



Senate

General Assembly

File No. 546

February Session, 2016

Substitute Senate Bill No. 142

Senate, April 7, 2016

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING REVISIONS TO THE CONNECTICUT UNIFORM POWER OF ATTORNEY ACT AND ADOPTION OF THE CONNECTICUT UNIFORM RECOGNITION OF SUBSTITUTE DECISION-MAKING DOCUMENTS ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsections (a) and (b) of section 1-350e of the 2016
2 supplement to the general statutes are repealed and the following is
3 substituted in lieu thereof (*Effective July 1, 2016*):

4 (a) A power of attorney executed in this state on or after [October 1,
5 2015] July 1, 2016, is valid if its execution complies with section 1-350d.

6 (b) A power of attorney executed in this state before [October 1,
7 2015] July 1, 2016, is valid if its execution complied with the law of this
8 state as it existed at the time of execution.

9 Sec. 2. Subsection (a) of section 1-351l of the 2016 supplement to the
10 general statutes is repealed and the following is substituted in lieu
11 thereof (*Effective July 1, 2016*):

12 (a) Unless the power of attorney otherwise provides, language in a
13 power of attorney granting general authority with respect to personal
14 and family maintenance authorizes the agent to:

15 (1) Perform the acts necessary to maintain the customary standard
16 of living of the principal, the principal's spouse and the following
17 individuals, whether living when the power of attorney is executed or
18 later born:

19 (A) The principal's children;

20 (B) Other individuals legally entitled to be supported by the
21 principal; and

22 (C) The individuals whom the principal has customarily supported
23 or indicated the intent to support;

24 (2) Make periodic payments of child support and other family
25 maintenance required by a court or governmental agency or an
26 agreement to which the principal is a party;

27 (3) Provide living quarters for the individuals described in
28 subdivision (1) of this subsection by:

29 (A) Purchase, lease or other contract; or

30 (B) Paying the operating costs, including interest, amortization
31 payments, repairs, improvements and taxes, for premises owned by
32 the principal or occupied by those individuals;

33 (4) Provide normal domestic help, usual vacations and travel
34 expenses and funds for shelter, clothing, food, appropriate education,
35 including post secondary and vocational education and other current
36 living costs for the individuals described in subdivision (1) of this
37 subsection;

38 (5) Pay expenses for necessary health care and custodial care on
39 behalf of the individuals described in subdivision (1) of this subsection;

40 (6) Act as the principal's personal representative pursuant to the
41 Health Insurance Portability and Accountability Act, Sections 1171 to
42 1179, inclusive, of the Social Security Act, 42 USC 1320d, as amended
43 from time to time, and applicable federal regulations, in making
44 decisions related to the past, present or future payment for the
45 provision of health care consented to by the principal or anyone
46 authorized under the law of this state to consent to health care on
47 behalf of the principal;

48 (7) Continue any provision made by the principal for automobiles or
49 other means of transportation, including registering, licensing,
50 insuring and replacing them, for the individuals described in
51 subdivision (1) of this subsection;

52 (8) Maintain credit and debit accounts for the convenience of the
53 individuals described in subdivision (1) of this subsection and open
54 new accounts; [and]

55 (9) Continue payments incidental to the membership or affiliation of
56 the principal in a religious institution, club, society, order or other
57 organization or continue contributions to those organizations; and

58 (10) Execute a written document in advance of the principal's death,
59 in accordance with section 45a-318, as amended by this act, directing
60 the disposition of the principal's body upon the death of the principal
61 or designating an individual to have custody and control of the
62 disposition of the principal's body upon the death of the principal.

63 Sec. 3. Subsection (a) of section 1-352 of the 2016 supplement to the
64 general statutes is repealed and the following is substituted in lieu
65 thereof (*Effective July 1, 2016*):

66 (a) The use of the following form in the creation of a power of
67 attorney is authorized, and, when used, it shall be construed in
68 accordance with the provisions of sections 1-350 to 1-353b, inclusive:

69 "Notice: The powers granted by this document are broad and
70 sweeping. They are defined in Connecticut Uniform Power of Attorney

71 Act, which expressly permits the use of any other or different form of
72 power of attorney desired by the parties concerned. The grantor of any
73 power of attorney or the agent may make application to a court of
74 probate for an accounting as provided in subsection (b) of section 45a-
75 175 of the general statutes. This power of attorney does not authorize
76 the agent to make health care decisions for you.

77 Know All Persons by These Presents, which are intended to
78 constitute a GENERAL POWER OF ATTORNEY pursuant to
79 Connecticut Uniform Power of Attorney Act:

80 That I (insert name and address of the principal) do hereby
81 appoint (insert name and address of the agent, or each agent, if
82 more than one is designated) my agent(s) TO ACT

83 If more than one agent is designated and the principal wishes each
84 agent alone to be able to exercise the power conferred, insert in this
85 blank the word 'severally'. Failure to make any insertion or the
86 insertion of the word 'jointly' shall require the agents to act jointly.

87 First: In my name, place and stead in any way which I myself could
88 do, if I were personally present, with respect to the following matters
89 as each of them is defined in the Connecticut Uniform Power of
90 Attorney Act to the extent that I am permitted by law to act through an
91 agent:

92 (Strike out and initial in the opposite box any one or more of the
93 subdivisions as to which the principal does NOT desire to give the
94 agent authority. Such elimination of any one or more of subdivisions
95 (A) to (M), inclusive, shall automatically constitute an elimination also
96 of subdivision (N).)

97 To strike out any subdivision the principal must draw a line
98 through the text of that subdivision AND write his initials in the box
99 opposite.

T1 (A) [real estate transactions (real property)] Real property; ()

| | | | |
|-----|-----------------------------|---|-----------------|
| T2 | (B) | [chattel and goods transactions (tangible personal | () |
| T3 | | property)] <u>Tangible personal property;</u> | |
| T4 | (C) | [bond, share and commodity transactions (stocks and | () |
| T5 | | bonds)] <u>Stocks and bonds;</u> | () |
| T6 | <u>(D)</u> | <u>Commodities and options;</u> | () |
| T7 | [(D)] <u>(E)</u> | [banking transactions (banks and other financial | () |
| T8 | | institutions)] <u>Banks and other financial institutions;</u> | |
| T9 | [(E)] <u>(F)</u> | [business operating transactions (operation of entity or | () |
| T10 | | business)] <u>Operation of entity or business;</u> | |
| T11 | [(F)] <u>(G)</u> | [insurance transactions (insurance and annuities)] | () |
| T12 | | <u>Insurance and annuities;</u> | |
| T13 | [(G)] <u>(H)</u> | [estate transactions (estates, trusts, and other beneficial | () |
| T14 | | interests)] <u>Estates, trusts and other beneficial interests;</u> | |
| T15 | [(H)] <u>(I)</u> | [claims] <u>Claims</u> and litigation; | () |
| T16 | [(I)] <u>(J)</u> | [personal relationships and affairs (personal and family | () |
| T17 | | maintenance)] <u>Personal and family maintenance;</u> | |
| T18 | [(J)] <u>(K)</u> | [benefits from military service (benefits from governmental | () |
| T19 | | programs or civil or military service)] <u>Benefits from</u> | |
| T20 | | <u>governmental programs or civil or military service;</u> | |
| T21 | [(K) | records, reports and statements; | ()] |
| T22 | (L) | [retirement] <u>Retirement</u> plans; | () |
| T23 | (M) | [taxes] <u>Taxes;</u> | () |
| T24 | (N) | [all] <u>All</u> other matters; | () |
| T25 | | | |
| T26 | | | |
| T27 | | | |
| T28 | | | |

100 (Special provisions and limitations may be included in the statutory
101 form power of attorney only if they conform to the requirements of the
102 Connecticut Uniform Power of Attorney Act.)

103 (Strike out below and initial in the opposite box any one or more of
104 the subdivisions as to which the principal does NOT desire to give the
105 agent authority. To strike out any subdivision the principal must draw
106 a line through the text of that subdivision AND write his initials in the
107 box opposite.)

108 (CAUTION: Granting any of the following will give your agent the
109 authority to take actions that could significantly reduce your property

110 or change how your property is distributed at your death.)

111 YOU SHOULD SEEK LEGAL ADVICE BEFORE

112 INCLUDING THE FOLLOWING POWERS:

T29 (O) Create, amend, revoke or terminate an inter vivos trust, ()
 T30 provided in the case of a trust established for a disabled
 T31 person pursuant to 42 USC 1396p (d)(4)(A) or 42 USC
 T32 1396p (d)(4)(C), the creation of such trust by an agent
 T33 shall be only as permitted by federal law
 T34

T35 (P) Make a gift, subject to the limitations of the Connecticut ()
 T36 Uniform Power of Attorney Act and any special
 T37 instructions in this power of attorney. Unless otherwise
 T38 provided in the special instructions, gifts per recipient
 T39 may not exceed the annual dollar limits of the federal
 T40 gift tax exclusion under Internal Revenue Code Section
 T41 2503(b), or if the principal's spouse agrees to consent to a
 T42 split gift pursuant to Internal Revenue Code Section
 T43 2513, in an amount per recipient not to exceed twice the
 T44 annual federal gift tax exclusion limit. In addition, an
 T45 agent must determine that gifts are consistent with the
 T46 principal's objectives if actually known by the agent and,
 T47 if unknown, as the agent determines is consistent with
 T48 the principal's best interest based on all relevant factors
 T49

T50 (Q) Create or change rights of survivorship ()
 T51

T52 (R) Create or change a beneficiary designation ()
 T53

T54 (S) Authorize another person to exercise the authority ()
 T55 granted under this power of attorney
 T56

T57 (T) Waive the principal's right to be a beneficiary of a joint ()
 T58 and survivor annuity, including a survivor benefit under
 T59 a retirement plan
 T60

T61 (U) Exercise fiduciary powers that the principal has authority ()
 T62 to delegate
 T63

T64 (V) Disclaim or refuse an interest in property, including a ()
T65 power of appointment

113 Second: With full and unqualified authority to delegate any or all of
114 the foregoing powers to any person or persons whom my agent(s)
115 shall select;

116 Third: Hereby ratifying and confirming all that said agent(s) or
117 substitute(s) do or cause to be done.

118 Fourth:

119 LIMITATION ON AGENT'S AUTHORITY

120 An agent that is not my ancestor, spouse, or descendant MAY NOT
121 use my property to benefit the agent or a person to whom the agent
122 owes an obligation of support unless I have included that authority in
123 the special instructions.

124 Fifth:

125 DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

126 If my agent is unable or unwilling to act for me, I name as my
127 successor agent:

T66 Name of Successor Agent: _____

T67

T68 Successor Agent's Address: _____

128 If my successor agent is unable or unwilling to act for me, I name as
129 my second successor agent:

T69 Name of Second Successor Agent: _____

T70

T71 Second Successor Agent's Address: _____

130 Sixth:

131 EFFECTIVE DATE

132 This power of attorney is effective immediately unless I have stated
133 otherwise in the special instructions.

134 In Witness Whereof I have hereunto signed my name and affixed
135 my seal this day of ..., 20...

136 (Signature of Principal) (Seal)

137 (ACKNOWLEDGMENT)"

138 The execution of this statutory form power of attorney shall be duly
139 acknowledged by the principal in the manner prescribed for the
140 acknowledgment of a conveyance of real property.

141 No provision of this chapter shall be construed to bar the use of any
142 other or different form of power of attorney desired by the parties
143 concerned.

144 Every statutory form power of attorney shall contain, in boldface
145 type or a reasonable equivalent thereof, the "Notice" at the beginning
146 of this section.

147 Sec. 4. Section 1-353b of the 2016 supplement to the general statutes
148 is repealed and the following is substituted in lieu thereof (*Effective July*
149 *1, 2016*):

150 (a) Except as otherwise provided in sections 1-350 to 1-353b,
151 inclusive, as amended by this act, on [October 1, 2015] July 1, 2016, said
152 sections apply to:

153 (1) A power of attorney created before, on, or after [October 1, 2015]
154 July 1, 2016;

155 (2) A judicial proceeding concerning a power of attorney
156 commenced on or after [October 1, 2015] July 1, 2016; and

157 (3) A judicial proceeding concerning a power of attorney
158 commenced before [October 1, 2015] July 1, 2016, unless the court finds
159 that application of a provision of sections 1-350 to 1-353b, inclusive, as
160 amended by this act, would substantially interfere with the effective
161 conduct of the judicial proceeding or prejudice the rights of a party, in
162 which case that provision does not apply and the superseded law
163 applies.

164 (b) An act performed by an agent under a power of attorney before
165 [October 1, 2015] July 1, 2016, is not affected by sections 1-350 to 1-
166 353b, inclusive, as amended by this act.

167 Sec. 5. Subsection (a) of section 19a-580e of the 2016 supplement to
168 the general statutes, as amended by section 54 of public act 15-240, is
169 repealed and the following is substituted in lieu thereof (*Effective July*
170 *1, 2016*):

171 (a) Except as authorized by a court of competent jurisdiction, a
172 conservator shall comply with a conserved person's individual health
173 care instructions and other wishes, if any, expressed while the
174 conserved person had capacity and to the extent known to the
175 conservator, and the conservator may not revoke the conserved
176 person's advance health care directive or a directive executed in
177 accordance with subdivision (10) of section 1-351l, as amended by this
178 act, or section 45a-318, as amended by this act, unless the appointing
179 court expressly so authorizes.

180 Sec. 6. Subsection (c) of section 19a-580f of the 2016 supplement to
181 the general statutes, as amended by section 51 of public act 15-240, is
182 repealed and the following is substituted in lieu thereof (*Effective July*
183 *1, 2016*):

184 (c) A power of attorney for health care decisions properly executed
185 prior to October 1, 2006, shall have the same power and effect as
186 provided under section [1-55] 1-54a of the general statutes, revision of
187 1958, revised to January 1, [2015] 2005, in effect at the time of its
188 execution.

189 Sec. 7. Subdivision (2) of subsection (a) of section 45a-318 of the 2016
190 supplement to the general statutes, as amended by section 55 of public
191 act 15-240, is repealed and the following is substituted in lieu thereof
192 (*Effective July 1, 2016*):

193 (2) Any conservator of the person authorized pursuant to
194 subdivision (5) of subsection (a) of section 45a-656 to act on behalf of a
195 conserved person, or any agent authorized to act on behalf of a
196 principal, including any agent authorized pursuant to subdivision (1)
197 of section 1-351l, as amended by this act, may execute in advance of
198 such conserved person's or principal's death a written document,
199 subscribed by such conservator or agent and attested by two
200 witnesses, either: (A) Directing the disposition of such conserved
201 person's or principal's body upon the death of such conserved person
202 or principal, which document may also designate an individual to
203 have custody and control of such conserved person's or principal's
204 body and to act as agent to carry out such directions; or (B) if there are
205 no directions for disposition, designating an individual to have
206 custody and control of the disposition of such conserved person's or
207 principal's body upon the death of such conserved person or principal.
208 Such disposition shall include, but not be limited to, cremation,
209 incineration, disposition of cremains, burial, method of interment and
210 cryogenic preservation. Any such document may designate an
211 alternate to an individual designated under subparagraph (A) or (B) of
212 this subdivision. A document executed by a conservator pursuant to
213 this subdivision shall include provisions indicating that such
214 document (i) is valid if the person is under conservatorship at the time
215 of his or her death, and (ii) terminates upon the termination of the
216 conservatorship when such termination occurs prior to the death of the
217 conserved person.

218 Sec. 8. Subsection (a) of section 45a-660 of the 2016 supplement to
219 the general statutes, as amended by section 53 of public act 15-240, is
220 repealed and the following is substituted in lieu thereof (*Effective July*
221 *1, 2016*):

222 (a) (1) A conserved person may, at any time, petition the court of
223 probate having jurisdiction for the termination of a conservatorship. A
224 petition for termination of a conservatorship shall be determined by a
225 preponderance of the evidence. The conserved person shall not be
226 required to present medical evidence at such a hearing. A hearing on
227 the petition shall be held not later than thirty days after the date the
228 petition was filed in the Court of Probate, unless the hearing is
229 continued for good cause. If such hearing is not held within such
230 thirty-day period or continuance period, if applicable, the
231 conservatorship shall terminate. If the court of probate having
232 jurisdiction finds a conserved person to be capable of caring for
233 himself or herself, the court shall, upon hearing and after notice, order
234 that the conservatorship of the person be terminated. [The court may
235 also order the reinstatement of any authority of any agent under a
236 power of attorney that was previously limited, suspended or
237 terminated by the court because of the conservatorship.] If the court
238 finds upon hearing and after notice which the court prescribes, that a
239 conserved person is capable of managing his or her own affairs, the
240 court shall order that the conservatorship of the estate be terminated
241 and that the remaining portion of the conserved person's property be
242 restored to the conserved person. The court may order the
243 reinstatement of any authority of any agent under a power of attorney
244 that was previously limited or suspended by the court because of the
245 conservatorship. (2) If the court finds upon hearing and after notice
246 which the court prescribes that a conserved person has no assets of any
247 kind remaining except for that amount allowed by subsection (c) of
248 section 17b-80, the court may order that the conservatorship of the
249 estate be terminated. The court shall thereupon order distribution of
250 the remaining assets to the conservator of the person or, if there is no
251 conservator or the conservator declines or is unable to accept or the
252 conservator is the Commissioner of Social Services, to some suitable
253 person, to be determined by the court, to hold for the benefit of the
254 conserved person, upon such conservator or person giving such
255 probate bond, if any, as the court orders. (3) If any conserved person
256 having a conservator dies, the conserved person's property other than

257 property which has accrued from the sale of the conserved person's
258 real property shall be delivered to the conserved person's executor or
259 administrator. The unexpended proceeds of the conserved person's
260 real property sold as aforesaid shall go into the hands of the executor
261 or administrator, to be distributed as such real property would have
262 been.

263 Sec. 9. (NEW) (*Effective October 1, 2016*) Sections 9 to 18, inclusive, of
264 this act may be cited as the "Connecticut Uniform Recognition of
265 Substitute Decision-Making Documents Act".

266 Sec. 10. (NEW) (*Effective October 1, 2016*) As used in sections 9 to 18,
267 inclusive, of this act:

268 (1) "Decision maker" means a person authorized to act for an
269 individual under a substitute decision-making document, whether
270 denominated a decision maker, agent, attorney-in-fact, proxy or
271 representative or by another title. "Decision maker" includes an
272 original decision maker, a co-decision maker, a successor decision
273 maker and a person to which a decision maker's authority is delegated;

274 (2) "Good faith" means honesty in fact;

275 (3) "Health care" means a service or procedure to maintain,
276 diagnose, treat or otherwise affect an individual's physical or mental
277 condition;

278 (4) "Person" means an individual, estate, business or nonprofit
279 entity, public corporation, government or governmental subdivision,
280 agency or instrumentality, or other legal entity;

281 (5) "Personal care" means an arrangement or service to provide an
282 individual shelter, food, clothing, transportation, education, recreation,
283 social contact or assistance with the activities of daily living;

284 (6) "Property" means anything that may be subject to ownership,
285 whether real or personal or legal or equitable, or any interest or right
286 therein;

287 (7) "Record" means information that is inscribed on a tangible
288 medium or that is stored in an electronic or other medium and is
289 retrievable in perceivable form; and

290 (8) "Substitute decision-making document" or "document" means a
291 record created by an individual to authorize a decision maker to act for
292 the individual with respect to property, health care or personal care.

293 Sec. 11. (NEW) (*Effective October 1, 2016*) (a) A substitute decision-
294 making document for property executed outside this state is valid in
295 this state if, when the document was executed, the execution complied
296 with the law of the jurisdiction indicated in the document or, if no
297 jurisdiction is indicated, the law of the jurisdiction in which the
298 document was executed.

299 (b) A substitute decision-making document for health care or
300 personal care, including the appointment of a health care
301 representative, executed outside this state is valid in this state if, when
302 the document was executed, the execution complied with: (1) The law
303 of the jurisdiction indicated in the document or, if no jurisdiction is
304 indicated, the law of the jurisdiction in which the document was
305 executed; or (2) the law of this state, other than sections 9 to 18,
306 inclusive, of this act.

307 (c) Except as otherwise provided by law, other than sections 9 to 18,
308 inclusive, of this act, a photocopy or electronically transmitted copy of
309 an original substitute decision-making document has the same effect as
310 the original.

311 Sec. 12. (NEW) (*Effective October 1, 2016*) The meaning and effect of a
312 substitute decision-making document and the authority of the decision
313 maker are determined by the law of the jurisdiction indicated in the
314 document or, if no jurisdiction is indicated, the law of the jurisdiction
315 in which the document was executed.

316 Sec. 13. (NEW) (*Effective October 1, 2016*) (a) Except as provided in
317 subsection (f) of section 1-56b, section 19a-579b and section 19a-580g of

318 the general statutes, a person that in good faith accepts a substitute
319 decision-making document without actual knowledge that the
320 document is void, invalid or terminated, or that the authority of the
321 purported decision maker is void, invalid or terminated, may assume
322 without inquiry that the document is genuine, valid and still in effect
323 and that the decision maker's authority is genuine, valid and still in
324 effect.

325 (b) A person who is asked to accept a substitute decision-making
326 document may request and without further investigation rely on:

327 (1) The decision maker's assertion of a fact concerning the
328 individual for whom a decision will be made, the decision maker or
329 the document;

330 (2) A translation of the document if the document contains, in whole
331 or in part, language other than English; and

332 (3) An opinion of counsel regarding any matter of law concerning
333 the document if the person provides in a record the reason for the
334 request.

335 Sec. 14. (NEW) (*Effective October 1, 2016*) (a) Except as provided in
336 subsection (b) of this section, or by law of this state other than sections
337 9 to 13, inclusive, of this act, and sections 15 to 18, inclusive, of this act,
338 a person who is asked to accept a substitute decision-making
339 document shall accept within a reasonable time a document that
340 purportedly meets the validity requirements of section 11 of this act.
341 The person may not require an additional or different form of
342 document for authority granted in the document presented.

343 (b) A person that is asked to accept a substitute decision-making
344 document is not required to accept the document if:

345 (1) The person otherwise would not be required in the same
346 circumstances to act if requested by the individual who executed the
347 document;

348 (2) The person has actual knowledge of the termination of the
349 decision maker's authority or the document;

350 (3) The person's request under subsection (b) of section 13 of this act
351 for the decision maker's assertion of fact, a translation or an opinion of
352 counsel is refused;

353 (4) The person in good faith believes that the document is not valid
354 or the decision maker does not have the authority to request a
355 particular transaction or action; or

356 (5) The person makes, or has actual knowledge that another person
357 has made, a report to the Office of Protection and Advocacy for
358 Persons with Disabilities or the Department of Social Services stating a
359 belief that the individual for whom a decision will be made may be
360 subject to abuse, neglect, exploitation or abandonment by the decision
361 maker or a person acting for or with the decision maker.

362 (c) A person that in violation of this section refuses to accept a
363 substitute decision-making document is subject to:

364 (1) A court order mandating acceptance of the document; and

365 (2) Liability for reasonable attorney's fees and costs incurred in an
366 action or proceeding that mandates acceptance of the document.

367 Sec. 15. (NEW) (*Effective October 1, 2016*) The remedies under
368 sections 9 to 18, inclusive, of this act are not exclusive and do not
369 abrogate any right or remedy under law of this state, other than
370 sections 9 to 18, inclusive, of this act.

371 Sec. 16. (NEW) (*Effective October 1, 2016*) In applying and construing
372 sections 9 to 18, inclusive, of this uniform act, consideration must be
373 given to the need to promote uniformity of the law with respect to its
374 subject matter among the states that enact it.

375 Sec. 17. (NEW) (*Effective October 1, 2016*) Sections 9 to 18, inclusive,
376 of this act, modify, limit or supersede the Electronic Signatures in

377 Global and National Commerce Act, 15 USC 7001 et seq., but do not
 378 modify, limit or supersede Section 101(c) of said act, 15 USC 7001(c), or
 379 authorize electronic delivery of any of the notices described in Section
 380 103(b) of said act, 15 USC 7003(b).

381 Sec. 18. (NEW) (*Effective October 1, 2016*) Sections 9 to 17, inclusive,
 382 of this act apply to a substitute decision-making document created
 383 before, on or after October 1, 2016.

| | | |
|---|------------------------|-------------------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | <i>July 1, 2016</i> | 1-350e(a) and (b) |
| Sec. 2 | <i>July 1, 2016</i> | 1-3511(a) |
| Sec. 3 | <i>July 1, 2016</i> | 1-352(a) |
| Sec. 4 | <i>July 1, 2016</i> | 1-353b |
| Sec. 5 | <i>July 1, 2016</i> | 19a-580e(a) |
| Sec. 6 | <i>July 1, 2016</i> | 19a-580f(c) |
| Sec. 7 | <i>July 1, 2016</i> | 45a-318(a)(2) |
| Sec. 8 | <i>July 1, 2016</i> | 45a-660(a) |
| Sec. 9 | <i>October 1, 2016</i> | New section |
| Sec. 10 | <i>October 1, 2016</i> | New section |
| Sec. 11 | <i>October 1, 2016</i> | New section |
| Sec. 12 | <i>October 1, 2016</i> | New section |
| Sec. 13 | <i>October 1, 2016</i> | New section |
| Sec. 14 | <i>October 1, 2016</i> | New section |
| Sec. 15 | <i>October 1, 2016</i> | New section |
| Sec. 16 | <i>October 1, 2016</i> | New section |
| Sec. 17 | <i>October 1, 2016</i> | New section |
| Sec. 18 | <i>October 1, 2016</i> | New section |

Statement of Legislative Commissioners:

In Section 2(a)(10), "directing the disposition of the principal's body upon the disposition of the principal's body upon the death of the principal" was changed to "directing the disposition of the principal's body upon the death of the principal" for accuracy. In Section 10(8), "or "document"" was added to the definition for accuracy.

JUD *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill makes technical changes to the Uniform Power of Attorney Act and does not result in a fiscal impact to the state or municipalities.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**SB 142*****AN ACT CONCERNING REVISIONS TO THE CONNECTICUT UNIFORM POWER OF ATTORNEY ACT AND ADOPTION OF THE CONNECTICUT UNIFORM RECOGNITION OF SUBSTITUTE DECISION-MAKING DOCUMENTS ACT.*****SUMMARY:**

This bill establishes the "Connecticut Uniform Recognition of Substitute Decision-Making Documents Act" and makes it applicable to any substitute decision-making document created before, on, or after October 1, 2016. It also revises the Uniform Power of Attorney Act.

Under the bill, a "substitute decision-making document" is a record created by an individual to authorize a decision maker to act for the individual with respect to property, health care, or personal care.

The bill:

1. establishes the conditions under which a substitute decision-making document executed out of state may be considered valid in Connecticut;
2. specifies which law to apply when determining the meaning and effect of such a document and the authority of the decision maker;
3. allows a person to (a) accept a substitute decision-making document in good faith and (b) make specific requests, such as asking for an English translation of the document;
4. requires a person to accept a purportedly valid document within a reasonable time, except under specified circumstances,

such as when the person knows that the decision maker's authority or the document has been terminated; and

5. establishes penalties and available remedies for violations.

Under the bill, except as otherwise provided by law, a photocopy or electronically transmitted copy of an original substitute decision-making document has the same effect as the original.

With regard to the Uniform Power of Attorney Act, the bill makes minor and technical changes including updating various dates to reflect PA 15-240's effective date (§§ 1 & 4) and corrects a reference regarding POAs for health care decisions executed before October 1, 2016 (§ 6).

EFFECTIVE DATE: July 1 2016 for the power of attorney provisions. October 1, 2016 for the substitute decision-making provisions and applicable to any document created before, on, or after October 1, 2016.

§§ 9 – 17—UNIFORM SUBSTITUTE DECISION-MAKING DOCUMENTS ACT

Applicable Law (§§ 11 & 12)

Property. Under the bill, a substitute decision-making document for property executed out of state is valid in Connecticut if, when the document was executed, the execution complied with the law of the relevant jurisdiction (i.e., the jurisdiction indicated in the document or, if no jurisdiction is indicated, the law of the jurisdiction in which the document was executed).

"Property" means anything that may be owned, whether real, personal, legal, or equitable, or any associated interest or right.

Health Care or Personal Care. Under the bill, a substitute decision-making document for health care or personal care, including the appointment of a health care representative, executed out of state is valid in Connecticut if, at the time the document was executed, the execution complied with law in Connecticut or the relevant

jurisdiction.

"Health care" means a service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition. "Personal care" means an arrangement or service to provide an individual shelter, food, clothing, transportation, education, recreation, social contact, or assistance with the daily living activities.

Meaning, Effect, and Authority. Under the bill, substitute decision-making document's meaning and effect and the decision maker's authority are determined by the law of the relevant jurisdiction.

A "decision maker" is a person authorized to act for an individual under a substitute decision-making document, whether a decision maker, agent, attorney-in-fact, proxy, representative, or a person with another title. A decision maker includes an original decision maker, a co-decision maker, a successor decision maker, and a person to whom or which a decision maker's authority is delegated. "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality, or other legal entity.

Document Acceptance (§§ 13 & 14)

Good Faith Acceptance. Under the bill, except as provided under laws that govern a power of attorney, health care proxy, and health care representative, a person who accepts a substitute decision-making document in good faith (i.e., honesty in fact) without actual knowledge that the document or the purported decision maker's authority is void, invalid, or terminated, may assume without question that the document and the decision maker's authority are genuine, valid, and still in effect.

Permitted Requests. The bill allows a person asked to accept a substitute decision-making document to request and, without further investigation, rely on:

1. the decision maker's assertion of a fact about the document, the decision maker, or the individual for whom a decision will be made;
2. a translation of the document if the document contains language other than English; and
3. legal opinion on any matter of law concerning the document if the person provides in a record the reason for the request.

Under the bill, "record" means information inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form.

Reasonable Response Time. With some exceptions (see below), the bill requires a person asked to accept a substitute decision-making document to accept it within a reasonable time if it purportedly meets the bill's validity requirements. The bill prohibits a person from requiring an additional or different form of document for authority granted in such document.

A person is not required to accept a substitute decision-making document if the person:

1. would otherwise not be required in the same circumstances to act if requested by the individual who executed the document;
2. knows the decision maker's authority or the document, has been terminated;
3. asked for the decision maker's assertion of fact, a translation, or an opinion of counsel and it was refused;
4. believes, in good faith, that the document is not valid or the decision maker does not have the authority to request a particular transaction or action; or
5. makes, or knows that another person has made, a report to the Office of Protection and Advocacy for Persons with Disabilities

or the Department of Social Services stating a belief that the individual for whom a decision will be made may be subject to abuse, neglect, exploitation, or abandonment by the decision maker or a person acting for or with the decision maker.

Penalties for Violations and Available Remedies (§§ 14 & 15)

A person that refuses to accept a substitute decision-making document, in violation of the bill, is subject to a court order mandating its acceptance and liability for reasonable attorney's fees and costs incurred in an action or proceeding that mandates such acceptance.

The bill's remedies are not exclusive and do not abrogate any right or remedy under Connecticut law.

§§ 16 & 17—Effect on Other Laws

The bill specifies that persons applying and construing its provisions, must give consideration to the need to promote uniformity.

It also specifies that its provisions modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act (ESIGN), except for the consumer disclosure requirements (15 U.S.C § 7001, et seq.) (see BACKGROUND). The bill does not authorize the electronic delivery of the notices described under ESIGN, such as court orders, notices, or official documents (15 U.S.C § 7003(b)).

§§ 1 – 8 — UNIFORM POWER OF ATTORNEY ACT

Document Directing Disposition or Custody of body on Death (§§ 2, 5, & 7)

PA 15-240 establishes nine powers that a power of attorney (POA) provides to an agent when the POA grants general authority over personal and family maintenance. The bill adds the power to execute a written document, before the principal's death, directing the disposition of the principal's body upon death or designating someone to have custody and control of the body upon death. Existing law already allows an agent to execute such a document on a principal's behalf. The bill clarifies that a conservator cannot revoke this document unless authorized by the court.

Reinstatement of Agent After Conservatorship Terminates (§ 8)

Under PA 15-240, a probate court appointing a conservator of the estate to manage the affairs of a principal may limit, suspend, or terminate an agent’s authority to act for the principal under a POA. The act allows the probate court to reinstate an agent whose authority was previously limited, suspended, or terminated. The bill allows reinstatement only if the agent’s authority was limited or suspended, but not terminated.

BACKGROUND

ESIGN Act

The ESIGN Act provides that a contract or signature may not be denied legal effect, validity, or enforceability solely because it is in electronic form. A state statute, regulation, or other rule of law may modify, limit, or supersede the ESIGN provisions. It generally does not apply to a contract or other record that governs the creation and execution of wills, codicils, or testamentary trusts (P. L. 106-229).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable
Yea 43 Nay 0 (03/21/2016)