

# New Michigan Durable Power of Attorney Act

Wednesday, November 8, 2023

**Take-Away:** Today Michigan adopted the latest version of the Uniform Power of Attorney Act. The Uniform Power of Attorney Act was developed to standardize states' laws that deal with powers of attorney. Over 30 states have adopted this uniform law. Michigan now joins them.

**Summary:** Some key provisions of this new law are summarized below.

**Repeal:** It repeals Sections 5501 to 5505 of the Estates and Protected Individuals Code (EPIC, or MCL 700.5501 through MCL 700.5505;)

**Process to Create and Terminate:** It establishes a power of attorney *process* in Michigan that generally provides for the authorities, powers and duties of an agent and principal under a power of attorney instrument, and it also covers the formal *execution* and *termination* of a power of attorney;

**Existing Powers of Attorney are Covered:** It specifies the scope of the Act and applies to most existing powers of attorney in Michigan by specifying that the Act applies to a power of attorney that was created before, on, or after the Act's effective date, except in certain limited circumstances;

**Agent Compensation:** It entitles an agent who acts under the power of attorney to reimbursement of expenses incurred and reasonable compensation for services rendered on behalf of a principal, unless such reimbursement and agent compensation are specifically prohibited in the power of attorney instrument;

**Legal Standing Expanded:** It gives specified individuals associated with the principal, such as a principal's caregiver or heir, legal standing to petition a court to review an agent's conduct who acts under the auspices of the durable power of attorney;

Restitution Remedy: It prescribes restitution requirements if an agent is found to have violated the terms of the power of attorney;

Certification Process: It provides a formal *process* by which the power of attorney is *certified*, which in turn triggers facilitates a process for the presented power to attorney to be honored by third-parties, e.g., banks, and it also prescribes a process and short time-frame for a third-party to ‘vet’ the offered power of attorney and/or request additional information, and then respond if it will (or not) honor the presented power of attorney;

Third-Party Noncompliance: It identifies the legal consequences to the third-party without legal basis rejects the *certified* power of attorney, including an award of attorney’s fees against the third-party that unreasonably refuses to honor the power of attorney; and

Model Form: It presents a model form power of attorney in the statute that can be used to create a valid power of attorney that has the meaning and effect that is prescribed by the Act.

The Michigan Public Health Code is also amended to replace its reference to MCL 700.5501 through MCL 700.5505 with a reference to the Uniform Power of Attorney Act.

Conclusion: This is a welcome change to Michigan law, arguably long overdue. As the nuances of the Act become clearer, they will be reported.