

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
Complete to 6-14-23

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.¹ 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. This document provides a brief summary and background of House Bill 4644. A detailed summary is in progress.

The Uniform Power of Attorney Act is a model statute developed by the Uniform Law Commission in 2006.² 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 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.

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.”³

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

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

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

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

power of attorney meeting certain requirements as to its execution would be durable unless it contains a provision expressly providing that it is not.

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.⁴

FISCAL IMPACT:

A fiscal analysis is in progress.

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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.

⁴ 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.