

46:2B-1

LEGISLATIVE HISTORY CHECKLIST
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(Banking transactions--power of
attorney--agents' authority)

NJSA: 46:2B-1

LAWS OF: 1991 CHAPTER: 95

BILL NO: S2886

SPONSOR(S): Lesniak

DATE INTRODUCED: October 1, 1990

COMMITTEE: ASSEMBLY: ---
SENATE: Labor, Industry & Professions

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: ASSEMBLY: February 25, 1991
SENATE: January 24, 1991

DATE OF APPROVAL: April 9, 1991

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG:pp

P.L.1991, CHAPTER 95, *approved April 9, 1991*

1990 Senate No. 2886

1 AN ACT concerning the use and acceptance by banking
2 institutions of certain forms of powers of attorney and
3 supplementing P.L.1971, c.373 (C.46:2B-8 et seq.).
4

5 BE IT ENACTED *by the Senate and General Assembly of the*
6 *State of New Jersey:*

7 1. As used in this act:

8 "Account" means an agreement between a banking institution
9 and its customer pursuant to which the banking institution
10 accepts funds or property of the customer and agrees to repay or
11 return the funds or property upon the terms and conditions
12 specified in the agreement. The term "account" includes, but is
13 not limited to, checking accounts, savings accounts, certificates
14 of deposit and other types of time and demand accounts as
15 banking institutions are authorized to enter into pursuant to
16 applicable federal or State law.

17 "Agent" means the person authorized to act for another person
18 pursuant to a power of attorney. An agent may be referred to as
19 an "attorney," "attorney-in-fact" or "deputy" in the power of
20 attorney.

21 "Banking institution" includes banks, savings banks, savings and
22 loan associations and credit unions, whether chartered by the
23 United States, this State or any other state or territory of the
24 United States or a foreign country.

25 A thing is done "in good faith" when it is in fact done honestly,
26 regardless of whether it is done negligently.

27 "Power of attorney" means a duly signed and acknowledged
28 written document in which a principal authorizes an agent to act
29 on his behalf.

30 "Principal" means a person executing a power of attorney.

31 "Safe deposit company" means a company operating pursuant
32 to P.L.1983, c.566 (C.17:14A-1 et seq.).

33 2. If any power of attorney contains language which confers
34 authority on the agent to "conduct banking transactions as set
35 forth in section 2 of P.L. , c. (C.)" (now pending before
36 the Legislature as this bill), the agent shall have the following
37 authority under the power of attorney:

38 a. To continue, modify or terminate any account or other
39 banking arrangement made by or on behalf of the principal prior
40 to creation of the agency;

41 b. To open, either in the name of the agent alone, the principal
42 alone or in both their names jointly, or otherwise, an account of
43 any type in any banking institution selected by the agent; to hire,

1 remove the contents of or surrender a safe deposit box or vault
2 space; and to make other contracts for the procuring of other
3 services made available by any banking institution or safe deposit
4 company as the agent shall deem desirable;

5 c. To draw, sign and deliver checks or drafts for any purpose,
6 to withdraw by check, order, draft, wire transfer, electronic
7 funds transfer or otherwise, any funds or property of the principal
8 deposited with, or left in the custody of, any banking institution,
9 wherever located, either prior or subsequent to the creation of
10 the agency, and use any line of credit connected with any such
11 accounts, apply for any automatic teller machine card or debit
12 card or use any automatic teller machine card or debit card,
13 including already existing cards, in connection with any such
14 accounts and apply for and use any bank credit card issued in the
15 name of the agent as an alternate user, but shall not use existing
16 credit cards issued in the name of the principal, on existing bank
17 credit card accounts of the principal;

18 d. To prepare periodic financial statements concerning the
19 assets and liabilities or income and expenses of the principal, and
20 to deliver statements so prepared to the banking institution or
21 other person whom the agent believes to be reasonably entitled;

22 e. To receive statements, vouchers, notices or other
23 documents from any banking institution and to act with respect
24 to them;

25 f. To have free access during normal business hours to any safe
26 deposit box or vault to which the principal would have access if
27 personally present;

28 g. To borrow money by bank overdraft, loan agreement or
29 promissory note of the principal given for a period or on demand
30 and at an interest rate as the agent shall select; to give any
31 security out of the assets of the principal as the agent shall deem
32 desirable or necessary for any borrowing; to pay, renew or
33 extend the time of payment of any agreement or note so given or
34 given by or on behalf of the principal; and to procure for the
35 principal a loan from any banking institution by any other
36 procedure made available by a banking institution;

37 h. To make, assign, endorse, discount, guaranty and negotiate
38 for any purpose all promissory notes, checks, drafts or other
39 negotiable or non-negotiable paper instruments of the principal
40 or payable to the principal or to the principal's order; to receive
41 the cash or other proceeds of these transactions; and to accept
42 any draft drawn by any person upon the principal and pay it when
43 due;

44 i. To receive for the principal and deal in or with any trust
45 receipt, warehouse receipt or other negotiable or non-negotiable
46 instrument in which the principal has or claims to have interest;

47 j. To apply for and receive letters of credit or traveler's
48 checks from any banking institution selected by the agent, giving
49 any related indemnity or other agreements as the agent shall
50 deem appropriate;

1 k. To consent to an extension in the time of payment for any
2 commercial paper or banking transaction in which the principal
3 has an interest or by which the principal is, or might be, affected
4 in any way;

5 l. To demand, receive, obtain by action, proceeding or
6 otherwise any money or other thing of value to which the
7 principal is, may become or may claim to be entitled to as the
8 proceeds of any banking transaction conducted by the principal or
9 by the agent in the execution of any of the powers described in
10 this section, or partly by the principal and partly by the agent so
11 acting; to conserve, invest, disburse or utilize anything so
12 received for the purposes enumerated in this section; and to
13 reimburse the agent for any expenditures properly made by the
14 agent in the execution of the powers conferred upon the agent by
15 the power of attorney pursuant to the provisions of this section;

16 m. To execute, acknowledge, seal and deliver any instrument
17 in the name of the principal or otherwise which the agent deems
18 useful for the accomplishment of any purpose enumerated in this
19 section;

20 n. To prosecute, defend, submit to arbitration, settle and
21 propose or accept a compromise with respect to any claim
22 existing in favor of or against the principal based on or involving
23 any banking transaction or to intervene in any action or
24 proceeding relating to the banking transaction;

25 o. To hire, discharge and compensate any attorney,
26 accountant, expert witness or other assistant or assistants when
27 the agent deems the action to be appropriate for the proper
28 execution by the agent of any of the powers described in this
29 section and for maintaining the necessary records; and

30 p. In addition to the specific acts set forth in this section, to
31 do any other act which the principal may do through an agent
32 concerning any transaction with a banking institution which
33 affects the financial or other interests of the principal.

34 3. An agent may exercise all powers described in this act
35 exercisable by the principal upon and after the presentation of
36 the power of attorney to the banking institution with respect to
37 any banking transaction whether conducted in this or any other
38 state.

39 4. With respect to banking transactions, banking institutions
40 shall accept and rely on a power of attorney which conforms to
41 this act and shall permit the agent to act and exercise the
42 authority set forth in this act, provided that:

43 a. The banking institution shall refuse to rely on or act
44 pursuant to a power of attorney if (1) the signature of the
45 principal is not genuine, or (2) the employee of the banking
46 institution who receives, or is required to act on, the power of
47 attorney has received actual notice of the death of the principal,
48 of the revocation of the power of attorney or of the disability of
49 the principal at the time of the execution of the power of
50 attorney;

1 b. The banking institution is not obligated to rely on or act
2 pursuant to the power of attorney if it believes in good faith that
3 the power of attorney does not appear to be genuine, that the
4 principal is dead, that the power of attorney has been revoked or
5 that the principal was under a disability at the time of the
6 execution of the power of attorney. The banking institution shall
7 have a reasonable time under the circumstances within which to
8 decide whether it will rely on or act pursuant to a power of
9 attorney presented to it, but it may refuse to act or rely upon a
10 power of attorney first presented to it more than 10 years after
11 its date or on which it has not acted for a 10-year period unless
12 the agent is either the spouse, parent or a descendant of a parent
13 of the principal;

14 c. If the power of attorney provides that it "shall become
15 effective upon the disability of the principal" or similar words,
16 the banking institution is not obligated to rely on or act pursuant
17 to the power of attorney unless the banking institution is provided
18 by the agent with proof to its satisfaction that the principal is
19 then under a disability;

20 d. If the agent seeks to withdraw or pay funds from an account
21 of the principal, the agent shall provide evidence satisfactory to
22 the banking institution of his identity and shall execute a
23 signature card in a form as required by the banking institution;

24 e. If the banking institution refuses to rely on or act pursuant
25 to a power of attorney and the agent or principal has, in writing,
26 provided the banking institution with an address of the agent, the
27 institution shall notify the agent by a writing addressed to the
28 address provided to it that the power of attorney has been
29 rejected and the reason for the rejection;

30 f. The banking institution has viewed a form of power of
31 attorney which contains an actual original signature of the
32 principal. Alternatively, if the banking institution receives an
33 affidavit of the agent that such an original is not available to be
34 presented, the banking institution may accept a photocopy of the
35 power of attorney certified to be a true copy of the original by
36 either (1) another banking institution or (2) the county recording
37 office of the county in which the original was recorded.

38 5. No banking institution acting in reliance on a power of
39 attorney as set forth in this act, nor any person acting on behalf
40 of such an institution, shall be held liable for injury for any act or
41 omission if it is performed in good faith and within the scope of
42 the institution's or person's duties, unless the act or omission
43 constitutes a crime, actual fraud, actual malice or willful
44 misconduct.

45 6. Nothing in this act shall be deemed to give an agent any
46 greater authority or rights than the principal could exercise on
47 his own behalf.

48 7. Any banking transaction made by an agent or banking
49 institution under the authority of a power of attorney described
50 in this act, unless otherwise invalid or unenforceable, binds the

1 principal and his heirs, devisees, and personal representatives.

2 8. This act is not intended to be the exclusive method of
3 providing for powers of attorney for bank transactions and
4 nothing herein shall be deemed to invalidate or make inoperable
5 any power of attorney which is not made pursuant to this act and
6 which is otherwise valid. A power of attorney for banking
7 transactions pursuant to this act may be combined with a power
8 of attorney for other purposes. The provisions of section 1 of
9 P.L.1971, c.373 (C.46:2B-8) shall apply to any power of attorney
10 made pursuant to this act.

11 9. The banking institution may retain a photocopy of the
12 original signed power of attorney presented to it pursuant to
13 subsection f. of section 4 of this act or may retain and rely upon
14 the certified copies of the original as alternatively provided in
15 subsection f. of section 4 and thereafter may rely on such
16 photocopy or certified copy unless or until it receives knowledge
17 or information that requires or permits it not to honor the power
18 of attorney as provided in section 4.

19 10. An agent presenting or acting pursuant to or relying on a
20 power of attorney described in section 2 of this act shall be a
21 fiduciary within the meaning of the "Uniform Fiduciaries Law,"
22 P.L.1981, c.405 (C.3B:14-52 et seq.).

23 11. This act shall take effect on the 180th day after the date
24 of enactment.

25 26 27 STATEMENT

28
29 This bill provides a mechanism for principals and agents to
30 enter into and exercise agreements providing powers of attorney
31 for the purpose of conducting banking transactions. Agents
32 operating pursuant to a power of attorney executed in accordance
33 with this bill would have the authority, among other things, to:
34 continue, modify or terminate any accounts; open an account
35 either in the name of the agent alone, the principal alone or in
36 both their names jointly; draw, sign and deliver checks or drafts
37 for any purpose; prepare periodic financial statements; borrow
38 money by bank overdraft; make, endorse, discount, guaranty and
39 negotiate all promissory notes and other negotiable and
40 non-negotiable instruments of the principal; receive for the
41 principal and deal in or with any trust receipt; prosecute, defend,
42 submit for arbitration and settle the principal's existing claims
43 on banking transactions; and hire, discharge and compensate any
44 attorney, accountant, expert witness or other person required for
45 the proper execution of the power of attorney.

46 47 48 BANKING AND FINANCE

49
50 Establishes agent's authority under power of attorney for banking
51 transactions.

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2 8. This act is not intended to be the exclusive method of
3 providing for powers of attorney for bank transactions and
4 nothing herein shall be deemed to invalidate or make inoperable
5 any power of attorney which is not made pursuant to this act and
6 which is otherwise valid. A power of attorney for banking
7 transactions pursuant to this act may be combined with a power
8 of attorney for other purposes. The provisions of section 1 of
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10 made pursuant to this act.

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12 original signed power of attorney presented to it pursuant to
13 subsection f. of section 4 of this act or may retain and rely upon
14 the certified copies of the original as alternatively provided in
15 subsection f. of section 4 and thereafter may rely on such
16 photocopy or certified copy unless or until it receives knowledge
17 or information that requires or permits it not to honor the power
18 of attorney as provided in section 4.

19 10. An agent presenting or acting pursuant to or relying on a
20 power of attorney described in section 2 of this act shall be a
21 fiduciary within the meaning of the "Uniform Fiduciaries Law,"
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32 operating pursuant to a power of attorney executed in accordance
33 with this bill would have the authority, among other things, to:
34 continue, modify or terminate any accounts; open an account
35 either in the name of the agent alone, the principal alone or in
36 both their names jointly; draw, sign and deliver checks or drafts
37 for any purpose; prepare periodic financial statements; borrow
38 money by bank overdraft; make, endorse, discount, guaranty and
39 negotiate all promissory notes and other negotiable and
40 non-negotiable instruments of the principal; receive for the
41 principal and deal in or with any trust receipt; prosecute, defend,
42 submit for arbitration and settle the principal's existing claims
43 on banking transactions; and hire, discharge and compensate any
44 attorney, accountant, expert witness or other person required for
45 the proper execution of the power of attorney.

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BANKING AND FINANCE

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50 Establishes agent's authority under power of attorney for banking
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SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATEMENT TO

SENATE, No. 2886

STATE OF NEW JERSEY

DATED OCTOBER 15, 1990

The Senate Labor, Industry and Professions Committee reports favorably Senate, No. 2886.

This bill provides a mechanism for principals and agents to enter into and exercise agreements providing powers of attorney for the purpose of conducting banking transactions. Agents operating pursuant to a power of attorney executed in accordance with this bill would have the authority, upon and after the presentation of the power of attorney to any banking institution, to:

(1) Continue, modify or terminate any account or other banking arrangement made by or on behalf of the principal prior to creation of the agency;

(2) Open, either in the name of the agent, the principal, jointly or otherwise, an account of any type in any banking institution selected by the agent; to hire, remove the contents of or surrender a safe deposit box or vault space; and to make other contracts for the procuring of other services made available by any banking institution or safe deposit company as the agent deems desirable;

(3) Draw, sign and deliver checks or drafts for any purpose, to withdraw by check, order, draft, wire transfer, electronic funds transfer or otherwise, any funds or property of the principal deposited with, or left in the custody of, any banking institution, wherever located, either prior or subsequent to the creation of the agency, and use any line of credit connected with any such accounts, apply for any automatic teller machine card or debit card or use any automatic teller machine card or debit card, including already existing cards, in connection with any such accounts and apply for and use any bank credit card issued in the name of the agent as an alternate user, except existing credit cards issued in the name of the principal, on existing bank credit card accounts of the principal;

(4) Prepare periodic financial statements concerning the assets and liabilities or income and expenses of the principal and to deliver statements so prepared to the banking institution or other person whom the agent believes to be reasonably entitled;

(5) Receive statements, vouchers, notices or other documents from any banking institution and to act with respect to them;

(6) Have free access during normal business hours to any safe deposit box or vault to which the principal would have access if personally present;

(7) Borrow money by bank overdraft, loan agreement or promissory note of the principal given for a period or on demand and at an interest rate as the agent shall select; to give any security out

of the assets of the principal as the agent shall deem desirable or necessary for any borrowing; to pay, renew or extend the time of payment of any agreement or note so given or given by or on behalf of the principal; and to procure for the principal a loan from any banking institution by any other procedure made available by a banking institution;

(8) Make, assign, endorse, discount, guaranty and negotiate for any purpose all promissory notes, checks, drafts or other negotiable or non-negotiable instruments of the principal or payable to the principal or to the principal's order; to receive the cash or other proceeds of these transactions; and to accept any draft drawn by any person upon the principal and pay it when due;

(9) Receive for the principal and deal in or with any trust receipt, warehouse receipt or other negotiable or non-negotiable instrument in which the principal has or claims to have an interest;

(10) Apply for and receive letters of credit or traveler's checks from any banking institution selected by the agent, giving any related indemnity or other agreements as the agent shall deem appropriate;

(11) Consent to an extension in the time of payment for any commercial paper or banking transaction in which the principal has an interest or by which the principal is, or might be, affected in any way;

(12) Demand, receive, obtain by action, proceeding or otherwise any money or other thing of value to which the principal is, may become or may claim to be entitled to as the proceeds of any banking transaction conducted by the principal or by the agent in the execution of any of the powers permissible under the power of attorney; to conserve, invest, disburse or utilize anything so received for the purposes enumerated in the power of attorney; and to reimburse the agent for any expenditures properly made by the agent in the execution of the powers conferred upon the agent by the power of attorney;

(13) Execute, acknowledge, seal and deliver any instrument in the name of the principal or otherwise which the agent deems useful for the accomplishment of any purpose permissible under the power of attorney;

(14) Prosecute, defend, submit to arbitration, settle and propose or accept a compromise with respect to any claim existing in favor of or against the principal based on or involving any banking transaction or to intervene in any action or proceeding relating to the banking transaction; and

(15) Hire, discharge and compensate any attorney, accountant, expert witness or other assistant or assistants when the agent deems the action to be appropriate for the proper execution by the agent of any of the powers permissible under the power of attorney and for maintaining the necessary records.

In addition to the specific acts set forth above, the agent may take any other action which the principal may do through an agent concerning any transaction with a banking institution which affects

the financial or other interests of the principal. Any banking transaction made by an agent or banking institution under the authority of a power of attorney pursuant to the provisions of this bill, unless otherwise invalid or unenforceable, binds the principal and his heirs, devisees, and personal representatives. However, the bill expressly provides that its provisions are not to be deemed to give an agent any greater authority or rights than the principal could exercise on his own behalf.

The bill establishes certain safeguards with respect to the exercise of powers of attorney. The bill provides that, with respect to banking transactions, banking institutions are to accept and rely on a power of attorney which conforms to the standards provided by the bill if the banking institution has viewed a form of power of attorney which contains an actual original signature of the principal. Alternatively, if the banking institution receives an affidavit of the agent that such an original is not available to be presented, the banking institution may accept a photocopy of the power of attorney certified to be a true copy of the original by either another banking institution or the county recording office of the county in which the original was recorded.

The bill provides that a banking institution is to refuse to rely on or act pursuant to a power of attorney if the signature of the principal is not genuine or the employee of the banking institution who receives, or is required to act on, the power of attorney has received actual notice of the death of the principal, of the revocation of the power of attorney or of the disability of the principal at the time of the execution of the power of attorney. The bill further provides that the banking institution is not obligated to rely on or act pursuant to the power of attorney if it believes in good faith that the power of attorney does not appear to be genuine, that the principal is dead, that the power of attorney has been revoked or that the principal was under a disability at the time of the execution of the power of attorney. In addition, the bill provides that the banking institution shall have a reasonable time under the circumstances within which to decide whether it will rely on or act pursuant to a power of attorney presented to it. A banking institution may refuse to act or rely upon a power of attorney first presented to it more than 10 years after its date or on which it has not acted for a 10-year period unless the agent is either the spouse, parent or a descendant of a parent of the principal. Furthermore, if the power of attorney provides that it "shall become effective upon the disability of the principal" or similar words, the banking institution is not obligated to rely on or act pursuant to the power of attorney unless the banking institution is provided by the agent with proof to its satisfaction that the principal is then under a disability.

The bill also provides that if an agent seeks to withdraw or pay funds from an account of the principal, the agent shall provide evidence satisfactory to the banking institution of his identity and shall execute a signature card in a form as required by the banking institution. If the banking institution refuses to rely on or act

pursuant to a power of attorney and the agent or principal has, in writing, provided the banking institution with an address of the agent, the institution is to notify the agent by a writing addressed to the address provided to it that the power of attorney has been rejected and provide the reason for the rejection.

The bill states that no banking institution acting in reliance on a power of attorney pursuant to its provisions, nor any person acting on behalf of such an institution, shall be held liable for injury for any act or omission if it is performed in good faith and within the scope of the institution's or person's duties, unless the act or omission constitutes a crime, actual fraud, actual malice or willful misconduct.

The provisions of the bill are not intended to provide the exclusive method of establishing powers of attorney for bank transactions and nothing contained in the bill is to be deemed to invalidate or make inoperable any power of attorney which is not made pursuant to the provisions of the bill and which is otherwise valid. A power of attorney for banking transactions made in accordance with the provisions of this bill may be combined with a power of attorney for other purposes. The bill provides that the provisions of section 1 of P.L.1971, c.373 (C.46:2B-8) shall apply to any power of attorney made pursuant to its provisions.

Finally, the bill provides that an agent presenting or acting pursuant to or relying on a power of attorney described in section 2 of this bill shall be a fiduciary within the meaning of the "Uniform Fiduciaries Law," P.L.1981, c.405 (C.3B:14-52 et seq.).