

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 519 (Senator Simonaire, *et al.*)
Judicial Proceedings

Maryland General and Limited Power of Attorney Act (Loretta's Law)

This bill establishes the Maryland General and Limited Power of Attorney Act and repeals existing statutory provisions relating to powers of attorney.

Fiscal Summary

State Effect: Any impact the bill will have on the workload of the Judiciary is expected to be handled with existing resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill establishes that, except as otherwise provided in a power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal or other specified persons or entities. The bill specifies the persons that may petition a court to construe a power of attorney, or review the agent's conduct, and grant appropriate relief. However, on motion by the principal, the court must dismiss a petition unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

The bill provides a statutory form power of attorney and an optional form for use by an agent to certify facts concerning a power of attorney. The bill prohibits a person from requiring an additional or different form of power of attorney for authority granted in the

statutory form power of attorney. A person that refuses to accept an acknowledged statutory form power of attorney is subject to a court order mandating acceptance and liability for reasonable attorney's fees and costs incurred in an action that confirms the validity of the power of attorney or mandates its acceptance.

A "principal" is an individual who grants authority to an agent in a power of attorney. An "agent" is a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise.

Current Law: 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 person as an attorney-in-fact or agent by a power of attorney in writing, it is a durable power of attorney unless otherwise provided by its terms.

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 was alive, competent, and not disabled.

If a guardian is appointed for a principal, the attorney-in-fact or agent accounts to the guardian rather than the principal. The guardian has the same power the principal would have if not for the principal's disability or incompetence, to revoke, suspend, or terminate all or any part of the power of attorney or agency.

The death, disability, or incompetence of a principal who has executed a power of attorney in writing does not revoke or terminate the agency as to the attorney-in-fact, agent, or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. In the absence of fraud, an affidavit executed by the attorney-in-fact or agent, stating that the attorney-in-fact or agent did not have actual knowledge of the revocation or termination of the power of attorney is conclusive proof of the nonrevocation or nontermination of the power at that time. Any action taken binds the principal and the principal's heirs, legatees, and personal representatives unless it is otherwise invalid or unenforceable.

Background: A power of attorney is an authorization for one person (the agent) to act on behalf of another (the principal). Under Maryland law, the authorization under a durable power of attorney continues despite the principal's subsequent disability or incapacity. The National Conference of Commissioners on Uniform State Laws, which has promulgated a Uniform Power of Attorney Act (2006), portions of which are similar to provisions in the bill, indicates that the concept of a durable power of attorney was

viewed in the past as an inexpensive method of surrogate decision making for people of modest means, but is now widely used for incapacity planning and convenience.

State and Local Expenditures: The bill could affect the number of cases brought relating to powers of attorney, possibly as a result of the bill's provisions allowing a wide group of individuals/entities to petition a court to construe a power of attorney or review an agent's conduct or the bill's provisions relating to acceptance of an "acknowledged statutory form power of attorney." On the whole, however, whether the bill would lead to an increase or decrease in cases, and to what extent, cannot be reliably estimated.

Additional Information

Prior Introductions: None.

Cross File: HB 659 (Delegate Simmons, *et al.*) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Register of Wills, National Conference of Commissioners on Uniform State Laws, Department of Legislative Services

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