

1-1 By: Hartnett (Senate Sponsor - Uresti) H.B. No. 2585
1-2 (In the Senate - Received from the House May 13, 2009;
1-3 May 14, 2009, read first time and referred to Committee on Health
1-4 and Human Services; May 20, 2009, reported favorably by the
1-5 following vote: Yeas 8, Nays 0; May 20, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to digital or electronic signatures and witness signatures
1-9 on advance directives.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 166.002, Health and Safety Code, is
1-12 amended by adding Subdivisions (5-a) and (5-b) to read as follows:

1-13 (5-a) "Digital signature" means an electronic
1-14 identifier intended by the person using it to have the same force
1-15 and effect as the use of a manual signature.

1-16 (5-b) "Electronic signature" means a facsimile, scan,
1-17 uploaded image, computer-generated image, or other electronic
1-18 representation of a manual signature that is intended by the person
1-19 using it to have the same force and effect of law as a manual
1-20 signature.

1-21 SECTION 2. Subchapter A, Chapter 166, Health and Safety
1-22 Code, is amended by adding Section 166.011 to read as follows:

1-23 Sec. 166.011. DIGITAL OR ELECTRONIC SIGNATURE. (a) For an
1-24 advance directive in which a signature by a declarant, witness, or
1-25 notary public is required or used, the declarant, witness, or
1-26 notary public may sign the directive or a written revocation of the
1-27 directive using:

1-28 (1) a digital signature that:
1-29 (A) uses an algorithm approved by the department;
1-30 (B) is unique to the person using it;
1-31 (C) is capable of verification;
1-32 (D) is under the sole control of the person using
1-33 it;

1-34 (E) is linked to data in a manner that
1-35 invalidates the digital signature if the data is changed;

1-36 (F) persists with the document and not by
1-37 association in separate files; and

1-38 (G) is bound to a digital certificate; or

1-39 (2) an electronic signature that:
1-40 (A) is capable of verification;
1-41 (B) is under the sole control of the person using
1-42 it;

1-43 (C) is linked to data in a manner that
1-44 invalidates the electronic signature if the data is changed; and

1-45 (D) persists with the document and not by
1-46 association in separate files.

1-47 (b) In approving an algorithm for purposes of Subsection
1-48 (a)(1)(A), the department may consider an algorithm approved by the
1-49 National Institute of Standards and Technology.

1-50 (c) The executive commissioner of the Health and Human
1-51 Services Commission by rule shall modify the advance directive
1-52 forms required under this chapter as necessary to provide for the
1-53 use of a digital or electronic signature that complies with the
1-54 requirements of this section.

1-55 SECTION 3. Section 166.032, Health and Safety Code, is
1-56 amended by amending Subsection (b) and adding Subsection (b-1) to
1-57 read as follows:

1-58 (b) Except as provided by Subsection (b-1), the [The]
1-59 declarant must sign the directive in the presence of two witnesses
1-60 who qualify under Section 166.003, at least one of whom must be a
1-61 witness who qualifies under Section 166.003(2). The witnesses must
1-62 sign the directive.

1-63 (b-1) The declarant, in lieu of signing in the presence of
1-64 witnesses, may sign the directive and have the signature

2-1 acknowledged before a notary public.

2-2 SECTION 4. Section 166.036(a), Health and Safety Code, is
2-3 amended to read as follows:

2-4 (a) Except as provided by Section 166.032(b-1), a [A]
2-5 written directive executed under Section 166.033 or 166.035 is
2-6 effective without regard to whether the document has been
2-7 notarized.

2-8 SECTION 5. Sections 166.082(b) and (c), Health and Safety
2-9 Code, are amended to read as follows:

2-10 (b) Except as provided by this subsection, the [The]
2-11 declarant must sign the out-of-hospital DNR order in the presence
2-12 of two witnesses who qualify under Section 166.003, at least one of
2-13 whom must be a witness who qualifies under Section 166.003(2). The
2-14 witnesses must sign the order. The attending physician of the
2-15 declarant must sign the order and shall make the fact of the
2-16 existence of the order and the reasons for execution of the order a
2-17 part of the declarant's medical record. The declarant, in lieu of
2-18 signing in the presence of witnesses, may sign the out-of-hospital
2-19 DNR order and have the signature acknowledged before a notary
2-20 public.

2-21 (c) If the person is incompetent but previously executed or
2-22 issued a directive to physicians in accordance with Subchapter B,
2-23 the physician may rely on the directive as the person's
2-24 instructions to issue an out-of-hospital DNR order and shall place
2-25 a copy of the directive in the person's medical record. The
2-26 physician shall sign the order in lieu of the person signing under
2-27 Subsection (b) and may use a digital or electronic signature
2-28 authorized under Section 166.011.

2-29 SECTION 6. Section 166.083(b), Health and Safety Code, is
2-30 amended to read as follows:

2-31 (b) The standard form of an out-of-hospital DNR order
2-32 specified by the board must, at a minimum, contain the following:

2-33 (1) a distinctive single-page format that readily
2-34 identifies the document as an out-of-hospital DNR order;

2-35 (2) a title that readily identifies the document as an
2-36 out-of-hospital DNR order;

2-37 (3) the printed or typed name of the person;

2-38 (4) a statement that the physician signing the
2-39 document is the attending physician of the person and that the
2-40 physician is directing health care professionals acting in
2-41 out-of-hospital settings, including a hospital emergency
2-42 department, not to initiate or continue certain life-sustaining
2-43 treatment on behalf of the person, and a listing of those procedures
2-44 not to be initiated or continued;

2-45 (5) a statement that the person understands that the
2-46 person may revoke the out-of-hospital DNR order at any time by
2-47 destroying the order and removing the DNR identification device, if
2-48 any, or by communicating to health care professionals at the scene
2-49 the person's desire to revoke the out-of-hospital DNR order;

2-50 (6) places for the printed names and signatures of the
2-51 witnesses or the notary public's acknowledgment and for the printed
2-52 name and signature of the attending physician of the person and the
2-53 medical license number of the attending physician;

2-54 (7) a separate section for execution of the document
2-55 by the legal guardian of the person, the person's proxy, an agent of
2-56 the person having a medical power of attorney, or the attending
2-57 physician attesting to the issuance of an out-of-hospital DNR order
2-58 by nonwritten means of communication or acting in accordance with a
2-59 previously executed or previously issued directive to physicians
2-60 under Section 166.082(c) that includes the following:

2-61 (A) a statement that the legal guardian, the
2-62 proxy, the agent, the person by nonwritten means of communication,
2-63 or the physician directs that each listed life-sustaining treatment
2-64 should not be initiated or continued in behalf of the person; and

2-65 (B) places for the printed names and signatures
2-66 of the witnesses and, as applicable, the legal guardian, proxy,
2-67 agent, or physician;

2-68 (8) a separate section for execution of the document
2-69 by at least one qualified relative of the person when the person

3-1 does not have a legal guardian, proxy, or agent having a medical
3-2 power of attorney and is incompetent or otherwise mentally or
3-3 physically incapable of communication, including:

3-4 (A) a statement that the relative of the person
3-5 is qualified to make a treatment decision to withhold
3-6 cardiopulmonary resuscitation and certain other designated
3-7 life-sustaining treatment under Section 166.088 and, based on the
3-8 known desires of the person or a determination of the best interest
3-9 of the person, directs that each listed life-sustaining treatment
3-10 should not be initiated or continued in behalf of the person; and

3-11 (B) places for the printed names and signatures
3-12 of the witnesses and qualified relative of the person;

3-13 (9) a place for entry of the date of execution of the
3-14 document;

3-15 (10) a statement that the document is in effect on the
3-16 date of its execution and remains in effect until the death of the
3-17 person or until the document is revoked;

3-18 (11) a statement that the document must accompany the
3-19 person during transport;

3-20 (12) a statement regarding the proper disposition of
3-21 the document or copies of the document, as the board determines
3-22 appropriate; and

3-23 (13) a statement at the bottom of the document, with
3-24 places for the signature of each person executing the document,
3-25 that the document has been properly completed.

3-26 SECTION 7. Section 166.089(d), Health and Safety Code, is
3-27 amended to read as follows:

3-28 (d) The responding health care professionals must determine
3-29 that the out-of-hospital DNR order form appears to be valid in that
3-30 it includes:

3-31 (1) written responses in the places designated on the
3-32 form for the names, signatures, and other information required of
3-33 persons executing or issuing, or witnessing or acknowledging as
3-34 applicable, the execution or issuance of, the order;

3-35 (2) a date in the place designated on the form for the
3-36 date the order was executed or issued; and

3-37 (3) the signature or digital or electronic signature
3-38 of the declarant or persons executing or issuing the order and the
3-39 attending physician in the appropriate places designated on the
3-40 form for indicating that the order form has been properly
3-41 completed.

3-42 SECTION 8. Section 166.154, Health and Safety Code, is
3-43 amended to read as follows:

3-44 Sec. 166.154. EXECUTION [~~AND WITNESSES~~]. (a) Except as
3-45 provided by Subsection (b), the [The] medical power of attorney
3-46 must be signed by the principal in the presence of two witnesses who
3-47 qualify under Section 166.003, at least one of whom must be a
3-48 witness who qualifies under Section 166.003(2). The witnesses must
3-49 sign the document.

3-50 (b) The principal, in lieu of signing in the presence of the
3-51 witnesses, may sign the medical power of attorney and have the
3-52 signature acknowledged before a notary public.

3-53 (c) [~~(b)~~] If the principal is physically unable to sign,
3-54 another person may sign the medical power of attorney with the
3-55 principal's name in the principal's presence and at the principal's
3-56 express direction. The person may use a digital or electronic
3-57 signature authorized under Section 166.011.

3-58 SECTION 9. (a) Not later than December 1, 2009, the
3-59 executive commissioner of the Health and Human Services Commission
3-60 shall adopt the rules and modify the forms as necessary to comply
3-61 with the changes in law made by this Act.

3-62 (b) Notwithstanding Chapter 166, Health and Safety Code, as
3-63 amended by this Act, a person may not sign an advance directive or a
3-64 written revocation of an advance directive using a digital or
3-65 electronic signature before January 1, 2010.

3-66 SECTION 10. This Act takes effect September 1, 2009.

3-67 * * * * *