

Michigan HB 4644 (UPOAA)
Statement of Support

To: Representative Breen
Chair, House Judiciary Committee

From: Christopher W. Smith, Esq.
Chair, Power of Attorney Subcommittee
Elder Abuse Task Force, Michigan Attorney General's Office

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In March 2019, the Elder Abuse Task Force formed with several initiatives focused on guardianship and conservatorship reform. Yet modernizing Michigan's guardianship/conservatorship system requires robust alternatives to guardianship/conservatorship. Powers of attorney are the primary alternative. Thus, revisiting Michigan's power of attorney statute became a part of the Task Force's second initiatives, and this subcommittee was formed.

The subcommittee informally came to three objectives:

- Increasing the acceptance of powers of attorneys.
- Ensuring access to powers of attorney.
- Minimizing powers of attorney as a tool of exploitation.

The Uniform Power of Attorney Act is now the law in over half the United States, so any Michigan reform must consider it. And as our financial system and other corporations have become increasingly national, the UPOAA offers a tested and understood framework that benefits Michiganders and its business community.

When Michigan first looked at the UPOAA nearly fifteen years ago, however, it faced stiff resistance from the legal community. With this history, the subcommittee initially narrowed its focus to adopting narrow sections of the UPOAA to increase acceptance and reduce exploitation. We thank Representative Wozniak for introducing HB 5768 and HB 5769 in the 2019-2020 legislative session.

While these 2019-2020 bills received positive feedback, many financial institutions opposed a piecemeal approach to adopting the UPOAA, but committed to being engaged with adopting the UPOAA as a whole. At the same time, the Probate Section of the State Bar of Michigan formed a subcommittee to look at Michigan adopting the UPOAA. Thus, in the 2021-2022 legislative session, this subcommittee worked closely with the Probate Section of the State Bar Representative, and Senator Wozniak assisted us in introducing SB 1148.

We now thank Representatives Hope and Haadsma and the co-sponsors for introducing HB 4644, 4465, and 4646.

HB 4644 does not unthinkingly adopt the UPOAA. Instead, it results from a collaborative effort that included the subcommittee's goals at the forefront. HB 4644 delivers on the Task Force's objectives for the following reasons:

Increasing Acceptance of Powers of Attorney

Astonishingly there is no current mechanism to get a power of attorney accepted in Michigan. As a result, if a third party refuses to recognize a power of attorney, a probate protective proceeding (e.g., guardianship/ conservatorship/ protective order) is too often the necessary alternative. The UPOAA attempts to change this dynamic in several ways:

- Creates a statutory procedure for individuals and third parties to work through issues in powers of attorney. (Sections 119 and 120.)
- Provides for a certification to work through the most common concerns impairing a power of attorney's acceptance. (Sections 119 and 303.)
- Incentivizes individuals to bring an action to enforce the acceptance of a power of attorney if certain procedures are followed by potentially awarding an individual's attorneys' fees in bringing the action. (Section 120.)
- It avoids issues with acceptance because "every power of attorney is different" by providing standard definitions for the most frequently used powers. (Sections 201-217.)
- Moves Michigan to the UPOAA, which is unquestionably the national standard understood by national corporations.

Ensuring Access to Powers of Attorney.

Access to alternatives to guardianships and conservatorships cannot just be for the privileged who can afford attorneys. Instead, all Michigan adults need access to an effective power of attorney. HB 4644 improves access by:

- Creating a statutory power of attorney vetted by practicing attorneys and adapted for Michigan. (Section 301.)
- Puts powers of attorneys on par with individuals who can afford trusts by providing a certification similar to a certificate of trust (Sections 119 and 303) with an opportunity to receive attorneys' fees if it becomes needlessly necessary to enforce the acceptance of a power of attorney (Section 120.)
- Simplifies the legal complexities of powers of attorney by creating plain English and standard definitions (Sections 201-217.)
- Supports the supported decision-making movement by simplifying powers of attorney and increasing its acceptance.

Minimizing Powers of Attorney as a Tool for Exploitation

Increasing the acceptance of and access to powers of attorney necessitates some exploitation risk. But HB 4644 (in conjunction with other exploitation laws) goes after potential exploiters by:

- Complementing some of the country's most robust financial exploitation prevention statutes, such as the Financial Exploitation Prevention Act referenced in HB 4644. (Section 120.)
- Adding an acceptance form requirement to the UPOAA (and consistent with current Michigan law) so agents clearly understand and publicly acknowledge their solemn duties (Sections 113 and 301.)
- Mandating that agents keep reasonable receipts and records - a duty that cannot be waived. (Section 114.)
- Reiterating a right to treble damages against an exploiting agent. (Section 117.)
- Requiring two witnesses and a notary to have an acknowledged power of attorney that activates the requirement for third parties to accept a power of attorney. (Section 105.)
- Defines a wide range of individuals who can ask for judicial intervention if exploitation is suspected. (Section 116.)
- Limits the default gifting language and even then defaults to requiring an agent to act consistent with an individual's estate plan (Section 217).

 For all these reasons, we thank this committee for considering HB 4644 and urge its passage.

Yours,



Christopher W. Smith