



2022 South Dakota Legislature

Senate Bill 79

Introduced by: **Senator Johns**

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

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

3 **Section 1. That § 59-12-8 be AMENDED:**

4 **59-12-8.** (1) A power of attorney is effective when executed unless the principal
5 provides in the power of attorney that it becomes effective at a future date or upon
6 the occurrence of a future event or contingency.

7 (2) If a power of attorney becomes effective upon the occurrence of a future event or
8 contingency, the principal, in the power of attorney, may authorize one or more
9 persons to determine in a writing or other record that the event or contingency has
10 occurred.

11 (3) If a power of attorney becomes effective upon the principal's incapacity and the
12 principal has not authorized a person to determine whether the principal is
13 incapacitated, or the person authorized is unable or unwilling to make the
14 determination, the power of attorney becomes effective upon a determination in a
15 writing or other record by:

16 (a) A physician or licensed psychologist that the principal is incapacitated within
17 the meaning in ~~§ 59-12-1~~ subsection 59-12-1(5)(a); or

18 (b) An attorney at law, a judge, or an appropriate governmental official that
19 the principal is incapacitated within the meaning in ~~§ 59-12-1~~ subsection
20 59-12-1(5)(b).

21 (4) A person authorized by the principal in the power of attorney to determine that the
22 principal is incapacitated may act as the principal's personal representative
23 pursuant to the Health Insurance Portability and Accountability Act, Sections 1171
24 through 1179 of the Social Security Act, 42 U.S.C. § 1320(d), and applicable
25 regulations, to obtain access to the principal's health care information and
26 communicate with the principal's health care provider.