

BILL ANALYSIS

C.S.H.B. 2124
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Recently enacted legislation allowed the principal of a medical power of attorney to sign the medical power of attorney and have the signature acknowledged before a notary public in lieu of signing in the presence of two qualifying witnesses. However, interested parties observe that the current form of a medical power of attorney still requires the form to be signed in the presence of two competent adult witnesses in order to be valid. C.S.H.B. 2124 seeks to amend the form of a medical power of attorney to conform to the recently enacted legislation and also addresses the venue for an action to revoke a medical power of attorney.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2124 amends the Health and Safety Code to change the form of a medical power of attorney and the form of the disclosure statement regarding medical power of attorney, effective January 1, 2014, to provide the principal the option of signing the medical power of attorney form and have the signature acknowledged before a notary public as an alternative to signing the form in the presence of two competent adult witnesses and to inform the principal of that option in the related disclosure statement, respectively. The bill clarifies in the disclosure statement that the form must be signed by the principal. Effective January 1, 2014, when the changes to the medical power of attorney form take effect, the bill establishes that the changes to statutory provisions prescribing such form do not affect the validity of a document executed under those provisions before that date. The bill requires the executive commissioner of the Health and Human Services Commission to adopt the forms necessary to comply with the changes made under the bill's provisions not later than October 1, 2013.

C.S.H.B. 2124 requires a civil action relating to the revocation of a medical power of attorney to be brought in district court only in a county in which there is no statutory probate court. The bill establishes that in a county in which there is a statutory probate court, the statutory probate court and the district court have concurrent jurisdiction over such an action.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2124 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Sections 166.163 and 166.164, Health and Safety Code, are amended.

No equivalent provision.

SECTION 2. Not later than October 1, 2013, the executive commissioner of the Health and Human Services Commission shall adopt the forms necessary to comply with the changes in law made by this Act.

SECTION 3. The change in law made by this Act does not affect the validity of a document executed under Section 166.164, Health and Safety Code, before the effective date of this Act. A document executed before the effective date of this Act is governed by the law in effect on the date the document was executed, and that law continues in effect for that purpose.

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Section 166.165, Health and Safety Code, is amended by amending Subsections (a) and (c) and adding Subsection (a-1) to read as follows:

(a) A person who is a near relative of the principal or a responsible adult who is directly interested in the principal, including a guardian, social worker, physician, or clergyman, may bring an action [~~in district court~~] to request that the medical power of attorney be revoked because the principal, at the time the medical power of attorney was signed:

- (1) was not competent; or
- (2) was under duress, fraud, or undue influence.

(a-1) In a county in which there is no statutory probate court, an action under this section shall be brought in the district court. In a county in which there is a statutory probate court, the statutory probate court and the district court have concurrent jurisdiction over an action brought under this section.

(c) During the pendency of the action, the authority of the agent to make health care decisions continues in effect unless the [~~district~~] court orders otherwise.

SECTION 3. Substantially the same as introduced version.

SECTION 4. Substantially the same as introduced version.

SECTION 5. The change in law made by this Act to Section 166.165, Health and Safety Code, applies to an action brought under that section on or after the effective

date of this Act, regardless of whether the power of attorney was executed before, on, or after the effective date of this Act.

SECTION 4. (a) Except as provided by Subsection (b), this Act takes effect January 1, 2014.

(b) Section 2 of this Act takes effect September 1, 2013.

SECTION 6. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2013.

(b) Sections 1 and 4 of this Act take effect January 1, 2014.