

STATE OF ALASKA

DEPARTMENT OF REVENUE

Alaska Mental Health
Trust Authority

SEAN PARNELL, GOVERNOR

Office of the Long Term Care Ombudsman

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April 4, 2014

Rep. Shelley Hughes
Alaska State Capitol, Room 409
Juneau, AK 99801-1182

Re: HB 254 Powers of Attorney

Dear Representative Hughes:

Please accept my grateful thanks for sponsoring CSHB 254, enacting significant reforms to Alaska's power of attorney law (AS 16.24). I strongly support the language in this bill because it brings Alaska law into closer conformity with the Uniform Power of Attorney Act (2006), adding important protections for vulnerable seniors.

As you know, the Office of the Long Term Care Ombudsman frequently investigates cases in which family members, friends, or even church members have misused powers of attorney to exploit vulnerable older Alaskans. In these cases, unscrupulous agents often help themselves to the seniors' assets, purchasing items that in no way benefit the principals. Sometimes these agents even dissolve a family trust, directly ignoring seniors' expressed wishes for the distribution of their assets. After working all their adult lives to save for old age, older Alaskans are defrauded of assets that should be used to provide for their care.

Reforming Alaska's power of attorney law cannot stop determined individuals from theft or other abuses. However, CSHB 254 does provide important protections which our current law does not. For instance, CSHB 254 sets forth the fiduciary duties of agents in language which clearly prohibits self-dealing, establishes liability for abuse of a power of attorney, and gives courts effective guidelines for protection of principals in civil actions and criminal prosecutions.

CSHB 254 also revises the state's current statutory form for power of attorney so that it is no longer counter-intuitive. Instead of requiring principals to indicate which "hot powers" they do not want to delegate, the proposed form requires them to indicate which "hot powers" they do want to delegate to the agent. I believe this revision will make it more difficult for unscrupulous agents to manipulate unsophisticated principals into signing away their "hot powers" unintentionally.

Finally, CSHB 254 explicitly describes when a third party may legitimately refuse to accept a power of attorney. Currently, state law provides an unintentional "safe haven" which encourages financial institutions to accept powers of attorney, even when they believe them fraudulent. CSHB 254 will encourage institutions to refuse questionable powers of attorney and to report suspected exploitation to the authorities without fear of penalty. However, CSHB 254 also sets forth the instances in which it is not lawful to refuse a power of attorney, establishing reasonable sanctions.

Your leadership in putting forward this bill is much appreciated. If there is anything the Ombudsman's office can do to assist you further in this effort, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Diana Weber". The signature is written in a cursive, flowing style.

Diana Weber
Long Term Care Ombudsman