

FINAL BILL REPORT

ESSB 5635

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Synopsis as Enacted

Brief Description: Enacting the uniform power of attorney act.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Pedersen and O'Ban; by request of Uniform Law Commission).

Senate Committee on Law & Justice
House Committee on Judiciary

Background: A power of attorney is an adaptable document permitting a person, known as the "principal," to designate someone else to act on the principal's behalf as their surrogate in transactions as an "attorney-in-fact" or "agent." A power of attorney may be very narrow, for a specific action and a specific circumstance. A power of attorney may also be very broad, granting power to make financial and personal decisions. A power of attorney may have a specific end-date, but the principal may also revoke it in writing at any time. The broadest form of a power of attorney is the general durable power of attorney. If it specifically grants general powers, the agent has broad decision-making authority and may continue to use the power if the principal is incapacitated or whereabouts and condition is unknown. A durable power of attorney may be terminated or revoked by the principal, or by a court-appointed guardian, or court order.

Washington's current power of attorney law is chapter 11.94 RCW. The Uniform Law Commission produced a Uniform Power of Attorney Act (UPOAA) in 2006. Currently, 18 states have adopted the 2006 Act: AL, AR, CO, CT, HI, ID, IA, ME, MD, MT, NB, NV, NM, OH, PA, VA, WV, and WI. It has been introduced in 2016 in South Carolina and Utah.

Summary: Washington's power of attorney act is repealed in favor of the UPOAA, but with some differences from the UPOAA. A power of attorney must be signed, dated, and either notarized or witnessed by a non-relative who is someone other than the principal's caregiver.

A power of attorney is assumed to terminate when the principal is incapacitated, so it is not assumed to be durable unless specific language in the document expressly provides that it survives the incapacity of the principal. Co-agents exercise their authority jointly unless specifically provided otherwise. A power of attorney granted to a spouse or a domestic partner terminates upon filing for a dissolution from the spouse or domestic partner. The power also terminates when the court appoints a guardian for the principal. If a limited

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guardianship is granted, the power of attorney may continue as valid to the extent permitted by the court.

The Act lists the agent's fiduciary duties. The agent is empowered to give informed consent for the principal under a power of attorney for health care decisions. The authority to give informed consent for health care must be specifically stated in the power of attorney. The principal may designate an agent to make health care decisions for the principal's minor children. The agent has access to all of the health care information that the principal would have under the Health Insurance Portability and Accountability Act (HIPAA). The principal may specify a successor agent to act if the agent dies or resigns.

Some powers are assumed to be granted under a general power of attorney unless specifically excluded. Other powers are not assumed, but must be specifically called out in the document in order for the agent to exercise them. The principal may expressly shield the agent from liability negligence or gross negligence. The agent is not held liable for discretionary acts of a hired person if the agent exercises reasonable care in hiring them. Judicial review of an agent's proposed action is broadly available. An agent may resign after giving specified notice. Third parties may be held liable for wrongfully rejecting a power of attorney. A third party is protected from someone using an invalid power of attorney by asking the agent to certify the power of attorney's validity. The certification must include notice that a power of attorney granted to a spouse or a domestic partner terminates upon filing for a dissolution from the spouse or domestic partner.

Votes on Final Passage:

Senate	48	0	
House	96	0	(House amended)
Senate	48	0	(Senate concurred)

Effective: January 1, 2017