

February 9, 2015

Representative Shelley Hughes  
Alaska State Capitol, Room 13  
Juneau, Alaska 99801-1182

RE: HB 8 – Powers of Attorney - SUPPORT

Dear Representative Hughes,

Thank you very much for your sponsorship of HB 8. AARP Alaska, on behalf of our 86,000 members, strongly supports enactment of HB 8, as an update to existing statute to more closely conform to the Uniform Powers of Attorney Act and the Uniform Recognition of Substitute Decision-Making Documents Act. The HB 8 update to current Alaska statute will strengthen protections for vulnerable adults, their agents, and third parties.

Powers of attorney are essential tools for delegating authority to a trusted person to handle financial matters in many situations, including potential incapacity for decision-making. It is a legal document used by an individual (the principal) to name someone else (the agent) to make financial decisions and act on the principal's behalf.

To be useful as an incapacity planning tool, a power of attorney must give broad authority to the agent. A power of attorney is private, and there is no oversight by a court as there would be for a guardian or conservator. State laws are often unclear about the duty owed by the agent to the principal. This combination of broad consent, lack of oversight, and unclear duties makes it possible for agents to misuse their authority.

When such authority is misused as a means of financial exploitation, powers of attorney have been called a "license to steal". This is cause for concern and explains why we think it's critical that our state laws help prevent, detect and redress the abuse of powers of attorney. Powers of attorney abuse can take many forms, including:

- Forging the principal's signature on a power of attorney form or making a fraudulent document;
- Spending the principal's money for the benefit of the agent;
- Making gifts when the power of attorney does not provide authority to do so; and
- Undermining the principal's estate plan by giving assets to unintended recipients.

Additionally, we are concerned about third party acceptance of powers of attorney. A power of attorney will not be useful if third parties, such as financial institutions, refuse to honor an agent's directions. It is true that third parties that refuse to honor a power of attorney because they believe the agent is misusing authority may help prevent exploitation of the principal. Sometimes, however, third

parties refuse to honor the POA for less legitimate reasons, such as because it is old or from another state.

While the Act can't prevent bad actors from committing theft and other forms of abuse, it does set forth clear agent duties and prohibitions that will make civil actions and criminal prosecutions more effective. It also provides important protections to third parties to encourage their acceptance of powers of attorney in appropriate circumstances. Highlights include provisions that:

- Contain mandatory and default duties that prohibit self-dealing and mandate preservation of the principal's estate plan;
- Make clear that a power of attorney terminates when the principal dies;
- Set forth the powers, often referred to as "hot powers", that an agent cannot exercise unless the principal specifically authorizes such actions;
- Establish liability for agents who violate the power of attorney law;
- Address third-party acceptance of and reliance upon a power of attorney; and
- List circumstances under which a third party may legitimately refuse to accept a power of attorney and provide sanctions for unlawful refusals.

HB 8 also incorporates a newly drafted uniform code, the Uniform Recognition of Substitute Decision-Making Documents. The purpose of this provision is to provide for portability among U.S. jurisdictions. Lack of recognition and acceptance of a substitute decision-making document (i.e., POA), defeats the purpose, particularly when a principal's POA was created in another jurisdiction or seeks acceptance in another jurisdiction. Documents covered by HB 8 would be those that delegate decision-making authority over property, health care or personal care to a specific decision-maker. This provision would apply to all substitute decision-making documents, whether created in Alaska or in another jurisdiction. Fundamentally, the provision gives flexibility and broadens acceptance of substitute decision-making documents that strengthen an individual's advance planning for incapacity. Enactment of HB 8 would strengthen the power of attorney law to better protect vulnerable or incapacitated Alaskans and to benefit our businesses and courts.

AARP supports the adoption of HB 8 and encourages its passage and enactment. We are happy to elaborate our position or answer any questions. Thank you.

Respectfully,



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Marie Darlin  
Chair, AARP Capitol City Task Force

CC: Representative Max Gruenberg, Co-sponsor