

SUBJECT:	Revisions provisions related to durable power of attorney
COMMITTEE:	Judiciary & Civil Jurisprudence — favorable, without amendment
VOTE:	8 ayes — Leach, Julie Johnson, Davis, Flores, Murr, Schofield, Slawson, Vasut 0 nays 1 absent — Moody
WITNESSES:	For — Lauren Hunt, TREP (<i>Registered, but did not testify</i> : Guy Herman, Presiding Judge of the Statutory Probate Courts of Texas; Craig Hopper, Texas Real Estate Probate Institute; Dyann McCully, TREP) Against — None
BACKGROUND:	Some have suggested that clarifying the Durable Power of Attorney Act could reduce unnecessary litigation.
DIGEST:	<p>HB 3562 would revise certain language within Estates Code regarding the durable power of attorney. The bill would amend any reference to "person" to "individual." It also would change references to an "incapacitated person" to "ward."</p> <p>The bill would make the following changes related to the appointment of a permanent or temporary guardian of the estate:</p> <ul style="list-style-type: none">• referring to the court tasked with appointing a guardian of the estate as a "court" rather than a "court of the principal's domicile"; and• specifying that the principal who executed the power of attorney would be referred to as "ward" under these provisions. <p>The bill would automatically revoke the power and authority of an agent named in the power of attorney over a ward upon the qualification of a</p>

permanent guardian of the estate, unless the court entered an order of suspension during the pendency of the guardianship of the estate.

The bill would automatically suspend the power and authority of an agent named in the power of attorney over a ward upon the qualification of a temporary guardian of the estate for the duration of the guardianship, unless the court entered an order that affirmed and stated the effectiveness of the power of attorney and confirmed the validity of the appointment of the named agent.

The bill would revise provisions on judicial relief to specify that a governmental agency with authority to provide protective services to the principal could bring an action requesting a court to construe or determine the validity of a durable power of attorney. The bill also would establish that, if such an action were brought, the court could award costs and reasonable and necessary attorney's fees in an amount the court considered equitable and just.

HB 3562 would expand the applicability of a durable power of attorney regarding business operation transactions to include powers related to an entity or entity ownership interest, subject to certain documents governing such interest. The bill would revise the enumerated powers that may be exercised by an agent by:

- removing provisions limiting certain powers to actions taken under a partnership agreement;
- specifying that certain powers would apply to ownership of an entity as well as to ownership of a business; and
- specifying that certain powers relate to a certificated or uncertificated ownership interest held by the principal.

The bill would create an exception allowing a disclaimer by a fiduciary that would result in an interest in or power over property passing to the person making the disclaimer to be effective without approval by a court if the disclaimer was authorized under statute.

The bill would take effect September 1, 2023. The bill would apply only to a durable power of attorney executed and a disclaimer made on or after the effective date.