

BILL ANALYSIS

Senate Research Center
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S.B. 41
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently under a statutory Power of Attorney (POA) only the principal (the person granting the POA) can request a financial accounting from the attorney-in-fact (the person provided with the authority to make financial decisions under a POA). When the principal becomes incapacitated or is a person at risk of financial exploitation, the principal may not suspect the need for an accounting or may lack the ability to request it. Sometimes a person interested in the principal, such as a family member or a legal guardian, may be in a better position to identify signs of financial exploitation by the attorney-in-fact. These persons should be able to demand an accounting to ensure that the attorney-in-fact is not abusing the person financially.

S.B. 41 would clarify that interested persons, such as POA successors, family members, and guardians, also are authorized to demand an accounting on behalf of the principal from the attorney-in-fact. This would allow these interested persons to determine whether an attorney-in-fact has financially exploited the person or to prevent such exploitation.

As proposed, S.B. 41 amends current law relating to the demand for an accounting from an attorney in fact or agent of a principal by a guardian of the principal.

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 Section 751.104, Estates Code, as follows:

Sec. 751.104. ACCOUNTING. (a) Authorizes the principal or a guardian of the principal to demand an accounting by the attorney in fact or agent, rather than authorizes the principal to demand an accounting.

(b) Makes a conforming change.

(c) Requires the attorney in fact or agent, unless directed otherwise by the principal or a guardian of the principal, to provide all documentation regarding the principal's property to the principal or guardian, as appropriate.

SECTION 2. Amends Section 751.105, Estates Code, as follows:

Sec. 751.105. EFFECT OF FAILURE TO COMPLY; SUIT. Provides that if the attorney in fact or agent fails or refuses to comply with certain provisions of a demand, the principal or a guardian of the principal is authorized to file suit to compel delivery of the accounting or the assets or terminate the power of attorney.

SECTION 3. Provides that the changes made by this Act apply to a guardianship created before, on, or after the effective date of this Act.

SECTION 4. Effective date: upon passage or September 1, 2017.