

## **BILL ANALYSIS**

Senate Research Center  
81R24092 CLG-F

C.S.S.B. 1625  
By: Wentworth, Nelson  
Jurisprudence  
4/17/2009  
Committee Report (Substituted)

### **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.

This bill 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.

C.S.S.B. 1625 amends current law relating to the acceptance of durable powers of attorney by third parties.

### **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:

(1) 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; 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; and actual knowledge that a report has been made to the Department of Family and Protective Services stating that a good faith belief that the principal may have been or is subject to physical or financial abuse, neglect, exploitation, or abandonment by the principal's attorney in fact or agent or a person acting for or with the attorney in fact or agent; and

(2) that it is apparent on the face of the durable power of attorney that the instrument is fraudulent or has been forged or altered.

(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, the principal's heirs, and other successors in interest of the principal to the same extent as if the third party had refused to allow the principal to act on the principal's own behalf.

(e) Prohibits a third party that honors a durable power of attorney as required by this section from being held liable for damages resulting from the use of the durable power of attorney to the principal, the principal's heirs, other successors in interest of the principal, or any other person.

SECTION 2. Effective date: September 1, 2009.