

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 41
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State Affairs
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Committee Report (Substituted)

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.

C.S.S.B. 41 would clarify that interested persons, such as a guardian, POA successor, family member, legal representative, and person holding a medical power of attorney, 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

C.S.S.B. 41 amends current law relating to the demand for an accounting from an attorney in fact or agent of a principal by certain persons.

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; a guardian, spouse, parent, sibling, or adult child of the principal; a person named as a successor attorney in fact or agent in the durable power of attorney; an agent of the principal authorized to make health care decisions on the principal's behalf by a medical power of attorney; or an attorney who represents the principal, to demand an accounting by the attorney in fact or agent.

(b) Makes a conforming change.

(c) Requires the attorney in fact or agent, unless directed otherwise by the person demanding an accounting under this section, to also provide to the person all documentation regarding the principal's property. Makes conforming changes.

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 inform the principal, provide documentation, or deliver an accounting to the principal or other person under Section 751.104 within 60 days of a demand under that section, or a longer or shorter period as demanded by the person or ordered by a court:

(1) the principal or other person is authorized to file suit to compel delivery of the accounting or the assets; or

(2) the principal is authorized to file suit to terminate the power of attorney (POA).

SECTION 3. Amends Section 752.051, Estates Code, as follows:

Sec. 752.051. FORM. Sets forth the content of a "statutory durable power of attorney" form, and makes conforming changes.

SECTION 4. (a) Provides that Sections 751.104 and 751.105, Estates Code, as amended by this Act, apply to a durable POA, including a statutory durable POA, executed before, on, or after the effective date of this Act.

(b) Makes application of Section 752.051, Estates Code, as amended by this Act, prospective.

SECTION 5. Effective date: upon passage or September 1, 2017.