

Statement of DeAnza Valencia, Government Affairs Director, AARP to the Vermont House Judiciary Committee on Wednesday, February 15th, 2023 at 11:00am on H.227- “An act relating to the Vermont Uniform Power of Attorney Act”

Chairman **LaLonde** and Members of the Committee:

Thank you for the opportunity to speak on behalf of AARP Vermont in support of this important legislation. With approximately 130,000 members in Vermont, AARP is the nation’s largest nonprofit, nonpartisan organization dedicated to empowering Americans 50 and older to choose how they live as they age.

My name is DeAnza Valencia, I am a licensed attorney and AARP Government Affairs Director working to support America’s nearly 48 million unpaid family caregivers.

A power of attorney – or POA - is an important estate planning tool for family caregivers. It is a legal document that a person uses to name and legally empower an agent to make decisions or transact business on their behalf.

In Vermont, there are over 74,000 family caregivers who help their older parents, spouses or other loved ones live independently and at home— which is where they want to be. And most of these caregivers do this while also juggling a full or part-time job.

As our population ages, the power of attorney will be used increasingly to appoint trusted family members or others to handle financial decision-making.

A power of attorney creates an agency relationship – where a “principal” names another person (the “agent”) to act on the principal’s behalf. In most cases when used for this purpose, the POA specifies that it will continue if incapacity occurs, and this is known as a *durable* power of attorney.

POAs are popular with estate planners and their clients as a simple, inexpensive alternative to guardianship that provides greater autonomy for the principal without the added expense of judicial oversight.

However, powers of attorney can also be abused by unscrupulous agents and are sometimes used as a tool to commit elder financial abuse. POA abuse can affect many older Vermonters - especially those who become incapacitated due to Alzheimer’s disease as well as other illnesses and conditions. Therefore, AARP has been working across the country to support legislation – like H. 227- to help update POA statutes to prevent, detect and redress power of attorney abuse.

With the proposed technical amendments this legislation is substantially consistent with the Uniform Power of Attorney Act - that was developed to be used as a model for updating state laws on power of attorney and has already been used as a model for reform in 29 states.

This bill standardizes the law and improves upon older power of attorney statutes by offering greater protections to principals, agents, and third parties that are asked to accept a power of attorney.

This bill includes several improvements over the current Vermont power of attorney statute including:

- Safeguards against elder abuse, including the ability for any interested party to challenge whether an agent is acting in the best interest of the principal by filing an action with the court;
- A default standard of fiduciary duties clearly spelled out for agents;
- Express remedies and sanctions for agent abuse;
- Statutory forms with instructions and warnings for both the principal and the agent;
- New provisions to encourage wider acceptance of powers of attorney;
- An enhanced liability shield for parties that accept a notarized power of attorney without knowledge of the agent's fraud;
- A portability provision to help encourage reciprocal acceptance of powers of attorney by adopting jurisdictions;
- Automatic revocation of a spouse-agent's authority upon divorce;
- Clearer provisions for an agent's resignation and termination of authority;

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.

AARP strongly urges the adoption of H 227 as a much-needed financial planning tool for family caregivers and as a means to prevent elder financial abuse.