A bill for an act

relating to powers of attorney; creating an alternative statutory short form for military members who are in active service; amending Minnesota Statutes 2006, sections 523.02; 523.131; 523.16; 523.20; 523.21; 523.23, subdivision 3; proposing coding for new law in Minnesota Statutes, chapter 523.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2006, section 523.02, is amended to read:

523.02 COMMON LAW, PREEXISTING AND FOREIGN POWERS OF ATTORNEY.

A written power of attorney is a validly executed power of attorney for the purposes of sections 523.01 to 523.24, and is subject to the provisions of sections 523.01 to 523.24, if it is validly created pursuant to: (1) the law of Minnesota as it existed prior to the enactment of sections 523.01 to 523.24 if it was executed prior to August 1, 1984; (2) the common law; or (3) the law of another state or country. A power of attorney executed before August 1, 1992, in conformity with section 523.23 as that statute existed before that date is a statutory short form power of attorney. A power of attorney executed on or after August 1, 1992, in conformity with section 523.23 <u>or section 523.231</u> as it exists on or after that date is a statutory short form power of attorney. A provision in a power of attorney that would make it a durable power of attorney under section 523.07 but for its use of the term "disability" in place of "incapacity or incompetence" is nonetheless a durable power of attorney.

Sec. 2. Minnesota Statutes 2006, section 523.131, is amended to read:

523.131 QUALIFICATION OF SUCCESSOR ATTORNEY-IN-FACT IN STATUTORY SHORT FORM POWER OF ATTORNEY.

If two or more attorneys-in-fact are originally appointed and one dies, resigns, or is unable to serve, a successor attorney-in-fact named in a power of attorney executed in conformity with section 523.23 or 523.231 replaces the attorney-in-fact who dies, resigns, or is unable to serve. If the original attorneys-in-fact were required to act jointly, the attorneys-in-fact acting at any time must act jointly. If the original attorneys-in-fact were allowed to act individually, the attorneys-in-fact acting at any time may act individually. If attorneys-in-fact acting at any time are required to act jointly, and there is only one remaining attorney-in-fact because of the death, resignation, or inability to serve of all other original and successor attorneys-in-fact, the remaining attorney-in-fact may act alone.

Sec. 3. Minnesota Statutes 2006, section 523.16, is amended to read:

523.16 AFFIDAVIT AS PROOF OF AUTHORITY OF ATTORNEY-IN-FACT.

Subdivision 1. **Multiple attorneys-in-fact.** If the attorney-in-fact exercising a power pursuant to a power of attorney has authority to act as a result of the death, incompetency, or resignation of one or more attorneys-in-fact named in the power of attorney, an affidavit executed by the attorney-in-fact setting forth the conditions precedent to the attorney-in-fact's authority to act under the power of attorney and stating that those conditions have occurred is conclusive proof as to any party relying on the affidavit of the occurrence of those conditions.

Subd. 2. **Attorney-in-fact for member of military.** If an attorney-in-fact exercising a power pursuant to a power of attorney executed by a member of the military has authority to act under section 523.231, subdivision 3, an affidavit executed by the attorney-in-fact setting forth the conditions precedent to the authority to act and stating the existence of those conditions is conclusive proof as to any party relying on the affidavit of the existence of those conditions.

Sec. 4. Minnesota Statutes 2006, section 523.20, is amended to read:

523.20 LIABILITY OF PARTIES REFUSING AUTHORITY OF ATTORNEY-IN-FACT TO ACT ON PRINCIPAL'S BEHALF.

Any party refusing to accept the authority of an attorney-in-fact to exercise a power granted by a power of attorney which (1) is executed in conformity with section 523.23

or 523.231; (2) contains a specimen signature of the attorney-in-fact authorized to act; (3) with regard to the execution or delivery of any recordable instrument relating to real property, is accompanied by affidavits that satisfy the provisions of section 523.17; (4) with regard to any other transaction, is signed by the attorney-in-fact in a manner conforming to section 523.18; and (5) when applicable, is accompanied by an affidavit and any other document required by section 523.16, is liable to the principal and to the principal's heirs, assigns, and representative of the estate of the principal in the same manner as the party would be liable had the party refused to accept the authority of the principal to act on the principal's own behalf unless: (1) the party has actual notice of the revocation of the power of attorney prior to the exercise of the power; (2) the duration of the power of attorney specified in the power of attorney itself has expired; ~~or~~ (3) the party has actual knowledge of the death of the principal or, if the power of attorney is not a durable power of attorney, actual notice of a judicial determination that the principal is legally incompetent; or (4) in the case of a power of attorney executed by a member of the military under section 523.231, the party has actual knowledge that the power of attorney is not in effect under section 523.231, subdivision 3. This provision does not negate any liability which a party would have to the principal or to the attorney-in-fact under any other form of power of attorney under the common law or otherwise.

Sec. 5. Minnesota Statutes 2006, section 523.21, is amended to read:

523.21 DUTIES OF AN ATTORNEY-IN-FACT.

(a) The attorney-in-fact shall keep complete records of all transactions entered into by the attorney-in-fact on behalf of the principal. Except as provided in paragraph (b), the attorney-in-fact has no duty to render an accounting of those transactions unless: (1) requested to do so at any time by the principal; (2) the instrument conferring the power of attorney requires that the attorney-in-fact render accountings and specifies to whom the accounting must be delivered; or (3) the attorney-in-fact has reimbursed the attorney-in-fact for any expenditure the attorney-in-fact has made on behalf of the principal. A written statement that gives reasonable notice of all transactions entered into by the attorney-in-fact on behalf of the principal is an adequate accounting.

(b) An attorney-in-fact acting under a power of attorney executed under section 523.231 has a duty to render an accounting unless the power of attorney specifies that an accounting is not required. To the extent that the power of attorney document does not specify either the frequency of or to whom the accounting must be made, the accounting must be made to the principal on a quarterly basis.

(c) The persons entitled to examine and copy the records of the attorney-in-fact are the principal, a person designated by the principal in the document creating the power of attorney as the recipient of accountings required by this section, and the guardian or conservator of the estate of the principal while the principal is living and the personal representative of the estate of the principal after the death of the principal.

(d) The attorney-in-fact has no affirmative duty to exercise any power conferred upon the attorney-in-fact under the power of attorney. In exercising any power conferred by the power of attorney, the attorney-in-fact shall exercise the power in the same manner as an ordinarily prudent person of discretion and intelligence would exercise in the management of the person's own affairs and shall have the interests of the principal utmost in mind. The attorney-in-fact is personally liable to any person, including the principal, who is injured by an action taken by the attorney-in-fact in bad faith under the power of attorney or by the attorney-in-fact's failure to account when the attorney-in-fact has a duty to account under this section.

Sec. 6. Minnesota Statutes 2006, section 523.23, subdivision 3, is amended to read:

Subd. 3. **Requirements.** Except as otherwise provided in section 523.231, to constitute a "statutory short form power of attorney," as this phrase is used in this chapter the wording and content of the form in subdivision 1 must be duplicated exactly and with no modifications, parts First, Second, and Third must be properly completed, and the signature of the principal must be acknowledged. Failure to name a successor attorney-in-fact, to provide an expiration date, or to complete part Fourth does not invalidate the power as a statutory short form power of attorney. A power of attorney that does not satisfy the requirements of this subdivision or section 523.231, but purports to be a statutory short form power of attorney, may constitute a common law power of attorney that incorporates by reference the definitions of powers contained in section 523.24; however, a party refusing to accept the authority of the common law attorney-in-fact is not liable under section 523.20.

Sec. 7. **[523.231] ALTERNATIVE STATUTORY SHORT FORM OF GENERAL POWER OF ATTORNEY FOR MILITARY MEMBERS IN ACTIVE SERVICE.**

Subdivision 1. **Application.** The statutory form contained in this section may be used by a resident of this state who is a member of the military in active service, as defined in section 190.05. This form is an alternative to the statutory short form in section 523.23. Section 523.23, subdivisions 2 and 3a, apply to this section. Notwithstanding

section 523.075 or 523.08, a power of attorney executed under this section is effective and expires as provided in subdivision 3.

Subd. 2. **Form.** The following form must be used to create a power of attorney under this section. When used, it must be construed in accordance with this section and section 523.24:

STATUTORY SHORT FORM POWER OF ATTORNEY FOR MILITARY MEMBER IN ACTIVE SERVICE OUTSIDE OF MINNESOTA,

MINNESOTA STATUTES, SECTION 523.231

IMPORTANT NOTICE: The powers granted by this document are broad and sweeping. They are defined in Minnesota Statutes, section 523.24. If you have any questions about these powers, obtain competent advice. This power of attorney may be revoked by you if you wish to do so. This power of attorney is automatically terminated if it is to your spouse and proceedings are commenced for dissolution, legal separation, or annulment of your marriage. This power of attorney authorizes, but does not require, the attorney-in-fact to act for you. This power of attorney is effective only during the time that you are a member of the military in active service and stationed outside of the state of Minnesota.

PRINCIPAL (Name and Address of Person Granting the Power)

.....

.....

.....

ATTORNEY(S)-IN-FACT	SUCCESSOR ATTORNEY(S)-IN-FACT
(Name and Address)	(Optional) To act if any named attorney-in-fact dies, resigns, or is otherwise unable to serve.
	(Name and Address)
.....	First Successor .....
.....	.....
.....	.....
.....	Second Successor .....
.....	.....
.....	.....
NOTICE: If more than one attorney-in-fact is designated, make a check or "x" on the line in front of one of the following statements:	
... Each attorney-in-fact may independently exercise the powers granted.	

... All attorneys-in-fact must jointly exercise the powers granted.

I, (the above-named Principal) hereby appoint the above named Attorney(s)-in-Fact to act as my attorney(s)-in-fact:

FIRST: To act for me in any way that I could act with respect to the following matters, as each of them is defined in Minnesota Statutes, section 523.24:

(To grant to the attorney-in-fact any of the following powers, make a check or "x" on the line in front of each power being granted. You may, but need not, cross out each power not granted. Failure to make a check or "x" on the line in front of the power will have the effect of deleting the power unless the line in front of the power of (N) is checked or x-ed.)

.....(A) real property transactions;

I choose to limit this power to real property in ..... County, Minnesota, described as follows:

(Use legal description. Do not use street address.)

.....

.....

.....

.....

(If more space is needed, continue on the back or on an attachment.)

.....(B) tangible personal property transactions;

.....(C) bond, share, and commodity transactions;

.....(D) banking transactions;

.....(E) business operating transactions;

.....(F) insurance transactions;

.....(G) beneficiary transactions;

.....(H) gift transactions;

.....(I) fiduciary transactions;

.....(J) claims and litigation;

.....(K) family maintenance;

.....(L) benefits from military service;

.....(M) records, reports, and statements;

.....(N) all of the powers listed in (A) through (M) above and all other matters.

SECOND: (You must indicate below whether or not this power of attorney will be effective if you become incapacitated or incompetent. Make a check or "x" on the line in front of the statement that expresses your intent.)

..... This power of attorney shall not be effective if I become incapacitated or incompetent.

..... This power of attorney shall continue to be effective if I become incapacitated or incompetent.

THIRD: (You must indicate below whether or not this power of attorney authorizes the attorney-in-fact to transfer your property to the attorney-in-fact. Make a check or "x" on the line in front of the statement that expresses your intent.)

..... This power of attorney does not authorize the attorney-in-fact to transfer my property to the attorney-in-fact.

..... This power of attorney authorizes the attorney-in-fact to transfer my property to the attorney-in-fact.

FOURTH: (You must indicate below whether or not the attorney-in-fact is required to make an accounting. Make a check or "x" on the line in front of the statement that expresses your intent. If you do not indicate your intent, a quarterly accounting to you will be required.)

..... My attorney-in-fact must render .....
(Monthly, Quarterly, Annual)
accountings to me or .....
(Name and Address)
during my lifetime, and a final accounting to the personal representative of my estate, if any is appointed, after my death.

..... My attorney-in-fact need not render an accounting unless I request it or the accounting is otherwise required by Minnesota Statutes, section 523.21.

ACKNOWLEDGMENT OF PRINCIPAL

In Witness Whereof I have hereunto signed my name this ..... day of ..... , ...

.....
(Signature of Principal)

(Acknowledgment of Principal)

STATE OF MINNESOTA)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this ..... day of ....., ..., by .....
(Insert Name of Principal)

.....
(Signature of Notary Public or other Official)

ACKNOWLEDGMENT OF ATTORNEY(S)-IN-FACT

I, ... (insert name(s) of attorney(s)-in-fact), acknowledge that by exercising a power granted by this document, I assume certain duties under law and may be civilly or criminally liable for an action made in bad faith or in a fraudulent or negligent manner, as provided in Minnesota Statutes, section 523.21 or 523.22, or other applicable law.

In Witnesss Whereof I have hereunto signed my name this ..... day of ....., ...

.....

.....

Signature of Attorney(s)-in-fact

(Acknowledgment of Attorney(s)-in-fact)

STATE OF MINNESOTA)

)ss.

COUNTY OF)

The foregoing instrument was acknowledged before me this ..... day of ....., ...,

by .....

(Insert Name(s) of Attorney(s)-in-fact

.....

Signature of Notary Public or other Official

Subd. 3. **Effective period and expiration.** A power of attorney executed under this section is effective only when the principal is a member of the military in active service and stationed outside of the state of Minnesota. This power of attorney expires when the principal is no longer in active military service.