

Department of Legislative Services  
Maryland General Assembly  
2007 Session

FISCAL AND POLICY NOTE

Senate Bill 385 (Senator Frosh)  
Judicial Proceedings

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Powers of Attorney - Standing to Seek Judicial Relief

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This bill allows specified individuals and entities to petition a court to construe a power of attorney or review the agent's conduct, and grant appropriate relief. The court must dismiss the petition on motion by the principal unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

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Fiscal Summary

**State Effect:** It is uncertain what effect the bill might have on the number of cases filed regarding powers of attorney; therefore, any effect on the workload of the Judiciary cannot be reliably estimated.

**Local Effect:** See above.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** The following persons may petition a court to construe a power of attorney or review the agent's conduct, and grant appropriate relief: • the principal or agent; • a guardian, conservator, or other fiduciary acting for the principal; • a person authorized to make health care decisions for the principal; • the principal's spouse, parent, or descendant; • an individual who would qualify as a presumptive heir of the principal; • a person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate; • a governmental

agency with regulatory authority to protect the welfare of the principal; • the principal’s caregiver or another person who demonstrates sufficient interest in the principal’s welfare, and • a person asked to accept a power of attorney.

**Current Law:**

*Power of Attorney*

With the exception of an instrument or portion of an instrument that is an advance directive appointing a health care agent under the Health – General Article of the Annotated Code (which is governed by that Article), when a principal designates another as an attorney in fact or agent by a power of attorney in writing, it is a durable power of attorney unless otherwise provided. Authority under a durable power of attorney is exercisable notwithstanding the principal’s subsequent disability or incapacity.

An action taken by an attorney in fact or agent pursuant to the power of attorney during a period of disability, incompetence, or uncertainty as to whether the principal is dead or alive has the same effect and inures to the benefit of and binds the principal as if the principal were alive, competent, and not disabled.

*Standing*

Generally, a party to a civil action must be authorized to participate in the action, either by statute or by having common law “standing.” Standing means that a party has a sufficient stake in a controversy to be able to obtain judicial resolution of that controversy. The question is whether the plaintiff is the proper party to the case and not about the merits of the case.

**Background:** The language of the bill is identical to a provision of the 2006 Uniform Power of Attorney Act that was drafted, approved, and recommended for enactment in all states by the National Conference of Commissioners on Uniform State Laws (NCCUSL). According to the NCCUSL, the provision that the bill is identical to is intended to protect vulnerable or incapacitated principals against financial abuse by establishing broad categories of persons who have standing to petition a court to review a power of attorney or an agent’s conduct, including a “person that demonstrates sufficient interest in the principal’s welfare.”

**State and Local Expenditures:** To the extent the bill expands the group of individuals or entities who may otherwise petition a court to review a power of attorney or an agent’s conduct, it could potentially increase the number of cases brought involving powers of attorney. It is unknown how many additional cases would be brought because of the bill.

If the number of cases is small, the bill would not significantly increase the workload of the Judiciary.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Register of Wills, Department of Legislative Services

**Fiscal Note History:** First Reader - February 7, 2007  
mam/jr

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