

DURABLE POWER OF ATTORNEY: REQUIRE WRITTEN ACKNOWLEDGEMENT OF RESPONSIBILITIES

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House Bill 5188

Sponsor: Rep. Tory Rocca

Committee: Judiciary

Complete to 7-19-10

A SUMMARY OF HOUSE BILL 5188 AS INTRODUCED 7-14-09

The bill would require that when one person designates another as his or her "agent" or "attorney in fact" under a durable power of attorney, the designated "attorney in fact," before exercising authority, sign an acceptance of the designation to acknowledge and accept certain obligations, liabilities, and rights as specified in the bill.

A power of attorney allows a person, known as the "principal", to name another person or a bank as his or her agent or attorney in fact. The attorney in fact can then conduct business transactions and make other decisions on behalf of the principal; for instance, pay bills, write checks, sell property, contract for medical or professional services, and make decisions or transactions regarding retirement and pension benefits. A power of attorney expires when a person dies or becomes disabled or incapacitated by illness, injury, accident, or old age. In contrast, a durable power of attorney is not affected by the principal's subsequent disability, and remains in effect until such time as the principal dies.

House Bill 5188 would amend Section 5501 of the Estates and Protected Individuals Code (EPIC). Section 5501 defines a "durable power of attorney" as a power of attorney by which a principal designates another as his or attorney in fact in a writing that contains the words "This power of attorney is not affected by the principal's subsequent disability or incapacity, or by the lapse of time", or "This power of attorney is effective upon the disability or incapacity of the principal", or similar words that show the principal intended the authority being conferred to be exercisable even if he or she became disabled or incapacitated and despite the amount of time that had lapsed since its execution, unless the document had a termination time.

The bill would retain these provisions and add that before exercising authority as attorney in fact under a durable power of attorney, a person would have to sign an acceptance of the designation, acknowledging and accepting all of the following obligations, liabilities, and rights:

- To act in the best interest of the principal.
- To keep the principal informed of his or her actions and give an account to the principal.

- To not make gifts of the principal's property unless specifically authorized by the power of attorney.
- To be prosecuted and punished for any criminal acts.
- To keep the principal's money in a separate account from the attorney in fact.
- To only use the principal's property and income for the benefit of the principal, unless otherwise specifically authorized in the power of attorney.
- Upon request, to provide an accounting to the principal, a fiduciary appointed on behalf of the principal, or to a court.
- To maintain sufficient records of every transaction and be prepared to defend each action.
- To be held financially responsible for any transaction not specifically authorized in the power of attorney.
- To hire an advisor, attorney, accountant, or other professional as reasonably required to comply with the duties of attorney in fact and to pay for those services from the principal's estate.
- Unless prohibited by the power of attorney, to receive reasonable compensation for the attorney in fact's services; the compensation may be subject to scrutiny by the court.

MCL 700.5501

FISCAL IMPACT:

House Bill 5188 would have no fiscal impact on state or local government, including the judicial branch.

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