

BILL ANALYSIS

S.B. 39
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties assert the benefits of enacting certain changes to the law relating to guardianships, substitutes for guardianships, and durable powers of attorney for persons with disabilities or who are incapacitated. S.B. 39 seeks to implement these changes.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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

S.B. 39 amends the Estates Code to revise statutory provisions relating to the effect of the appointment of a temporary or permanent guardian of an estate on the exercise of a durable power of attorney, for purposes of the suspension or revocation, as applicable, of the powers of an estate's attorney in fact or an agent after such appointment, to automatically revoke on the qualification of the guardian the powers and authority granted to the attorney in fact or agent named in the power of attorney if the court appoints a permanent guardian of an estate and to automatically suspend on the qualification of the guardian the powers and authority granted to the attorney in fact or agent named in the power of attorney for the duration of the guardianship if the court appoints a temporary guardian of the estate, unless the court enters an order that affirms and states the effectiveness of the power of attorney and that confirms the validity of the appointment of the named attorney in fact or agent. The bill clarifies that an attorney in fact or agent whose powers and authority are so revoked is required to deliver to the guardian all assets of the ward's estate that are in the possession of the attorney in fact or agent and to account to the guardian as the attorney in fact or agent would account to the principal if the principal had terminated the powers of the attorney in fact or agent and clarifies that such revocation by, the death of, or the qualification of such a temporary or permanent guardian of the estate does not revoke, suspend, or terminate the agency as to the attorney in fact, agent, or other person who acts in good faith under or in reliance on the power without actual knowledge of the termination or suspension, as applicable, of the power by the revocation, the principal's death, the qualification of a temporary or permanent guardian of the estate of the principal, or the attorney in fact's or agent's removal.

S.B. 39 authorizes any person named as a successor attorney in fact or agent in a durable power of attorney and any person having a property right in or claim against an estate being administered or person interested in the welfare of an incapacitated person in a guardianship proceeding commenced for a principal who has executed a durable power of attorney to file a

petition for a probate court to enter an order removing a person named and serving as an attorney in fact or agent under a durable power of attorney, authorizing the appointment of a successor attorney in fact or agent who is named in the durable power of attorney if the court finds that the successor attorney in fact or agent is willing to accept the authority granted under the power of attorney and, if compensation is allowed by the terms of the durable power of attorney, denying all or part of the removed attorney in fact's or agent's compensation. The bill authorizes a probate court to enter such an order after a hearing if the court finds certain cause for removal as specified by the bill. The bill requires a successor attorney in fact or agent to provide actual notice of such a removal order not later than the 21st day after the date a court enters the order to each third party that the attorney in fact or agent has reason to believe relied on or may rely on the durable power of attorney. The bill revises the form for a statutory durable power of attorney. The bill establishes that a person who is entitled to receive notice from an applicant for guardianship is not required to file a motion to intervene in order to intervene in a guardianship proceeding. The bill authorizes an application for the appointment of a guardian to omit the address of a person named in the application if the application states that the person was protected by a protective order issued under the Family Code and applies to an application making that statement the same conditions that are applicable to an application stating that a person is protected by such a protective order.

S.B. 39 requires a guardian of the person of a ward who personally transports the ward or directs the ward's transport by emergency medical services or other means to an inpatient mental health facility for a preliminary examination to immediately provide written notice to the court that granted the guardianship of the filing of an application for emergency detention with the facility. The bill establishes that an adult who has entered into a supported decision-making agreement with an adult with a disability owes to the supported adult fiduciary duties as listed in a statutorily valid supported decision-making agreement, regardless of whether the statutory form is used for the agreement. The bill establishes that the relationship between an adult with a disability and the supporter with whom the adult enters into a supported decision-making agreement is one of trust and confidence and does not undermine the decision-making authority of the adult. The bill authorizes an adult with a disability who makes a determination that the supporter with whom the adult entered into a supported decision-making agreement is the most appropriate person to provide to the adult supports and services for which the supporter will be compensated to amend the supported decision-making agreement to designate an alternate person to act as the adult's supporter for the limited purpose of participating in person-centered planning as it relates to the provision of those supports and services. The bill terminates a supported decision-making agreement if a temporary or permanent guardian of the person or estate appointed for the supported adult qualifies. The bill revises the form for a supported decision-making agreement.

S.B. 39, for purposes of its provisions relating to the effect of the appointment of a temporary or permanent guardian of an estate on the exercise of a durable power of attorney and to good-faith reliance on a durable power of attorney subject to removal of the originally named attorney in fact or agent, applies to a durable power of attorney, including a statutory durable power of attorney, executed before, on, or after the bill's effective date. The bill's provisions relating to a fiduciary relationship in the context of supported decision-making agreements, to the termination of such an agreement, and to the designation of an alternate supporter in certain circumstances apply to a supported decision-making agreement entered into before, on, or after the bill's effective date.

EFFECTIVE DATE

September 1, 2017.