

**HB**

**254**

<TARGET><BILL>HB 254</BILL><SUBJECT>HB  
254</SUBJECT><COMM>HJUD28</COMM></TARGET>

# ALASKA STATE LEGISLATURE

**SESSION ADDRESS:**

Alaska State Capitol  
Juneau Alaska 99801  
Phone: 907-465-3743  
Toll-free: 1-800-565-3743  
Fax: 907-465-2381  
Rep.Shelley.Hughes@akleg.gov



**INTERIM ADDRESS:**  
600 E Railroad Avenue  
Wasilla AK 99654  
Phone: 907-376-3725  
Fax: 907-376-4768

Representative Shelley Hughes  
House District 8 ~ Greater Palmer

Honorable Representative Kurt Olson, Chair  
Labor and Commerce Committee  
State Capitol Room 13  
Juneau, AK 99801

## **HB254 Power of Attorney Uniform Law CSHB254 ver U**

### **Sponsor Statement**

**March 17, 2014**

Financial scams targeting seniors are far too common. Disturbingly, a growing number of these scams involve relatives or friends who steal money from an elder when the elder grants them a financial power of attorney. Older Americans are vulnerable to fraud and financial abuse because they commonly experience some degree of cognitive decline – through natural causes or from medications – and can have difficulty understanding their changing world.

HB254 offers changes to existing power of attorney statutes, strengthening them by clarifying the responsibilities of the person receiving the power of attorney and revisiting the statutorily required form. While keeping our statutes customized for Alaska, specific to circumstances unique in our state, HB254 also more closely aligns some statutory wording with other states' language to eliminate problems when the senior and the power of attorney live in different states. This is better for both the senior and the person serving as the power of attorney when the two are separated by a state line.

We honor our elders and have an obligation to help protect them as they enter a vulnerable time in life. This bill will strengthen existing statutes to better protect our seniors and better guide those who help care for them.

# ALASKA STATE LEGISLATURE



**SESSION ADDRESS:**  
 Alaska State Capitol  
 Juneau Alaska 99801  
 Phone: 907-465-3743  
 Toll-free: 1-800-565-3743  
 Fax: 907-465-2381  
 Rep.Shelley.Hughes@akleg.gov

**INTERIM ADDRESS:**  
 600 E Railroad Avenue  
 Wasilla AK 99654  
 Phone: 907-376-3725  
 Fax: 907-376-4768

Representative Shelley Hughes  
 House District 8 - Greater Palmer

## HB254 Power of Attorney Uniform Law CSHB254(L&C) ver N

### Section Analysis April 10, 2014

Section	Action	Comments
Section 1 Pg 1, ln 4	Replaces the current definition of an "agent"	The term attorney-in-fact appears similar but 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 and this bill employ the term <b>agent</b> .  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. An agent would be held to the same level of honesty.
Section 2 Pg 1, ln 9	Corrects the definition of "state" by including <u>the United States Virgin Islands</u>	technical
Section 3 Pg 1, ln 13  "sign" Pg 2, ln 13	Adds new definitions for "durable", "electronic", "power of attorney", "principal", "record" and "sign" as they pertain to this act  In this bill an <b>agent</b> is the person granted powers and the finances belong to the <b>principal</b>	It was brought to our attention that a signature or initials could be quite difficult for someone with arthritis. Under this definition, a variety of ways for a person to "sign" would be allowed.
Section 4 Pg 3, ln 10	Amends the statutory form required to assign a power of attorney. On page 3, instructions to complete the form have been changed requiring the principal to select each function for which the agent would be granted powers.	The prior version of the state form allowed one signature for all powers to be granted to the agent. The likelihood that each item was not carefully considered was of concern.

Pg 4, In 10	Page 4, line 10 includes Retirement Plans as a responsibility to select for the agent to manage	Retirement plans are not in the current list
Pg 4, In 16	Grant of Specific Authority Trusts, Gifts and Beneficiary designation	Throughout HB254, the words REVOKE, CREATE OR MODIFY A TRUST are <b>removed from general authority</b> of the agent. GIFTS and BENEFICIARY DESIGNATIONS are newly added to the grants of specific authority because these powers award the authority to dissipate the principal's property or alter the principal's estate plan.  Incapacity replaces disability throughout HB254
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.
Section 6	"revoke, create or modify a trust"	
Section 7 Pg 8	"revoke, create or modify a trust" (A) Real estate	Describes the kinds of actions that pertain to category (A) in the Form POA
Section 8 Pg 9, In 27	"revoke, create or modify a trust" (B) Tangible personal property, chattels, and goods	Describes the kinds of actions that pertain to category (B) in the Form POA
Section 9 Pg 11, In 19	"revoke, create or modify a trust" (C) Bonds, shares and commodities transactions	Describes the kinds of actions that pertain to category (C) in the Form POA
Section 10 Pg 14, In 1 Pg 14, In 30	(D) Banking transactions  (8) includes credit and debit cards, electronic transaction authorizations	Describes the kinds of actions that pertain to category (D) in the Form POA  Including electronic banking, updates the provision to current common practice.
Section 11 Pg 16, In 5 Pg 18, In 14	(E) Business operating transactions  Includes new sections further describing business transactions that would be authorized	Describes the kinds of actions that pertain to category (E) in the Form POA

	by the POA to the agent	
Section 12 Pg 18, ln 27	(F) Insurance transactions	Describes the kinds of actions that pertain to category (F) in the Form POA
Pg 20, ln 28	Includes the ability to exercise investment powers available under a contract of insurance or annuity	Including investment powers updates the provision to current common practice
Section 13 Pg 21, ln 3	Authorizes the agent to make a gift consistent with the principal's known wishes or consistent with the principal's best interest	Describes the kinds of actions that pertain to the GIFT category in the Form POA under GRANT OF SPECIFIC AUTHORITY on page 4  This section states that gifts must be in an amount not to exceed the annual dollar limits of the federal gift tax exclusion
Section 14 Pg 22, ln 11	(I) Personal relationships and affairs	Describes the kinds of actions that pertain to category (I) in the Form POA
Pg 22, ln 13	References the agent's abilities with respect to gifts	
Pg 22, ln 20	References individuals whom the principal has customarily supported or intends to support	
Pg 22, ln 30	Court or governmental agency requirement of payments on behalf of the principal	Such as child support payments
Pg 24, ln 27	Authorizes the POA to act as the principal's representative for HIPAA purposes with regard to health care payments	Health care payments
Section 15 Pg 25, ln 2	(J) Benefits from government programs and civil or military service	Describes the kinds of actions that pertain to category (J) in the Form POA  Includes general authority with respect to benefits of civil and military 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 16 Pg 26, ln 12	Adds a new section: (N) retirement plans	Describes the kinds of actions that pertain to category (N) in the Form POA

Section 17 Pg 26, In 25	Adds a new section: Validity of a power of attorney executed in another state  Portability	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 18 Pg 27, In 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	Line 16 relieves the agent of liability if he/she breaches a duty of the POA when the action was conducted within the best interest of the principal.  If the agent is dishonest, abusive, etc. the agent would be found liable.
Section 19 Pg 27, In 24	Adds two new sections: AS 13.26.348 Agent's acceptance and liability 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 upon violation of the agent
Pg 28, In 4	AS 13.26.349 Agent's duties Outlines the ethical guidelines for the actions of an agent	Act in good faith and within the scope of authority granted in the power of attorney
Section 20 Pg 29, In 30	"Incapacity" and "Agent" terminology updates	
Section 21 Pg 30, In 26	Adds two new sections: AS 13.26.351 Judicial relief	Lists the persons able to petition a court to review the agent's conduct including revoking the agent's authority or Power of Attorney
Pg 31, In 18	AS 13.26.352 Relationship to other laws	Does not supersede other laws or remedies as they pertain to HB254
Section 22 Pg 31, In 22	Repealed and Reenacted Definition of "incapacity" for purposes of HB254	Unable to receive and evaluate information Two medical professionals who personally examine and sign an affidavit
Section 23 Pg 32, In 15	Terminology and reference updates	
Section 24 Pg 32, In 22	Adds a new section: AS 13.26.354 Acceptance of power of attorney Detailed rules for accepting a power of attorney when the person accepting does not have actual knowledge of the validity of the POA.	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

		<p>the agent as representing the principal (don't have to make the principal come in to complete the transaction).</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 25 Pg 34, ln 11	Adds a new section: AS 13.26.355 Termination of power of attorney; agent's resignation; notice	Specifies when the POA is terminated: Principal dies, not durable upon incapacity, revoked by principal, court appoints conservator, agent resigns.
Section 26 Pg 35, ln 3	Terminology updates	
Section 27 Pg 35, ln 24	Public home care provider cannot be agent unless the designation is held jointly with another individual who is not the public home care provider.	
Section 28 Pg 35, ln 29	Adds a new section: AS 13.26.359 Definitions As they pertain to this chapter.	"military and civil benefits" "good faith" "incapacity" "retirement plan"
Section 29 Pg 37, ln 1	repealed	
Section 30 Pg 37, ln 2	Uncodified law relating to the applicability of this act	
Section 29 Pg 37, ln 15	Effective date January 1, 2015	

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSHB 254(L&C)  
Fiscal Note Number: 1  
(H) Publish Date: 4/8/14

Identifier: HB254-DOA-OPA-04-04-2014  
Title: POWERS OF ATTORNEY  
Sponsor: HUGHES, GRUENBERG  
Requester: House Labor and Commerce

Department: Department of Administration  
Appropriation: Legal and Advocacy Services  
Allocation: Office of Public Advocacy  
OMB Component Number: 43

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2015 Request	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>	<b>FY 2015</b>	<b>FY 2015</b>					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
---------------------------	--	--	--	--	--	--	--

**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2015) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? N/A  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Initial version, not applicable

Prepared By: <u>Richard Allen, Director</u>	Phone: <u>(907)269-3504</u>
Division: <u>Office of Public Advocacy</u>	Date: <u>04/04/2014 10:30 PM</u>
Approved By: <u>Curtis Thayer, Commissioner</u>	Date: <u>04/04/14</u>
Agency: <u>Department of Administration</u>	

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSHB 254(L&C)

**Analysis**

The bill makes changes to the existing powers of attorney statutes. This legislation is not expected to impact the operations and administration of the Office of Public Advocacy (OPA) and therefore, OPA submits a zero fiscal note.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSHB 254(L&C)  
Fiscal Note Number: 2  
(H) Publish Date: 4/8/14

Identifier: HB254-LAW-CIV-04-04-14  
Title: POWERS OF ATTORNEY  
Sponsor: HUGHES, GRUENBERG  
Requester: (H) L&C

Department: Department of Law  
Appropriation: Civil Division  
Allocation: Commercial and Fair Business  
OMB Component Number: 2717

## Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates				
			FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>							
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

## Fund Source (Operating Only)

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

## Positions

Full-time							
Part-time							
Temporary							

## Change in Revenues

--	--	--	--	--	--	--	--

**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2015) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

## ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

## Why this fiscal note differs from previous version:

Initial version, not applicable.

Prepared By:	Loretta Withington, Division Operations Manager	Phone:	(907)465-5427
Division:	Department of Law	Date:	04/04/2014 03:55 PM
Approved By:	Michael C. Geraghty, Attorney General	Date:	04/04/14
Agency:	Department of Law		

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSHB 254(L&C)

**Analysis**

HB 254 amends various provisions of the uniform probate code with respect to powers of an agent to act under a power of attorney. It gives the agent additional authority to act with respect to certain business operating transactions, insurance transactions, gift transactions and government benefits programs. It also allows the agent to make periodic payments of child support or other family maintenance, and it permits a power of attorney to contain language that limits liability of an agent except in cases of dishonesty or abuse of a confidential or fiduciary relationship. These amendments impact private transactions and should have little to no financial impact to the Department of Law.



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

Department of  
Health and Social Services

ALASKA COMMISSION ON AGING

P.O. Box 110693  
Juneau, Alaska 99811-0693  
Main: 907.465.3250  
Fax: 907.465.1398

March 19, 2014

Representative Shelly Hughes  
Alaska Capitol, Room 409  
Juneau, Alaska 99801-1182

Regarding: Support CSHB 254, Strengthening Powers of Attorney

Dear Representative Hughes:

The Alaska Commission on Aging is pleased to express our support for CSHB 254, as authored by you and co-sponsored by Representative Max Gruenberg, to reform Alaska's durable power of attorney statute (AS 14.26). CSHB 254 will strengthen Alaska's statutes by clarifying the responsibilities of the person receiving the power of attorney. In addition, CSHB 254 will make Alaska's power of attorney statute interstate compatible by incorporating provisions from the model Uniform Power of Attorney Act used by most states which will help to eliminate problems when the older adult and the power of attorney live in different states. Although CSHB 254 addresses the needs of all vulnerable adults, we focus our attention on the benefits of this legislation we perceive for vulnerable older Alaskans.

An estimated 116,880 Alaskans are age 60 years and older and comprise nearly 15% of the state's population. The number of older Alaskans has nearly doubled since 2000, with persons who are age 85 years and older being one of the state's fastest growing age sectors in the senior population (Alaska Department of Labor Population Estimates 2013). Due to infirmities or cognitive impairment, Older Alaskans are often the victims of financial exploitation.

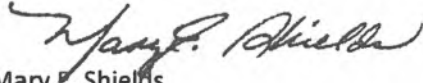
According to the state's Office of Elder Fraud and Assistance program, the most common type of fraud perpetrated against older Alaskans involves the abuse of a durable power of attorney. The Office of the Long Term Care Ombudsman concurs, finding that residents with dementia are particularly vulnerable.

As the Alaska senior population increases, so have reports to Adult Protective Services, the Office of the Long-Term Care Ombudsman and the Office of Elder Fraud and Assistance. Reports of harm to Adult Protective Services, for example, have risen by 118% over the last 5 years with the highest number of reports related to self-neglect and financial exploitation.

By incorporating provisions of the model 2006 Uniform Power of Attorney Act promulgated by the Uniform Law Commission into Alaska's power of attorney statute, there will be clearer guidance related to the fiduciary duties of the agent to act in the best interests of a vulnerable elderly person. Further, CSHB 254 will provide a new statutory power of attorney form that will require the senior to expressly approve the authority to sell, dispose, convey, and encumber real and personal property belonging to the senior. Under current law, a vulnerable adult who signs the power of attorney form can provide blanket approval for all powers to the agent unless otherwise indicated. CSHB 254 requires the principal to give special consideration and approve each power delegated to an agent.

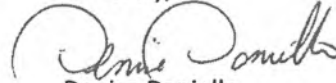
Financial exploitation against older adults is a widespread social problem that can affect any vulnerable older adult cutting across all socio-economic, cultural, racial, and ethnic divisions. The Commission believes that CSHB 254 builds on the provisions approved by the Governor's bill (SB 86) in 2012 and furthers efforts that strengthen protection for Alaska's vulnerable adults against financial exploitation. Thank you for your leadership on CSHB 254.

Sincerely,



Mary E. Shields  
Chair, Alaska Commission on Aging

Sincerely,



Denise Daniello  
ACoA Executive Director

Cc: Representative Max Gruenberg

# STATE OF ALASKA

DEPARTMENT OF REVENUE  
Alaska Mental Health  
Trust Authority

*SEAN PARNELL, GOVERNOR*

Office of the Long Term Care Ombudsman

3745 Community Park Loop. Suite 200  
Anchorage AK 99508  
Phone (907) 334-4480  
Fax (907) 334-4486

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.

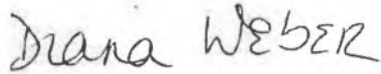
Reforming Alaska's power of attorney law cannot stop determined individuals from theft or other abuses. However, CSHB 254 does provide important protections which our current law does not. For instance, CSHB 254 sets forth the fiduciary duties of agents in language which clearly prohibits self-dealing, 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 cursive script that reads "Diana WEBER". The signature is written in dark ink on a light-colored background.

Diana Weber  
Long Term Care Ombudsman



April 8<sup>th</sup>, 2014

The Honorable Shelley Hughes  
House District 8 – Greater Palmer  
Alaska State Legislature  
120 East 4<sup>th</sup> Street  
Juneau, Alaska 99801

Dear Representative Hughes,

On behalf of the 1.2 million members of AMAC, the Association of Mature American Citizens, including more than 5,000 members in Alaska, I am writing to offer our support to HB 254, the “Uniform Power of Attorney” bill, which has been introduced in the Alaska State Legislature. This important piece of legislation seeks to protect seniors from fraud and financial abuse as a result of vulnerabilities in the state’s existing power of attorney statutes.

By clarifying the responsibilities and duties of those receiving the power of attorney, HB 254 strengthens current law and works to minimize instances of elder financial abuse. This legislation also amends existing statute so that if the individual receiving the power of attorney acts inappropriately, then his powers can be removed. AMAC believes that enhancing accountability within the state’s laws will give mature Americans and seniors the added protections they need.

Unfortunately, scams targeting seniors have become far too common. As older Americans experience some degree of cognitive decline, they often become increasingly susceptible to fraud and financial abuse from relatives or close friends. Taking these critical concerns into consideration, HB 254 has worked to align its statutory wording with that of other states in order to eliminate problems when the senior and the power of attorney live in different states. AMAC is pleased that HB 254 seeks to address myriad aspects of this problem and that it has been specifically designed to better guide those who help care for seniors.

As the fastest-growing conservative seniors organization in the country, AMAC remains very concerned about abuses of power of attorney statutes. AMAC joins you in honoring our elders and protecting them as they enter a vulnerable time in life. Thanks to your concern for seniors and leadership on this significant issue, AMAC is proud to support HB 254 and strongly encourages the Alaska State Legislature to adopt this bill.

Sincerely,

Dan Weber  
President and Founder of AMAC



**AARP Alaska**  
3601 C Street  
Suite 1420  
Anchorage, AK 99503

T 1-866-227-7447  
F 907-341-2270  
[www.aarp.org/ak](http://www.aarp.org/ak)

April 4, 2014

Representative Shelley Hughes  
Alaska State Capitol, Room 409  
Juneau, Alaska 99801-1182

RE: HB 254 – Powers of Attorney - SUPPORT

Dear Representative Hughes,

Thank you very much for your sponsorship of HB 254. AARP strongly supports enactment of HB 254, the Uniform Power of Attorney Act, in Alaska, and indeed in every state. HB 254 updates current Alaska statute to more closely conform to uniform probate code, and to strengthen protections for vulnerable adults, their agents, and third parties.

Powers of attorney are essential tools for delegating authority to others 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 often are 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.

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

- Forging the principal's signature on a power of attorney 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 that; 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.

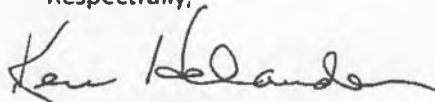
While the Act can't prevent bad actors from committing theft and other forms of abuse, it does set forth clear agent duties and prohibitions that will make civil actions and criminal prosecutions more effective. It also provides important protections to third parties to encourage their acceptance of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

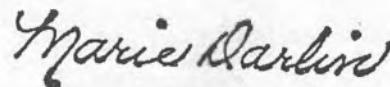
To date, thirteen states and the Virgin Islands have enacted the Uniform Power of Attorney Act, and Connecticut, Hawaii, Iowa, Kansas, Mississippi, and Washington are considering it now. By enacting the UPOAA, Alaska could strengthen its power of attorney law to better protect Alaskans and to benefit our businesses and courts.

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

Respectfully,



Ken Helander  
Advocacy Director  
AARP Alaska  
762-3314  
[khelander@aarp.org](mailto:khelander@aarp.org)



Marie Darlin  
Chair, AARP Capitol City Task Force

CC: Representative Max Gruenberg, Co-sponsor