



2022 South Dakota Legislature
Senate Bill 79
ENROLLED

AN ACT

ENTITLED An Act to clarify cross-references regarding powers of attorney.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 59-12-8 be AMENDED:

- 59-12-8.** (1) A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.
- (2) If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.
- (3) If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by:
- (a) A physician or licensed psychologist that the principal is incapacitated within the meaning in subsection 59-12-1(5)(a); or
- (b) An attorney at law, a judge, or an appropriate governmental official that the principal is incapacitated within the meaning in subsection 59-12-1(5)(b).
- (4) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, Sections 1171 through 1179 of the Social Security Act, 42 U.S.C. § 1320(d), and applicable regulations, to obtain access to the principal's health care information and communicate with the principal's health care provider.

An Act to clarify cross-references regarding powers of attorney.

I certify that the attached Act originated in the:

Senate as Bill No. 79

Received at this Executive Office
this ____ day of _____,
2022 at _____ M.

Secretary of the Senate

By _____
for the Governor

President of the Senate

The attached Act is hereby
approved this _____ day of
_____, A.D., 2022

Attest:

Secretary of the Senate

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

Speaker of the House

Attest:

Filed _____, 2022
at _____ o'clock __ M.

Chief Clerk

Secretary of State

Senate Bill No. 79
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State