

- SUBJECT:** Amending the statutory durable power of attorney form
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 7 ayes — Lewis, Farrar, Farney, Gooden, K. King, Raymond, S. Thompson
- 0 nays
- 2 absent — Hernandez Luna, Hunter
- WITNESSES:** For — Guy Herman, Travis County Probate Court; Joe Sanchez, AARP (*Registered, but did not testify*: Lin Morrisett; Maxcine Tomlinson, Texas New Mexico Hospice Organization)
- Against — None
- On — William Pargaman
- BACKGROUND:** Estates Code, sec. 752.051 specifies the language of the statutory durable power of attorney form. Durable power of attorney gives an agent or an attorney in fact powers with respect to a person's property and financial matters. These powers continue if the signer of the form, or principal, is disabled or incapacitated. Current statutory wording of the form grants the agent all the general powers listed on the form unless the principal crosses out the specific powers he or she does not wish to grant. Use of the form to grant durable power of attorney is optional; agents may make modifications to the statutory form.
- DIGEST:** CSHB 2918 would modify the statutory durable power of attorney form so that the principal was required to grant affirmatively any or all of 13 specific powers listed on the form by initialing a line in front of each power the principal chose to grant. The principal could also select to initial a line to grant all powers. To withhold a power from the agent, the principal could either not initial the line in front of the power or cross it out.
- The bill would add statement that the principal should select an agent the principal trusts and that the agent's authority would continue until the

principal died or revoked the power of attorney, the agent died or was unable to act for the principal, or a guardian was appointed for the estate. The bill also would require that the form specify that the agent has the power to make gifts outright to or for the benefit of a person. The bill would require that the form include information for the agent on the agent's duties, liabilities, and termination of authority.

The bill would take effect January 1, 2014.

**SUPPORTERS
SAY:**

CSHB 2918 would make the statutory durable power of attorney form pro-consumer by changing the selection of power from the current "opt-out" format to "opt in." The existing form gives all financial authority to an agent when the principal simply signs the form. The principal may not read or understand all of the powers being granted when using the opt-out form.

The opt-in form would require the principal to authorize explicitly the powers being granted. While most attorneys responsibly use this form, such forms are widely accessible on the Internet and people can easily and quickly sign a single line on the form without realizing its immense implications. Additionally, the clarifying language the bill would add to the form would emphasize to consumers the importance and impact of signing the form.

The type of opt-in form required by the bill is recommended as a best practice by the National Conference of Commissioners on Uniform State Laws. Because the majority of other states use this type of form, CSHB 2918 would improve portability and convenience for consumers moving to and from Texas.

**OPPONENTS
SAY:**

CSHB 2918 would add confusion to the statutory durable power of attorney form and could increase the possibility of tampering. With the proposed form, a principal would have the option of leaving a line empty instead of crossing out the power if he or she did not wish to grant it. An agent could easily forge the principal's initials in the blank, whereas it is far more difficult to falsely include a power that has been crossed out. In addition, most people grant all powers to the agent and could simply skip to the signature line. It is possible that a person could sign the form without granting any powers to the attorney, causing confusion.

Despite what proponents claim, the current statutory form is already

portable outside of Texas because the differences between the forms are relatively minor. People accustomed to working with durable power of attorney forms recognize the meaning of either form.

NOTES:

The bill as filed would have changed Texas' statutory power of attorney form by adopting a template used nationally, called the Uniform Power of Attorney III. The committee substitute modifies the Texas power of attorney form to make the selecting of powers 'opt in.'