivision (b), a printed form of
10 a durable power of attorney that is sold or otherwise
11 distributed in this state for use by a person who does not
12 have the advice of legal counsel shall contain, in not less
13 than 10-point boldface type or a reasonable equivalent
14 thereof, the following warning ~~statement~~ *statements*:

15
16 Notice to Person Executing Durable Power of Attorney

17
18 A durable power of attorney is an important legal
19 document. By signing the durable power of attorney, you
20 are authorizing another person to act for you, the
21 principal. Before you sign this durable power of attorney,
22 you should know these important facts:

23 Your agent (attorney-in-fact) has no duty to act unless
24 you and your agent agree otherwise in writing.

25 This document gives your agent the powers to manage,
26 dispose of, sell, and convey your real and personal
27 property, and to use your property as security if your
28 agent borrows money on your behalf. This document does
29 not give your agent the power to accept or receive any
30 of your property, in trust or otherwise, as a gift, unless you
31 ~~execute a separate document authorizing your agent to~~
32 ~~accept or receive such property as a gift, as specified in~~
33 ~~subdivision (b) of Section 4264 of the Probate Code.~~
34 *specifically authorize the agent to accept or receive a gift.*

35 Your agent will have the right to receive reasonable
36 payment for services provided under this durable power
37 of attorney unless you provide otherwise in this power of
38 attorney. ~~However, you must execute a separate~~
39 ~~document authorizing your agent to accept or receive~~
40 ~~any of your property as payment for reasonable fees for~~



1 ~~services rendered by your agent, as specified in~~
2 ~~subdivision (b) of Section 4264 of the Probate Code.~~

3 The powers you give your agent will continue to exist
4 for your entire lifetime, unless you state that the durable
5 power of attorney will last for a shorter period of time or
6 unless you otherwise terminate the durable power of
7 attorney. The powers you give your agent in this durable
8 power of attorney will continue to exist even if you can
9 no longer make your own decisions respecting the
10 management of your property.

11 You can amend or change this durable power of
12 attorney only by executing a new durable power of
13 attorney or by executing an amendment through the
14 same formalities as an original. You have the right to
15 revoke or terminate this durable power of attorney at any
16 time, so long as you are competent.

17 This durable power of attorney must be dated and must
18 be acknowledged before a notary public or signed by two
19 witnesses. If it is signed by two witnesses, they must
20 witness either (1) the signing of the power of attorney or
21 (2) the principal's signing or acknowledgment of his or
22 her signature. A durable power of attorney that may
23 affect real property should be acknowledged before a
24 notary public so that it may easily be recorded.

25 You should read this durable power of attorney
26 carefully. When effective, this durable power of attorney
27 will give your agent the right to deal with property that
28 you now have or might acquire in the future. The durable
29 power of attorney is important to you. If you do not
30 understand the durable power of attorney, or any
31 provision of it, then you should obtain the assistance of an
32 attorney or other qualified person.

33

34

35 *Notice to Person Accepting the Appointment as*
36 *Attorney-in-Fact*

37

38 *By acting or agreeing to act as the agent*
39 *(attorney-in-fact) under this power of attorney you*



1 assume the fiduciary and other legal responsibilities of an
2 agent. These responsibilities include:

3 1. The legal duty to act solely in the interest of the
4 principal and to avoid conflicts of interest.

5 2. The legal duty to keep the principal's property
6 separate and distinct from any other property owned or
7 controlled by you.

8 You may not transfer the principal's property to
9 yourself without full and adequate consideration or
10 accept a gift of the principal's property unless this power
11 of attorney specifically authorizes you to transfer
12 property to yourself or accept a gift of the principal's
13 property. If you transfer the principal's property to
14 yourself without specific authorization in the power of
15 attorney, you may be prosecuted for fraud and/or
16 embezzlement. If the principal is 65 years of age or older
17 at the time that the property is transferred to you without
18 authority, you may also be prosecuted for elder abuse
19 under Penal Code Section 368. In addition to criminal
20 prosecution, you may also be sued in civil court.

21 I have read the foregoing notice and I understand the
22 legal and fiduciary duties that I assume by acting or
23 agreeing to act as the agent (attorney-in-fact) under the
24 terms of this power of attorney.

25

26 Date:

27

28

29

(Signature of agent)

30

31

32

(Print name of agent)

33

34 (b) Nothing in subdivision (a) invalidates any
35 transaction in which a third person relied in good faith on
36 the authority created by the durable power of attorney.

37 (c) This section does not apply to a statutory form
38 power of attorney under Part 3 (commencing with
39 Section 4400).



Signed this _____ day of _____, 20_____.

(attorney-in-fact's signature)

(attorney-in-fact's social security number)

State of _____

County of _____

(Include certificate of acknowledgment of notary public in compliance with Section 1189 of the Civil Code or other applicable law.)

~~SEC. 3. Section 4264 of the Probate Code is amended to read:~~

~~4264. (a) A power of attorney may not be construed to grant authority to an attorney-in-fact to perform any of the following acts unless expressly authorized in the power of attorney:~~

~~(1) Create, modify, or revoke a trust.~~

~~(2) Fund with the principal's property a trust not created by the principal or a person authorized to create a trust on behalf of the principal.~~

~~(3) Make or revoke a gift of the principal's property in trust or otherwise.~~

~~(4) Exercise the right to make a disclaimer on behalf of the principal. This subdivision does not limit the attorney-in-fact's authority to disclaim a detrimental transfer to the principal with the approval of the court.~~

~~(5) Create or change survivorship interests in the principal's property or in property in which the principal may have an interest.~~

~~(6) Designate or change the designation of beneficiaries to receive any property, benefit, or contract right on the principal's death.~~

~~(7) Make a loan to the attorney-in-fact.~~

~~(b) A power of attorney may not be construed to authorize an attorney-in-fact to accept or receive a gift of~~



1 ~~the principal's property in trust or otherwise, or to accept~~
 2 ~~or receive any of the principal's property as payment for~~
 3 ~~services rendered by the attorney-in-fact. Subsequent to~~
 4 ~~the execution of the power of attorney, a principal may~~
 5 ~~execute a document signed by the principal or in the~~
 6 ~~principal's name by an adult other than the~~
 7 ~~attorney-in-fact in the principal's presence and at the~~
 8 ~~principal's direction that expressly authorizes an~~
 9 ~~attorney in fact to accept or receive a gift of the~~
 10 ~~principal's property in trust or otherwise, or to accept or~~
 11 ~~receive any of the principal's property as payment for~~
 12 ~~services rendered by the attorney-in-fact provided the~~
 13 ~~document is either acknowledged before a notary public~~
 14 ~~or signed by at least two witnesses who satisfy the~~
 15 ~~requirements of Section 4122.~~

16 (e) ~~A document executed by the principal pursuant to~~
 17 ~~subdivision (b) subsequent to the execution of a power of~~
 18 ~~attorney shall contain the following warning:~~

19 ~~HAVING ACCEPTED THE APPOINTMENT TO~~
 20 ~~ACT FOR THE ABOVE PRINCIPAL UNDER A~~
 21 ~~POWER OF ATTORNEY, I ACKNOWLEDGE THAT:~~

22 ~~1. I have the legal duty to act solely in the interest of the~~
 23 ~~principal and to avoid actions that would benefit me to~~
 24 ~~the detriment of the principal's interest.~~

25
 26 ~~2. I have the legal duty to receive only reasonable fees for~~
 27 ~~services I have rendered to the principal.~~

28
 29 ~~3. If I were to transfer the principal's property to myself~~
 30 ~~under the power of attorney executed by the principal~~
 31 ~~without a separate document authorizing me to either~~
 32 ~~accept or receive any of principal's property as a gift or~~
 33 ~~as payment for services rendered, as specified by~~
 34 ~~subdivision (b) of Section 4264 of the Probate Code, I may~~
 35 ~~be prosecuted for embezzlement.~~

36
 37 ~~I HAVE READ AND UNDERSTOOD ALL THE TERMS~~
 38 ~~HEREIN AND AGREE TO ACT ACCORDING TO THE~~
 39 ~~TERMS OF THIS APPOINTMENT.~~

40

1 Signed this _____ day of _____, 20____.

2
3 _____

4 (attorney-in-fact's signature)

5
6 _____

7 (attorney-in-fact's social security number)

8
9 State of _____

10 County of _____

11
12 ~~(Include certificate of acknowledgment of notary public in~~
13 ~~compliance with Section 1189 of the Civil Code or other applicable~~
14 ~~law.)~~

15
16 ~~SEC. 4. Section 4401 of the Probate Code is amended~~
17 ~~to read:~~

18 ~~4401. The following statutory form power of attorney~~
19 ~~is legally sufficient when the requirements of Section 4402~~
20 ~~are satisfied:~~



1 ~~NOTE TO PRINTING OFFICE: INSERT BOTH~~
2 ~~STRIKE AND ITALED CAMERA READY COPY HERE~~
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1 ~~SEC. 5.~~

2 SEC. 2. The provisions of this bill shall not affect any
3 legally sufficient power of attorney executed prior to
4 January 1, 2001.

5 ~~SEC. 6.~~

6 SEC. 3. The provisions of this bill shall not affect ~~an~~
7 ~~executed~~ a durable power of attorney under Section 4128
8 of the Probate Code ~~or an executed Uniform Statutory~~
9 ~~Form Power of Attorney under Section 4401 of the~~
10 ~~Probate Code in printed form~~ *executed* prior to March 1,
11 2001. Subsequent to March 1, 2001, all printed forms
12 under Section 4128 of the Probate Code ~~or Section 4401~~
13 ~~of the Probate Code not conforming to the provisions of~~
14 ~~this bill shall be deemed legally insufficient.~~ *shall conform*
15 *to the provisions of this bill.*

