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THE JUDICIARY COMMITTEE

February 24, 2014

Testimony of Joelen J. Gates

H.B. No. 5215 AN ACT CONCERNING ADOPTION OF THE CONNECTICUT UNIFORM POWER OF ATTORNEY ACT

Recommended Action:

Approve the Bill With Amendment to Section 14

To Senator Coleman, Representative Fox and Members of the Judiciary Committee:

My name is Joelen Gates. I am an attorney in the elder law unit of Connecticut Legal Services, Inc. in Willimantic, Connecticut. I submit this testimony in support of **H.B. 5215, an Act Concerning Adoption of the Connecticut Uniform Power of Attorney Act** on behalf of the Legal Services programs in Connecticut and the low- income individuals we serve.

Many people want to appoint someone to handle their financial affairs and otherwise act on their behalf should they become incapacitated. A “durable” power of attorney (POA) is the legal document used for this purpose. Connecticut’s current law governing powers of attorney was enacted almost fifty years ago, and has not been substantially revised since. The Connecticut Uniform Power of Attorney Act updates our law in this area in many beneficial ways.

Under current Connecticut law, a POA does not survive the incapacity of the creator or “principal” and become “durable” unless it specifically states the power of attorney is not affected by the disability or incompetence of the principal. If a person does not have a durable POA and becomes incapacitated, a probate court may appoint a conservator of the estate to handle the person’s affairs. The probate court procedure is more costly, inconvenient, and time-consuming; and the conservator appointed may be a stranger, who does not know the person’s habits or preferences. In most cases, however, a probate court may not name a conservator for a person who has already made plans for his incapacity by naming an agent in a POA.



The Connecticut Uniform Power of Attorney Act:

- Is a uniform act which will make Connecticut powers of attorney more easily recognized and honored in other states
- Makes the POA automatically “durable” without additional language
- Adds helpful definitions
- Uses plain language, e.g. “agent” instead of “attorney in fact”
- Describes the agent’s duties
- Describes how a principal or agent can be found to be “incapable”
- Advises the principal of special powers, e.g. “gifting”
- Gives standing to more people to seek judicial review of the agent’s conduct
- Allows an agent to retain the powers not specifically granted to a conservator, if a probate court appoints a limited conservator.
- Includes more financial instruments, e.g. IRAs

The only change the Legal Services organizations propose is in Section 14, (attached). If the agent does not know the principal’s expectations, the agent would be required to make reasonable efforts to ascertain the principal’s expectations.

Sec. 14. (NEW) (*Effective October 1, 2014*) (a) Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:

(1) Act in accordance with the principal's reasonable expectations, and if unknown, make all reasonable efforts to ascertain the principal’s expectations, [to the extent actually known by the agent] and, otherwise, in the principal's best interest;

Please feel free to contact me at (860) 786-6372 or email at JGates@connlegalservices.org