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WHILE IN SESSION
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JUNEAU, ALASKA 99811
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REPRESENTATIVE JOHNNY ELLIS

M E M O R A N D U M

TO: The Honorable ^{JE} Elmar Kertulla
Chair, Senate Judiciary Committee

FROM: Rep. Johnny ^{JE} Ellis

RE: HB 491; "Statutory Form Power of Attorney"

DATE: May 2, 1988

MAY 2 1988

I respectfully request that you schedule a hearing on HB 491 as soon as possible.

This bill creates a power of attorney form and sets into statute the description of powers authorized. My staff developed the legislation with the assistance of the Older Alaskans Commission, the probate section of the Alaska Bar Association, and Alaska Legal Services.

The need for this legislation is based upon problems associated with the broadness of Alaska's existing power of attorney statutes. Because the existing statute is so broad, powers of attorney drafted by its authority lack uniformity. This is confusing to the people who need a power of attorney and to the third party who is supposed to honor the power.

A critical secondary need for this legislation is based upon the necessity of an increasing number of Alaskan Seniors to designate in advance the people they wish to manage their affairs should a temporary or permanent disability occur. The form created by this statute contains a check off section for designating the effectiveness of the power in case of incapacitation.

I have enclosed some back up for your convenience and would be more than happy to supply more information at your request.

Thank you for considering this request.

enclosures

Power of attorney bill: 'Senior-friendly'

by Rebecca Goodman
 A "much improved" durable power of attorney bill — CS HB-491 — emerged from the House Health, Education and Social Services committee in late April following some technical changes suggested by the Older Alaskans Commission and several health/legal specialists.

At *Senior Voice* press time the bill also had passed House Judiciary and was poised for a House floor vote April 26 or 27.

The bill, co-sponsored by Reps. Johnny Ellis (D-Anchorage) and Max Grueberg (D-Anchorage), would clarify existing statutes and provide an approved form for consumers to use in drawing

with reference to the existing Living Will statutes."

Ellis said the bill shortens the time required and reduces the expenses involved in putting a power of attorney in effect.

A durable power of attorney permits an individual to give another individual the authority to act on their behalf to do a variety of everyday legal matters.

Unlike the simple power of attorney which becomes ineffective upon incapacitation of the individual, a "durable" power of attorney becomes effective either at the start of a disability of the individual, or it starts prior to the disability and remains in effect throughout it.

"This bill is much improved," Ellis told committee members. "It clears up language in key sections and addresses concerns with reference to seniors' benefits and

health/legal specialists who attended the Anchorage workshop agreed durable power of attorney could help seniors avoid wasting their time and money in planning "advance directives," or measures that spell out an individual's wishes in the event of incapacitation.

Most health care providers strongly support this legislation as a means to avoid the turmoil of court-appointed guardianships, Sipe said. Rep. Bill Hudson (R-Juneau) said he could see the logic behind the bill.

"Having a mother-in-law who is now widowed and 75 years old, I can really see the

need to have these forms available and in terms people can understand.

"It seems a good idea to distribute this information around to the various senior centers so seniors could make these choices," Hudson suggested.

The amended version of the bill is now in House Judiciary. Aides to Ellis said although "time's running out" for the bill this session, the "groundwork for a good piece of legislation" had been established for introduction in a new legislative session.

"If it doesn't pass this time around, it doesn't mean we've lost the issue," one aide noted.

ting a power of attorney into place.

Connie Sipe, executive director of the Older Alaskans Commission, told lawmakers, "we're very supportive of this bill."

The new streamlined form in the measure would make the creation of a power of attorney more understandable to consumers, yet not affect their legal rights in any way, Sipe said.

A recent workshop on guardianship issues illustrated the need for clearer statutes on powers of attorney, she added. Most of the nearly 100

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SENIOR BILL DIGEST

SCSCS HB 36 — Grussendorf (D-Sitka). Car insurance rate break for seniors.

Allows reduced auto insurance rates for persons 55 and older who undergo approved driver training courses. Governor signed into law March 1988. Chapter 9 SLA 88.

HB 159 — Governor by Request. Income-based senior property tax exemption.

Would tie senior homeowners' and disabled veterans' property tax exemptions to income level on sliding-scale basis. Bill "shelved" February 10, 1988, by House Community and Regional Affairs Committee.

SSH 246 — Adams (D-Kotzebue). Fishing areas for seniors.

Would authorize Board of Fisheries to establish

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OPAG's 20th birthday

JUNEAU REPORT

Bill redefines power of attorney laws

by Rebecca Goodman
When Louise Black's 80-year-old mother had a massive, debilitating stroke in Anchorage last year, the last thing Black expected she'd have to do was go to court to gain financial control of her mother's assets just so she could pay for her mother's expensive and necessary nursing care.

The process was not simple. Black said she spent "several exhausting weeks" and "several thousand dollars on attorney and court fees" trying to arrange to have herself appointed conservator of her mother's assets.

"Mother does have a will and I figured that would take care of all the legal details we'd ever run into," Black said. "I never dreamed she'd end up like this unable to run her own affairs."

If Black and her mother had known about a legal device

known as a durable power of attorney, they might have been able to save themselves some expense and delay.
A durable power of attorney should not be confused with a general, nondurable power of attorney.

A general, nondurable power of attorney permits an individual (such as Black's mother) to give another person (such as Black) the authority to act on their behalf to do things such as receive and deposit assets; sign contracts; spend income from trusts; and act on a variety of everyday legal matters.

This kind of power of attorney is limited because it's effective only as long as the person who gave the power of attorney, the "principal," remains mentally competent.

For Black's mother, disabled by stroke, a general, nondurable power of attorney would have become ineffective

just at the moment when she most needed someone such as her daughter to act in her behalf.

A durable power of attorney goes beyond a general power

'Mother does have a will and I figured that would take care of all the legal details . . . I never dreamed she'd end up like this unable to run her own affairs.'

-Louise Black

of attorney in that it becomes effective either at the start of the disability of the "principal," or it starts prior to the disability and remains in effect throughout it.

Durable power of attorney authorizations can save time, money and frustrations. So why don't more Alaskans take advantage of them?

The problem, said Rep. Johnny Ellis (D-Anchorage),

is in Alaska's existing statutes.

"The first concern is the vagueness of the existing statutes. Because the existing statute does not explicitly describe the powers which the principal may delegate, many institutions (such as banks, health facilities, etc.) do not honor powers of attorney drafted under the statute," Ellis said.

To clear up the problem, Ellis has sponsored HB 491 to set into statute the actual form an individual may use in the event of disability.

Among other things, HB 491 would:

- spell out in detail the specific powers which may be exercised under 1/4 power of attorney;
- provide for a simple method to determine "disability," without requiring a judicial determination; and
- provide an approved form for use to save time and expense in the drawing up of a power of attorney.

During a mid-March teleconference on HB 491 in the House Health, Education and Social Services Committee, several attorneys and seniors signaled their support for the measure.

Speaking for the Older Alas-

kans Commission, project coordinator Fran Toland told lawmakers the commission "strongly supports" the bill but would like to see some minor amendments.

One of the suggested amendments would tie together the power of attorney measure and the Living Will statute which went into effect two years ago.

Toland and others said the health care provisions in the power of attorney measure should dovetail with the Living Will statutes to prevent conflicts.

Alaska Legal Services attorney Colleen DuFour echoed those suggestions.

"We need clarifications on what an attorney could do. If a person executes a separate Living Will, that individual should be able to empower their legal agent to see that the will is carried out. We need clear signals to enforce a validly executed Living Will form," DuFour said.

Ellis said suggested amendments to streamline and clarify HB 491 would be addressed soon.

At Senior Voice press time another hearing on the measure was expected.



REPRESENTATIVE JOHNNY ELLIS

HB 491: CREATING A STATUTORY FORM POWER OF ATTORNEY

1) IS THERE A NEED FOR THIS LEGISLATION?

Yes. There is a need because the existing power of attorney statute is too broad. The broadness of the existing statute results in a lack of uniformity which is confusing to the people who need a power of attorney and to the third party who is supposed to honor the power. The current process for drafting a power of attorney is time-consuming and expensive.

2) WHO WILL BENEFIT BY THIS LEGISLATION?

All Alaskans interested in creating a power of attorney in any form will benefit by passage of this bill because the statutory form:

- a. will require less attorney time and, as a result will be less costly to produce
- b. carries with it an enforcement provision warning third parties of possible penalties for refusing to honor the powers granted
- c. will increase awareness of the ability and need to designate an agent before incapacitation
- d. contains provisions which will allow family members to take care of an individual who is no longer able to make rational decisions

3) HOW DOES THE "DURABILITY CLAUSE" WORK?

If an individual chooses the durability option set out on page 3 of the form, that individual will have the advantage of choosing ahead of time the person who will manage his or her affairs in the event of a disabling illness or accident.

HB 491: CREATING A STATUTORY FORM POWER OF ATTORNEY
(CONT'D.)

4) WHY IS THIS BILL SO LONG?

The form will be enforceable only if an unambiguous interpretation of each provision is set out in the statute. This is especially important in the instance where a principal is interested in granting only some powers to an agent rather than full general power.

5) WHO SUPPORTS THIS LEGISLATION?

Senior organizations
Alaska Legal Services
Individual members of the probate section of the Alaska
Bar Association
Residential care facilities

Older Alaskans Commission

Box C
Juneau, Alaska 99811-0209
907/465-3250

POSITION PAPER -- APRIL 22, 1988

CSHB 491 (HESS)

"An Act Establishing a Statutory Form Power of Attorney"

The Older Alaskans Commission strongly supports passage of this bill. Senior citizens can best keep their own financial and personal affairs in order through the use of "advance directives" or Life Planning, by use of a Durable Power of Attorney. A previously signed Durable Power of Attorney would often eliminate the need for family or caregivers of an incapacitated senior to seek a guardianship. Petitioning the court for a guardianship takes up to four months, and is quite cumbersome and costly to both the petitioner's and the public's pocketbook.

At an OAC sponsored Workshop for Professionals on the Guardianship System in Alaska, March 31 and April 1, nearly 100 representatives from nursing homes, hospitals, social service agencies, the court system, the Offices of the Attorney General and the Public Guardian discussed the many problems surrounding the need for guardianship for people no longer competent to make decisions.

The workshop group reached a strong consensus on the need to avoid court guardianship proceedings whenever possible. They agreed that Alaska needs a statutory form Durable Power of Attorney which is easy and inexpensive to use. Once this exists, seniors should be strongly encouraged to use the forms; through a series of clinics at senior centers, hospitals, and certainly upon admission to a nursing home.

Although durable powers of attorney are currently authorized under AS 13.26.325, each person must pay a lawyer to draft the power, a job which can easily cost over \$ 500, because the lawyer must try to specify and define all sorts of contingencies about numerous types of financial and personal transactions.

The primary benefits of CSHB 491 (HESS) are that it provides a statutorily approved form Power of Attorney, and defines in detail the specific powers which an agent may exercise under the power of attorney. This will enable many individuals to enact a Durable Power of Attorney without any expense for consultation with a lawyer.

POSITION PAPER ON CSHB 491 -- PAGE 2
OLDER ALASKANS COMMISSION

In addition, CSHB 491 requires that third parties presented with a properly executed statutory Power of Attorney must honor it. The opposite frequently happens now, to even the best drafted Power of Attorney: when the agent presents it to a stock brokerage firm, bank or insurance company, the third party refuses to honor it and asks for a differently formatted Power--but if the principal is in the hospital in a coma, it is too late to get the principal's signature on a new form.

CSHB 491 might at first glance appear to be rather long, but the lengthy definitions are needed to ensure that third parties know what their obligations are to carry out the agent's instructions.

CSHB 491 makes several other improvements upon current law because it provides for a simple method to determine "disability," without requiring a judicial determination, provides a hold harmless guarantee to third parties, and ties in with the Living Will statute so that a person may appoint an agent for all health care decision-making.

In summary, the Commission strongly supports this bill in its present form. CSHB 491 (HESS) makes Alaska's current statute on powers of attorney much more beneficial and accessible for seniors and their families, friends, and caregivers who wish to plan for the senior's future.

APPROVED BY:

for Connie Lise Eves, Director
Dove Kull, Chair
Legislative Committee
Older Alaskans Commission

REVIEWED BY:

John M. Andrews
John M. Andrews, Commissioner
Department of Administration

DATE: April 22, 1988

DATE: 4/25/88



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MAR 25 1988

3/22/88

and
Representatives Niilo Koponen
and Johnny Ellis, Co-Chairmen
House HESS Committee
PO Box V
Juneau, AK 99811

Dear Representatives Koponen and Ellis:

AARP/Alaska State Legislative Committee is pleased to see legislation such as HB 491, "An Act establishing a statutory form power of attorney."

We feel such legislation is vital to clearly defining for Alaskans both general and durable powers of attorney. Such clarification is important not only to those who deal with complex legal issues through attorneys or who can afford to have attorneys draw up their powers of attorney, but also to those whose lower incomes cause them to rely on pre-printed forms for these matters.

Because low-income elderly persons are often unknowing victims of unclear or scattered statutes, bringing together these materials into a clear package seems especially important.

We urge your committee's support of this legislation and hope that it will include protection of "living wills" and state benefits.

Sincerely yours,

Miss Patricia Oakes, Chairman
AARP/Alaska State Legislative Committee

CARTA

Central Alaska Retired Teachers Association

Advocate for Retired and Pre-Retired Educators

1620 Crescent Drive
Anchorage, AK 99504
April 15, 1988

Representative Johnny Ellis
Alaska State Legislature
PO Box V (MS 3100)
Juneau, AK 99811

APR 20 1988

Dear Representative Ellis:

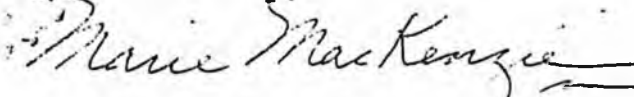
The Legislative Committee of the Central Alaska Retired Teachers Association (CARTA) has studied and considered a number of proposed bills this past year. We recently sent you a report of our activities that led to making our decisions. As we near the end of the session, we strongly urge passage of the following bills:

1. House Substitute for SB56 - Annuity Bill (First Priority)
2. SB67 - Mental Health Insurance Bill
3. HB491 - Establishing a Statutory Form Power of Attorney
4. SB442 - Relating to the Older Alaskan Commission and the protection of elderly persons, establishing the office of Older Alaskan Ombudsman
5. HB306 - Anatomical gifts

CARTA also strongly supports funding the recommendations of the Governor's Commission on Children and Youth.

We appreciate your attention and time for our concerns.

Sincerely,



Marie MacKenzie, Chairman
Legislative Committee

cc: Vera Gazaway, President, CARTA
Joan McKinnon, President, Alaska State Retired Teachers Assn
Patricia Oakes, Chairman, AARP State Legislative Committee
Anchorage Senior Citizens Advisory Committee

Anchorage, Alaska
March 18, 1986

MAR 24 1986

TO: REPRESENTATIVE JOHNNY ELLIS
REPRESENTATIVE MAX GRUENBERG, Jr.

FROM: Thelma P. Langdon - 2363 Capt. Cook Drive - Anchorage 99517

RE: HB NO. 491 - "An Act establishing a statutory form power of attorney"

I am in strong support of this bill. As one of the organizers of the Alzheimer's Disease Family Support Group, I know what a great help it would be to the families of victims of Alzheimer's Disease and Related Disorders.

My own father has a severe and progressive dementia and my sister and I need to have the kind of authority and protection this bill addresses. In carrying out our responsibility we need to have the authority to make decisions he cannot or will not make.

Thank you for introducing this bill.

Thelma P. Langdon
MSR
3/21/86