

BILL ANALYSIS

Senate Research Center

S.B. 39
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 39 is an omnibus guardianship bill prepared by the Real Estate Probate and Trust Law (REPTL) section of the Texas Bar. Specifically, S.B. 39 clarifies that children and siblings do not need court permission to intervene in guardianship cases involving their loved ones. This ensures that these immediate family members have an opportunity to state their position in court.

S.B. 39 also allows an application for guardianship to omit the address of any person who was ever protected by a protective order, as opposed to just a person who is protected at the time the application is filed. This expands this privacy protection to a greater number of at-risk Texans.

What's more, S.B. 39 codifies the duties of a supporter under a supported decision-making agreement (SDMA), including the duties to act in good faith and to avoid conflicts of interest. This clarity regarding responsibilities under SDMAs would encourage more persons to use this tool.

S.B. 39 clarifies that a named designated successor agent in a power of attorney (POA) has authority to act after a named attorney-in-fact has been removed by the court. What's more, this bill allows an interested person to request a court to remove an attorney-in-fact who is financially abusing the principal or breaching his or her fiduciary duties. It also provides the court with the authority to appoint the successor attorney-in-fact named in the POA, which would prevent unnecessary guardianships. When the named attorney-in-fact is removed by a court, the court typically would initiate proceedings to appoint a guardian because it lacks the authority to appoint an agent designated in the POA who the court can trust.

Lastly, S.B. 39 automatically revokes a POA when a temporary guardianship is established unless a court enters an order affirming the effectiveness of the POA and confirming its validity. This change prevents situations where there are two persons, guardian of the estate and agent under POA, with conflicting authority to make financial decisions on behalf of the same person.

As proposed, S.B. 39 amends current law relating to guardianships for persons who have physical disabilities or who are incapacitated.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1055.003, Estates Code, as follows:

Sec. 1055.003. INTERVENTION BY INTERESTED PERSON. (a) and (b) Makes no changes to these subsections.

(c) Provides that the provisions of Subsections (a) and (b) do not apply to any person who would be entitled to notice of the filing of the guardianship application pursuant to Section 1051.104 (Notice by Applicant for Guardianship), of this code.

SECTION 2. Amends Section 1102.002, Estates Code, as follows:

Sec. 1102.002. CONTENTS OF APPLICATION FOR GUARDIANSHIP; CONFIDENTIALITY OF CERTAIN ADDRESSES. Authorizes an application filed under Section 1101.001 (Application for Appointment of Guardian; Contents) to omit the address of a person named in the application, if the application states that the person is or was protected by a protective order issued under Chapter 85 (Issuance of Protective Order), Family Code, rather than if the application states that the person is protected by a protective order.

SECTION 3. Amends Section 1357.056, Estates Code, as follows:

Sec. 1357.056. FORM OF SUPPORTED DECISION-MAKING AGREEMENT. Sets forth certain language to be used in a supported decision-making agreement.

SECTION 4. Amends Section 1357.101, Estates Code, as follows:

Sec. 1357.101. RELIANCE ON AGREEMENT; LIMITATION OF LIABILITY.

(c) Provides that a supporter in a supported decision-making agreement is in a fiduciary relationship with the adult with a disability who enters into the agreement, and the supporter owes to the adult with a disability those duties stated in the supported decision-making agreement form.

SECTION 5. Amends Section 752.051, Estates Code, as follows:

Sec. 752.051. FORM OF STATUTORY DURABLE POWER OF ATTORNEY. Includes removal by a court of competent jurisdiction among certain other conditions that may lead to the naming of a successor agent in the text of the form for a statutory durable power of attorney.

SECTION 6. Amends Section 752.052, Estates Code, as follows:

Sec. 752.052. RELATION OF ATTORNEY-IN-FACT TO COURT-APPOINTED GUARDIAN OF ESTATE. (a) Provides that the appointment by a court in a guardianship proceeding in Texas of a temporary or permanent guardian of the estate for a ward who is the principal under a statutory durable power of attorney automatically revokes all powers and authority granted to each agent or attorney-in-fact named in the power of attorney, unless the court in the guardianship proceeding enters an order that affirms and states the effectiveness of the power of attorney and confirms the validity of the appointment of the named agent or attorney-in-fact.

SECTION 7. Amends the Estates Code, by adding Subtitle P, Chapter 753, Section 753.001, as follows:

Sec. 753.001. REMOVAL OF ATTORNEY-IN-FACT. (a) Authorizes certain persons to file a petition to remove the currently serving attorney-in-fact named in a durable power of attorney and appoint a successor attorney-in-fact who is named in the durable power of attorney.

(b) Authorizes the removal of an attorney-in-fact on the petition of an interested person. Authorizes a court, after a hearing, to remove an attorney-in-fact, in its discretion, and deny part or all of the attorney-in-fact's compensation under certain conditions, if allowed by the terms of the power of attorney.

(c) Authorizes a cause of action brought under Subsection (a) to be filed in any court with original probate jurisdiction.

SECTION 8. Amends the Estates Code, by adding Subtitle P, Chapter 753, Section 753.002, as follows:

Sec. 753.002. APPOINTMENT OF DESIGNATED SUCCESSOR ATTORNEY-IN-FACT. (a) Prohibits the court, if a person currently serving as an attorney-in-fact under a durable power of attorney is removed, from authorizing the appointment of any successor attorney-in-fact named in the durable power of attorney unless the court enters findings that such person is qualified and capable of properly performing his or her duties to the principal, pursuant to the terms of the durable power of attorney and other applicable law.

(b) Requires the successor attorney-in-fact, within 21 days after entry of an order removing an attorney-in-fact and appointing a successor attorney-in-fact, to provide actual notice of such order to all appropriate third-parties who the attorney-in-fact has reason to believe have relied, or may rely, on the durable power of attorney.