

BILL ANALYSIS

Senate Research Center

S.B. 511
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State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

As part of its ongoing review of Texas law, the Real Estate, Probate, and Trust Law Section of the State Bar of Texas (a.k.a. the REPTL Section) has proposed S.B. 511, which provides updates to the law regarding written declarations to designate a guardian before the need for a guardian arises.

The bill provides an additional method for execution of a written declaration to designate a guardian before need arises by permitting it to be signed in front of a notary public in lieu of two witnesses, but only if the declarant is not disqualifying any individual from serving as guardian. Changes to reflect this optional method have been added to the optional statutory form.

S.B. 511 amends current law relating to a written declaration to designate a guardian before the need for a guardian arises.

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 1104.203, Estates Code, by amending Subsections (a) and (b) and adding Subsection (a-1), as follows:

(a) Creates an exception as provided by Subsection (a-1).

(a-1) Requires that a declaration under this subchapter (Written Declaration to Designate Guardian Before Need Arises), if the declaration does not expressly disqualify any individual from serving as guardian of the declarant's person or estate, be signed by the declarant and authorizes it to be acknowledged by a notary public instead of being attested to in the declarant's presence by witnesses as required by Subsection (a)(2) (relating to requiring that a declaration be signed by the declarant and be attested to in the declarant's presence by certain credible witnesses).

(b) Authorizes a declaration that is not written wholly in the declarant's handwriting, notwithstanding Subsection (a) or (a-1), to be signed by another person for the declarant under the direction of and in the presence of the declarant.

SECTION 2. Amends Section 1104.204, Estates Code, by adding Subsections (c) and (d), as follows:

(c) Authorizes, but does not require, a declaration that complies with the requirements of Section 1104.203(a-1) to be in the form specified by Subsection (b) (relating to a certain form that is authorized to be used, but not required), except that instead of having attached the self-proving affidavit prescribed by that subsection, the declaration is required to have attached a certain acknowledgement and sets forth the required text of the acknowledgment.

(d) Provides that a declaration that complies with the requirements of Section 1104.203(a-1) that has attached the acknowledgment provided by Subsection (c) is considered self-proved.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2017.