

BILL ANALYSIS

S.B. 651
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Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, a medical power of attorney document is not deemed to be valid unless it is signed in the presence of two competent adult witnesses. However, the current law fails to specify who is required to sign the power of attorney document. Further, the requirement limits the instances in which a signature can be deemed valid, despite the existence of verification measures such as notarization.

S.B. 651 clarifies current law by stating that the principal must sign the document in the presence of two competent witnesses in order for the document to be valid. In addition, S.B. 651 recognizes the principal's signature as valid if the signature is acknowledged by a notary public.

S.B. 651 amends current law relating to a medical power of attorney.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Amends Sections 166.163 and 166.164, Health and Safety Code, as follows:

Sec. 166.163. FORM OF DISCLOSURE STATEMENT. Sets forth the required text for the disclosure statement form.

Sec. 166.164. FORM OF MEDICAL POWER OF ATTORNEY. Sets forth the required text for the medical power of attorney form.

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

(a) Authorizes 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, to bring an action, rather than to 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 was not competent or was under duress, fraud, or undue influence.

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

(c) Provides that the authority of the agent, during the pendency of the action, to make health care decisions continues in effect unless the court, rather than district court, orders otherwise.

SECTION 3. Requires the executive commissioner of the Health and Human Services Commission, not later than October 1, 2013, to adopt the forms necessary to comply with the changes in law made by this Act to Sections 166.163 and 166.164, Health and Safety Code.

SECTION 4. Provides that the change in law made by this Act to Section 166.164, Health and Safety Code, does not affect the validity of a document executed under that section before the effective date of this section. Provides that a document executed before the effective date of this section is governed by the law in effect on the date the document was executed, and that law continues in effect for that purpose.

SECTION 5. Provides that 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.

EFFECTIVE DATE

Effective date, except as provided by Subsection (b) of this section: September 1, 2013.

Effective date, Sections 1 and 4 of this Act: January 1, 2014.