

BILL ANALYSIS

Senate Research Center
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S.B. 1625
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Jurisprudence
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A durable power of attorney allows a person to delegate the authority to carry on his or her affairs during periods of incapacitation. An unreasonable refusal to honor a durable power of attorney can be costly for both the principal and his or her heirs. There are currently no penalties for third parties who unreasonably refuse to honor a durable power of attorney.

S.B. 1625 makes a person who unreasonably refuses to honor a durable power of attorney liable to the principal and the principal's heirs to the same extent as if the third party had refused to allow the principal to act on the principal's own behalf. Only unreasonable refusals would be subject to liability. Other refusals such as when the third party has actual knowledge of the principal's death or of the termination of the power of attorney would not be subject to liability.

As proposed, S.B. 1625 prohibits a third party from refusing, without reasonable cause, to honor a durable power of attorney, and provides that a third party who violates this is liable to the principal and the principal's heirs.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter XII, Texas Probate Code, by adding Section 489C, as follows:

Sec. 489C. ACCEPTANCE OF DURABLE POWER OF ATTORNEY BY THIRD PARTIES REQUIRED. (a) Prohibits a third party located in this state from refusing, without reasonable cause, to honor a durable power of attorney properly executed in accordance with this chapter, including as statutory durable power of attorney.

(b) Provides that reasonable cause for a third party's refusal to honor a durable power of attorney under Subsection (a) of this section includes the third party's actual knowledge of the principal's death, actual notice of the termination or revocation of the power of attorney, actual knowledge of the appointment of a guardian of the estate for the principal, and actual knowledge of the principal's divorce or annulment of the principal's marriage, if the principal's attorney in fact or agent was the principal's spouse.

(c) Prohibits a third party from refusing to honor a durable power of attorney under this section if the sole reason for the refusal is the power of attorney is not on a form prescribed by the third party to whom the power of attorney is presented, or there has been a lapse of time since the execution of the power of attorney.

(d) Provides that a third party that violates this section is liable to the principal and the principal's heirs to the same extent as if the third party had refused to allow the principal to act on the principal's own behalf.

SECTION 2. Effective date: September 1, 2009.