

1-1 By: Uresti S.B. No. 1752  
 1-2 (In the Senate - Filed March 8, 2013; March 25, 2013, read  
 1-3 first time and referred to Committee on Health and Human Services;  
 1-4 April 25, 2013, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 7, Nays 0; April 25, 2013,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8 Nelson	X			
1-9 Deuell	X			
1-10 Huffman	X			
1-11 Nichols			X	
1-12 Schwertner	X			
1-13 Taylor	X			
1-14 Uresti			X	
1-15 West	X			
1-16 Zaffirini	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1752 By: Schwertner

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to declarations for mental health treatment.  
 1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
 1-23 SECTION 1. Chapter 137, Civil Practice and Remedies Code,  
 1-24 is transferred to Chapter 576, Health and Safety Code, redesignated  
 1-25 as Subchapter C, Chapter 576, Health and Safety Code, and amended to  
 1-26 read as follows:  
 1-27 SUBCHAPTER C [~~CHAPTER 137~~]. DECLARATION FOR MENTAL HEALTH  
 1-28 TREATMENT  
 1-29 Sec. 576.051 [~~137.001~~]. DEFINITIONS. In this chapter:  
 1-30 (1) "Adult" means a person 18 years of age or older or  
 1-31 a person under 18 years of age who has had the disabilities of  
 1-32 minority removed.  
 1-33 (2) "Attending physician" means the physician,  
 1-34 selected by or assigned to a patient, who has primary  
 1-35 responsibility for the treatment and care of the patient.  
 1-36 (3) "Declaration for mental health treatment" means a  
 1-37 document making a declaration of preferences or instructions  
 1-38 regarding mental health treatment.  
 1-39 (4) "Emergency" means a situation in which it is  
 1-40 immediately necessary to treat a patient to prevent:  
 1-41 (A) probable imminent death or serious bodily  
 1-42 injury to the patient because the patient:  
 1-43 (i) overtly or continually is threatening  
 1-44 or attempting to commit suicide or serious bodily injury to the  
 1-45 patient; or  
 1-46 (ii) is behaving in a manner that indicates  
 1-47 that the patient is unable to satisfy the patient's need for  
 1-48 nourishment, essential medical care, or self-protection; or  
 1-49 (B) imminent physical or emotional harm to  
 1-50 another because of threats, attempts, or other acts of the patient.  
 1-51 (5) "Health care provider" means an individual or  
 1-52 facility licensed, certified, or otherwise authorized to  
 1-53 administer health care or treatment, for profit or otherwise, in  
 1-54 the ordinary course of business or professional practice and  
 1-55 includes a physician or other health care provider, a residential  
 1-56 care provider, or an inpatient mental health facility as defined by  
 1-57 Section 571.003[~~, Health and Safety Code~~].  
 1-58 (6) "Incapacitated" means that, in the opinion of the  
 1-59 court in a guardianship proceeding under Chapter XIII, Texas  
 1-60 Probate Code, or in a medication hearing under Section 574.106[~~7~~

2-1 ~~Health and Safety Code~~], a person lacks the ability to understand  
2-2 the nature and consequences of a proposed treatment, including the  
2-3 benefits, risks, and alternatives to the proposed treatment, and  
2-4 lacks the ability to make mental health treatment decisions because  
2-5 of impairment.

2-6 (7) "Mental health treatment" means electroconvulsive  
2-7 or other convulsive treatment, treatment of mental illness with  
2-8 psychoactive medication as defined by Section 574.101[~~, Health and~~  
2-9 ~~Safety Code~~], or emergency mental health treatment.

2-10 (8) "Principal" means a person who has executed a  
2-11 declaration for mental health treatment.

2-12 Sec. 576.052 [~~137.002~~]. PERSONS WHO MAY EXECUTE  
2-13 DECLARATION FOR MENTAL HEALTH TREATMENT; PERIOD OF VALIDITY.

2-14 (a) An adult who is not incapacitated may execute a declaration  
2-15 for mental health treatment. The preferences or instructions may  
2-16 include consent to or refusal of mental health treatment.

2-17 (b) A declaration for mental health treatment is effective  
2-18 on execution as provided by this chapter. Except as provided by  
2-19 Subsection (c), a declaration for mental health treatment expires  
2-20 on the third anniversary of the date of its execution or when  
2-21 revoked by the principal, whichever is earlier.

2-22 (c) If the declaration for mental health treatment is in  
2-23 effect and the principal is incapacitated on the third anniversary  
2-24 of the date of its execution, the declaration remains in effect  
2-25 until the principal is no longer incapacitated.

2-26 Sec. 576.053 [~~137.003~~]. EXECUTION AND WITNESSES. (a) A  
2-27 declaration for mental health treatment must be signed by the  
2-28 principal in the presence of two or more subscribing witnesses.

2-29 (b) A witness may not, at the time of execution, be:

2-30 (1) the principal's health or residential care  
2-31 provider or an employee of that provider;

2-32 (2) the operator of a community health care facility  
2-33 providing care to the principal or an employee of an operator of the  
2-34 facility;

2-35 (3) a person related to the principal by blood,  
2-36 marriage, or adoption;

2-37 (4) a person entitled to any part of the estate of the  
2-38 principal on the death of the principal under a will, trust, or deed  
2-39 in existence or who would be entitled to any part of the estate by  
2-40 operation of law if the principal died intestate; or

2-41 (5) a person who has a claim against the estate of the  
2-42 principal.

2-43 (c) For a witness's signature to be effective, the witness  
2-44 must sign a statement affirming that, at the time the declaration  
2-45 for mental health treatment was signed, the principal:

2-46 (1) appeared to be of sound mind to make a mental  
2-47 health treatment decision;

2-48 (2) has stated in the witness's presence that the  
2-49 principal was aware of the nature of the declaration for mental  
2-50 health treatment and that the principal was signing the document  
2-51 voluntarily and free from any duress; and

2-52 (3) requested that the witness serve as a witness to  
2-53 the principal's execution of the document.

2-54 Sec. 576.054 [~~137.004~~]. HEALTH CARE PROVIDER TO ACT IN  
2-55 ACCORDANCE WITH DECLARATION FOR MENTAL HEALTH TREATMENT. A  
2-56 physician or other health care provider shall act in accordance  
2-57 with the declaration for mental health treatment when the principal  
2-58 has been found to be incapacitated. A physician or other provider  
2-59 shall continue to seek and act in accordance with the principal's  
2-60 informed consent to all mental health treatment decisions if the  
2-61 principal is capable of providing informed consent.

2-62 Sec. 576.055 [~~137.005~~]. LIMITATION ON LIABILITY. (a) An  
2-63 attending physician, health or residential care provider, or person  
2-64 acting for or under an attending physician's or health or  
2-65 residential care provider's control is not subject to criminal or  
2-66 civil liability and has not engaged in professional misconduct for  
2-67 an act or omission if the act or omission is done in good faith under  
2-68 the terms of a declaration for mental health treatment.

2-69 (b) An attending physician, health or residential care

3-1 provider, or person acting for or under an attending physician's or  
3-2 health or residential care provider's control does not engage in  
3-3 professional misconduct for:

3-4 (1) failure to act in accordance with a declaration  
3-5 for mental health treatment if the physician, provider, or other  
3-6 person:

3-7 (A) was not provided with a copy of the  
3-8 declaration; and

3-9 (B) had no knowledge of the declaration after a  
3-10 good faith attempt to learn of the existence of a declaration; or

3-11 (2) acting in accordance with a directive for mental  
3-12 health treatment after the directive has expired or has been  
3-13 revoked if the physician, provider, or other person does not have  
3-14 knowledge of the expiration or revocation.

3-15 Sec. 576.056 [~~137.006~~]. DISCRIMINATION RELATING TO  
3-16 EXECUTION OF DECLARATION FOR MENTAL HEALTH TREATMENT. A health or  
3-17 residential care provider, health care service plan, insurer  
3-18 issuing disability insurance, self-insured employee benefit plan,  
3-19 or nonprofit hospital service plan may not:

3-20 (1) charge a person a different rate solely because  
3-21 the person has executed a declaration for mental health treatment;

3-22 (2) require a person to execute a declaration for  
3-23 mental health treatment before:

3-24 (A) admitting the person to a hospital, nursing  
3-25 home, or residential care home;

3-26 (B) insuring the person; or

3-27 (C) allowing the person to receive health or  
3-28 residential care;

3-29 (3) refuse health or residential care to a person  
3-30 solely because the person has executed a declaration for mental  
3-31 health treatment; or

3-32 (4) discharge the person solely because the person has  
3-33 or has not executed a declaration for mental health treatment.

3-34 Sec. 576.057 [~~137.007~~]. USE AND EFFECT OF DECLARATION FOR  
3-35 MENTAL HEALTH TREATMENT. (a) On being presented with a  
3-36 declaration for mental health treatment, a physician or other  
3-37 health care provider shall make the declaration a part of the  
3-38 principal's medical record. When acting in accordance with a  
3-39 declaration for mental health treatment, a physician or other  
3-40 health care provider shall comply with the declaration to the  
3-41 fullest extent possible.

3-42 (b) If a physician or other provider is unwilling at any  
3-43 time to comply with a declaration for mental health treatment, the  
3-44 physician or provider may withdraw from providing treatment  
3-45 consistent with the exercise of independent medical judgment and  
3-46 must promptly:

3-47 (1) make a reasonable effort to transfer care for the  
3-48 principal to a physician or provider who is willing to comply with  
3-49 the declaration;

3-50 (2) notify the principal, or principal's guardian, if  
3-51 appropriate, of the decision to withdraw; and

3-52 (3) record in the principal's medical record the  
3-53 notification and, if applicable, the name of the physician or  
3-54 provider to whom the principal is transferred.

3-55 Sec. 576.058 [~~137.008~~]. DISREGARD OF DECLARATION FOR  
3-56 MENTAL HEALTH TREATMENT. (a) A physician or other health care  
3-57 provider may subject the principal to mental health treatment in a  
3-58 manner contrary to the principal's wishes as expressed in a  
3-59 declaration for mental health treatment only:

3-60 (1) if the principal is under an order for temporary or  
3-61 extended mental health services under Section 574.034 or 574.035[~~7~~  
3-62 ~~Health and Safety Code~~], and treatment is authorized in compliance  
3-63 with Section 574.106[~~7~~ ~~Health and Safety Code~~]; or

3-64 (2) in case of an emergency when the principal's  
3-65 instructions have not been effective in reducing the severity of  
3-66 the behavior that has caused the emergency.

3-67 (b) A declaration for mental health treatment does not limit  
3-68 any authority provided by Chapter 573 or 574[~~7~~ ~~Health and Safety~~  
3-69 ~~Code~~]:

4-1 (1) to take a person into custody; or  
4-2 (2) to admit or retain a person in a mental health  
4-3 treatment facility.

4-4 (c) This section does not apply to the use of  
4-5 electroconvulsive treatment or other convulsive treatment.

4-6 Sec. 576.059 [~~137.009~~]. CONFLICTING OR CONTRARY  
4-7 PROVISIONS. (a) Mental health treatment instructions contained  
4-8 in a declaration executed in accordance with this chapter supersede  
4-9 any contrary or conflicting instructions given by:

4-10 (1) a durable power of attorney under Subchapter D,  
4-11 Chapter 166 [~~Chapter 135~~]; or

4-12 (2) a guardian appointed under Chapter XIII, Texas  
4-13 Probate Code, after the execution of the declaration.

4-14 (b) Mental health treatment instructions contained in a  
4-15 declaration executed in accordance with this chapter shall be  
4-16 conclusive evidence of a declarant's preference in a medication  
4-17 hearing under Section 574.106 [~~Health and Safety Code~~].

4-18 Sec. 576.060 [~~137.010~~]. REVOCATION. (a) A declaration  
4-19 for mental health treatment is revoked when a principal who is not  
4-20 incapacitated:

4-21 (1) notifies a licensed or certified health or  
4-22 residential care provider of the revocation;

4-23 (2) acts in a manner that demonstrates a specific  
4-24 intent to revoke the declaration; or

4-25 (3) executes a later declaration for mental health  
4-26 treatment.

4-27 (b) A principal's health or residential care provider who is  
4-28 informed of or provided with a revocation of a declaration for  
4-29 mental health treatment immediately shall:

4-30 (1) record the revocation in the principal's medical  
4-31 record; and

4-32 (2) give notice of the revocation to any other health  
4-33 or residential care provider the provider knows to be responsible  
4-34 for the principal's care.

4-35 Sec. 576.061 [~~137.011~~]. FORM OF DECLARATION FOR MENTAL  
4-36 HEALTH TREATMENT. The declaration for mental health treatment must  
4-37 be in substantially the following form:

DECLARATION FOR MENTAL HEALTH TREATMENT

4-39 I, \_\_\_\_\_, being an adult of sound mind, wilfully  
4-40 and voluntarily make this declaration for mental health treatment  
4-41 to be followed if it is determined by a court that my ability to  
4-42 understand the nature and consequences of a proposed treatment,  
4-43 including the benefits, risks, and alternatives to the proposed  
4-44 treatment, is impaired to such an extent that I lack the capacity to  
4-45 make mental health treatment decisions. "Mental health treatment"  
4-46 means electroconvulsive or other convulsive treatment, treatment  
4-47 of mental illness with psychoactive medication, and preferences  
4-48 regarding emergency mental health treatment.

4-49 (OPTIONAL PARAGRAPH) I understand that I may become  
4-50 incapable of giving or withholding informed consent for mental  
4-51 health treatment due to the symptoms of a diagnosed mental  
4-52 disorder. These symptoms may include:

PSYCHOACTIVE MEDICATIONS

4-54 If I become incapable of giving or withholding informed  
4-55 consent for mental health treatment, my wishes regarding  
4-56 psychoactive medications are as follows:

4-57 \_\_\_\_\_ I consent to the administration of the following  
4-58 medications:

4-59 \_\_\_\_\_  
4-60 \_\_\_\_\_  
4-61 \_\_\_\_\_ I do not consent to the administration of the following  
4-62 medications:

4-63 \_\_\_\_\_  
4-64 \_\_\_\_\_ I consent to the administration of a federal Food and  
4-65 Drug Administration approved medication that was only approved and  
4-66 in existence after my declaration and that is considered in the same  
4-67 class of psychoactive medications as stated below:

4-68 \_\_\_\_\_  
4-69 Conditions or limitations: \_\_\_\_\_

5-1 CONVULSIVE TREATMENT

5-2 If I become incapable of giving or withholding informed  
5-3 consent for mental health treatment, my wishes regarding convulsive  
5-4 treatment are as follows:

5-5 \_\_\_\_\_ I consent to the administration of convulsive  
5-6 treatment.

5-7 \_\_\_\_\_ I do not consent to the administration of convulsive  
5-8 treatment.

5-9 Conditions or limitations: \_\_\_\_\_

5-10 PREFERENCES FOR EMERGENCY TREATMENT

5-11 In an emergency, I prefer the following treatment FIRST  
5-12 (circle one) Restraint/Seclusion/Medication.

5-13 In an emergency, I prefer the following treatment SECOND  
5-14 (circle one) Restraint/Seclusion/Medication.

5-15 In an emergency, I prefer the following treatment THIRD  
5-16 (circle one) Restraint/Seclusion/Medication.

5-17 \_\_\_\_\_ I prefer a male/female to administer restraint,  
5-18 seclusion, and/or medications.

5-19 Options for treatment prior to use of restraint, seclusion,  
5-20 and/or medications:

5-21 \_\_\_\_\_

5-22 Conditions or limitations: \_\_\_\_\_

5-23 ADDITIONAL PREFERENCES OR INSTRUCTIONS

5-24 \_\_\_\_\_

5-25 Conditions or limitations: \_\_\_\_\_

5-26 Signature of Principal/Date: \_\_\_\_\_

5-27 STATEMENT OF WITNESSES

5-28 I declare under penalty of perjury that the principal's name  
5-29 has been represented to me by the principal, that the principal  
5-30 signed or acknowledged this declaration in my presence, that I  
5-31 believe the principal to be of sound mind, that the principal has  
5-32 affirmed that the principal is aware of the nature of the document  
5-33 and is signing it voluntarily and free from duress, that the  
5-34 principal requested that I serve as witness to the principal's  
5-35 execution of this document, and that I am not a provider of health  
5-36 or residential care to the principal, an employee of a provider of  
5-37 health or residential care to the principal, an operator of a  
5-38 community health care facility providing care to the principal, or  
5-39 an employee of an operator of a community health care facility  
5-40 providing care to the principal.

5-41 I declare that I am not related to the principal by blood,  
5-42 marriage, or adoption and that to the best of my knowledge I am not  
5-43 entitled to and do not have a claim against any part of the estate of  
5-44 the principal on the death of the principal under a will or by  
5-45 operation of law.

5-46 Witness Signature: \_\_\_\_\_

5-47 Print Name: \_\_\_\_\_

5-48 Date: \_\_\_\_\_

5-49 Address: \_\_\_\_\_

5-50 Witness Signature: \_\_\_\_\_

5-51 Print Name: \_\_\_\_\_

5-52 Date: \_\_\_\_\_

5-53 Address: \_\_\_\_\_

5-54 NOTICE TO PERSON MAKING A DECLARATION FOR MENTAL HEALTH TREATMENT

5-55 This is an important legal document. It creates a  
5-56 declaration for mental health treatment. Before signing this  
5-57 document, you should know these important facts:

5-58 This document allows you to make decisions in advance about  
5-59 mental health treatment and specifically three types of mental  
5-60 health treatment: psychoactive medication, convulsive therapy,  
5-61 and emergency mental health treatment. The instructions that you  
5-62 include in this declaration will be followed only if a court  
5-63 believes that you are incapacitated to make treatment decisions.  
5-64 Otherwise, you will be considered able to give or withhold consent  
5-65 for the treatments.

5-66 This document will continue in effect for a period of three  
5-67 years unless you become incapacitated to participate in mental  
5-68 health treatment decisions. If this occurs, the directive will  
5-69 continue in effect until you are no longer incapacitated.

6-1 You have the right to revoke this document in whole or in part  
6-2 at any time you have not been determined to be incapacitated. YOU  
6-3 MAY NOT REVOKE THIS DECLARATION WHEN YOU ARE CONSIDERED BY A COURT  
6-4 TO BE INCAPACITATED. A revocation is effective when it is  
6-5 communicated to your attending physician or other health care  
6-6 provider.

6-7 If there is anything in this document that you do not  
6-8 understand, you should ask a lawyer to explain it to you. This  
6-9 declaration is not valid unless it is signed by two qualified  
6-10 witnesses who are personally known to you and who are present when  
6-11 you sign or acknowledge your signature.

6-12 SECTION 2. (a) Subdivision (6), Section 576.051, Health  
6-13 and Safety Code, as effective September 1, 2013, is amended to read  
6-14 as follows:

6-15 (6) "Incapacitated" means that, in the opinion of the  
6-16 court in a guardianship proceeding under Title 3, Estates [~~Chapter~~  
6-17 ~~XIII, Texas Probate~~] Code, or in a medication hearing under Section  
6-18 574.106, a person lacks the ability to understand the nature and  
6-19 consequences of a proposed treatment, including the benefits,  
6-20 risks, and alternatives to the proposed treatment, and lacks the  
6-21 ability to make mental health treatment decisions because of  
6-22 impairment.

6-23 (b) This section takes effect January 1, 2014.

6-24 SECTION 3. (a) Subsection (a), Section 576.059, Health and  
6-25 Safety Code, as effective September 1, 2013, is amended to read as  
6-26 follows:

6-27 (a) Mental health treatment instructions contained in a  
6-28 declaration executed in accordance with this chapter supersede any  
6-29 contrary or conflicting instructions given by:

6-30 (1) a durable power of attorney under Subchapter D,  
6-31 Chapter 166; or

6-32 (2) a guardian appointed under Title 3, Estates  
6-33 [~~Chapter XIII, Texas Probate~~] Code, after the execution of the  
6-34 declaration.

6-35 (b) This section takes effect January 1, 2014.

6-36 SECTION 4. Except as otherwise provided by this Act, this  
6-37 Act takes effect September 1, 2013.

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