

**HOUSE . . . . . No. 1654**

By Mr. O’Flaherty of Chelsea, petition of Eugene L. O’Flaherty for legislation to make certain changes relative to the uniform durable power of attorney law. The Judiciary.

**The Commonwealth of Massachusetts**

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO THE DURABLE POWER OF ATTORNEY ACT.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 1 of Chapter 201B of the General Laws, as  
2 appearing in the 2004 Official Edition, is hereby amended by  
3 striking out subsection A and inserting in place thereof the following  
4 subsection:—

5 (a) A durable power of attorney is a power of attorney by which a  
6 principal, in writing, designates another as his attorney in fact and  
7 the writing contains the words, “This power of attorney shall not be  
8 affected by subsequent disability or incapacity of the principal,” or  
9 “This power of attorney shall not be affected by subsequent dis-  
10 ability or incapacity of the principal or by lapse of time,” or “This  
11 power of attorney shall become effective upon the disability or inca-  
12 pacity of the principal,” or similar words showing the intent of the  
13 principal that the authority conferred shall continue notwithstanding  
14 the subsequent disability or incapacity of the principal, and, unless  
15 the instrument states a time of termination, shall continue notwith-  
16 standing the lapse of time since the execution of the instrument.

1 SECTION 2. Said Chapter 201B is hereby further amended by  
2 striking out Section 2, as appearing in the 2004 Official Edition and  
3 inserting in place thereof the following section:—

4 Section 2. Regardless of the date of execution of the durable  
5 power of attorney, all acts done by an attorney in fact pursuant to a  
6 durable power of attorney during any period of disability or inca-  
7 pacity of the principal shall have the same effect and inure to the

8 benefit of, and bind the principal and his successors in interest, as if  
9 the principal were competent and not disabled.

1 SECTION 3. Said Chapter 201B is hereby further amended by  
2 striking out section 5, as appearing in the 2004 Official Edition and  
3 inserting in place there of the following section:—

4 Section 5. Good faith reliance; knowledge of termination of  
5 power; damages and costs.

6 (a) As to acts undertaken in good faith reliance thereon, an affi-  
7 davit executed by the attorney in fact under a power of attorney,  
8 durable or otherwise, stating that he did not have, at the time of exer-  
9 cise of the power, actual knowledge of the termination of the power  
10 by revocation or of the death, disability or incapacity of the principal  
11 shall be conclusive proof of the nonrevocation or nontermination of  
12 the power at that time. If the exercise of the power of attorney  
13 requires execution and delivery of any instrument that is recordable,  
14 such affidavit when authenticated for record shall be likewise  
15 recordable. This section shall not affect any provision in a power of  
16 attorney for its termination by expiration of time or occurrence of an  
17 event other than express revocation or a change in the capacity of the  
18 principal. Third parties who act in reasonable reliance on such an  
19 affidavit shall not be liable in any action for any loss suffered or lia-  
20 bility incurred as a result of actions taken by an attorney in fact.

21 (b) An attorney in fact who prevails in enforcing a durable power  
22 of attorney shall be entitled to recover attorney's fees, costs, and  
23 consequential damages, and such other equitable relief as the court  
24 deems appropriate.