

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 23, 2015

1:34 p.m.

MEMBERS PRESENT

Representative Wes Keller, Vice Chair
Representative Neal Foster
Representative Bob Lynn
Representative Charisse Millett
Representative Matt Claman
Representative Max Gruenberg

MEMBERS ABSENT

Representative Gabrielle LeDoux, Chair

COMMITTEE CALENDAR

HOUSE BILL NO. 8

"An Act relating to powers of attorney and other substitute decision-making documents; relating to the uniform probate code; and providing for an effective date."

- MOVED CSHB 8(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 79

"An Act relating to controlled substances; relating to marijuana; relating to driving motor vehicles when there is an open marijuana container; and providing for an effective date."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: HB 8

SHORT TITLE: POWERS OF ATTORNEY

SPONSOR(S): REPRESENTATIVE(S) HUGHES

01/21/15 (H) PREFILE RELEASED 1/9/15

01/21/15 (H) READ THE FIRST TIME - REFERRALS

01/21/15 (H) JUD
02/13/15 (H) JUD AT 1:00 PM CAPITOL 120
02/13/15 (H) Heard & Held
02/13/15 (H) MINUTE(JUD)
02/23/15 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

GINGER BLAISDELL, Staff
Representative Shelley Hughes
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented changes and answered questions regarding committee substitute for HB 8.

MARIE DARLIN, Coordinator
American Association of Retired Persons (AARP)
Juneau, Alaska

POSITION STATEMENT: Testified in support of CSHB 8.

DENISE DANIELLO, Executive Director
Alaska Commission on Aging
Department of Health & Social Services
Juneau, Alaska

POSITION STATEMENT: Testified in support of CSHB 8.

TERESA HOLT, Ombudsman
Office of Long Term Care Ombudsman
Department of Revenue
Anchorage, Alaska

POSITION STATEMENT: Testified in support of CSHB 8.

TERRY BANNISTER, Attorney
Legislative Legal and Research Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding CSHB 8

DEBORAH BEHR, Attorney
Alaska Uniform Law Delegation
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding CSHB 8.

ACTION NARRATIVE

[1:34:43 PM](#)

VICE CHAIR WES KELLER called the House Judiciary Standing Committee meeting to order at 1:34 p.m. Representatives Lynn, Millett, Claman, Gruenberg, Foster, and Keller, were present at the call to order.

HB 8-POWERS OF ATTORNEY

[1:34:47 PM](#)

VICE CHAIR KELLER announced that the only order of business would be HOUSE BILL NO. 8 "An Act relating to powers of attorney and other substitute decision-making documents; relating to the uniform probate code; and providing for an effective date."

VICE CHAIR KELLER opened public testimony.

[1:35:20 PM](#)

REPRESENTATIVE MILLETT moved to adopt proposed committee substitute (CS) for HB 8, Version 29-LS0055\E, Bannister, 2/19/15, as the working document. There being no objection, Version E was before the committee.

[1:36:06 PM](#)

REPRESENTATIVE SHELLEY HUGHES discussed changes in the committee substitute regarding powers of attorney in that as the bill allows better powers of attorney for our elders and vulnerable folks.

[1:36:45 PM](#)

GINGER BLAISDELL, Staff, Representative Shelley Hughes, Alaska State Legislature, paraphrased a two page explanation of changes as follows [original punctuation provided]:

Page 5, line 17: added "Notwithstanding AS
13.26.357"

This statutory reference was added because of new section (page 36, line 7) of validity of powers of attorney to connect the validity with the section that says you're not required to accept the powers.

Page 8, lines 10-14: added "If you do not mark either of the boxes opposite a category, or if you mark both of the boxes opposite a category, your agent or agents will not have the power in that category."

This language satisfies the interpretation of the powers in the event the form was not filled out completely or unclearly.

Page 9, line 2: removes "Delegation" from the list of general powers because it is included in "grant of specific authority" and renumbers the remainder of the list.

Page 9, lines 19-25: includes the additional "grant of special authority" items that were not included in version A.

1. Create or change rights of survivorship
2. Delegate authority granted under the power of attorney
3. Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
4. Exercise fiduciary powers that the principal has authority to delegate

Page 12, lines 11-12: The committee requested to include definitions for Guardian or Conservator. Because both are defined elsewhere in statute, it was recommended not to repeat definitions in this Act.

Guardian AS 13.26.005

Conservator AS 13.26.2102 Explanation of changes to HB8 ver E

Page 13, lines 4-7: new section (5) if the principal has failed to mark either of the "Yes" or "No" boxes opposite a category of power, or if the principal has marked both the "Yes" or "No" boxes opposite a category of power, the agent does not have the power in that category.

Page 34, line 30: includes the office of the long term care ombudsman in the list of agencies with specific authority to protect the welfare of the principal.

Page 36, line 4: clarification

September 4, 1988 was the date power of attorney was first entered into statute in Alaska

Page 36, line 7-13: new section 25: Sec. 13.26.357. Execution of power of attorney. A power of attorney executed in this state is valid if the principal

1. Signs the power of attorney or, in the principal's conscious presence, directs another individual to sign the principal's name on the power of attorney; and

2. Acknowledges the signature before a notary public or other individual authorized by law to take acknowledgements.

Page 36, line 15: definition already provided

Public home care provider AS 47.05.017(3)(c)

[1:38:44 PM](#)

REPRESENTATIVE CLAMAN asked Ms. Blaisdell to identify the four missing "hot powers."

VICE CHAIR KELLER expressed his preference that Ms. Blaisdell have an opportunity to offer her presentation prior to the committee members asking questions.

REPRESENTATIVE CLAMAN replied it was more of a clarification.

MS. BLAIDELL referred to the first page of the Explanation of Changes document "Page 9, lines 19-25, that adds the four that were missing." One of the four includes the word "delegate" that was taken off of the standard powers and inserted under "hot powers," she said.

[1:45:07 PM](#)

REPRESENTATIVE LYNN asked for the definition of a public home care provider and a private home care provider as they apply to this bill.

MS. BLAISDELL replied she perform a statute review for public home care provider, but does not know whether a definition for private home care provider is available.

[1:45:39 PM](#)

REPRESENTATIVE GRUENBERG referred to page 36, line 15, that mentions public home care provider and he questioned whether it is defined somewhere else in the statute.

MS. BLAISDELL responded that it is defined in AS 47.05.017(3)(c).

REPRESENTATIVE GRUENBERG asked what AS 47.05.017[a](3)(c) says.

MS. BLAISDELL read the statute as follows:

(c) In this section, "public home care provider" means a person who is paid by the state, or by an entity that has contracted with the state or received a grant from state funds, to provide

homemaker services, chore services, personal care services, home health care services, or similar services in or around a client's private residence or to provide respite care in either the client's residence or the caregiver's residence or facility.

[1:47:30 PM](#)

REPRESENTATIVE GRUENBERG opined that if the aforementioned Title 47 definition was to be used in Title 13, a conforming amendment would be necessary to reflect that the definition of "public home care provider" in Title 13 was taken from [Title 47]. He explained, "Because otherwise, unless it's in Title 1, it doesn't apply throughout the whole statute."

[1:48:15 PM](#)

VICE CHAIR KELLER said he understood the drafter to say it was automatically covered without the reference.

MS. BLAISDELL responded that the bill drafter recommended that a specific definition not be added as it was listed somewhere else which "is why I did not include it."

[1:48:46 PM](#)

REPRESENTATIVE CLAMAN questioned whether the committee substitute conforms to those of the Uniform Law Commission (ULC), as was discussed during the last committee meeting, and whether CSHB 8 has its support.

MS. BLAISDELL replied that she had only spoken with ULC regarding the first version of the bill, but that she did forward the committee substitute and the letter describing the changes, but has not yet received a response.

[1:49:41 PM](#)

REPRESENTATIVE GRUENBERG advised that he spoke with Ben Orzeske, [Uniform Law Commission Legislative Council] and Mr. Orzeski would be available at 2:00 to answer questions

telephonically. He commented there may be conflict between two uniform acts due to the manner the bill is written.

1:51:03 PM

REPRESENTATIVE HUGHES reminded the committee that they did go through the ULC's model language piece by piece with the Department of Law, and the Long Term Care Ombudsman, and picked out issues that made sense for the State of Alaska. House Bill 8 with the "yes" / "no" options on the form, the ability to have a definition of "sign" when some individuals cannot write their signature, and the language addressing Alaska Native legal issues made the powers of attorney better. She expressed that the bill does not parallel the uniform laws so they did not receive a letter of support.

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REPRESENTATIVE GRUENBERG opined that the phrase causing problems is on page 5, line 17, "Notwithstanding AS 13.26.357".

VICE CHAIR KELLER opened public testimony.

1:54:02 PM

MARIE DARLIN, Coordinator, American Association of Retired Persons (AARP), said she represents the American Association of Retired Persons (AARP) that supports the bill as it cures the unspecific powers of attorney problems.

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DENISE DANIELLO, Executive Director, Alaska Commission on Aging (ACoA), Department of Health & Social Services, offered support for HB 8 as people 85 and older are most at risk for developing chronic health conditions, physical disabilities and cognitive impairments that may be due to dementia or adverse reactions to medications. These issues, she expressed open seniors to financial exploitation and other forms of elder abuse. She pointed out that the bill incorporates provisions from the Uniform

Power of Attorney Act (UPOAA) making the Alaska Statutes interstate compatible with other states, which is especially important when a principle and agent live in different states.

The Alaska Commission on Aging (ACoA) also supports incorporating the Substitute Decisions Act (SDA) into Alaska Statutes to protect a vulnerable person while they are traveling. Most importantly, she expressed, ACoA supports improvements to the Power of Attorney form by increasing the principle's control over delegating their authority with respect to routine financial transactions, as well as the "hot powers."

[1:57:58 PM](#)

TERESA HOLT, Ombudsman, Office of Long Term Care Ombudsman, Department of Revenue, said the Office of Long Term Care Ombudsman investigates complaints on behalf of or from seniors living in assisted living homes and nursing homes, and supports HB 8. She remarked that the investigations of durable powers of attorney are a long standing problem such as: unscrupulous agents spending senior's assets for their own benefit; a personal care attendant using the debit card to purchase items for themselves; a family member spending hundreds of thousands of dollars on vacations or cars; an agent transferring the elder's home into their own name; or someone dissolving a family trust prior to the senior passing and thereby transferring the assets to themselves rather than spread amongst the siblings. She offered excitement in that the form specifically states the agent must act in accordance with the principle's wishes or the principle's best interests and keep records and that agents are liable to restore or reimburse the principle or principle's successors if the agent abuses its power of attorney. She remarked that seniors have to indicate either "yes" / "no" for each of the fourteen powers, and the super-powers which is an active designation versus crossing out and she appreciates a judicial review when an individual believes someone is abusing or misusing their power of attorney. She described situations on both sides where a third party accepted a document they shouldn't

have, or wouldn't accept a document that would have been in senior's best interests.

[2:01:57 PM](#)

VICE CHAIR KELLER referred to page 36, line 15, and ask Terry Bannister (Legislative Legal and Research Services drafting attorney on-line) whether or not another definition should be repeated in public home care provider.

REPRESENTATIVE GRUENBERG then referred Ms. Bannister to Sec. 26, page 36, lines 14-18 regarding the definition of public home care provider. He said that Ms. Blaisdell pointed out it is currently defined in AS 47.05.017 and unless there is something in that particular definition that would reference back to Title 13, he suggested that somewhere in "that area of Title 13" that public home care provider is defined in AS 47.05.017.

TERRY BANNISTER, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, said the other definition does not apply to this and it is a good idea to define public home care provider.

[2:04:01 PM](#)

REPRESENTATIVE GRUENBERG asked whether Ms. Bannister's recommendation is that it is defined "fresh," or references back.

[2:04:10 PM](#)

MS. BANNISTER responded that if it is tied to something that will be the main teller of the item, Legislative Legal and Research Services references back. But, she said, if it needs its own special definition it would be defined especially for the section.

REPRESENTATIVE GRUENBERG offered to submit a conceptual amendment and the drafter and sponsor could determine how to craft it.

[2:04:45 PM](#)

VICE CHAIR KELLER asked Representative Gruenberg to ask Ms. Bannister about the "Notwithstanding" part as he would prefer asking Legislative Legal and Research Services.

REPRESENTATIVE GRUENBERG responded to Vice Chair Keller that he is not sure he fully understands the "Notwithstanding" controversy.

[2:05:23 PM](#)

REPRESENTATIVE CLAMAN asked why there are a number of movements away from not following the uniform act in more significant ways. He said he is particularly concerned about powers of attorney which often are executed in Alaska, but show up in the other 49 states. He described it as enough of a departure from the uniform laws that the ULC did not write a letter of support.

MS. BANNISTER responded that is a "policy call."

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REPRESENTATIVE CLAMAN suggested that without getting into the policy questions in what ways does this differ from the uniform act. He said that "apparently you can't tell us the reasons why you chose to differ," but to explain where it differs in significant ways from the uniform act.

MS. BANNISTER replied that there are probably many differences, but that does not mean it doesn't contain some of the concepts in the uniform act. She said she has not read the full uniform act but knows that the bill pulled the provisions it wanted.

[2:08:17 PM](#)

REPRESENTATIVE GRUENBERG remarked it is important to see that the bill combines two uniform acts. He said he would like to know what the bill does, what the sponsor is doing that is different, "what's going on here."

VICE CHAIR KELLER pointed out this is not the first time this bill has been in front of the committee.

REPRESENTATIVE LYNN referred to Sec. [2], page 1 and noted that it refers to the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands and questioned whether those are the only locations the bill is concerned. He referred to the Marshall Island, Guam, and America Samara and asked where they would fit.

[2:10:46 PM](#)

REPRESENTATIVE GRUENBERG said it appears the bill adds the Virgin Island and questioned why that wouldn't have been included previously. He noted that if uniform acts are now starting to include the Virgin Islands as a separate category whether the legislature should look at other uniform acts to determine if this should be included generally.

MS. BEHR, Attorney, Alaska Uniform Law Delegation replied that the definition here is the standard definition used in all uniform acts so as long as the Virgin Islands was a territory or insular possession subject to the jurisdiction of the United States, it should have been included specifically, or would have been picked up in the catch all. She offered that if Representative Gruenberg preferred to look at other uniform acts to determine whether it was omitted, that would be appropriate.

[2:12:07 PM](#)

DEBORAH BEHR said she has been a member of the Alaska Uniform Law delegation for over 20 years and explained that the State of Alaska has been a member of the Uniform Law Commission (ULC) since 1914, Alaska has been an active participant in that it has adopted the major bills of the ULC such as the Uniform Commercial Code, and the Uniform Child Custody and Jurisdiction Act, she explained. The delegation considers the ULC as a state's rights organization wherein all of the states meet once a year with the best minds to determine what is working. She describes it as a totally open process with experts on the banking community, insurance community, et cetera, watching how the ULC develops uniform acts. It is voted on, similar

to the legislature, by the states and [the law] then goes to the states to be enacted by all of the people who participated in it. She described [the laws] as the best thoughts across state lines, and easier to enforce in a nation where people travel a lot. She pointed the committee to CSHB 8, page 37, line 22, "Chapter 28. Recognition of Substitute Decision-Making Documents" and opined that the bill avoids the need for attorney and court involvement, helps the process move faster and inexpensively, and implements the principle's wishes quickly. Ms. Behr stated that the bill answers the questions between states as to what was expected, what could be asked for, and the penalty when an individual does not accept one of the documents. She offered a situation where a principle opens a bank account to receive their social security check in a different state, or possibly consents to a medical procedure, or the principle's credit cards were hacked and had to be canceled with new cards issued. She related that the ULC supports pages 37-41, and a technical amendment can be made in the other body.

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REPRESENTATIVE CLAMAN asked whether the ULC supports and the "rest of what we are doing here," other than page 37-41.

MS. BEHR explained that the goal of ULC is to encourage a uniform adoption of its laws so a judge is familiar with a power of attorney form or health care form from other states. She noted the sponsor picked good provisions of the uniform act and she particularly appreciates the protection of seniors but there are a lot things where there are differences. Therefore, she explained, CSHB 8 will not go down in ULC books as a uniform act.

[2:16:55 PM](#)

REPRESENTATIVE CLAMAN asked for an explanation of how it differs from the uniform act.

MS. BEHR replied a red flag is in the [power of attorney] form itself as the uniform act has one general power of attorney and the agent receives all of the powers unless a

line is drawn through it and "no" is written. The Alaska form is different in that Alaskans must stipulate "yes" / "no" to each power which is enough to make it not uniform law. There are other things she could go over, but [the form] is "pretty major," she remarked.

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REPRESENTATIVE GRUENBERG asked Ms. Behr to go over other major differences that would make this non-uniform and questioned whether the "yes/no" form as opposed to an "opt out" form would make it non-uniform.

MS. BEHR advised she has not talked to Ben [Orzeski}, but when the options are "yes/no," there is a possibility something might be omitted. Whereas if someone is given all of the powers, except the one the principle crosses out, the principle has clearly given the agent all the powers the principle has.

REPRESENTATIVE GRUENBERG noted a provision that if a person neglects to check a box, or checks both boxes, by default the agent does not receive the power.

MS. BEHR submitted that there could be [a power] the principle wants to give but it is not listed on the form, and therefore questioned "What if it is not an all-inclusive list." She opined that is the difficulty in a specific list versus a general list.

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REPRESENTATIVE CLAMAN offered a scenario of a principle signing a power of attorney and if it is a general blanket power of attorney then the agent has full authority. Whereas when going line-by-line, the principle must specifically choose "yes/no" and, he questioned, does the principle understand what they are signing away versus a general power of attorney with exclusions. He expressed that from an evidentiary standpoint, the approach the ULC has taken prefers the general power in that an individual makes active efforts to eliminate, rather than the reverse of what is going on.

MS. BEHR commented it is a "major" policy call for the legislature to make.

REPRESENTATIVE CLAMAN questioned how enforceable would another state treat Alaska's "yes/no" provision versus the general blanket provisions that might be adopted in other states. He further questioned if that could create issues.

MS. BEHR stated in dealing with conservative attorneys in the financial world she has had to explain commas, so it is an issue. She then pointed out that there has been significant testimony for the "[yes]/[no]" form.

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VICE CHAIR KELLER noted there has been a suggestion of a conceptual amendment and would like to know the sponsor's thoughts.

MS. BLAISDELL responded to Representative Gruenberg's concern about the definition of a public home care provider and pointed to Sec. 47, which is very specific to home care providers and is under the section of administration of welfare, social services, and institutions. She described it as very broad where a home care provider will conduct business and it describes who a public home care provider is. She referred to page 36, line 15, and noted a public home care provider is discussed. Unfortunately, she noted, the bill only shows the parts of the law being changed and explained that existing statute subsection (b) reads "in this section public home care provider has the meaning given in AS 47.05.017(c).

MS. BLASDELL agreed with Representative Gruenberg's statement that another subsection of AS 13.26.358 already references back.

VICE CHAIR KELLER closed public testimony after ascertaining no one further wished to testify.

[2:25:41 PM](#)

REPRESENTATIVE MILLETT stated she does have concerns on the state-to-state functioning of the "yes/no" form questions,

but believes it is in the best interest of Alaskan seniors. She noted she is comfortable with the bill as written.

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REPRESENTATIVE CLAMAN advised he does not have a problem with CSHB 8 moving out of committee but is troubled about taking a different path. He said he has been dealing with this in an estate matter in which a release from another state was presented to a sister state. Unfortunately, he explained, the sister state didn't like it so attorney's fees started running. He remarked that it is a concern because the legislature wants to protect Alaskan seniors from fraud and also the public from running into high and arguably unwarranted attorney's fees.

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REPRESENTATIVE KELLER assured Representative Claman that everyone agrees with him wholeheartedly, that the issue is the most expedient and least expensive care, legal and otherwise, for Alaskan seniors. He said that many share his concerns and want to make this right.

2:29:42 PM

REPRESENTATIVE MILLETT moved to report the proposed CS for HB 8, Version 29-LS0055\E, Bannister, 2/19/15, from committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 8(JUD) was reported from the House Judiciary Standing Committee.

2:30:05 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:30 p.m.