

ALASKA STATE LEGISLATURE

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HB254 Power of Attorney Uniform Law CSHB254 ver U

Section Analysis March 17, 2014

Section	Action	Comments
Section 1	Replaces the current definition of an "agent"	<p>The term attorney-in-fact is used in several states of the United States in place of the term agent and should be distinguished from the term attorney-at-law. An attorney-at-law in the United States is a lawyer — someone licensed to practice law in a particular jurisdiction. The Uniform Power of Attorney Act employs the term agent.^[2]</p> <p>As an agent, an attorney-in-fact is a fiduciary for the principal, so the law requires an attorney-in -fact to be completely honest with and loyal to the principal in their dealings with each other.</p>
Section 2	Corrects the definition of "state" by including <u>the United States Virgin Islands</u>	technical
Section 3	Adds new definitions for "durable", "electronic", "power of attorney", "principal", "record" and "sign" as they pertain to this act	<p>The term durable means not terminated by the principal's incapacity. The only way for another party to act on their behalf is to have a court impose a conservatorship or a guardianship.</p> <p>It was brought to our attention that a signature or initials could be quite difficult for someone with arthritis. Under this definition, it appears that there could be a variety of ways for a person to "sign".</p>

Section 4	Amends the statutory form required to assign a power of attorney. On page 4 of the bill additional language is added that identifies two specific powers that must be separately signed off by the principal	Adding “create, amend, revoke or terminate a trust” at this place in the bill is the reason for removing this provision throughout the bill as a separate act regarding trusts in each instance. Same for “gifts”.
Section 5	Amends existing statute to remove the powers to “revoke, create or modify a trust” as a general authority granted under a power of attorney. These functions must be individually considered and signed off by the principal on the statutory form	This approach follows a growing trend among states to require express specific authority for such actions as making a gift, creating or revoking a trust, and using other non-probate estate planning devices such as survivorship interests and beneficiary designations. The rationale for requiring a grant of specific authority to perform the acts is the risk those acts pose to the principal’s property and estate plan.
Section 6	“revoke, create or modify a trust”	
Section 7	“revoke, create or modify a trust”	
Section 8	Amends existing statute to allow the agent to use credit and debit cards and electronic transactions on behalf of the principal	In order for the Power of Atty to conduct these actions electronically, he/she would have access to login ID(s) and passwords.
Section 9	Amends existing statute to conduct additional business related actions to further protect the interests of the principal	Expands the authority of the POA to act on behalf of the principal with regard to business transactions where the principal is partner or owner in a business.
Section 10	Amends existing statute to exercise investment powers available under a contract of insurance or annuity	This would allow the POA to make changes to the principal’s contract of insurance or annuity.
Section 11	Repeal and reenact powers for the agent to receive general authority with respect to gift transactions	Clarifies the POA’s ability to make a gift on behalf of the principal and states that the gift would be made in the spirit of what the principal may have identified prior, and is in line with federal gift tax regulations under the IRS code.
Section 12	Amends existing statute to further define personal relationships, living dependents of the principal, and to make child support payments or other payments required by the courts or governmental agency	Specifies the POA’s rights with respect to gifts made on behalf of the principal. Clarifies who would receive a customary standard of living, including making child support payments or other

		family maintenance costs required by the court or government agency.
	Includes a new responsibility of the agent to act as the principal's personal representative in making decisions related to the payment of health care	Authorizes the POA to act as the principal's representative for HIPAA purposes with regard to health care.
Section 13	Amends existing statute to include general authority with respect to benefits of civil service and includes allowances and reimbursements of transportation of the principal's dependents, shipment of household goods, and to enroll in, apply for, amend, etc., on the principal's behalf for a benefit or program	
Section 14	Adds a new section granting authorization to the agent to manage retirement plans on behalf of the principal	
Section 15	Adds a new section regarding the validity of a power of attorney executed in another state	Alaska would recognize a POA executed in another state as long as it was executed in compliance of that state's jurisdiction or military POA
Section 16	Amends existing statute regarding the validity of the modified statutory form of power of attorney to relieve the agent of liability except if they act dishonestly, improperly, or recklessly on behalf of the principal	If the Agent acts inappropriately his/her powers can be removed
Section 17	Adds a new section requiring the agent to restore the value of the principal's finances to what it would have been if a violation had not occurred	Repayment provision
	Adds a new section outlining the agent's duties to act in good faith and on behalf of the good of the principal	
Section 18	Amends existing statute to replace the term "attorney-in-fact" with "agent"	
Section 19	Adds a new section for judicial relief upon review of the agent's conduct	
Section 20	Amends statutory references	

Section 21	Adds a new section identifying that the agent may request specific provisions in a court or by an attorney	<p>A person who reviews a POA; that individual can choose whether or not to accept the POA document. The third party needs to be able to rely on the document. The third party has to accept the Agent as representing the principal (don't have to make the principal come in to complete the sale).</p> <p>In example of a bank teller: If the 'bank' feels that the powers are not valid, there is a report to DHSS of exploitation, or another recognition that inappropriate action may be occurring, the 'bank' may further investigate but must act within 7 days.</p>
Section 22	Adds a new section regarding the termination of power of attorney and the agent's resignation notice	
Section 23	Adds definitions as they pertain to this act	
Section 24	Is repealed	
Section 25	Applicability of this act	
Section 26	Effective date January 1, 2015	