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HOUSE BILL 1135

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State of Washington                      57th Legislature                      2001 Regular Session

By Representatives Lantz, Esser and McDermott

Read first time 01/18/2001. Referred to Committee on Judiciary.

1            AN ACT Relating to powers of attorney; amending RCW 11.94.040,  
2 11.96A.040, 11.96A.050, 11.96A.120, and 11.94.050; and adding new  
3 sections to chapter 11.94 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.**    (1) An appointment of a principal's spouse  
6 as attorney in fact, including appointment as successor or co-attorney  
7 in fact, under a power of attorney shall be revoked upon entry of a  
8 decree of dissolution or legal separation or declaration of invalidity  
9 of the marriage of the principal and the attorney in fact, unless the  
10 power of attorney or the decree provides otherwise. The effect of this  
11 revocation shall be as if the spouse resigned as attorney in fact, or  
12 if named as successor attorney in fact, renounced the appointment, as  
13 of the date of entry of the decree or declaration, and the power of  
14 attorney shall otherwise remain in effect with respect to appointments  
15 of other persons as attorney in fact for the principal or procedures  
16 prescribed in the power of attorney to appoint other persons, and any  
17 terms relating to service by persons as attorney in fact.

1 (2) This section applies to all decrees of dissolution and  
2 declarations of invalidity of marriage entered after the effective date  
3 of this act.

4 **Sec. 2.** RCW 11.94.040 and 1985 c 30 s 28 are each amended to read  
5 as follows:

6 (1) Any person acting without negligence and in good faith in  
7 reasonable reliance on a power of attorney shall not incur any  
8 liability (~~((thereby))~~).

9 (2) If the attorney in fact presents the power of attorney to a  
10 third person and requests the person to accept the attorney in fact's  
11 authority to act for the principal, and also presents to the person an  
12 acknowledged affidavit or declaration signed under penalty of perjury  
13 in the form designated in RCW 9A.72.085, signed and dated  
14 contemporaneously with presenting the power of attorney, which meets  
15 the requirements of subsection (3) of this section, and the person  
16 accepting the power of attorney has examined the power of attorney and  
17 confirmed the identity of the attorney in fact, then the person's  
18 reliance on the power of attorney is presumed to be without negligence  
19 and in good faith in reasonable reliance, which presumption may be  
20 rebutted by clear and convincing evidence that the person accepting the  
21 power of attorney knew or should have known that one or more of the  
22 material statements in the affidavit is untrue. It shall not be found  
23 that an organization knew or should have known of circumstances that  
24 would revoke or terminate the power of attorney or limit or modify the  
25 authority of the attorney in fact, unless the individual accepting the  
26 power of attorney on behalf of the organization knew or should have  
27 known of the circumstances.

28 (3) An affidavit presented pursuant to subsection (2) of this  
29 section shall state that:

30 (a) The person presenting himself or herself as the attorney in  
31 fact and signing the affidavit or declaration is the person so named in  
32 the power of attorney;

33 (b) If the attorney in fact is named in the power of attorney as a  
34 successor attorney in fact, the circumstances or conditions stated in  
35 the power of attorney that would cause that person to become the acting  
36 attorney in fact have occurred;

37 (c) To the best of the attorney in fact's knowledge, the principal  
38 is still alive;

1       (d) To the best of the attorney in fact's knowledge, at the time  
2 the power of attorney was signed, the principal was competent to  
3 execute the document and was not under undue influence to sign the  
4 document;

5       (e) All events necessary to making the power of attorney effective  
6 have occurred;

7       (f) The attorney in fact does not have actual knowledge of the  
8 revocation, termination, limitation, or modification of the power of  
9 attorney or of the attorney in fact's authority;

10       (g) The attorney in fact does not have actual knowledge of the  
11 existence of other circumstances that would limit, modify, revoke, or  
12 terminate the power of attorney or the attorney in fact's authority to  
13 take the proposed action;

14       (h) If the attorney in fact was married to the principal at the  
15 time of execution of the power of attorney, then at the time of signing  
16 the affidavit or declaration, the marriage of the principal and the  
17 attorney in fact has not been dissolved or declared invalid; and

18       (i) The attorney in fact is acting in good faith pursuant to the  
19 authority given under the power of attorney.

20       (4) Unless the document contains a time limit, the length of time  
21 which has elapsed from its date of execution shall not prevent a party  
22 from reasonably relying on the document.

23       (5) Unless the document contains a requirement that it be filed for  
24 record to be effective, a person (~~shall~~) may place reasonable  
25 reliance on it regardless of whether it is so filed.

26       NEW SECTION. Sec. 3. (1) A person designated in section 4 of this  
27 act may file a petition requesting that the court:

28       (a) Determine whether the power of attorney is in effect or has  
29 terminated;

30       (b) Compel the attorney in fact to submit the attorney in fact's  
31 accounts or report the attorney in fact's acts as attorney in fact to  
32 the principal, the spouse of the principal, the guardian of the person  
33 or the estate of the principal, or to any other person required by the  
34 court in its discretion, if the attorney in fact has failed to submit  
35 an accounting or report within sixty days after written request from  
36 the person filing the petition;

37       (c) Ratify past acts or approve proposed acts of the attorney in  
38 fact;

1 (d) Order the attorney in fact to exercise or refrain from  
2 exercising authority in a power of attorney in a particular manner or  
3 for a particular purpose;

4 (e) Modify the authority of an attorney in fact under a power of  
5 attorney;

6 (f) Remove the attorney in fact on a determination by the court of  
7 both of the following:

8 (i) The attorney in fact has violated or is unfit to perform the  
9 fiduciary duties under the power of attorney; and

10 (ii) The removal of the attorney in fact is in the best interest of  
11 the principal;

12 (g) Approve the resignation of the attorney in fact and approve the  
13 final accountings of the resigning attorney in fact if submitted,  
14 subject to any orders the court determines are necessary to protect the  
15 principal's interests;

16 (h) Confirm the authority of a successor attorney in fact to act  
17 under a power of attorney upon removal or resignation of the previous  
18 attorney in fact;

19 (i) Compel a third person to honor the authority of an attorney in  
20 fact, provided that a third person may not be compelled to honor the  
21 agent's authority if the principal could not compel the third person to  
22 act in the same circumstances;

23 (j) Order the attorney in fact to furnish a bond in an amount the  
24 court determines to be appropriate.

25 (2) The petition shall contain a statement identifying the  
26 principal's known immediate family members, and any other persons known  
27 to petitioner to be interested in the principal's welfare or the  
28 principal's estate, stating which of said persons have an interest in  
29 the action requested in the petition and explaining the determination  
30 of who is interested in the petition.

31 NEW SECTION. **Sec. 4.** (1) A petition may be filed under section 3  
32 of this act by any of the following persons:

33 (a) The attorney in fact;

34 (b) The principal;

35 (c) The spouse of the principal;

36 (d) The guardian of the estate or person of the principal;

1 (e) The state of Washington or an agency, if the principal is a  
2 resident of the state of Washington at the time of filing the petition;  
3 or

4 (f) Any other interested person, as long as the person demonstrates  
5 to the court's satisfaction that the person is interested in the  
6 welfare of the principal and has a good faith belief that the court's  
7 intervention is necessary, and that the principal is incapacitated at  
8 the time of filing the petition or otherwise unable to protect his or  
9 her own interests.

10 (2) Notwithstanding section 1 of this act, the principal may  
11 specify in the power of attorney by name certain persons who shall have  
12 no authority to bring a petition under section 3 of this act with  
13 respect to the power of attorney. This provision is enforceable:

14 (a) If the person so named is not at the time of filing the  
15 petition the guardian of the principal;

16 (b) If at the time of signing the power of attorney the principal  
17 was represented by an attorney who advised the principal regarding the  
18 power of attorney and who signed a certificate at the time of execution  
19 of the power of attorney, stating that the attorney has advised the  
20 principal concerning his or her rights, the applicable law, and the  
21 effect and consequences of executing the power of attorney; or

22 (c) If (a) and (b) of this subsection do not apply, unless the  
23 person so named can establish that the principal was unduly influenced  
24 by another or under mistaken beliefs when excluding the person from the  
25 petition process.

26 NEW SECTION. **Sec. 5.** In ruling on a petition filed under section  
27 3 of this act and ordering any relief, the court must consider the best  
28 interests of the principal and will order relief that is the least  
29 restrictive to the exercise of the power of attorney while still  
30 adequate in the court's view to serve the principal's best interests.  
31 Upon entry of an order ruling on a petition, the court's oversight of  
32 the attorney in fact's actions and of the operation of the power of  
33 attorney ends unless another petition is filed under this chapter or  
34 unless the order specifies further court involvement that is necessary  
35 for a resolution of the issues raised in the petition.

36 NEW SECTION. **Sec. 6.** In any proceeding commenced by the filing of  
37 a petition under section 3 of this act by a person other than the

1 attorney in fact, the court may in its discretion award costs,  
2 including reasonable attorneys' fees, to any person participating in  
3 the proceedings from any other person participating in the proceedings,  
4 or from the assets of the principal, as the court determines to be  
5 equitable. In determining what is equitable in making the award, the  
6 court must consider whether the petition was filed without reasonable  
7 cause, and order costs and fees paid by the attorney in fact  
8 individually only if the court determines that the attorney in fact has  
9 clearly violated his or her fiduciary duties or has refused without  
10 justification to cooperate with the principal or the principal's  
11 guardian or personal representative. In a proceeding to compel a third  
12 party to accept a power of attorney, the court may order costs,  
13 including reasonable attorneys' fees, to be paid by the third party  
14 only if the court determines that the third party did not have a good  
15 faith concern that the attorney in fact's exercise of authority would  
16 be improper. To the extent this section is inconsistent with RCW  
17 11.96A.150, this section controls the award of costs and attorneys'  
18 fees in proceedings brought under section 3 of this act.

19 NEW SECTION. **Sec. 7.** The provisions of chapter 11.96A RCW, except  
20 for RCW 11.96A.260 through 11.96A.320, are applicable to proceedings  
21 commenced by the filing of a petition under section 3 of this act.

22 NEW SECTION. **Sec. 8.** (1) The following persons are entitled to  
23 notice of hearing on any petition under section 3 of this act:

- 24 (a) The principal;  
25 (b) The principal's spouse;  
26 (c) The attorney in fact;  
27 (d) The guardian of the estate or person of the principal;  
28 (e) Any other person identified in the petition as being interested  
29 in the action requested in the petition, or identified by the court as  
30 having a right to notice of the hearing. If a person would be excluded  
31 from bringing a petition under section 4(2) of this act, then that  
32 person is not entitled to notice of the hearing.

33 (2) Notwithstanding subsection (1) of this section, if the  
34 whereabouts of the principal are unknown or the principal is otherwise  
35 unavailable to receive notice, the court may waive the requirement of  
36 notice to the principal, and if the principal's spouse is similarly

1 unavailable to receive notice, the court may waive the requirement of  
2 notice to the principal's spouse.

3 (3) Notice must be given as required under chapter 11.96A RCW,  
4 except that the parties entitled to notice shall be determined under  
5 this section.

6 **Sec. 9.** RCW 11.96A.040 and 1999 c 42 s 201 are each amended to  
7 read as follows:

8 (1) The superior court of every county has original subject matter  
9 jurisdiction over the probate of wills and the administration of  
10 estates of incapacitated, missing, and deceased individuals in all  
11 instances, including without limitation:

12 (a) When a resident of the state dies;

13 (b) When a nonresident of the state dies in the state; or

14 (c) When a nonresident of the state dies outside the state.

15 (2) The superior court of every county has original subject matter  
16 jurisdiction over trusts and all matters relating to trusts.

17 (3) The superior courts may: Probate or refuse to probate wills,  
18 appoint personal representatives, administer and settle the affairs and  
19 the estates of incapacitated, missing, or deceased individuals  
20 including but not limited to decedents' nonprobate assets; administer  
21 and settle matters that relate to nonprobate assets and arise under  
22 chapter 11.18 or 11.42 RCW; administer and settle all matters relating  
23 to trusts; administer and settle matters that relate to powers of  
24 attorney; award processes and cause to come before them all persons  
25 whom the courts deem it necessary to examine; order and cause to be  
26 issued all such writs and any other orders as are proper or necessary;  
27 and do all other things proper or incident to the exercise of  
28 jurisdiction under this section.

29 (4) The subject matter jurisdiction of the superior court applies  
30 without regard to venue. A proceeding or action by or before a  
31 superior court is not defective or invalid because of the selected  
32 venue if the court has jurisdiction of the subject matter of the  
33 action.

34 **Sec. 10.** RCW 11.96A.050 and 1999 c 42 s 202 are each amended to  
35 read as follows:

36 (1) Venue for proceedings pertaining to trusts shall be:

1 (a) For testamentary trusts established under wills probated in the  
2 state of Washington, in the superior court of the county where letters  
3 testamentary were granted to a personal representative of the estate  
4 subject to the will or, in the alternative, the superior court of the  
5 county of the situs of the trust; and

6 (b) For all other trusts, in the superior court of the county in  
7 which the situs of the trust is located, or, if the situs is not  
8 located in the state of Washington, in any county.

9 (2) Venue for proceedings subject to chapter 11.88 or 11.92 RCW  
10 shall be determined under the provisions of those chapters.

11 (3) Venue for proceedings pertaining to the probate of wills, the  
12 administration and disposition of a decedent's property, including  
13 nonprobate assets, and any other matter not identified in subsection  
14 (1) or (2) of this section, may be in any county in the state of  
15 Washington. A party to a proceeding may request that venue be changed  
16 if the request is made within four months of the mailing of the notice  
17 of appointment and pendency of probate required by RCW 11.28.237, and  
18 except for good cause shown, venue must be moved as follows:

19 (a) If the decedent was a resident of the state of Washington at  
20 the time of death, to the county of the decedent's residence; or

21 (b) If the decedent was not a resident of the state of Washington  
22 at the time of death, to any of the following:

23 (i) Any county in which any part of the probate estate might be;

24 (ii) If there are no probate assets, any county where any  
25 nonprobate asset might be; or

26 (iii) The county in which the decedent died.

27 (4) Once letters testamentary or of administration have been  
28 granted in the state of Washington, all orders, settlements, trials,  
29 and other proceedings under this title shall be had or made in the  
30 county in which such letters have been granted unless venue is moved as  
31 provided in subsection (2) of this section.

32 (5) Venue for proceedings pertaining to powers of attorney shall be  
33 in the superior court of the county of the principal's residence,  
34 except for good cause shown.

35 (6) If venue is moved, an action taken before venue is changed is  
36 not invalid because of the venue.

37 ~~((+6))~~ (7) Any request to change venue that is made more than four  
38 months after the commencement of the action may be granted in the  
39 discretion of the court.



1       **Sec. 11.** RCW 11.96A.120 and 1999 c 42 s 305 are each amended to  
2 read as follows:

3       (1) This section is intended to adopt the common law concept of  
4 virtual representation. This section supplements the common law  
5 relating to the doctrine of virtual representation and shall not be  
6 construed as limiting the application of that common law doctrine.

7       (2) Any notice requirement in this title is satisfied if notice is  
8 given as follows:

9       (a) Where an interest in an estate, trust, or nonprobate asset or  
10 an interest that may be affected by a power of attorney has been given  
11 to persons who comprise a certain class upon the happening of a certain  
12 event, notice may be given to the living persons who would constitute  
13 the class if the event had happened immediately before the commencement  
14 of the proceeding requiring notice, and the persons shall virtually  
15 represent all other members of the class;

16       (b) Where an interest in an estate, trust, or nonprobate asset or  
17 an interest that may be affected by a power of attorney has been given  
18 to a living person, and the same interest, or a share in it, is to pass  
19 to the surviving spouse or to persons who are, or might be, the  
20 distributees, heirs, issue, or other kindred of that living person upon  
21 the happening of a future event, notice may be given to that living  
22 person, and the living person shall virtually represent the surviving  
23 spouse, distributees, heirs, issue, or other kindred of the person; and

24       (c) Except as otherwise provided in this subsection, where an  
25 interest in an estate, trust, or nonprobate asset or an interest that  
26 may be affected by a power of attorney has been given to a person or a  
27 class of persons, or both, upon the happening of any future event, and  
28 the same interest or a share of the interest is to pass to another  
29 person or class of persons, or both, upon the happening of an  
30 additional future event, notice may be given to the living person or  
31 persons who would take the interest upon the happening of the first  
32 event, and the living person or persons shall virtually represent the  
33 persons and classes of persons who might take on the happening of the  
34 additional future event.

35       (3) A party is not virtually represented by a person receiving  
36 notice if a conflict of interest involving the matter is known to exist  
37 between the notified person and the party.

1 (4) An action taken by the court is conclusive and binding upon  
2 each person receiving actual or constructive notice or who is otherwise  
3 virtually represented.

4 **Sec. 12.** RCW 11.94.050 and 1989 c 87 s 1 are each amended to read  
5 as follows:

6 (1) Although a designated attorney in fact or agent has all powers  
7 of absolute ownership of the principal, or the document has language to  
8 indicate that the attorney in fact or agent shall have all the powers  
9 the principal would have if alive and competent, the attorney in fact  
10 or agent shall not have the power to make, amend, alter, or revoke the  
11 principal's wills or codicils, and shall not have the power, unless  
12 specifically provided otherwise in the document: To make, amend,  
13 alter, or revoke any of the principal's ((wills, ~~codicils,~~)) life  
14 insurance, annuity, or similar contract beneficiary designations,  
15 employee benefit plan beneficiary designations, trust agreements,  
16 registration of the principal's securities in beneficiary form, payable  
17 on death or transfer on death beneficiary designations, designation of  
18 persons as joint tenants with right of survivorship with the principal  
19 with respect to any of the principal's property, community property  
20 agreements, or any other provisions for nonprobate transfer at death  
21 contained in nontestamentary instruments described in RCW 11.02.091; to  
22 make any gifts of property owned by the principal; to make transfers of  
23 property to any trust (whether or not created by the principal) unless  
24 the trust benefits the principal alone and does not have dispositive  
25 provisions which are different from those which would have governed the  
26 property had it not been transferred into the trust, or to disclaim  
27 property.

28 (2) Nothing in subsection (1) of this section prohibits an attorney  
29 in fact or agent from making any transfer of resources not prohibited  
30 under chapter 74.09 RCW when the transfer is for the purpose of  
31 qualifying the principal for medical assistance or the limited casualty  
32 program for the medically needy.

33 NEW SECTION. **Sec. 13.** Sections 1 and 3 through 8 of this act are  
34 each added to chapter 11.94 RCW.

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