

# Legislative Analysis



## UNIFORM POWER OF ATTORNEY ACT

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4644 as introduced**  
**Sponsor: Rep. Kara Hope**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bills 4645 and 4646 as introduced**  
**Sponsor: Rep. Jim Haadsma**

**Committee: Judiciary**  
**Revised 6-20-23**

### BRIEF SUMMARY:

House Bill 4644 would create a new act, the Uniform Power of Attorney Act, and repeal sections of the Estates and Protected Individuals Code (EPIC) that now provide for a durable power of attorney.<sup>1</sup> House Bills 4645 and 4646 would revise references to powers of attorney in the Natural Resources and Environmental Protection Act and the Public Health Code, respectively, to reflect those changes. Those bills are not further described in this summary.

A power of attorney is a legal document under which one individual provides another with the authority to act for them in specified matters. (In the bill and the brief description that follows, the person making the power of attorney delegation is called the “principal,” the person that power is delegated to is called the “agent.”) A *durable* power of attorney is an agreement that stays in effect if the principal suffers an incapacitating event. Generally speaking, an agent acting under a power of attorney must do so in the principal’s best interests.

The Uniform Power of Attorney Act is a model statute developed by the Uniform Law Commission in 2006.<sup>2</sup> Uniform state laws are intended to standardize procedures across states to promote consistency and regulatory ease for people or entities that change states or have dealings in more than one. The Uniform Power of Attorney Act is intended to provide cross-jurisdictional consistency regarding power of attorney agreements.

A *Michigan Bar Journal* summary of the Uniform Power of Attorney Act says that it “provides a series of default rules that give broad authority to the agent to act while protecting the principal from fraud, require the agent to financially reimburse the principal if the agent violates the rules, and protect third parties that rely on the power.”<sup>3</sup>

Among the notable changes is that, under current Michigan law, a power of attorney is not a durable power of attorney unless it contains an affirmative statement that the agreement is not affected by the later incapacity of the principal. Under the Uniform Power of Attorney Act, a power of attorney meeting certain requirements as to its execution would be durable unless it contains a provision expressly providing that it is not durable.

<sup>1</sup> Sections 5501 to 5505: <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-386-1998-V-5.pdf>

<sup>2</sup> <https://www.uniformlaws.org/committees/community-home?communitykey=b1975254-8370-4a7c-947f-e5af0d6cb07c>

<sup>3</sup> <https://www.michbar.org/journal/Details/Uniform-Power-of-Attorney-Act-on-the-horizon?ArticleID=4617>

## DETAILED SUMMARY:

### ARTICLE 1. GENERAL PROVISIONS

The new act would apply to all *powers of attorney* except the following:

- A *power* to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction.
- A patient advocate designation under EPIC.
- A delegation of a parent's or guardian's power regarding care, custody, or property of a minor child or ward under EPIC.
- A proxy or other delegation to exercise voting rights or management rights with respect to an entity.
- A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

*Power of attorney* or *power* would mean a written record that grants authority to an *agent* to act in one or more matters on behalf of the *principal*, regardless of whether the term "power of attorney" is used.

*Agent* would mean a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise. Agent would include an original agent, a coagent, a successor agent, and a person to whom an agent's authority is delegated.

*Principal* would mean an individual who grants authority to an agent in a power of attorney.

#### **Knowledge of a fact**

Under the bill, except as described below, a person would have knowledge of a fact involving a power of attorney if one or more of the following are true:

- The person has *actual knowledge* of the fact.
- The person has received a notice or notification of the fact.
- From all the facts and circumstances known to the person at the time in question, the person has reason to know the fact.

*Actual knowledge* would mean knowledge in fact.

An entity that conducts activities through one or more employees would have notice or knowledge of a fact involving a power of attorney, a principal, or an agent only from the time the information is received by an employee conducting a *transaction* or from the time the information would have been brought to the employee's attention if the entity had exercised *reasonable diligence*.

*Transaction* would mean a transaction that is conducted for the entity and that involves the power of attorney.

*Reasonable diligence* would mean the maintenance of and reasonable compliance with reasonable routines for communicating significant information to the employee

conducting the transaction. Reasonable diligence would not require an employee of the entity to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter concerning the transaction would be materially affected by the information.

An entity that conducts activities through one or more employees would have actual knowledge of a fact relating to a power of attorney, a principal, or an agent only if the employee conducting the transaction has actual knowledge of the fact.

### **Creation and execution**

To be effective, a power of attorney created on or after the effective date of the bill would have to be signed by one of the following individuals:

- The principal.
- If signed in the principal's conscious presence, another individual directed by the principal to sign the principal's name.

To be durable, a power of attorney signed by the principal as described above would have to meet one of the following requirements:

- Be acknowledged by the principal before a notary public or other individual authorized to take acknowledgments.
- Be signed in the presence of two witnesses, both of whom also sign the power, subject to both of the following:
  - A witness may not be an agent nominated in the power.
  - One of the witnesses may be an individual who also acts, in the principal's execution of the power, as a notary public or other individual authorized to take acknowledgments.
- To be durable, a power of attorney signed in the principal's conscious presence as described above would, regardless of whether the power is acknowledged, have to be signed in the presence of two witnesses, both of whom also sign the power, subject to both of the following:
  - A witness may not be an agent nominated in the power.
  - One of the witnesses may be an individual who also acts, in the principal's execution of the power, as a notary public or other individual authorized to take acknowledgments.

A power of attorney created on or after the effective date of this act that is executed in accordance with the above (to be durable) would be durable unless it expressly provides that it is terminated by the incapacity of the principal. A power of attorney created on or after the effective date of this act that is not executed in accordance with the above (to be durable) would not be durable.

A signature on a power of attorney would be presumed genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments. A signature on a power of attorney that is witnessed as described above but is not acknowledged would not be entitled to this presumption of genuineness and the power would not be acknowledged within the meaning of the provisions described under "Acceptance of power of attorney," below.

### **Validity and effect**

A power of attorney executed in Michigan would be valid in Michigan if, when the power was executed, the execution complied with the requirements for the execution of a power of attorney under Michigan law as it existed at that time.

A power of attorney not executed in Michigan would be valid in Michigan if, when the power was executed, the execution complied with either of the following:

- The requirements for the execution of a power of attorney under the law of the jurisdiction that determines the meaning and effect of the power as described below or under the law of the jurisdiction in which the principal was domiciled at the time of execution.
- The requirements for a military power of attorney under 10 USC 1044b.

Except as otherwise provided in the power of attorney or by another statute, a photocopy or electronically transmitted copy of an original power of attorney would have the same effect as the original.

The meaning and effect of a power of attorney would be determined by the law of the jurisdiction indicated in the power and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power was executed.

### **Conservator or guardian**

In a power of attorney, a principal could nominate a conservator or guardian of the principal's estate or guardian of the principal's person for a protective proceeding if a protective proceeding for the principal's estate or person commences after the principal executes the power. If consistent with applicable law on priority and suitability, the court would have to make its appointment in accordance with the principal's most recent nomination in a power of attorney.

If, after a principal executes a power of attorney, a court appoints a conservator or guardian of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, both of the following would apply:

- The agent would be accountable to the fiduciary as well as to the principal.
- The power of attorney would not be terminated, and the agent's authority would continue unless limited, suspended, or terminated by the court.

### **Time of effectiveness**

A power of attorney would be effective when executed unless the principal provides in the power that it becomes effective at a specified future date or on the occurrence of a specified future event or contingency. If a power of attorney is intended to become effective on the occurrence of a specified future event or contingency, the principal could, in the power, authorize one or more persons to determine in a record that the event or contingency has occurred.

If a power of attorney is intended to become effective on the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the

person authorized is unable or unwilling to make the determination, the power would become effective upon a determination in a record by either of the following:

- A physician or licensed psychologist that the principal is *incapacitated*.
- An attorney at law, a judge, or an appropriate governmental official that the principal is incapacitated.

*Incapacity*, as used in the act, would mean the inability of an individual to manage property or business affairs for either of the following reasons:

- The individual has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance.
- The individual is any of the following:
  - Missing.
  - Detained, including incarcerated in a penal system.
  - Outside the United States and unable to return.

A person authorized by the principal in the power of attorney to determine that the principal is incapacitated could, to the extent necessary or convenient in making that determination, act as the principal's personal representative under the Health Insurance Portability and Accountability Act, sections 1171 to 1179 of the Social Security Act, and applicable regulations, to obtain access to the principal's health care information and communicate with the principal's health care provider.

### **Termination**

A power of attorney would terminate if any of the following occur:

- The principal dies.
- For a power of attorney that is not durable, the principal becomes incapacitated.
- The principal revokes the power of attorney.
- An event occurs that, according to the terms of the power of attorney, terminates the power.
- For a power of attorney that is intended only for a specified, limited purpose, the specified purpose of the power is accomplished.
- The principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power.

An agent's authority would terminate if any of the following occur:

- The principal revokes the authority.
- The agent dies, becomes incapacitated, or resigns.
- An action is filed for the dissolution or annulment of the agent's marriage to the principal or for the legal separation of the agent and the principal, unless the power of attorney provides otherwise.
- The power of attorney terminates.

Unless the power of attorney provides otherwise, an agent's authority could be exercised until the authority terminates as above, notwithstanding any lapse of time since the execution of the power.

Termination of an agent's authority or of a power of attorney would not be effective as to the agent or another person that, without actual knowledge of the termination, acts in *good faith* under or in reliance upon the power. Unless it was otherwise invalid or unenforceable, an act so performed would bind the principal and the principal's successors in interest.

*Good faith*, as used in the act, would mean honesty in fact.

Similarly, incapacity of the principal of a power of attorney that is not durable would not revoke or terminate the power as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under or in reliance on the power. Unless it was otherwise invalid or unenforceable, an act so performed would bind the principal and the principal's successors in interest.

The execution of a power of attorney would not revoke a power of attorney previously executed by the principal unless the subsequent power provides that the previous power is revoked or that all other powers of attorney are revoked.

#### **Coagents and successor agents**

A principal could designate two or more persons to act as coagents. Unless the power of attorney otherwise provided, each coagent could exercise the authority granted in the power independently.

A principal could designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. A principal could grant authority to designate one or more successor agents to an agent or other person designated by name, office, or function. Unless the power of attorney otherwise provided, a successor agent would have the same authority as that granted to the original agent and could not act until all of the successor agent's predecessors under the terms of the power of attorney have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.

Except to the extent the power provides that coagents and successor agents are liable for one another's misconduct, an agent under a given power of attorney who does not participate in or conceal a breach of fiduciary duty committed by another agent who is or was serving under that power, including a predecessor agent under the power, would be liable for the actions of the other agent only as provided below.

An agent serving under a given power of attorney that has knowledge of a breach or imminent breach of fiduciary duty by another agent who is or was serving under that power, including a predecessor agent under the power, would have to notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's best interest. An agent that fails to notify the principal or take action as required by this subsection would be liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action.

#### **Reimbursement of agent**

Unless the power of attorney provides otherwise, an agent would be entitled to both of the following:

- Reimbursement of expenses reasonably incurred on behalf of the principal.

- Reasonable compensation for services rendered on behalf of the principal.

### **Acceptance of appointment**

Except as otherwise provided in the power of attorney, a person would accept appointment as an agent under a power of attorney by exercising authority as an agent or by any other assertion or conduct indicating acceptance.

Before exercising authority under a durable power of attorney, an agent would have to execute an acknowledgment of the agent's duties that contains all the substantive statements contained in the optional agent acknowledgment template provided in the bill. However, an agent's failure to do so would not affect the agent's authority to act for the principal as provided in the durable power of attorney or the bill, would not alter the agent's duties under the power and the bill, and would not mitigate the agent's potential liability for breach of those duties.

### **Duties and exemption from liability**

Notwithstanding provisions to the contrary in the power of attorney, an agent that has accepted appointment would have to do all of the following:

- Act in accordance with reasonable expectations of the principal that are actually known to the agent and, to the extent the expectations are not actually known, act in the principal's best interest.
- Act in good faith.
- Act only within the scope of authority granted by the principal.
- Keep reasonable records of receipts, disbursements, and transactions made by the agent on behalf of the principal.

Except as otherwise provided in the power of attorney, an agent who has accepted appointment would have to do all of the following:

- Act loyally for the principal's benefit.
- Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest.
- Act with the care, competence, and diligence that a prudent person would in dealing with the property of another.
- Cooperate with a person that has authority to make health care decisions for the principal to carry out reasonable expectations of the principal concerning health care that are actually known to the agent and, to the extent the expectations are not actually known, to act in the principal's best interest.
- Attempt to preserve the principal's estate plan to the extent that plan is actually known to the agent and preserving the plan is consistent with the principal's best interest based on relevant factors including all of the following:
  - The value and nature of the principal's property.
  - The principal's foreseeable obligations and need for maintenance.
  - The desirability of minimizing taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes.
  - Eligibility for a benefit, a program, or assistance under a statute or regulation.

An agent who acts in good faith would not be liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

An agent who acts for the best interest of the principal with the care, competence, and diligence that a prudent person would in dealing with the property of another would not be liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise would have to be considered in determining whether the agent has acted with care, competence, and diligence.

A decline in the value of the principal's property would not in itself be sufficient to establish a breach of fiduciary duty.

An agent serving under a power of attorney that does not have knowledge of a breach or imminent breach of fiduciary duty by another agent who is or was serving under that power would not have a duty to investigate the conduct of any coagent or predecessor agent to rule out the possibility of any breach.

An agent who exercises authority to delegate to another person the authority granted by the principal or who engages another person on behalf of the principal would not be liable for an act, error of judgment, or default of the person if the agent exercises care, competence, and diligence in selecting and monitoring the person.

Except as otherwise provided in the power of attorney, an agent would not be required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, or adult protective services, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If a person that is authorized by the power of attorney or by this provision to request a disclosure described above makes a request, the agent would have to comply with the request within 30 days or provide a record substantiating why additional time is needed. If additional time is needed, the agent would have to comply with the request within an additional 30 days.

#### **Provision of relief of liability**

A provision in a power of attorney relieving an agent of liability for breach of duty would be binding on the principal and the principal's successors in interest except to the extent either of the following applies:

- The provision was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.
- The provision relieves the agent of liability for breach of duty committed in bad faith or, except as provided below, with reckless indifference to the purposes of the power of attorney or the best interest of the principal.

A provision in a power of attorney relieving an agent of liability under the provision described above requiring notification in the event of a breach or imminent breach of fiduciary duty by another agent would be binding on the principal and the principal's successors in interest except to the extent that it relieves the agent of liability for breach of duty committed in bad faith or was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.



### **Petition to court**

Without precluding other bases on which such matters may properly be brought before the court, any of the following persons could petition a court to construe a power of attorney or review the agent's conduct and grant appropriate relief:

- The principal or the agent.
- A guardian, conservator, or other fiduciary acting for the principal.
- A person that, at the time of the petition, is exercising authority to make health care decisions for the principal.
- An individual who, at the time of the petition, would be an heir of the principal if the principal were to die intestate at that time.
- A person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal the trustee of which has a financial interest in the principal's estate.
- The personal representative of the principal's estate.
- Adult protective services.
- A caregiver or another person that demonstrates sufficient interest in the principal's welfare.
- A person asked to accept the power of attorney.

Upon motion by the principal, the court would have to dismiss such a petition filed unless the court finds one of the following:

- That the principal lacks capacity to revoke the agent's authority or the power of attorney.
- That the motion is the effect of undue influence, fraud, or duress.

In addition, without precluding other bases on which such matters may properly be brought before the court, any of the following persons could petition a court to review conduct regulated by the new act on the part of a person to whom a power of attorney is *presented for acceptance* and to grant appropriate relief:

- The principal or the agent.
- A guardian, conservator, or other court-appointed fiduciary acting for the principal.

*Presented for acceptance*, with respect to a power of attorney, would mean that both of the following events have occurred:

- A person other than the principal or an agent under the power in question has been asked by the principal or an agent under the power to take a specified action or actions in reliance on the power.
- The power of attorney itself or a copy of it has been presented to and received by the person that is asked to take action in reliance on the power as described above.

### **Liability for violation**

An agent who violates the new act would be liable to the principal or the principal's successors in interest for the amount required to restore the value of the principal's property to what it would have been had the violation not occurred, including reimbursement of attorney fees and costs paid on the agent's behalf in the defense of conduct constituting or contributing to the violation.

An agent who embezzles or wrongfully converts the principal's property, or refuses, without colorable claim of right, to transfer possession of the principal's property to the principal or the principal's successors in interest on demand, would be liable in an action brought by the principal or the principal's successors in interest for treble the value of any property embezzled, converted, or wrongfully withheld from the principal or the principal's successors in interest.

### **Resignation**

Unless the power of attorney provides a different method for an agent's resignation, an agent could resign by notifying the principal if the principal is not incapacitated or, if the principal is incapacitated, by notifying the following persons, as applicable:

- If a conservator or guardian has been appointed for the principal, the conservator or guardian.
- If a coagent or successor agent has been designated, the coagent or successor agent.
- If there is not a person described above, one of the following:
  - A caregiver of the principal who is reasonably believed by the agent to have a significant interest in the principal's welfare or another person that is reasonably believed by the agent to have the significant interest.
  - Adult protective services.

### **Acceptance of power of attorney**

A person that in good faith accepts an *acknowledged* power of attorney without actual knowledge that the signature is not genuine could rely upon the presumption, described above, that the signature is genuine.

*Acknowledged*, as used in these provisions, would mean purportedly verified before a notary public or other individual authorized to take acknowledgments.

A person that in good faith accepts a power of attorney that is either an acknowledged power or a *vintage durable power* without actual knowledge that the power is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding the agent's authority could rely on the power as if the power were genuine, valid, and still in effect, the agent's authority were genuine, valid, and still in effect, and the agent had not exceeded and had properly exercised the authority. This provision would apply regardless of whether the purported agent under a durable power of attorney has executed an acknowledgment that complies with the provisions described above (under "Acceptance of appointment") or any similar requirement under prior law.

*Vintage durable power* would mean a power of attorney to which all of the following apply:

- The power is valid as described above under "Validity and effect."
- The power is durable under the law that validates the power as described above.
- The power was executed after September 29, 2012, and before the effective date of the bill.

If a power of attorney that is durable is presented for acceptance without an agent's acknowledgment that complies the provisions described above and is signed by the agent who is to act on the principal's behalf in the transaction in question, a person that is asked to accept the power could require that the agent provide the acknowledgment before accepting the power.

A person asked to accept an acknowledged power of attorney could request and could rely, without further investigation, upon any of the following:

- A certification under penalty of perjury by an agent or an attorney at law who represents either the agent or the principal of any factual matter concerning the principal, agent, or power of attorney.
- An English translation of the power of attorney if the power contains, in whole or in part, language other than English and the translation's accuracy is the subject of either a certification or an opinion of counsel.
- An opinion of counsel as to any matter of law concerning the power of attorney if the person requesting the opinion explains the reason for the request in a record.

Except as provided below, an English translation or an opinion of counsel requested under these provisions would have to be provided at the principal's expense unless the request is made more than seven business days after the power of attorney is presented for acceptance.

If a person asked to accept an acknowledged power of attorney requests an opinion of counsel and a court finds that the reason for the request as stated in the required record is frivolous, the person making the request would be subject to liability for attorney fees and costs incurred in providing the requested opinion. In deciding whether the stated reason for the request is frivolous, the court would have to consider, in addition to other relevant factors, whether, in light of the language of the power, the provisions of this act, and the surrounding circumstances, there is arguable merit to the legal concern that the request addresses.

#### **Further acceptance provisions**

Except as otherwise provided below, a person would have to either accept an acknowledged power of attorney or request an agent's acknowledgment or a certification, translation, or opinion of counsel not later than seven business days after the power is presented for acceptance. A person could not require either of the following:

- An additional or different form of power of attorney for authority granted in the acknowledged power presented.
- An additional or different form of agent's acknowledgment if an acknowledgment that complies with the provisions described above and is signed by the agent who is to act on the principal's behalf in the transaction in question is presented with the acknowledged power presented or in response to a request.

Except as otherwise provided below, if a person requests an agent's acknowledgment or a certification, translation, or opinion of counsel, the person would have to accept the power of attorney not later than five business days after receipt of the requested acknowledgment, certification, translation, or opinion of counsel or, if more than one item has been timely requested in response to the same presentation, five business days after the requesting person has received all of the items timely requested.

A person would not be required to accept a power of attorney if any of the following apply:

- The person is not required to engage in a transaction with the principal in the same circumstances.

- Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law or with guidance issued by a federal regulatory agency to whose jurisdiction the person is subject.
- The person has actual knowledge of the termination of the agent’s authority or of the power of attorney before exercise of the power.
- The person’s timely request for an agent’s acknowledgment or a certification, translation, or opinion of counsel is refused.
- The person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not an agent’s acknowledgment or a certification, translation, or opinion of counsel has been requested or provided.
- The person in good faith makes, or has actual knowledge that another person has made, a report to Adult Protective Services stating a belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.
- The person is a financial institution and the person is, at the time in question, delaying or placing a freeze on transactions or assets relative to the principal under the Financial Exploitation Prevention Act.

A person that refuses to accept an acknowledged power of attorney in violation of this section would be subject to a court order mandating acceptance of the power and liability for reasonable attorney fees and costs incurred in any action or proceeding that confirms the validity of the power or mandates acceptance of the power.

A person that refuses to accept an acknowledged power of attorney in violation of this section after having requested and received a certification, a translation, or an opinion of counsel would be subject to, in addition to the liability described above, liability for reasonable attorney fees and costs incurred in providing the requested certification, translation, or opinion of counsel.

## ARTICLE 2. AUTHORITY

### **Authority and incorporation by reference of kinds of general authority**

An agent under a power of attorney could do the following on behalf of the principal or with the principal’s property *only if* the power expressly grants the agent the authority and exercise of the authority is not prohibited by another agreement or instrument to which the authority or property is subject or the authority is granted by judicial order:

- Create, amend, revoke, or terminate an inter vivos trust.
- Make a gift.
- Create or change rights of survivorship.
- Create or change a beneficiary designation.
- Delegate authority granted under the power of attorney.
- Waive the principal’s right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan.
- Exercise fiduciary powers that the principal has authority to delegate.
- Exercise authority over the content of electronic communications, as defined in 18 USC 2510(12), sent or received by the principal.
- Exercise authority over any bank, securities, or other financial account in a foreign country within the meaning of 31 CFR 1010.350.

Notwithstanding a grant of authority to do an act described above, unless the power of attorney provides otherwise, an agent who is not an ancestor, spouse, or descendant of the principal could not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise. The terms of a power of attorney could expand or narrow the class of agents permitted by this provision to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property.

The bill would provide that, subject to these provisions, if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent would have the general authority described in the "General authority..." provisions below, except "General authority with respect to gifts."

Unless the power of attorney provides otherwise, a grant of authority to make a gift would be subject to provisions described below under "General authority with respect to gifts."

Subject to the above, if the subjects over which authority is granted by a power of attorney are similar or overlap, the broadest authority would control.

Authority granted in a power of attorney would be exercisable with respect to property that the principal has when the power is executed or acquires later, whether or not the property is located in Michigan and whether or not the authority is exercised or the power is executed in Michigan.

An act performed by an agent under a power of attorney would have the same effect and would inure to the benefit of and bind the principal and the principal's successors in interest as if the principal had performed the act.

An agent would have authority described in the "General authority..." provisions below if the power of attorney does either of the following:

- Cites the section of the act in which the authority is described.
- Refers to a heading or catchline added to those sections by the Legislative Service Bureau in compiling the new act.

A power of attorney that incorporates by reference any part of a section of the bill described in the "General authority..." provisions below would incorporate the entire section of the bill as if that section were set out in full in the power.

A principal could modify authority incorporated by reference.

Except as otherwise provided in the power of attorney, by executing a power that incorporates by reference a subject described in the "General authority..." provisions below or that grants to an agent authority to do all acts that a principal could do as described above, a principal authorizes the agent, with respect to that subject, to do all of the following:

- Demand, receive, and obtain, by litigation or otherwise, money or another thing of value to which the principal is, may become, or claims to be entitled, and conserve, invest, disburse, or use anything so received or obtained for the purposes intended.

- Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release, or modify the contract or another contract made by or on behalf of the principal.
- Execute, acknowledge, seal, deliver, file, or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating at any time a schedule listing some or all of the principal's property and attaching it to the power of attorney.
- Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim.
- Seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the power of attorney.
- Engage, compensate, and discharge an attorney, accountant, discretionary investment manager, expert witness, or other advisor.
- Prepare, execute, and file a record, report, or other document to safeguard or promote the principal's interest under a statute or regulation.
- Communicate with any representative or employee of a government or governmental subdivision, agency, or instrumentality, on behalf of the principal.
- Access communications intended for and communicate on behalf of the principal, whether by mail, electronic transmission, telephone, or other means.
- Do any lawful act with respect to the subject and all property related to the subject.

#### **General authority with respect to real property**

A power of attorney that authorizes the agent to convey or otherwise exercise power over real property does not need to contain the real property's legal description.

Unless the power of attorney provides otherwise, language in a power granting general authority with respect to real property authorizes the agent to do all of the following:

- Demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property.
- Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property.
- Pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal.
- Release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien, or other claim to real property that exists or is asserted.
- Manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including all of the following:
  - Insuring against liability or casualty or other loss.

- Obtaining or regaining possession of or protecting the interest or right by litigation or otherwise.
- Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with them.
- Purchasing supplies, hiring labor, and making repairs or alterations to the real property.
- Use, develop, alter, replace, remove, erect, or install structures or other improvements on real property in or incident to which the principal has, or claims to have, an interest or right.
- Participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including all of the following:
  - Selling or otherwise disposing of them.
  - Exercising or selling an option, right of conversion, or similar right with respect to them.
  - Exercising any voting rights in person or by proxy.
- Change the form of title of an interest in or right incident to real property.
- Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

**General authority with respect to tangible personal property**

Unless the power of attorney provides otherwise, language in a power granting general authority with respect to tangible personal property would authorize the agent to do all of the following:

- Demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property.
- Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; create a security interest in; grant options concerning; lease; sublease; or otherwise dispose of tangible personal property or an interest in tangible personal property.
- Grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal.
- Release, assign, satisfy, or enforce, by litigation or otherwise, a security interest, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property.
- Manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including all of the following:
  - Insuring against liability or casualty or other loss.
  - Obtaining or regaining possession of or protecting the property or interest, by litigation or otherwise.
  - Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments.
  - Moving the property from place to place.
  - Storing the property for hire or on a gratuitous bailment.
  - Using and making repairs, alterations, or improvements to the property.

- Change the form of title of an interest in tangible personal property.

#### **General authority with respect to stocks and bonds**

Unless the power of attorney provides otherwise, language in a power granting general authority with respect to stocks and bonds would authorize the agent to do all of the following:

- Buy, sell, and exchange stocks and bonds.
- Establish, continue, modify, or terminate an account with respect to stocks and bonds.
- Pledge stocks and bonds as security to borrow, pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal.
- Receive certificates and other evidence of ownership with respect to stocks and bonds.
- Exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

#### **General authority with respect to commodities and options**

Unless the power of attorney provides otherwise, language in a power granting general authority with respect to commodities and options would authorize the agent to do the following:

- Buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange.
- Establish, continue, modify, and terminate option accounts.

#### **General authority with respect to banks and other financial institutions**

Unless the power of attorney provides otherwise, language in a power granting general authority with respect to banks and other financial institutions would authorize the agent to do all of the following:

- Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal.
- Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent.
- Contract for services available from a financial institution, including renting a safe deposit box or space in a vault.
- Withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution.
- Receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them.
- Enter a safe deposit box or vault and withdraw or add to the contents.
- Borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal.
- Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due.
- Receive for the principal and act on a sight draft, warehouse receipt, or other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument.



- Apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit.
- Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

**General authority with respect to operation of an entity or business**

Subject to the terms of a document or an agreement governing an entity or an entity ownership interest, and unless the power of attorney provides otherwise, language in a power granting general authority with respect to operation of an entity or business would authorize the agent to do all of the following:

- Operate, buy, sell, enlarge, reduce, or terminate an ownership interest.
- Perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege, or option that the principal has, may have, or claims to have.
- Enforce the terms of an ownership agreement.
- Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party because of an ownership interest.
- Exercise in person or by proxy, or enforce, by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of stocks and bonds.
- Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds.
- With respect to an entity or business owned solely by the principal, do all of the following:
  - Continue, modify, renegotiate, extend, and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney.
  - Determine all of the following:
    - The location of the entity's or business's operation.
    - The nature and extent of the business.
    - The methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in the entity's or business's operation.
    - The amount and types of insurance carried.
    - The mode of engaging, compensating, and dealing with the entity's or business's employees and accountants, attorneys, or other advisors.
  - Change the name or form of organization under which the entity or business is operated or enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business.
  - Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business.
- Put additional capital into an entity or business in which the principal has an interest.
- Join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business.
- Sell or liquidate all or part of an entity or business.

- Establish the value of an entity or business under a buy-out agreement to which the principal is a party.
- Prepare, sign, file, and deliver reports, compilations of information, returns, or other records with respect to an entity or business and make related payments.
- Pay, compromise, or contest taxes, assessments, fines, or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines, or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

#### **General authority with respect to insurance and annuities**

Unless the power of attorney provides otherwise, language in a power granting general authority with respect to insurance and annuities would authorize the agent to do all of the following:

- Continue, pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract.
- Procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents, and select the amount, type of insurance or annuity, and mode of payment.
- Pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the agent.
- Apply for and receive a loan secured by a contract of insurance or annuity.
- Surrender and receive the cash surrender value on a contract of insurance or annuity.
- Exercise an election.
- Exercise investment powers available under a contract of insurance or annuity.
- Change the manner of paying premiums on a contract of insurance or annuity.
- Change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section.
- Apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal.
- Collect, sell, assign, hypothecate, borrow against, or pledge the interest of the principal in a contract of insurance or annuity.
- Select the form and timing of the payment of proceeds from a contract of insurance or annuity.
- Pay, from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

#### **General authority with respect to estates, trusts, and other beneficial interests**

Unless the power of attorney provides otherwise, language in a power granting general authority with respect to *estates, trusts, and other beneficial interests* would authorize the agent to do all of the following:

- Accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment from an estate, trust, or other beneficial interest.

- Demand or obtain money or another thing of value to which the principal is, may become, or claims to be, entitled by reason of an estate, trust, or other beneficial interest, by litigation or otherwise.
- Exercise for the benefit of the principal a *presently exercisable* general power of appointment held by the principal.
- Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal.
- Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary.
- Conserve, invest, disburse, or use anything received for an authorized purpose.
- Transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of a revocable trust created by the principal as settlor.

*Estate, trust, or other beneficial interest* would mean a trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the principal is, may become, or claims to be entitled to a share or payment.

*Presently exercisable*, with respect to a power of appointment, would mean that the power of appointment is exercisable by the appointee at the relevant time. A power of appointment that is not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period is presently exercisable only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period. A power that is exercisable only by will is not presently exercisable.

#### **General authority with respect to claims and litigation**

Unless the power of attorney provides otherwise, language in a power granting general authority with respect to claims and litigation would authorize the agent to do all of the following:

- Assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment, or defense, including an action to recover property or other thing of value, recover damages sustained by the principal, eliminate or modify tax liability, or seek an injunction, specific performance, or other relief.
- Bring an action to determine adverse claims or intervene or otherwise participate in litigation.
- Seek an attachment, garnishment, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree.
- Make or accept a tender, offer of judgment, or admission of facts, submit a controversy on an agreed statement of facts, consent to examination, and bind the principal in litigation.
- Submit to alternative dispute resolution, settle, and propose or accept a compromise.

- Waive the issuance and service of process on the principal, accept service of process, appear for the principal, designate persons on whom process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive, execute, and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation.
- Act for the principal with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization, receivership, or application for the appointment of a receiver or trustee that affects an interest of the principal in property or other thing of value.
- Pay a judgment, award, or order against the principal or a settlement made in connection with a claim or litigation.
- Receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

#### **General authority with respect to personal and family maintenance**

Unless the power of attorney provides otherwise, language in a power granting general authority with respect to personal and family maintenance would authorize the agent to do all of the following:

- Perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse, and the following individuals, whether they are living when the power of attorney is executed or are born later:
  - The principal's children.
  - Individuals legally entitled to be supported by the principal.
  - Individuals whom the principal has customarily supported or indicated the intent to support.
- Provide living quarters for the individuals described above by any the following:
  - Purchase, lease, or other contract.
  - Paying the operating costs, including interest, amortization payments, repairs, improvements, and taxes, for premises owned by the principal or occupied by those individuals.
- Provide normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described above.
- Pay expenses for necessary health care and custodial care on behalf of the individuals described above.
- Continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them, for the individuals described above.
- Maintain credit and debit accounts for the convenience of the individuals described above and open new accounts for that purpose.
- Act as the principal's personal representative under the Health Insurance Portability and Accountability Act, sections 1171 to 1179 of the Social Security Act, and applicable regulations, in making decisions related to the past, present, or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this state to consent to health care on behalf of the principal.

- Make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party.
- Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order, or other organization or to continue an established pattern of contributions to those organizations.

Authority with respect to personal and family maintenance would not be dependent on, or limited by, authority that an agent may or may not have with respect to gifts under this act.

**General authority with respect to government or military benefits**

Unless the power of attorney provides otherwise, language in a power granting general authority with respect to *benefits from governmental programs or civil or military service* would authorize the agent to do all of the following:

- Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in section 213(1)(a), and for shipment of their household effects.
- Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose.
- Enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's behalf, a benefit or program.
- Prepare, file, and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a statute or regulation.
- Receive the financial proceeds of a claim described in subdivision (d) and conserve, invest, disburse, or use for a lawful purpose anything so received.
- Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute or regulation.

*Benefits from governmental programs or civil or military service* would mean any benefit, program, or other assistance provided under a statute or regulation including Social Security, Medicare, and Medicaid.

**General authority with respect to retirement plans**

Unless the power of attorney provides otherwise, language in a power granting general authority with respect to *retirement plans* would authorize the agent to do all of the following:

- Select the form and timing of payments under a retirement plan and withdraw benefits from a plan.
- Make a rollover or a trustee-to-trustee transfer of benefits from one retirement plan to another.
- Establish a retirement plan in the principal's name.
- Make contributions to a retirement plan.
- Exercise investment powers available under a retirement plan.
- Borrow from, sell assets to, or purchase assets from a retirement plan as permitted by the plan.

**Retirement plan** would mean a plan or account created by an employer, the principal, or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary, or owner, including a plan or account under any of the following:

- An individual retirement account under section 408 of the Internal Revenue Code.
- A Roth individual retirement account under section 408A of the Internal Revenue Code.
- A deemed individual retirement account under section 408(q) of the Internal Revenue Code.
- An annuity or mutual fund custodial account under section 403(b) of the Internal Revenue Code.
- A pension, profit-sharing, stock bonus, or other retirement plan qualified under section 401(a) of the Internal Revenue Code.
- A plan under section 457(b) of the Internal Revenue Code.
- A nonqualified deferred compensation plan under section 409A of the Internal Revenue Code.

#### **General authority with respect to taxes**

Unless the power of attorney provides otherwise, language in a power granting general authority with respect to taxes would authorize the agent to do all of the following:

- Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, property, federal insurance contributions act, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under section 2032A of the Internal Revenue Code, closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years.
- Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority.
- Exercise any election available to the principal under federal, state, local, or foreign tax law, including consent, under section 2513 of the Internal Revenue Code, to the splitting of one or more gifts made by the principal's spouse.
- Act for the principal in all tax matters for all periods before the Internal Revenue Service or other taxing authority.

#### **General authority with respect to gifts**

Unless the power of attorney provides otherwise, language in a power granting general authority with respect to gifts would authorize the agent to make outright gifts of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, to, or ***for the benefit of***, a person or persons as the agent determines is consistent with the principal's objectives if actually known by the agent and, to the extent the principal's objectives are unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including the following:

- The value and nature of the principal's property.

- The principal’s foreseeable obligations and need for maintenance, including anticipated private-pay nursing or assisted-living care costs incurred in a facility or at home.
- The desirability of minimizing taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes.
- Eligibility for a benefit, a program, or assistance under a statute or regulation, including eligibility for assistance with nursing or assisted-living care in a facility or at home.
- The principal’s personal history of making gifts.

A gift *for the benefit of* a person would include a gift in trust, an account under the Michigan Uniform Transfers to Minors Act, a tuition savings account or prepaid tuition plan as described in section 529 of the federal Internal Revenue Code, and an ABLE account as defined in section 529A of the Internal Revenue Code.

### ARTICLE 3. STATUTORY FORMS

#### **Statutory forms**

The bill would include a power of attorney form that would have the meaning and effect prescribed by the act, as well as an optional template that could be used by a nominated agent under a durable power of attorney to provide the acknowledgment required as described above, and an optional template that could be used by an agent or an attorney at law who represents either the agent or the principal to certify facts concerning a power of attorney:

#### **Other provisions**

Unless displaced by a provision of the new act, principles of common law and equity would supplement the act.

The act would not supersede any other law applicable to financial institutions or other regulated entities, and that other law would control to the extent it is inconsistent with the act.

The remedies under the act would not be exclusive and would not abrogate any right or remedy under other Michigan law.

The bill also provides definitions for several terms that have not been included in this summary, such as *court*, *electronic*, *entity*, *person*, *property*, *record*, *sign*, *state*, and *stocks and bonds*, among others.

#### **Effectiveness and applicability**

House Bill 4644 would take effect July 1, 2024. Except as otherwise provided, the new act would apply as follows:

- To a power of attorney created before, on, or after that date.
- To a judicial proceeding concerning a power of attorney commenced on or after that date.
- To a judicial proceeding concerning a power of attorney commenced before that date unless the court finds that application of a provision of the new act would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision would not apply and the superseded law would apply.

An act done before the bill's effective date would not be affected by the new act.

House Bill 4644 would not take effect unless HBs 4645 and 4646 were both also enacted, and neither of those bills would take effect unless HB 4644 were enacted.

## **BACKGROUND:**

According to the Uniform Law Commission:

The concept of a power of attorney was first incorporated into the Uniform Probate Code in 1969 to offer an inexpensive method of surrogate decision making to those whose modest assets did not justify pre-incapacity planning with a trust or post-incapacity property management with a guardianship. After more than three decades, the durable power of attorney is now used by both the wealthy and the non-wealthy for incapacity planning as well as convenience. The Uniform Power of Attorney Act (2006) (UPOAA) is necessary because over the years many states adopted non-uniform provisions to deal with issues on which the Uniform Probate Code and the original Uniform Durable Power of Attorney Act are silent. The UPOAA, which provides uniformity on these issues, enhances the usefulness of durable powers while protecting the principal, the agent, and those who deal with the agent.

A national study of durable powers of attorney, conducted in 2002, revealed the need to address numerous issues not contemplated in the original Uniform Durable Power of Attorney Act such as the authority of multiple agents, the authority of later-appointed guardians, and the impact of dissolution or annulment of the principals marriage to the agent. The study also revealed other topics about which the states had legislated, although not necessarily in a divergent manner, including: successor agents, execution requirements, portability, sanctions for dishonor of a power of attorney, and restrictions on powers that alter a principals estate plan. In a national survey, trust and estate lawyers responses demonstrated a high degree of consensus about the need to improve portability and acceptance of powers of attorneys as well as the need to better protect incapacitated principals.

As of June 13, 2023, 30 states and the District of Columbia have enacted the Uniform Power of Attorney Act or a substantially similar law.<sup>4</sup>

## **FISCAL IMPACT:**

A fiscal analysis is in progress.

Legislative Analyst: Rick Yuille  
Fiscal Analyst: Robin Risko

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

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<sup>4</sup> Alabama, Arkansas, Colorado, Connecticut, Georgia, Hawaii, Idaho, Iowa, Kentucky, Maine, Maryland, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.