

2 **SHB 1135** - S COMM AMD  
3 By Committee on Judiciary

4 ADOPTED 04/04/01

5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. Sec. 1. (1) An appointment of a principal's spouse  
8 as attorney in fact, including appointment as successor or co-attorney  
9 in fact, under a power of attorney shall be revoked upon entry of a  
10 decree of dissolution or legal separation or declaration of invalidity  
11 of the marriage of the principal and the attorney in fact, unless the  
12 power of attorney or the decree provides otherwise. The effect of this  
13 revocation shall be as if the spouse resigned as attorney in fact, or  
14 if named as successor attorney in fact, renounced the appointment, as  
15 of the date of entry of the decree or declaration, and the power of  
16 attorney shall otherwise remain in effect with respect to appointments  
17 of other persons as attorney in fact for the principal or procedures  
18 prescribed in the power of attorney to appoint other persons, and any  
19 terms relating to service by persons as attorney in fact.

20 (2) This section applies to all decrees of dissolution and  
21 declarations of invalidity of marriage entered after the effective date  
22 of this act.

23 **Sec. 2.** RCW 11.94.040 and 1985 c 30 s 28 are each amended to read  
24 as follows:

25 (1) Any person acting without negligence and in good faith in  
26 reasonable reliance on a power of attorney shall not incur any  
27 liability (~~thereby~~).

28 (2) If the attorney in fact presents the power of attorney to a  
29 third person and requests the person to accept the attorney in fact's  
30 authority to act for the principal, and also presents to the person an  
31 acknowledged affidavit or declaration signed under penalty of perjury  
32 in the form designated in RCW 9A.72.085, signed and dated  
33 contemporaneously with presenting the power of attorney, which meets  
34 the requirements of subsection (3) of this section, and the person  
35 accepting the power of attorney has examined the power of attorney and

1 confirmed the identity of the attorney in fact, then the person's  
2 reliance on the power of attorney is presumed to be without negligence  
3 and in good faith in reasonable reliance, which presumption may be  
4 rebutted by clear and convincing evidence that the person accepting the  
5 power of attorney knew or should have known that one or more of the  
6 material statements in the affidavit is untrue. It shall not be found  
7 that an organization knew or should have known of circumstances that  
8 would revoke or terminate the power of attorney or limit or modify the  
9 authority of the attorney in fact, unless the individual accepting the  
10 power of attorney on behalf of the organization knew or should have  
11 known of the circumstances.

12 (3) An affidavit presented pursuant to subsection (2) of this  
13 section shall state that:

14 (a) The person presenting himself or herself as the attorney in  
15 fact and signing the affidavit or declaration is the person so named in  
16 the power of attorney;

17 (b) If the attorney in fact is named in the power of attorney as a  
18 successor attorney in fact, the circumstances or conditions stated in  
19 the power of attorney that would cause that person to become the acting  
20 attorney in fact have occurred;

21 (c) To the best of the attorney in fact's knowledge, the principal  
22 is still alive;

23 (d) To the best of the attorney in fact's knowledge, at the time  
24 the power of attorney was signed, the principal was competent to  
25 execute the document and was not under undue influence to sign the  
26 document;

27 (e) All events necessary to making the power of attorney effective  
28 have occurred;

29 (f) The attorney in fact does not have actual knowledge of the  
30 revocation, termination, limitation, or modification of the power of  
31 attorney or of the attorney in fact's authority;

32 (g) The attorney in fact does not have actual knowledge of the  
33 existence of other circumstances that would limit, modify, revoke, or  
34 terminate the power of attorney or the attorney in fact's authority to  
35 take the proposed action;

36 (h) If the attorney in fact was married to the principal at the  
37 time of execution of the power of attorney, then at the time of signing  
38 the affidavit or declaration, the marriage of the principal and the  
39 attorney in fact has not been dissolved or declared invalid; and

1        (i) The attorney in fact is acting in good faith pursuant to the  
2 authority given under the power of attorney.

3        (4) Unless the document contains a time limit, the length of time  
4 which has elapsed from its date of execution shall not prevent a party  
5 from reasonably relying on the document.

6        (5) Unless the document contains a requirement that it be filed for  
7 record to be effective, a person (~~shall~~) may place reasonable  
8 reliance on it regardless of whether it is so filed.

9        NEW SECTION. Sec. 3. (1) A person designated in section 4 of this  
10 act may file a petition requesting that the court:

11        (a) Determine whether the power of attorney is in effect or has  
12 terminated;

13        (b) Compel the attorney in fact to submit the attorney in fact's  
14 accounts or report the attorney in fact's acts as attorney in fact to  
15 the principal, the spouse of the principal, the guardian of the person  
16 or the estate of the principal, or to any other person required by the  
17 court in its discretion, if the attorney in fact has failed to submit  
18 an accounting or report within sixty days after written request from  
19 the person filing the petition, however, a government agency charged  
20 with the protection of vulnerable adults may file a petition upon the  
21 attorney in fact's refusal or failure to submit an accounting upon  
22 written request and shall not be required to wait sixty days;

23        (c) Ratify past acts or approve proposed acts of the attorney in  
24 fact;

25        (d) Order the attorney in fact to exercise or refrain from  
26 exercising authority in a power of attorney in a particular manner or  
27 for a particular purpose;

28        (e) Modify the authority of an attorney in fact under a power of  
29 attorney;

30        (f) Remove the attorney in fact on a determination by the court of  
31 both of the following:

32        (i) The attorney in fact has violated or is unfit to perform the  
33 fiduciary duties under the power of attorney; and

34        (ii) The removal of the attorney in fact is in the best interest of  
35 the principal;

36        (g) Approve the resignation of the attorney in fact and approve the  
37 final accountings of the resigning attorney in fact if submitted,

1 subject to any orders the court determines are necessary to protect the  
2 principal's interests;

3 (h) Confirm the authority of a successor attorney in fact to act  
4 under a power of attorney upon removal or resignation of the previous  
5 attorney in fact;

6 (i) Compel a third person to honor the authority of an attorney in  
7 fact, provided that a third person may not be compelled to honor the  
8 agent's authority if the principal could not compel the third person to  
9 act in the same circumstances;

10 (j) Order the attorney in fact to furnish a bond in an amount the  
11 court determines to be appropriate.

12 (2) The petition shall contain a statement identifying the  
13 principal's known immediate family members, and any other persons known  
14 to petitioner to be interested in the principal's welfare or the  
15 principal's estate, stating which of said persons have an interest in  
16 the action requested in the petition and explaining the determination  
17 of who is interested in the petition.

18 NEW SECTION. **Sec. 4.** (1) A petition may be filed under section 3  
19 of this act by any of the following persons:

20 (a) The attorney in fact;

21 (b) The principal;

22 (c) The spouse of the principal;

23 (d) The guardian of the estate or person of the principal; or

24 (e) Any other interested person, as long as the person demonstrates  
25 to the court's satisfaction that the person is interested in the  
26 welfare of the principal and has a good faith belief that the court's  
27 intervention is necessary, and that the principal is incapacitated at  
28 the time of filing the petition or otherwise unable to protect his or  
29 her own interests.

30 (2) Notwithstanding section 1 of this act, the principal may  
31 specify in the power of attorney by name certain persons who shall have  
32 no authority to bring a petition under section 3 of this act with  
33 respect to the power of attorney. This provision is enforceable:

34 (a) If the person so named is not at the time of filing the  
35 petition the guardian of the principal;

36 (b) If at the time of signing the power of attorney the principal  
37 was represented by an attorney who advised the principal regarding the  
38 power of attorney and who signed a certificate at the time of execution

1 of the power of attorney, stating that the attorney has advised the  
2 principal concerning his or her rights, the applicable law, and the  
3 effect and consequences of executing the power of attorney; or

4 (c) If (a) and (b) of this subsection do not apply, unless the  
5 person so named can establish that the principal was unduly influenced  
6 by another or under mistaken beliefs when excluding the person from the  
7 petition process, or unless the person named is a government agency  
8 charged with protection of vulnerable adults.

9 NEW SECTION. **Sec. 5.** In ruling on a petition filed under section  
10 3 of this act and ordering any relief, the court must consider the best  
11 interests of the principal and will order relief that is the least  
12 restrictive to the exercise of the power of attorney while still  
13 adequate in the court's view to serve the principal's best interests.  
14 Upon entry of an order ruling on a petition, the court's oversight of  
15 the attorney in fact's actions and of the operation of the power of  
16 attorney ends unless another petition is filed under this chapter or  
17 unless the order specifies further court involvement that is necessary  
18 for a resolution of the issues raised in the petition.

19 NEW SECTION. **Sec. 6.** In any proceeding commenced by the filing of  
20 a petition under section 3 of this act by a person other than the  
21 attorney in fact, the court may in its discretion award costs,  
22 including reasonable attorneys' fees, to any person participating in  
23 the proceedings from any other person participating in the proceedings,  
24 or from the assets of the principal, as the court determines to be  
25 equitable. In determining what is equitable in making the award, the  
26 court must consider whether the petition was filed without reasonable  
27 cause, and order costs and fees paid by the attorney in fact  
28 individually only if the court determines that the attorney in fact has  
29 clearly violated his or her fiduciary duties or has refused without  
30 justification to cooperate with the principal or the principal's  
31 guardian or personal representative. In a proceeding to compel a third  
32 party to accept a power of attorney, the court may order costs,  
33 including reasonable attorneys' fees, to be paid by the third party  
34 only if the court determines that the third party did not have a good  
35 faith concern that the attorney in fact's exercise of authority would  
36 be improper. To the extent this section is inconsistent with RCW

1 11.96A.150, this section controls the award of costs and attorneys'  
2 fees in proceedings brought under section 3 of this act.

3 NEW SECTION. **Sec. 7.** The provisions of chapter 11.96A RCW, except  
4 for RCW 11.96A.260 through 11.96A.320, are applicable to proceedings  
5 commenced by the filing of a petition under section 3 of this act.

6 NEW SECTION. **Sec. 8.** (1) The following persons are entitled to  
7 notice of hearing on any petition under section 3 of this act:

8 (a) The principal;

9 (b) The principal's spouse;

10 (c) The attorney in fact;

11 (d) The guardian of the estate or person of the principal;

12 (e) Any other person identified in the petition as being interested  
13 in the action requested in the petition, or identified by the court as  
14 having a right to notice of the hearing. If a person would be excluded  
15 from bringing a petition under section 4(2) of this act, then that  
16 person is not entitled to notice of the hearing.

17 (2) Notwithstanding subsection (1) of this section, if the  
18 whereabouts of the principal are unknown or the principal is otherwise  
19 unavailable to receive notice, the court may waive the requirement of  
20 notice to the principal, and if the principal's spouse is similarly  
21 unavailable to receive notice, the court may waive the requirement of  
22 notice to the principal's spouse.

23 (3) Notice must be given as required under chapter 11.96A RCW,  
24 except that the parties entitled to notice shall be determined under  
25 this section.

26 **Sec. 9.** RCW 11.96A.040 and 1999 c 42 s 201 are each amended to  
27 read as follows:

28 (1) The superior court of every county has original subject matter  
29 jurisdiction over the probate of wills and the administration of  
30 estates of incapacitated, missing, and deceased individuals in all  
31 instances, including without limitation:

32 (a) When a resident of the state dies;

33 (b) When a nonresident of the state dies in the state; or

34 (c) When a nonresident of the state dies outside the state.

35 (2) The superior court of every county has original subject matter  
36 jurisdiction over trusts and all matters relating to trusts.

1 (3) The superior courts may: Probate or refuse to probate wills,  
2 appoint personal representatives, administer and settle the affairs and  
3 the estates of incapacitated, missing, or deceased individuals  
4 including but not limited to decedents' nonprobate assets; administer  
5 and settle matters that relate to nonprobate assets and arise under  
6 chapter 11.18 or 11.42 RCW; administer and settle all matters relating  
7 to trusts; administer and settle matters that relate to powers of  
8 attorney; award processes and cause to come before them all persons  
9 whom the courts deem it necessary to examine; order and cause to be  
10 issued all such writs and any other orders as are proper or necessary;  
11 and do all other things proper or incident to the exercise of  
12 jurisdiction under this section.

13 (4) The subject matter jurisdiction of the superior court applies  
14 without regard to venue. A proceeding or action by or before a  
15 superior court is not defective or invalid because of the selected  
16 venue if the court has jurisdiction of the subject matter of the  
17 action.

18 **Sec. 10.** RCW 11.96A.050 and 1999 c 42 s 202 are each amended to  
19 read as follows:

20 (1) Venue for proceedings pertaining to trusts shall be:

21 (a) For testamentary trusts established under wills probated in the  
22 state of Washington, in the superior court of the county where letters  
23 testamentary were granted to a personal representative of the estate  
24 subject to the will or, in the alternative, the superior court of the  
25 county of the situs of the trust; and

26 (b) For all other trusts, in the superior court of the county in  
27 which the situs of the trust is located, or, if the situs is not  
28 located in the state of Washington, in any county.

29 (2) Venue for proceedings subject to chapter 11.88 or 11.92 RCW  
30 shall be determined under the provisions of those chapters.

31 (3) Venue for proceedings pertaining to the probate of wills, the  
32 administration and disposition of a decedent's property, including  
33 nonprobate assets, and any other matter not identified in subsection  
34 (1) or (2) of this section, may be in any county in the state of  
35 Washington. A party to a proceeding may request that venue be changed  
36 if the request is made within four months of the mailing of the notice  
37 of appointment and pendency of probate required by RCW 11.28.237, and  
38 except for good cause shown, venue must be moved as follows:

1 (a) If the decedent was a resident of the state of Washington at  
2 the time of death, to the county of the decedent's residence; or

3 (b) If the decedent was not a resident of the state of Washington  
4 at the time of death, to any of the following:

5 (i) Any county in which any part of the probate estate might be;

6 (ii) If there are no probate assets, any county where any  
7 nonprobate asset might be; or

8 (iii) The county in which the decedent died.

9 (4) Once letters testamentary or of administration have been  
10 granted in the state of Washington, all orders, settlements, trials,  
11 and other proceedings under this title shall be had or made in the  
12 county in which such letters have been granted unless venue is moved as  
13 provided in subsection (2) of this section.

14 (5) Venue for proceedings pertaining to powers of attorney shall be  
15 in the superior court of the county of the principal's residence,  
16 except for good cause shown.

17 (6) If venue is moved, an action taken before venue is changed is  
18 not invalid because of the venue.

19 ((+6+)) (7) Any request to change venue that is made more than four  
20 months after the commencement of the action may be granted in the  
21 discretion of the court.

22 **Sec. 11.** RCW 11.96A.120 and 1999 c 42 s 305 are each amended to  
23 read as follows:

24 (1) This section is intended to adopt the common law concept of  
25 virtual representation. This section supplements the common law  
26 relating to the doctrine of virtual representation and shall not be  
27 construed as limiting the application of that common law doctrine.

28 (2) Any notice requirement in this title is satisfied if notice is  
29 given as follows:

30 (a) Where an interest in an estate, trust, or nonprobate asset or  
31 an interest that may be affected by a power of attorney has been given  
32 to persons who comprise a certain class upon the happening of a certain  
33 event, notice may be given to the living persons who would constitute  
34 the class if the event had happened immediately before the commencement  
35 of the proceeding requiring notice, and the persons shall virtually  
36 represent all other members of the class;

37 (b) Where an interest in an estate, trust, or nonprobate asset or  
38 an interest that may be affected by a power of attorney has been given



1 to a living person, and the same interest, or a share in it, is to pass  
2 to the surviving spouse or to persons who are, or might be, the  
3 distributees, heirs, issue, or other kindred of that living person upon  
4 the happening of a future event, notice may be given to that living  
5 person, and the living person shall virtually represent the surviving  
6 spouse, distributees, heirs, issue, or other kindred of the person; and

7 (c) Except as otherwise provided in this subsection, where an  
8 interest in an estate, trust, or nonprobate asset or an interest that  
9 may be affected by a power of attorney has been given to a person or a  
10 class of persons, or both, upon the happening of any future event, and  
11 the same interest or a share of the interest is to pass to another  
12 person or class of persons, or both, upon the happening of an  
13 additional future event, notice may be given to the living person or  
14 persons who would take the interest upon the happening of the first  
15 event, and the living person or persons shall virtually represent the  
16 persons and classes of persons who might take on the happening of the  
17 additional future event.

18 (3) A party is not virtually represented by a person receiving  
19 notice if a conflict of interest involving the matter is known to exist  
20 between the notified person and the party.

21 (4) An action taken by the court is conclusive and binding upon  
22 each person receiving actual or constructive notice or who is otherwise  
23 virtually represented.

24 **Sec. 12.** RCW 11.94.050 and 1989 c 87 s 1 are each amended to read  
25 as follows:

26 (1) Although a designated attorney in fact or agent has all powers  
27 of absolute ownership of the principal, or the document has language to  
28 indicate that the attorney in fact or agent shall have all the powers  
29 the principal would have if alive and competent, the attorney in fact  
30 or agent shall not have the power to make, amend, alter, or revoke the  
31 principal's wills or codicils, and shall not have the power, unless  
32 specifically provided otherwise in the document: To make, amend,  
33 alter, or revoke any of the principal's ((wills, codicils,)) life  
34 insurance, annuity, or similar contract beneficiary designations,  
35 employee benefit plan beneficiary designations, trust agreements,  
36 registration of the principal's securities in beneficiary form, payable  
37 on death or transfer on death beneficiary designations, designation of  
38 persons as joint tenants with right of survivorship with the principal

1 with respect to any of the principal's property, community property  
2 agreements, or any other provisions for nonprobate transfer at death  
3 contained in nontestamentary instruments described in RCW 11.02.091; to  
4 make any gifts of property owned by the principal; to make transfers of  
5 property to any trust (whether or not created by the principal) unless  
6 the trust benefits the principal alone and does not have dispositive  
7 provisions which are different from those which would have governed the  
8 property had it not been transferred into the trust, or to disclaim  
9 property.

10 (2) Nothing in subsection (1) of this section prohibits an attorney  
11 in fact or agent from making any transfer of resources not prohibited  
12 under chapter 74.09 RCW when the transfer is for the purpose of  
13 qualifying the principal for medical assistance or the limited casualty  
14 program for the medically needy.

15 NEW SECTION. Sec. 13. Sections 1 and 3 through 8 of this act are  
16 each added to chapter 11.94 RCW."

17 **SHB 1135** - S COMM AMD  
18 By Committee on Judiciary

19 ADOPTED 04/04/01

20 On page 1, line 1 of the title, after "attorney;" strike the  
21 remainder of the title and insert "amending RCW 11.94.040, 11.96A.040,  
22 11.96A.050, 11.96A.120, and 11.94.050; and adding new sections to  
23 chapter 11.94 RCW."

EFFECT: Section 3(1)(b) allows a petition for accounting only  
after a demand and a 60-day wait. However, currently RCW 74.34.080  
allows DSHS/Adult Protective Services to seek an immediate remedy. The  
bill as written could require DSHS to wait 60 days if it needs  
immediate access to records during an investigation to protect the  
vulnerable adult and his/her assets.

--- END ---