

# MAINE STATE LEGISLATURE

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STATE OF MAINE

SENATE

124TH LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 507, L.D. 1404, Bill, "An Act To Enact the Maine Uniform Power of Attorney Act"

Amend the bill in section 2 in §5-902 in subsection (e) in the first paragraph in the first line (page 7, line 15 in L.D.) by inserting after the following: "to" the following: 'effectively'

Amend the bill in section 2 in §5-902 in subsection (e) in paragraph (1) in the last line (page 7, line 20 in L.D.) by inserting after "decisions" the following: 'regarding the individual's property or business affairs'

Amend the bill in section 2 in §5-905 in subsection (a) in the last line (page 11, line 35 in L.D.) by inserting after the following: "acknowledgments." the following: 'A power of attorney under this Part is not valid unless it is acknowledged before a notary public or other individual authorized by law to take acknowledgments.'

Amend the bill in section 2 in §5-905 in subsection (b) in the first line (page 11, line 36 in L.D.) by striking out the following: "power of attorney" and inserting the following: 'durable power of attorney under this Part'

Amend the bill in section 2 in §5-905 in subsection (b) in the 2nd blocked paragraph in the 9th line (page 12, line 15 in L.D.) by inserting after the following: "Part 9" the following: 'and Title 18-B, sections 802 to 807 and Title 18-B, chapter 9'

Amend the bill in section 2 in §5-905 by striking out the Maine Comment (page 13, lines 8 to 13 in L.D.) and inserting the following:

'Maine Comment

Maine deviates from the Uniform Act in subsection (a) by requiring that powers of attorney under this Part be acknowledged. This is a continuation of Maine law regarding durable financial powers of attorney. Subsection (b) is a deviation from the Uniform Act and continues, in part, Maine law regarding required notices in durable financial powers of attorney. The change, however, is that the notice may now be substantially similar to the statutory language as opposed to verbatim. Under prior law the verbatim requirement

COMMITTEE AMENDMENT

1 would frequently invalidate otherwise valid powers of attorney due to minor and  
2 inadvertent omissions in the notice.'

3 Amend the bill in section 2 in §5-911 in subsection (d) in the 3rd and 4th lines (page  
4 20, lines 19 and 20 in L.D.) by striking out the following: "best interest" and inserting the  
5 following: 'interests'

6 Amend the bill in section 2 in §5-911 by inserting after the Uniform Comment and  
7 before §5-912 the following:

8 **'Maine Comment**

9 Maine deviates from the Uniform Act in subsection (d) by removing the reference to  
10 the best interest standard of care for agents. See Maine Comment to section 5-914.'

11 Amend the bill in section 2 in §5-912 in the first paragraph in the last line (page 21,  
12 line 26 in L.D.) by inserting after the following: "circumstances." the following: 'The  
13 factors set forth in section 3-721, subsection (b) should be considered as guides in  
14 determining the reasonableness of compensation under this section.'

15 Amend the bill in section 2 in §5-912 by inserting after the Uniform Comment and  
16 before §5-913 the following:

17 **'Maine Comment**

18 Maine adds a provision that refers to section 3-721, subsection (b) of the Probate  
19 Code as a guide in determining reasonable compensation of the agent if the principal does  
20 not choose to specify the terms of compensation.'

21 Amend the bill in section 2 in §5-914 in subsection (a) by striking out all of  
22 paragraph (1) (page 22, lines 24 and 25 in L.D.) and inserting the following:

23 '(1). Act in accordance with the principal's reasonable expectations to the extent  
24 actually known by the agent and otherwise act as a fiduciary under the standards of  
25 care applicable to trustees as described under Title 18-B, sections 802 to 807 and  
26 Title 18-B, chapter 9;'

27 Amend the bill in section 2 in §5-914 in subsection (b) in paragraph (2) in the last  
28 line (page 22, line 32 in L.D.) by striking out the following: "in the principal's best  
29 interest"

30 Amend the bill in section 2 in §5-914 in subsection (b) in paragraph (5) in the last 2  
31 lines (page 22, lines 38 and 39 in L.D.) by striking out the following: "the principal's  
32 reasonable expectations to the extent actually known by the agent and, otherwise, act in  
33 the principal's best interest" and inserting the following: 'such decisions'

34 Amend the bill in section 2 in §5-914 in subsection (b) in paragraph (6) in the 2nd  
35 line (page 23, line 2 in L.D.) by striking out the following: "if preserving the plan is  
36 consistent with the principal's best interest"

37 Amend the bill in section 2 in §5-914 in subsection (d) in the first line (page 23, line  
38 12 in L.D.) by striking out the following: "best" and inserting the following: 'sole'

39 Amend the bill in section 2 in §5-914 by inserting after the Uniform Comment and  
40 before §5-915 the following:

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**'Maine Comment**

Maine deviates from the Uniform Act in subsections (a), (b) and (d) by removing the reference to the best interest standard of care for agents and continuing the trustee-type standard of care.'

Amend the bill in section 2 in §5-915 in subsection (a) in the last 2 lines (page 26, lines 19 and 20 in L.D.) by striking out the following: "or the best interest of the principal"

Amend the bill in section 2 in §5-915 by inserting after the Uniform Comment and before §5-916 the following:

**'Maine Comment**

Maine deviates from the Uniform Act in subsection (a) by removing the reference to the best interest standard of care for agents. See Maine Comment to section 5-914.'

Amend the bill in section 2 in §5-920 in subsection (b) by striking out all of paragraph (6) (page 31, lines 26 to 29 in L.D.) and inserting the following:

'(6). The person has a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation or abandonment by the agent or a person acting for or with the agent and the person makes, or has actual knowledge that another person has made, a report to the Department of Health and Human Services regarding such beliefs.'

Amend the bill in section 2 in §5-943 in subsection (a) by striking out all of paragraph (1) (page 46, lines 17 to 23 in L.D.) and inserting the following:

'(1). Perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse or the principal's registered domestic partner and the following individuals, whether living when the power of attorney is executed or later born:

- (i) Individuals legally entitled to be supported by the principal; and
- (ii) Individuals whom the principal has customarily supported or indicated the intent to support;'

Amend the bill in section 2 in §5-943 by inserting after the Uniform Comment and before §5-944 the following:

**'Maine Comment**

Maine deviates from the Uniform Act in subsection (a)(1) by removing the presumption that a principal's child is an automatic permissible beneficiary of payments for personal and family maintenance. If a child is an individual legally entitled to be supported by the principal or is an individual whom the principal has customarily supported or indicated the intent to support, that child may be a permissible beneficiary of payments for personal and family maintenance.'

Amend the bill in section 2 in §5-947 in subsection (b) in the 2nd line (page 50, line 24 in L.D.) by striking out the following: "actually"

1 Amend the bill in section 2 in §5-947 in subsection (b) in the 3rd line (page 50, line  
2 25 in L.D.) by striking out the following: "best interest" and inserting the following:  
3 'objectives'

4 Amend the bill in section 2 in §5-947 in the Maine Comment in the first paragraph in  
5 the last line (page 51, line 24 in L.D.) by inserting at the end the following: 'Additionally,  
6 Maine deviates from the Uniform Act in subsection (b) by removing the reference to the  
7 best interest standard of care for agents. See Maine Comment to section 5-914.'

8 **SUMMARY**

9 This amendment clarifies the definition of "incapacity."

10 This amendment provides that a power of attorney is not valid unless acknowledged  
11 before a notary public or other individual authorized by law to take acknowledgments. It  
12 also clarifies that durable powers of attorney created in the bill must contain the notices in  
13 substantially the form provided in the bill. Minor omissions or deviations do not  
14 invalidate the power of attorney.

15 This amendment includes appropriate cross-references to the Maine Uniform Trust  
16 Code with regard to the duties of a fiduciary.

17 This amendment clarifies the agent's responsibilities with regard to safeguarding the  
18 principal's interests.

19 This amendment cross-references guides to determining the reasonableness of an  
20 agent's compensation.

21 This amendment clarifies liability for refusal to accept an acknowledged power of  
22 attorney when the person has a good faith belief about abuse, neglect, exploitation or  
23 abandonment of the principal and a report has been made to the Department of Health  
24 and Human Services.

25 This amendment includes a reference to the principal's registered domestic partner  
26 with regard to payments for personal and family maintenance. It deletes the presumption  
27 that the principal's child is an automatic permissible beneficiary of payments for personal  
28 and family maintenance.

29 This amendment clarifies the agent's authority to make gifts.

30 This amendment includes changes to the Maine Comments related to these changes.