

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 ---