

**ASSEMBLY BILL**

**No. 1622**

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**Introduced by Assembly Member Bonta**

February 6, 2014

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An act to repeal and add Part 14 (commencing with Section 600) of Division 2 of the Probate Code, relating to the powers of appointment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1622, as introduced, Bonta. Uniform Powers of Appointment Act.

Existing law provides for the creation, exercise, and release of powers of appointment, as specified.

This bill would repeal those provisions and establish instead the Uniform Powers of Appointment Act.

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. Part 14 (commencing with Section 600) of
- 2 Division 2 of the Probate Code is repealed.
- 3 SEC. 2. Part 14 (commencing with Section 600) is added to
- 4 Division 2 of the Probate Code, to read:

1 PART 14. UNIFORM POWERS OF APPOINTMENT ACT

2  
3 CHAPTER 1. GENERAL PROVISIONS  
4

5 600. This part shall be known and may be cited as the Uniform  
6 Powers of Appointment Act.

7 601. For purposes of this part, the following definitions apply:

8 (a) "Appointee" means a person to which a powerholder makes  
9 an appointment of appointive property.

10 (b) "Appointive property" means the property or property  
11 interest subject to a power of appointment.

12 (c) "Blanket-exercise clause" means a clause in an instrument  
13 that exercises a power of appointment and is not a specific-exercise  
14 clause. The term includes a clause that does any of the following:

15 (1) Expressly uses the words "any power" in exercising any  
16 power of appointment the powerholder has.

17 (2) Expressly uses the words "any property" in appointing any  
18 property over which the powerholder has a power of appointment.

19 (3) Disposes of all property subject to disposition by the  
20 powerholder.

21 (d) "Donor" means a person that creates a power of appointment.

22 (e) "Exclusionary power of appointment" means a power of  
23 appointment exercisable in favor of any one or more of the  
24 permissible appointees to the exclusion of the other permissible  
25 appointees.

26 (f) "General power of appointment" means a power of  
27 appointment exercisable in favor of the powerholder, the  
28 powerholder's estate, a creditor of the powerholder, or a creditor  
29 of the powerholder's estate.

30 (g) "Gift-in-default clause" means a clause identifying a taker  
31 in default of appointment.

32 (h) "Impermissible appointee" means a person that is not a  
33 permissible appointee.

34 (i) "Instrument" means a record.

35 (j) "Nongeneral power of appointment" means a power of  
36 appointment that is not a general power of appointment.

37 (k) "Permissible appointee" means a person in whose favor a  
38 powerholder may exercise a power of appointment.

1 (l) “Person” means an individual, estate, trust, business or  
2 nonprofit entity, public corporation, government or governmental  
3 subdivision, agency, or instrumentality, or other legal entity.

4 (m) “Power of appointment” means a power that enables a  
5 powerholder acting in a nonfiduciary capacity to designate a  
6 recipient of an ownership interest in or another power of  
7 appointment over the appointive property. The term does not  
8 include a power of attorney.

9 (n) “Powerholder” means a person in which a donor creates a  
10 power of appointment.

11 (o) “Presently exercisable power of appointment” means a power  
12 of appointment exercisable by the powerholder at the relevant  
13 time. The term:

14 (1) Includes a power of appointment not exercisable until the  
15 occurrence of a specified event, the satisfaction of an ascertainable  
16 standard, or the passage of a specified time only after any of the  
17 following:

18 (A) The occurrence of the specified event.

19 (B) The satisfaction of the ascertainable standard.

20 (C) The passage of the specified time.

21 (2) Does not include a power exercisable only at the  
22 powerholder’s death.

23 (p) “Record” means information that is inscribed on a tangible  
24 medium or that is stored in an electronic or other medium and is  
25 retrievable in perceivable form.

26 (q) “Specific-exercise clause” means a clause in an instrument  
27 that specifically refers to and exercises a particular power of  
28 appointment.

29 (r) “Taker in default of appointment” means a person that takes  
30 all or part of the appointive property to the extent the powerholder  
31 does not effectively exercise the power of appointment.

32 (s) “Terms of the instrument” means the manifestation of the  
33 intent of the maker of the instrument regarding the instrument’s  
34 provisions as expressed in the instrument or as may be established  
35 by other evidence that would be admissible in a legal proceeding.

36 602. Unless the terms of the instrument creating a power of  
37 appointment manifest a contrary intent, both of the following apply:

38 (a) The creation, revocation, or amendment of the power is  
39 governed by the law of the donor’s domicile at the relevant time.

1 (b) The exercise, release, or disclaimer of the power, or the  
2 revocation or amendment of the exercise, release, or disclaimer of  
3 the power, is governed by the law of the powerholder’s domicile  
4 at the relevant time.

5 603. The common law and principles of equity supplement  
6 this part, except to the extent modified by this part or law of this  
7 state other than this part.

8  
9 CHAPTER 2. CREATION, REVOCATION, AND AMENDMENT OF  
10 POWER OF APPOINTMENT

11  
12 605. (a) A power of appointment is created only if both of the  
13 following conditions are satisfied:

- 14 (1) The instrument creating the power:
- 15 (A) Is valid under applicable law; and
- 16 (B) Except as otherwise provided in subdivision (b), transfers  
17 the appointive property.
- 18 (2) The terms of the instrument creating the power manifest the  
19 donor’s intent to create in a powerholder a power of appointment  
20 over the appointive property exercisable in favor of a permissible  
21 appointee.

22 (b) Subparagraph (B) of paragraph (1) of subdivision (a) does  
23 not apply to the creation of a power of appointment by the exercise  
24 of a power of appointment.

25 (c) A power of appointment may not be created in a deceased  
26 individual.

27 (d) Subject to an applicable rule against perpetuities, a power  
28 of appointment may be created in an unborn or unascertained  
29 powerholder.

30 606. A powerholder may not transfer a power of appointment.  
31 If a powerholder dies without exercising or releasing a power, the  
32 power lapses.

33 607. Subject to Section 609, and unless the terms of the  
34 instrument creating a power of appointment manifest a contrary  
35 intent, the power is all of the following:

- 36 (a) Presently exercisable.
- 37 (b) Exclusionary.
- 38 (c) Except as otherwise provided in Section 608, general.

1 608. Unless the terms of the instrument creating a power of  
2 appointment manifest a contrary intent, the power is nongeneral  
3 if both of the following conditions are satisfied:

4 (a) The power is exercisable only at the powerholder’s death.

5 (b) The permissible appointees of the power are a defined and  
6 limited class that does not include the powerholder’s estate, the  
7 powerholder’s creditors, or the creditors of the powerholder’s  
8 estate.

9 609. (a) For purposes of this section, “adverse party“ means  
10 a person with a substantial beneficial interest in property which  
11 would be affected adversely by a powerholder’s exercise or  
12 nonexercise of a power of appointment in favor of the powerholder,  
13 the powerholder’s estate, a creditor of the powerholder, or a  
14 creditor of the powerholder’s estate.

15 (b) If a powerholder may exercise a power of appointment only  
16 with the consent or joinder of an adverse party, the power is  
17 nongeneral.

18 (c) If the permissible appointees of a power of appointment are  
19 not defined and limited, the power is exclusionary.

20 610. A donor may revoke or amend a power of appointment  
21 only to the extent either of the following conditions is satisfied:

22 (a) The instrument creating the power is revocable by the donor.

23 (b) The donor reserves a power of revocation or amendment in  
24 the instrument creating the power of appointment.

25  
26 CHAPTER 3. EXERCISE OF POWER OF APPOINTMENT  
27

28 615. (a) A power of appointment is exercised only if both of  
29 the following conditions are satisfied:

30 (1) The instrument exercising the power is valid under applicable  
31 law.

32 (2) The terms of the instrument exercising the power do both  
33 of the following:

34 (A) Manifest the powerholder’s intent to exercise the power.

35 (B) Subject to Section 618, satisfy the requirements of exercise,  
36 if any, imposed by the donor.

37 (b) A power of appointment is exercised only to the extent the  
38 appointment is a permissible exercise of the power.

39 616. (a) For purposes of this section, both of the following  
40 shall apply:

1 (1) “Residuary clause” does not include a residuary clause  
2 containing a blanket- exercise clause or a specific-exercise clause.  
3 (2) “Will” includes a codicil and a testamentary instrument that  
4 revises another will.  
5 (b) A residuary clause in a powerholder’s will, or a comparable  
6 clause in the powerholder’s revocable trust, manifests the  
7 powerholder’s intent to exercise a power of appointment only if  
8 all of the following conditions are satisfied:  
9 (1) The terms of the instrument containing the residuary clause  
10 do not manifest a contrary intent.  
11 (2) The power is a general power exercisable in favor of the  
12 powerholder’s estate.  
13 (3) There is no gift-in-default clause or the gift-in-default clause  
14 is ineffective.  
15 (4) The powerholder did not release the power.  
16 617. Unless the terms of the instrument exercising a power of  
17 appointment manifest a contrary intent, one of the following  
18 applies:  
19 (a) Except as otherwise provided in subdivision (b), a  
20 blanket-exercise clause extends to a power acquired by the  
21 powerholder after executing the instrument containing the clause.  
22 (b) If the powerholder is also the donor of the power, the clause  
23 does not extend to the power unless there is no gift-in-default  
24 clause or the gift-in-default clause is ineffective.  
25 618. A powerholder’s substantial compliance with a formal  
26 requirement of appointment imposed by the donor, including a  
27 requirement that the instrument exercising the power of  
28 appointment make reference or specific reference to the power, is  
29 sufficient if both of the following conditions are satisfied:  
30 (a) The powerholder knows of and intends to exercise the power.  
31 (b) The powerholder’s manner of attempted exercise of the  
32 power does not impair a material purpose of the donor in imposing  
33 the requirement.  
34 619. (a) A powerholder of a general power of appointment  
35 that permits appointment to the powerholder or the powerholder’s  
36 estate may make any appointment, including an appointment in  
37 trust or creating a new power of appointment, that the powerholder  
38 could make in disposing of the powerholder’s own property.

1 (b) A powerholder of a general power of appointment that  
2 permits appointment only to the creditors of the powerholder or  
3 of the powerholder's estate may appoint only to those creditors.

4 (c) Unless the terms of the instrument creating a power of  
5 appointment manifest a contrary intent, the powerholder of a  
6 nongeneral power may do one of the following:

7 (1) Make an appointment in any form, including an appointment  
8 in trust, in favor of a permissible appointee.

9 (2) Create a general power in a permissible appointee.

10 (3) Create a nongeneral power in any person to appoint to one  
11 or more of the permissible appointees of the original nongeneral  
12 power.

13 620. (a) Subject to Sections 620.3 and 620.7, an appointment  
14 to a deceased appointee is ineffective.

15 (b) Unless the terms of the instrument creating a power of  
16 appointment manifest a contrary intent, a powerholder of a  
17 nongeneral power may exercise the power in favor of, or create a  
18 new power of appointment in, a descendant of a deceased  
19 permissible appointee whether or not the descendant is described  
20 by the donor as a permissible appointee.

21 620.3. (a) Except as provided in subdivision (b), if an  
22 appointment by will or by instrument effective only at the death  
23 of the powerholder is ineffective because of the death of an  
24 appointee before the appointment becomes effective and the  
25 appointee leaves issue surviving the powerholder, the surviving  
26 issue of the appointee take the appointed property in the same  
27 manner as the appointee would have taken had the appointee  
28 survived the powerholder, except that the property passes only to  
29 persons who are permissible appointees, including appointees  
30 permitted under Section 620.7. If the surviving issue are all of the  
31 same degree of kinship to the deceased appointee, they take  
32 equally, but if of unequal degree, then those of more remote degree  
33 take in the manner provided in Section 240.

34 (b) This section does not apply if either the donor or  
35 powerholder manifests an intent that some other disposition of the  
36 appointive property shall be made.

37 620.7. (a) Unless the creating instrument expressly provides  
38 otherwise, if a permissible appointee dies before the exercise of a  
39 nongeneral power of appointment, the powerholder has the power  
40 to appoint to the issue of the deceased permissible appointee,

1 whether or not the issue was included within the description of the  
2 permissible appointees, if the deceased permissible appointee was  
3 alive at the time of the execution of the creating instrument or was  
4 born thereafter.

5 (b) This section applies whether the nongeneral power of  
6 appointment is exercisable by inter vivos instrument, by will, or  
7 otherwise.

8 (c) This section applies to a case where the power of  
9 appointment is exercised on or after July 1, 1982, but does not  
10 affect the validity of any exercise of a power of appointment made  
11 before July 1, 1982.

12 621. (a) Except as otherwise provided in Section 620, an  
13 exercise of a power of appointment in favor of an impermissible  
14 appointee is ineffective.

15 (b) An exercise of a power of appointment in favor of a  
16 permissible appointee is ineffective to the extent the appointment  
17 is a fraud on the power.

18 622. If a powerholder exercises a power of appointment in a  
19 disposition that also disposes of property the powerholder owns,  
20 the owned property and the appointive property shall be allocated  
21 in the permissible manner that best carries out the powerholder's  
22 intent.

23 623. To the extent a powerholder of a general power of  
24 appointment, other than a power to withdraw property from,  
25 revoke, or amend a trust, makes an ineffective appointment, either  
26 of the following applies:

27 (a) The gift-in-default clause controls the disposition of the  
28 ineffectively appointed property.

29 (b) If there is no gift-in-default clause or to the extent the clause  
30 is ineffective, the ineffectively appointed property:

31 (1) Passes to either of the following:

32 (A) The powerholder if the powerholder is a permissible  
33 appointee and living.

34 (B) If the powerholder is an impermissible appointee or  
35 deceased, the powerholder's estate if the estate is a permissible  
36 appointee.

37 (2) If there is no taker under paragraph (1), passes under a  
38 reversionary interest to the donor or the donor's transferee or  
39 successor in interest.

1 624. To the extent a powerholder releases or fails to exercise  
2 a general power of appointment other than a power to withdraw  
3 property from, revoke, or amend a trust, either of the following  
4 applies:

5 (a) The gift-in-default clause controls the disposition of the  
6 unappointed property.

7 (b) If there is no gift-in-default clause or to the extent the clause  
8 is ineffective:

9 (1) Except as otherwise provided in paragraph (2), the  
10 unappointed property passes to either of the following:

11 (A) The powerholder if the powerholder is a permissible  
12 appointee and living.

13 (B) If the powerholder is an impermissible appointee or  
14 deceased, the powerholder's estate if the estate is a permissible  
15 appointee.

16 (2) To the extent the powerholder released the power, or if there  
17 is no taker under paragraph (1), the unappointed property passes  
18 under a reversionary interest to the donor or the donor's transferee  
19 or successor in interest.

20 625. To the extent a powerholder releases, ineffectively  
21 exercises, or fails to exercise a nongeneral power of appointment,  
22 either of the following applies:

23 (a) The gift-in-default clause controls the disposition of the  
24 unappointed property.

25 (b) If there is no gift-in-default clause or to the extent the clause  
26 is ineffective, the unappointed property either:

27 (1) Passes to the permissible appointees if both of the following  
28 conditions are satisfied:

29 (A) The permissible appointees are defined and limited.

30 (B) The terms of the instrument creating the power do not  
31 manifest a contrary intent.

32 (2) If there is no taker under paragraph (1), passes under a  
33 reversionary interest to the donor or the donor's transferee or  
34 successor in interest.

35 626. Unless the terms of the instrument creating or exercising  
36 a power of appointment manifest a contrary intent, if the  
37 powerholder makes a valid partial appointment to a taker in default  
38 of appointment, the taker in default of appointment may share fully  
39 in unappointed property.

1 627. If a powerholder makes an appointment to a taker in  
2 default of appointment and the appointee would have taken the  
3 property under a gift-in-default clause had the property not been  
4 appointed, the power of appointment is deemed not to have been  
5 exercised and the appointee takes under the clause.

6 628. A powerholder may revoke or amend an exercise of a  
7 power of appointment only to the extent either of the following  
8 conditions is satisfied:

9 (a) The powerholder reserves a power of revocation or  
10 amendment in the instrument exercising the power of appointment  
11 and, if the power is nongeneral, the terms of the instrument creating  
12 the power of appointment do not prohibit the reservation.

13 (b) The terms of the instrument creating the power of  
14 appointment provide that the exercise is revocable or amendable.

15

16 CHAPTER 4. DISCLAIMER OR RELEASE: CONTRACT TO APPOINT  
17 OR NOT TO APPOINT

18

19 630. As provided by Chapter 1 (commencing with Section 260)  
20 of Part 8:

21 (a) A powerholder may disclaim all or part of a power of  
22 appointment.

23 (b) A permissible appointee, appointee, or taker in default of  
24 appointment may disclaim all or part of an interest in appointive  
25 property.

26 631. A powerholder may release a power of appointment, in  
27 whole or in part, except to the extent the terms of the instrument  
28 creating the power prevent the release.

29 632. A powerholder of a releasable power of appointment may  
30 release the power in whole or in part by either of the following:

31 (a) By substantial compliance with a method provided in the  
32 terms of the instrument creating the power.

33 (b) If the terms of the instrument creating the power do not  
34 provide a method or the method provided in the terms of the  
35 instrument is not expressly made exclusive, by a record manifesting  
36 the powerholder’s intent by clear and convincing evidence.

37 633. A powerholder may revoke or amend a release of a power  
38 of appointment only to the extent that either of the following  
39 conditions is satisfied:

40 (a) The instrument of release is revocable by the powerholder.

1 (b) The powerholder reserves a power of revocation or  
2 amendment in the instrument of release.

3 634. A powerholder of a presently exercisable power of  
4 appointment may contract to do either of the following:

5 (a) Not to exercise the power.

6 (b) To exercise the power if the contract, when made, does not  
7 confer a benefit on an impermissible appointee.

8 635. A powerholder of a power of appointment that is not  
9 presently exercisable may contract to exercise or not to exercise  
10 the power only if both of the following conditions are satisfied:

11 (a) The powerholder is also the donor of the power.

12 (b) The powerholder has reserved the power in a revocable trust.

13 636. The remedy for a powerholder's breach of a contract to  
14 appoint or not to appoint appointive property is limited to damages  
15 payable out of the appointive property or, if appropriate, specific  
16 performance of the contract.

17

18 CHAPTER 5. RIGHTS OF POWERHOLDER'S CREDITORS IN  
19 APPOINTIVE PROPERTY

20

21 640. (a) For purposes of this section, "power of appointment  
22 created by the powerholder" includes a power of appointment  
23 created in a transfer by another person to the extent the powerholder  
24 contributed value to the transfer.

25 (b) Appointive property subject to a general power of  
26 appointment created by the powerholder is subject to a claim of a  
27 creditor of the powerholder or of the powerholder's estate to the  
28 extent provided in Chapter 1 (commencing with Section 3439) of  
29 Title 2 of Part 2 of Division 4 of the Civil Code.

30 (c) Subject to subdivision (b), appointive property subject to a  
31 general power of appointment created by the powerholder is not  
32 subject to a claim of a creditor of the powerholder or the  
33 powerholder's estate to the extent the powerholder irrevocably  
34 appointed the property in favor of a person other than the  
35 powerholder or the powerholder's estate.

36 (d) Subject to subdivisions (b) and (c), and notwithstanding the  
37 presence of a spendthrift provision or whether the claim arose  
38 before or after the creation of the power of appointment, appointive  
39 property subject to a general power of appointment created by the  
40 powerholder is subject to a claim of:

1 (1) A creditor of the powerholder, to the same extent as if the  
2 powerholder owned the appointive property, if the power is  
3 presently exercisable.

4 (2) A creditor of the powerholder's estate, to the extent the estate  
5 is insufficient to satisfy the claim and subject to the right of a  
6 decedent to direct the source from which liabilities are paid, if the  
7 power is exercisable at the powerholder's death.

8 641. (a) Except as otherwise provided in subdivision (b),  
9 appointive property subject to a general power of appointment  
10 created by a person other than the powerholder is subject to a claim  
11 of:

12 (1) A creditor of the powerholder, to the extent the  
13 powerholder's property is insufficient, if the power is presently  
14 exercisable.

15 (2) A creditor of the powerholder's estate, to the extent the estate  
16 is insufficient, subject to the right of a decedent to direct the source  
17 from which liabilities are paid.

18 (b) Subject to subdivision (c) of Section 643, a power of  
19 appointment created by a person other than the powerholder which  
20 is subject to an ascertainable standard relating to an individual's  
21 health, education, support, or maintenance within the meaning of  
22 26 U.S.C. Section 2041(b)(1)(A) or 26 U.S.C. Section 2514(c)(1),  
23 on January 1, 2015, is treated for purposes of this chapter as a  
24 nongeneral power.

25 642. (a) For purposes of this chapter, and except as otherwise  
26 provided in subdivision (b), a power to withdraw property from a  
27 trust is treated, during the time the power may be exercised, as a  
28 presently exercisable general power of appointment to the extent  
29 of the property subject to the power to withdraw.

30 (b) On the lapse, release, or waiver of a power to withdraw  
31 property from a trust, the power is treated as a presently exercisable  
32 general power of appointment only to the extent the value of the  
33 property affected by the lapse, release, or waiver exceeds the  
34 greater of the amount specified in 26 U.S.C. Section 2041(b)(2)  
35 and 26 U.S.C. Section 2514(e) or the amount specified in 26 U.S.C.  
36 Section 2503(b), on January 1, 2015.

37 643. (a) Except as otherwise provided in subdivisions (b) and  
38 (c), appointive property subject to a nongeneral power of  
39 appointment is exempt from a claim of a creditor of the  
40 powerholder or the powerholder's estate.

1 (b) Appointive property subject to a nongeneral power of  
2 appointment is subject to a claim of a creditor of the powerholder  
3 or the powerholder’s estate to the extent that the powerholder  
4 owned the property and, reserving the nongeneral power,  
5 transferred the property in violation of Chapter 1 (commencing  
6 with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil  
7 Code.

8 (c) If the initial gift in default of appointment is to the  
9 powerholder or the powerholder’s estate, a nongeneral power of  
10 appointment is treated for purposes of this chapter as a general  
11 power.

12  
13 CHAPTER 6. MISCELLANEOUS PROVISIONS  
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15 645. In applying and construing the uniform provisions  
16 contained in this part, consideration shall be given to the need to  
17 promote uniformity of the law with respect to its subject matter  
18 among states that enact it.

19 646. This part modifies, limits, or supersedes the Electronic  
20 Signatures in Global and National Commerce Act (15 U.S.C. Sec.  
21 7001 et seq.), but does not modify, limit, or supersede Section  
22 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize  
23 electronic delivery of any of the notices described in Section 103(b)  
24 of that act (15 U.S.C. Section 7003(b)).

25 647. (a) Except as otherwise provided in this part, on and after  
26 January 1, 2015, this part applies to all of the following:

27 (1) A power of appointment created before, on, or after January  
28 1, 2015.

29 (2) A judicial proceeding concerning a power of appointment  
30 commenced on or after January 1, 2015.

31 (3) A judicial proceeding concerning a power of appointment  
32 commenced before January 1, 2015, unless the court finds that  
33 application of a particular provision of this part would interfere  
34 substantially with the effective conduct of the judicial proceeding  
35 or prejudice a right of a party, in which case the particular provision  
36 of this part does not apply and any superseded law applies.

37 (b) A rule of construction or presumption provided in this part  
38 applies to an instrument executed before January 1, 2015, unless  
39 there is a clear indication of a contrary intent in the terms of the  
40 instrument.

- 1 (c) Except as otherwise provided in subdivision (a) or (b), an
- 2 action done before January 1, 2015, is not affected by this part.
- 3 (d) If a right is acquired, extinguished, or barred on the
- 4 expiration of a prescribed period that commenced under law of
- 5 this state other than this part before January 1, 2015, that law
- 6 continues to apply to the right.