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BILL ANALYSIS



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Senate Bill 92 (as introduced 1-27-11)
Sponsor: Senator Steven Bieda
Committee: Judiciary

Date Completed: 2-14-11

CONTENT

The bill would amend the Estates and Protected Individuals Code (EPIC) to require a person to sign an acceptance of a power-of-attorney designation, acknowledging and accepting certain responsibilities, before exercising authority under a durable power of attorney.

Under EPIC, a durable power of attorney is a power of attorney (an instrument granting someone authority to act as agent or attorney in fact for the grantor) by which a person, the "principal", designates another as his or her attorney in fact (someone designated to transact business for another) in a writing that contains words showing the principal's intent that the authority conferred can be exercised notwithstanding the principal's subsequent disability or incapacity and, unless the power states a termination time, notwithstanding the lapse of time since the execution of the instrument.

Under the bill, 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 the obligation, liability, or right to do all of the following:

- Act in the best interest of the principal.
- Keep the principal informed of the attorney in fact's actions and account to the principal.
- Not make gifts of the principal's property unless specifically authorized by the power of attorney.
- Be prosecuted and punished for any criminal acts.
- Keep the principal's assets in an account that did not include the attorney in fact's money or the money of another person.
- Use the principal's property and income only for the principal's benefit, unless otherwise authorized specifically in the power of attorney.
- Provide an accounting at any time to the principal, a fiduciary appointed on behalf of the principal, or the court, if requested.
- Maintain sufficient records of every transaction and be prepared to defend each action.
- Be held financially responsible for any transaction that was not specifically authorized in the power of attorney.
- Hire an advisor, attorney, accountant, or other professional as reasonably required to comply with the attorney in fact's duties, and pay for the that professional's services from the principal's estate.
- Unless prohibited by the power of attorney, receive reasonable compensation for the attorney in fact's services, which could be subject to the court's scrutiny.

FISCAL IMPACT

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

Fiscal Analyst: Matthew Grabowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.