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## BILL ANALYSIS



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Senate Bill 92 (Substitute S-2 as reported by the Committee of the Whole)  
Sponsor: Senator Steven Bieda  
Committee: Judiciary

**CONTENT**

The bill would amend the Estates and Protected Individuals Code (EPIC) to specify the responsibilities and limitations of an attorney-in-fact designated and acting under a durable power of attorney; and require an attorney-in-fact to execute an acceptance of obligations before exercising authority under a durable power of attorney. The bill would apply to a durable power of attorney executed on or after April 1, 2012.

The specified responsibilities and limitations would include a fiduciary standard of care; a prohibition against making a gift of the principal's assets, unless provided for in the durable power of attorney; a prohibition against commingling assets; a provision that the attorney-in-fact could be liable for any loss to the principal; and other provisions.

The responsibilities and limitations, and the requirement that an attorney-in-fact execute an acceptance of obligations, would not apply to any of the following:

- A patient advocate designation or a similar power of attorney relating to the health care of the principal (the person designating the attorney-in-fact).
- A delegation under Section 5103 of EPIC, or a similar power of attorney created by a parent or guardian regarding the care, custody, or property of a minor child or ward.
- A durable power of attorney that was coupled with an interest in the subject matter of the power.
- A durable power of attorney that was contained in or part of a loan agreement, security agreement, escrow agreement, joint venture agreement, license agreement, shareholder's agreement, operating agreement for a limited liability company, partnership agreement, or other agreement that primarily related to a similar entity.

The failure of an attorney-in-fact to execute an acceptance of obligations would not affect his or her responsibilities and potential liability to the principal.

The bill specifies that a third party would not be liable to the principal or any other person because the third party complied with instructions from an attorney-in-fact named in a durable power of attorney who had not executed an acceptance that complied with the bill. A third party also would not be liable to the principal or any other person if the third party required an attorney-in-fact named in a durable power of attorney to execute an acceptance that complied with the bill before recognizing the durable power of attorney.

MCL 700.5501

Legislative Analyst: Suzanne Lowe

**FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Date Completed: 4-29-11

Fiscal Analyst: Matthew Grabowski

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