

By: Hartnett

H.B. No. 2585

Substitute the following for H.B. No. 2585:

By: Hughes

C.S.H.B. No. 2585

A BILL TO BE ENTITLED

AN ACT

relating to digital or electronic signatures and witness signatures  
on advance directives.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 166.002, Health and Safety Code, is  
amended by adding Subdivisions (5-a) and (5-b) to read as follows:

(5-a) "Digital signature" means an electronic  
identifier intended by the person using it to have the same force  
and effect as the use of a manual signature.

(5-b) "Electronic signature" means a facsimile, scan,  
uploaded image, computer-generated image, or other electronic  
representation of a manual signature that is intended by the person  
using it to have the same force and effect of law as a manual  
signature.

SECTION 2. Subchapter A, Chapter 166, Health and Safety  
Code, is amended by adding Section 166.011 to read as follows:

Sec. 166.011. DIGITAL OR ELECTRONIC SIGNATURE. (a) For an  
advance directive in which a signature by a declarant, witness, or  
notary public is required or used, the declarant, witness, or  
notary public may sign the directive or a written revocation of the  
directive using:

(1) a digital signature that:

(A) uses an algorithm approved by the department;

(B) is unique to the person using it;

1           (C) is capable of verification;

2           (D) is under the sole control of the person using  
3 it;

4           (E) is linked to data in a manner that  
5 invalidates the digital signature if the data is changed;

6           (F) persists with the document and not by  
7 association in separate files; and

8           (G) is bound to a digital certificate; or

9           (2) an electronic signature that:

10           (A) is capable of verification;

11           (B) is under the sole control of the person using  
12 it;

13           (C) is linked to data in a manner that  
14 invalidates the electronic signature if the data is changed; and

15           (D) persists with the document and not by  
16 association in separate files.

17           (b) In approving an algorithm for purposes of Subsection  
18 (a)(1)(A), the department may consider an algorithm approved by the  
19 National Institute of Standards and Technology.

20           (c) The executive commissioner of the Health and Human  
21 Services Commission by rule shall modify the advance directive  
22 forms required under this chapter as necessary to provide for the  
23 use of a digital or electronic signature that complies with the  
24 requirements of this section.

25           SECTION 3. Section 166.032, Health and Safety Code, is  
26 amended by amending Subsection (b) and adding Subsection (b-1) to  
27 read as follows:

1           (b) Except as provided by Subsection (b-1), the [~~The~~]  
2 declarant must sign the directive in the presence of two witnesses  
3 who qualify under Section 166.003, at least one of whom must be a  
4 witness who qualifies under Section 166.003(2). The witnesses must  
5 sign the directive.

6           **(b-1) The declarant, in lieu of signing in the presence of**  
7 **witnesses, may sign the directive and have the signature**  
8 **acknowledged before a notary public.**

9           SECTION 4. Section 166.036(a), Health and Safety Code, is  
10 amended to read as follows:

11           (a) Except as provided by Section 166.032(b-1), a [~~A~~]  
12 written directive executed under Section 166.033 or 166.035 is  
13 effective without regard to whether the document has been  
14 notarized.

15           SECTION 5. Sections 166.082(b) and (c), Health and Safety  
16 Code, are amended to read as follows:

17           (b) Except as provided by this subsection, the [~~The~~]  
18 declarant must sign the out-of-hospital DNR order in the presence  
19 of two witnesses who qualify under Section 166.003, at least one of  
20 whom must be a witness who qualifies under Section 166.003(2). The  
21 witnesses must sign the order. The attending physician of the  
22 declarant must sign the order and shall make the fact of the  
23 existence of the order and the reasons for execution of the order a  
24 part of the declarant's medical record. The declarant, in lieu of  
25 signing in the presence of witnesses, may sign the out-of-hospital  
26 DNR order and have the signature acknowledged before a notary  
27 public.

1           (c) If the person is incompetent but previously executed or  
2 issued a directive to physicians in accordance with Subchapter B,  
3 the physician may rely on the directive as the person's  
4 instructions to issue an out-of-hospital DNR order and shall place  
5 a copy of the directive in the person's medical record. The  
6 physician shall sign the order in lieu of the person signing under  
7 Subsection (b) and may use a digital or electronic signature  
8 authorized under Section 166.011.

9           SECTION 6. Section 166.083(b), Health and Safety Code, is  
10 amended to read as follows:

11           (b) The standard form of an out-of-hospital DNR order  
12 specified by the board must, at a minimum, contain the following:

13                   (1) a distinctive single-page format that readily  
14 identifies the document as an out-of-hospital DNR order;

15                   (2) a title that readily identifies the document as an  
16 out-of-hospital DNR order;

17                   (3) the printed or typed name of the person;

18                   (4) a statement that the physician signing the  
19 document is the attending physician of the person and that the  
20 physician is directing health care professionals acting in  
21 out-of-hospital settings, including a hospital emergency  
22 department, not to initiate or continue certain life-sustaining  
23 treatment on behalf of the person, and a listing of those procedures  
24 not to be initiated or continued;

25                   (5) a statement that the person understands that the  
26 person may revoke the out-of-hospital DNR order at any time by  
27 destroying the order and removing the DNR identification device, if

1 any, or by communicating to health care professionals at the scene  
2 the person's desire to revoke the out-of-hospital DNR order;

3 (6) places for the printed names and signatures of the  
4 witnesses or the notary public's acknowledgment and for the printed  
5 name and signature of the attending physician of the person and the  
6 medical license number of the attending physician;

7 (7) a separate section for execution of the document  
8 by the legal guardian of the person, the person's proxy, an agent of  
9 the person having a medical power of attorney, or the attending  
10 physician attesting to the issuance of an out-of-hospital DNR order  
11 by nonwritten means of communication or acting in accordance with a  
12 previously executed or previously issued directive to physicians  
13 under Section 166.082(c) that includes the following:

14 (A) a statement that the legal guardian, the  
15 proxy, the agent, the person by nonwritten means of communication,  
16 or the physician directs that each listed life-sustaining treatment  
17 should not be initiated or continued in behalf of the person; and

18 (B) places for the printed names and signatures  
19 of the witnesses and, as applicable, the legal guardian, proxy,  
20 agent, or physician;

21 (8) a separate section for execution of the document  
22 by at least one qualified relative of the person when the person  
23 does not have a legal guardian, proxy, or agent having a medical  
24 power of attorney and is incompetent or otherwise mentally or  
25 physically incapable of communication, including:

26 (A) a statement that the relative of the person  
27 is qualified to make a treatment decision to withhold

1 cardiopulmonary resuscitation and certain other designated  
2 life-sustaining treatment under Section 166.088 and, based on the  
3 known desires of the person or a determination of the best interest  
4 of the person, directs that each listed life-sustaining treatment  
5 should not be initiated or continued in behalf of the person; and

6 (B) places for the printed names and signatures  
7 of the witnesses and qualified relative of the person;

8 (9) a place for entry of the date of execution of the  
9 document;

10 (10) a statement that the document is in effect on the  
11 date of its execution and remains in effect until the death of the  
12 person or until the document is revoked;

13 (11) a statement that the document must accompany the  
14 person during transport;

15 (12) a statement regarding the proper disposition of  
16 the document or copies of the document, as the board determines  
17 appropriate; and

18 (13) a statement at the bottom of the document, with  
19 places for the signature of each person executing the document,  
20 that the document has been properly completed.

21 SECTION 7. Section 166.089(d), Health and Safety Code, is  
22 amended to read as follows:

23 (d) The responding health care professionals must determine  
24 that the out-of-hospital DNR order form appears to be valid in that  
25 it includes:

26 (1) written responses in the places designated on the  
27 form for the names, signatures, and other information required of

1 persons executing or issuing, or witnessing or acknowledging as  
2 applicable, the execution or issuance of, the order;

3 (2) a date in the place designated on the form for the  
4 date the order was executed or issued; and

5 (3) the signature or digital or electronic signature  
6 of the declarant or persons executing or issuing the order and the  
7 attending physician in the appropriate places designated on the  
8 form for indicating that the order form has been properly  
9 completed.

10 SECTION 8. Section 166.154, Health and Safety Code, is  
11 amended to read as follows:

12 Sec. 166.154. EXECUTION [~~AND WITNESSES~~]. (a) Except as  
13 provided by Subsection (b), the [~~The~~] medical power of attorney  
14 must be signed by the principal in the presence of two witnesses who  
15 qualify under Section 166.003, at least one of whom must be a  
16 witness who qualifies under Section 166.003(2). The witnesses must  
17 sign the document.

18 (b) The principal, in lieu of signing in the presence of the  
19 witnesses, may sign the medical power of attorney and have the  
20 signature acknowledged before a notary public.

21 (c) [~~(b)~~] If the principal is physically unable to sign,  
22 another person may sign the medical power of attorney with the  
23 principal's name in the principal's presence and at the principal's  
24 express direction. The person may use a digital or electronic  
25 signature authorized under Section 166.011.

26 SECTION 9. (a) Not later than December 1, 2009, the  
27 executive commissioner of the Health and Human Services Commission

1 shall adopt the rules and modify the forms as necessary to comply  
2 with the changes in law made by this Act.

3 (b) Notwithstanding Chapter 166, Health and Safety Code, as  
4 amended by this Act, a person may not sign an advance directive or a  
5 written revocation of an advance directive using a digital or  
6 electronic signature before January 1, 2010.

7 SECTION 10. This Act takes effect September 1, 2009.