



Real Possibilities

**Testimony of AARP
In Support of
S.B. 1005 (RAISED), *AN ACT PROTECTING ELDERLY PERSONS FROM
EXPLOITATION.*
March 3, 2015**

Dear Aging Committee Members,

Thank you for the opportunity to provide written comments on S.B. 1005, *AN ACT PROTECTING ELDERLY PERSONS FROM EXPLOITATION*. AARP is a nonpartisan social mission organization representing nearly 37 million members age 50+, and approximately 600,000 here in Connecticut. We fight for issues that matter most to families such as quality healthcare, family caregiving and consumer protections. As such, AARP supports the broad principles and objectives contained in S.B. 1005.

AARP believes states should enact and enforce strong legal protections against, and effective protective services addressing, all forms of exploitation and abuse of incapacitated and vulnerable adults. Elder abuse, like many other forms of domestic abuse, is an often hidden phenomenon that affects hundreds of thousands of older Americans.

The Centers for Disease Control and Prevention lists—among the consequences of elder abuse—injuries, pain, poor nutrition, increased vulnerability to new illnesses, worsening of health conditions, and premature death. Other consequences include higher levels of distress and depression. Elder abuse may also induce post-traumatic stress disorder and other anxiety disorders. Financial exploitation additionally can exhaust seniors' incomes, reduce health care options, and leave seniors impoverished and even homeless.

Several provisions outlined in S.B. 1005 are intended to fight elder financial exploitation and abuse. The proposal also provides additional mechanisms to detect and report potential abuse. We applaud the Aging Committee for raising the legislation. In particular, AARP supports adoption of the Uniform Power of Attorney Act (sections 9-53). Powers of Attorney are essential tools for delegating authority to others to handle financial matters in many situations. It is a legal document used by an individual (the principal) to name someone else (the agent) to make financial decisions and act on the principal's behalf. To be useful as an incapacity planning tool, a POA must give broad authority to the agent.

A Power of Attorney, whether general or durable, is private; there is not the same level of court oversight as there is for a guardianship or conservatorship appointment. State laws often are unclear about the duty owed by the agent to the principal. This combination of broad consent, lack of oversight, and unclear duties makes it possible for agents to misuse their authority.

The power of attorney has been called a “license to steal” and this misuse of authority is a form of financial exploitation. This concerns us greatly and that is why we think it’s critical that state laws help prevent, detect and redress power of attorney abuse. Power of attorney abuse can take many forms, including:

- Forging the principal’s signature on a power of attorney or making a fraudulent document;
- Spending the principal’s money for the benefit of the agent;
- Making gifts when the power of attorney does not provide authority to do that; and
- Undermining the principal’s estate plan by giving assets to unintended recipients.

Additionally, a power of attorney will not be useful if third parties, such as financial institutions, refuse to honor an agent’s directions. Third parties that refuse to honor a power of attorney because they believe the agent is misusing authority may help prevent exploitation of the principal. Sometimes, however, third parties refuse to honor the POA for less legitimate reasons, such as because it is old or from another state. The Uniform Power of Attorney Act strikes a balance between these interests and sets clear standards for third-party reliance.

While the Act can’t prevent bad actors from committing theft and other forms of abuse, it does set forth clear agent duties and prohibitions that will make civil actions and criminal prosecutions more effective. Highlights include provisions that:

- Contain mandatory and default duties that prohibit self-dealing and mandate preservation of the principal’s estate plan;
- Makes clear that a power of attorney terminates when the principal dies;
- Set forth the powers that an agent cannot exercise unless the power of attorney expressly authorizes such actions;
- Establish liability for agents who violate the power of attorney law;
- Address third-party acceptance of and reliance upon a power of attorney; and
- List circumstances under which a third party may legitimately refuse to accept a power of attorney and provide sanctions for unlawful refusals.

To date, seventeen states have enacted the Uniform Power of Attorney Act, and D.C. and Utah are considering it now. By enacting the UPOAA, Connecticut could strengthen its power of attorney law to better protect its residents and to benefit its businesses and courts.

AARP has a long history of fighting for protections against financial exploitation of seniors; we support strong legal protections against these types of abuse. AARP looks forward to working with this Committee to advance the goals and objectives outlined in S.B. 1005, so that we can properly safeguard vulnerable residents from abuse, financial exploitation and harm. Thank you.

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