

JAN 17 2025

A BILL FOR AN ACT

RELATING TO POWERS OF ATTORNEY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that individuals with
2 cognitive impairments are particularly vulnerable to undue
3 influence and coercion. The legislature also finds that the
4 transfer of powers of attorney, including durable, general, and
5 financial powers of attorney, for individuals with cognitive
6 deficits, when not accompanied by proper safeguards, may lead to
7 financial exploitation and other forms of abuse.

8 Accordingly, the purpose of this Act is to establish
9 additional protections for individuals diagnosed with cognitive
10 deficits from unauthorized or unjust revocations of or changes
11 to agents under their power of attorney.

12 SECTION 2. The Hawaii Revised Statutes is amended by
13 adding a new chapter to be appropriately designated and to read
14 as follows:

15 **"CHAPTER**

16 **PROTECTION OF INDIVIDUALS WITH COGNITIVE DEFICITS FROM**
17 **UNAUTHORIZED OR UNJUST CHANGES TO THEIR POWER OF ATTORNEY**



1 § -1 **Definitions.** As used in this chapter:

2 "Agent" has the same meaning as defined in section 551E-1.

3 "Adult protective services" means the adult protective and
4 community services branch of the social services division of the
5 department of human services.

6 "Advanced health care directive" has the same meaning as
7 defined in section 327E-2.

8 "Advance mental health care directive" has the same meaning
9 as defined in section 327G-2.

10 "Change to a power of attorney" occurs when the principal:

11 (1) Revokes the power of attorney;

12 (2) Revokes the authority of an agent, co-agent, or
13 successor agent under the power of attorney;

14 (3) Modifies the authority given to an agent, co-agent, or
15 successor agent under the power of attorney; or

16 (4) Designates a new agent, co-agent, or successor agent
17 under the power of attorney.

18 "Cognitive deficit" means a condition characterized by
19 impairment in memory, reasoning, or other mental abilities that
20 significantly affects an individual's ability to make informed
21 decisions.



1 "Durable power of attorney" means a power of attorney that
2 is not terminated by the principal's incapacity.

3 "Good standing" means an agent of a power of attorney who
4 has acted responsibly, ethically, and in the best interests of
5 the principal, with no evidence of negligence, malfeasance, or
6 misconduct.

7 "Financial power of attorney" means a power of attorney
8 that grants the agent authority to make financial decisions on
9 behalf of the principal, including managing bank accounts,
10 paying bills, and handling investments or property.

11 "Power of attorney" means a writing or other record that
12 grants an agent the authority to act on behalf of the principal
13 for legal, financial, personal, and health care related matters,
14 regardless of whether the term "power of attorney" is used.

15 "Power of attorney" includes advance health-care directives and
16 advance mental health care directives. A power of attorney is a
17 durable power of attorney unless it expressly provides that it
18 is terminated by the incapacity of the principal.

19 "Principal" has the same meaning as defined in section
20 551E-1.



1 "Qualified health care professional" means a physician,
2 neuropsychologist, or geriatric certified professional licensed,
3 accredited, or certified to assess cognitive function under
4 state law.

5 § -2 Changes to power of attorney; principal diagnosed
6 with cognitive deficits; validity. No change to a power of
7 attorney of a principal who is diagnosed with cognitive deficits
8 shall be valid unless completed in compliance with the
9 provisions of this chapter.

10 § -3 Comprehensive cognitive assessment; certification.

11 (a) Any principal diagnosed with cognitive deficits who seeks
12 to change the individual's power of attorney shall undergo a
13 comprehensive cognitive assessment by a qualified health care
14 professional. The comprehensive cognitive assessment shall be
15 initiated upon the principal's request to change the power of
16 attorney.

17 (b) The qualified health care professional shall:

18 (1) Assess the principal's cognitive capacity, including
19 whether the principal has:



1 (A) The capacity to understand the implications of
2 the change to the principal's power of attorney;
3 and

4 (B) The ability to voluntarily execute the change;
5 and

6 (2) Submit a written certification that either confirms or
7 denies the principal's cognitive capacity and ability
8 required under paragraph (1) to:

9 (A) The principal; and

10 (B) Adult protective services.

11 (c) If the certificate submitted by the qualified health
12 care professional denies the principal's cognitive capacity and
13 ability pursuant to subsection (b)(1), the existing power of
14 attorney shall remain in effect until a court of competent
15 jurisdiction determines that the proposed change shall take
16 effect in the interests of justice.

17 § -4 **Written notice; affidavit in support.** (a) Any
18 person initiating a change to a power of attorney of a principal
19 diagnosed with cognitive deficits shall:

20 (1) Give a written notice explaining the proposed change
21 to:



- 1 (A) The principal;
- 2 (B) The existing agent;
- 3 (C) Any family member of the principal who may be
- 4 affected by the proposed revocation or change;
- 5 (D) Any legal guardian of the principal; and
- 6 (E) Any other person, including financial
- 7 institutions and entities, who may be affected by
- 8 the proposed revocation or change; and
- 9 (2) Within fifteen days of initiating the revocation or
- 10 change, submit to adult protective services an
- 11 affidavit in support of the proposed revocation or
- 12 change, which shall include a detailed explanation of:
- 13 (A) The revocation or change;
- 14 (B) The specific circumstances necessitating the
- 15 proposed revocation or change, including any
- 16 financial, medical, or personal reasons
- 17 justifying the change or revocation;
- 18 (C) The current mental, physical, and cognitive
- 19 status of the principal;



1 (D) The relationship between the principal and the
2 proposed new agent, co-agent, or successor agent,
3 as applicable; and

4 (E) Documentation evidencing that written notice to
5 all necessary persons has been given pursuant to
6 paragraph (1).

7 (b) Failure to submit an affidavit in compliance with
8 subsection (a)(2), including provision of an adequate
9 explanation supporting the proposed change to the power of
10 attorney, shall void the proposed change.

11 **§ -5 Effective date of change; mandatory waiting period;**

12 **notice.** (a) Except for an emergency change to a power of
13 attorney granted pursuant to section -6, any change to a
14 power of attorney of a principal diagnosed with cognitive
15 deficits shall not take effect until thirty days after adult
16 protective services confirms in writing, its receipt of:

17 (1) A certificate from the qualifying health care
18 professional confirming the principal's cognitive
19 capacity and ability pursuant to section -3(b); and

20 (2) An affidavit from the person initiating the change in
21 compliance with section -4(b).



1 (b) Adult protective services shall, upon receipt of the
2 information required in subsection (a), provide the principal
3 and any person initiating the change to the power of attorney
4 with a written notice:

5 (1) Confirming receipt of the required information and
6 that the proposed change to the principal's power of
7 attorney shall take effect after the mandatory waiting
8 period under subsection (a); or

9 (2) If the certificate submitted by the qualified health
10 care professional denies the principal's cognitive
11 capacity and ability pursuant to section -3(b), or
12 the affidavit submitted pursuant to section -4(b)
13 fails to include the necessary information, that the
14 proposed change to the principal's power of attorney
15 is invalid or delayed pending investigation by adult
16 protective services.

17 § -6 **Emergency change to power of attorney; principals**
18 **in imminent danger; court order; investigation.** (a) If a
19 principal diagnosed with cognitive deficits is in imminent
20 danger warranting an immediate change to the individuals' power
21 of attorney, the principal or the principal's designee may



1 petition a court of competent jurisdiction for an order allowing
2 an emergency change to the power of attorney, accompanied by
3 supporting documentation outlining the urgent circumstances
4 warranting the change.

5 (b) A petition for an emergency change filed pursuant to
6 subsection (a) shall be granted or denied within seventy-two
7 hours of the filing of the petition; provided that if granted,
8 the emergency change shall take effect immediately upon its
9 issuance and terminate on the thirtieth day thereafter, unless
10 made permanent pursuant to subsection (c).

11 (c) Within thirty days of an order granting an emergency
12 change to a power of attorney pursuant to subsection (b), the
13 issuing court shall investigate whether the emergency change is
14 in the best interests of the principal and determine if it
15 should be made permanent

16 § -7 Agent of a principal diagnosed with cognitive
17 deficits; investigations; interviews; safeguards; procedure.

18 (a) A principal diagnosed with cognitive deficits or a person
19 attempting to replace an existing agent with a new agent shall
20 request adult protective services for an investigation to
21 determine whether the existing agent is in good standing. The



1 investigation shall include a review of the existing agent's
2 actions, financial management, and health care decisions taken
3 or made on behalf of the principal.

4 If the existing agent is found to be in good standing, the
5 agent shall not be removed without proper cause or justification
6 and any attempts to replace the agent shall be deemed invalid.
7 If the investigation finds that the existing agent has engaged
8 in misconduct or has been negligent in the performance of the
9 agent's duties, the existing agent shall be subject to immediate
10 removal.

11 (b) In the event of a dispute between an existing agent in
12 good standing and a prospective agent, the existing agent shall
13 initiate a formal mediation or any other dispute resolution
14 process with adult protective services to resolve the conflict
15 and determine the best course of action for the principal
16 diagnosed with cognitive deficits.

17 (c) Adult protective services shall conduct annual
18 interviews with each agent of a principal diagnosed with
19 cognitive deficits to ensure that the agent is acting in the
20 best interests of the principal.



1 (d) Any attempt to change a power of attorney of a
2 principal diagnosed with cognitive deficits shall be accompanied
3 by clear evidence that the principal is making the decision
4 freely and without coercion. If allegations that the principal
5 is being manipulated and is not capable of understanding the
6 implications of the change to the power of attorney arise, the
7 change shall be invalid pending a review by adult protective
8 services. In cases where a principal's cognitive capacity is in
9 question, a court of competent jurisdiction may require ongoing
10 medical evaluations to ensure the principal's understanding of
11 decisions related to the power of attorney.

12 (e) A court of competent jurisdiction may appoint a
13 guardian ad litem or other legal representative to advocate on
14 behalf of the principal during a proceeding.

15 **§ -8 Civil actions for damages.** (a) A person who
16 alleges a violation of this chapter may bring a civil action for
17 actual damages. As used in this subsection, "damages" means
18 damages for any injury or loss caused by each violation of this
19 chapter, including reasonable attorney fees.

20 (b) An action commenced pursuant to subsection (a) may be
21 brought in the circuit court for the circuit where the alleged



1 violation occurred, where the complainant resides, or where the
2 person against whom the civil complaint is filed resides or has
3 a principal place of business.

4 § -9 **Coercion or undue influence to create or change a**
5 **power of attorney for an individual diagnosed with cognitive**
6 **deficits; penalty.** (a) No person shall coerce or manipulate
7 through undue influence a person diagnosed with cognitive
8 deficits to create or change a power of attorney.

9 (b) Any person convicted of violating this section shall
10 be sentenced as follows:

- 11 (1) A term of imprisonment of not less than ninety days;
12 and
13 (2) A fine of not more than \$10,000.

14 § -10 **Enforcement.** Adult protective services shall
15 enforce this chapter and shall:

- 16 (1) Oversee investigations into the conduct of current and
17 prospective agents for individuals diagnosed with
18 cognitive deficits;
19 (2) Ensure compliance with the waiting period, affidavit
20 and written notification requirements;

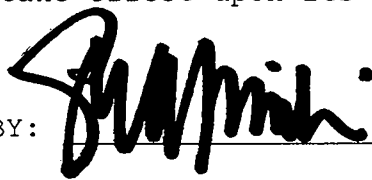


- 1 (3) Review disputes and mediate conflicts relating to
2 changes to a power of attorney for principles
3 diagnosed with cognitive deficits;
4 (4) Conduct annual interviews of agents of principles
5 diagnosed with cognitive deficits to ensure ongoing
6 protection of the principal; and
7 (5) Enforce penalties under this chapter.

8 § -11 **Severability.** If any provision of this chapter or
9 the application thereof to any person or circumstance is held
10 invalid, the invalidity does not affect other provisions or
11 applications of the chapter which can be given effect without
12 the invalid provision or application, and to this end the
13 provisions of this chapter are severable."

14 SECTION 3. This Act shall take effect upon its approval.

15

INTRODUCED BY:  _____



S.B. NO. 595

Report Title:

DHS; Adult Protective and Community Services Branch; Courts;
Power of Attorney; Cognitive Deficit; Revocation; Change of
Agent; Investigation; Remedies; Penalties

Description:

Establishes additional requirements to revoke or make changes relating to agents under powers of attorney of principals diagnosed with cognitive deficits. Requires submittals to the Adult Protective and Community Service Branch of the Department of Human Services. Requires the Branch to issue a notice of receipt to the principal and any person initiating the change. Establishes a mandatory waiting period before any proposed change takes effect. Establishes an expedited process for a court order granting an emergency change to a power of attorney.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

