

## **BILL ANALYSIS**

Senate Research Center  
87R16894 EAS-F

H.B. 2183  
By: Moody (Hughes)  
State Affairs  
5/19/2021  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Interested parties suggest that changes to the Durable Power of Attorney Act are needed to clarify that durable powers of attorney are tools for use by individuals, not by entities, and to establish what certain grants of authority by a durable power of attorney entail. Language relating to authority for business operation transactions under the Act also needs to be updated to cover actions with respect to a limited liability company, since when the relevant provisions were enacted limited liability companies were not yet in widespread use. H.B. 2183 makes these clarifications and updates.

H.B. 2183 amends current law relating to durable powers of attorney and the construction of certain powers conferred in those powers of attorney.

### **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 751.002(5), Estates Code, to redefine "principal" for Subtitle P (Durable Powers of Attorney).

SECTION 2. Amends Section 751.00201, Estates Code, to make conforming changes.

SECTION 3. Amends Section 752.001(a), Estates Code, to make conforming changes.

SECTION 4. Amends Section 752.107, Estates Code, as follows:

Sec. 752.107. BUSINESS OPERATION TRANSACTIONS. Provides that, subject to the terms of an agreement or other document governing or relating to an entity or entity ownership interest, to the extent the agent is permitted by law to act for the principal and unless the power of attorney provides otherwise, the language conferring authority with respect to business operating transactions in a statutory durable power of attorney empowers the agent, rather than the attorney in fact, to:

- (1) operate, buy, sell, enlarge, reduce, or terminate an ownership interest, rather than a business interest;
- (2) perform a duty or discharge a liability, or exercise in person or by proxy a right, power, privilege, or option that the principal has, may have, or claims to have;
- (3) enforce the terms of an agreement or other document governing or relating to an entity or entity ownership interest;
- (4) defend, submit to arbitration, settle, or compromise litigation or an action to which the principal is a party because of an entity ownership interest;

(5) exercise in person or by proxy, or enforce by litigation, action, or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of a certificated or uncertificated ownership interest;

(6) defend, submit to alternative dispute resolution, settle, or compromise litigation to which the principal is a party concerning a certificated or uncertificated ownership interest;

(7) with respect to a business or entity owned solely by the principal:

(A) continue, modify, renegotiate, extend, and terminate a contract made by or on behalf of the principal with respect to the business or entity, rather than a contract made before execution of the power of attorney with an individual, legal entity, firm, association, or corporation by or on behalf of the principal with respect to the business;

(B) determine the location of the business's or entity's operation, the nature and extent of the business, the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in the business's or entity's operation, the amount and types of insurance carried, and the method of engaging, compensating, and dealing with the business's or entity's accountants, attorneys, or other agents, rather than business's accountants, attorneys, or other agents and employees;

(C) change the name or form of organization under which the business or entity is operated and enter into an agreement with other persons to take over all or part of the operation of the business or entity, rather than enter into a partnership agreement with other persons or organize a corporation, to take over all or part of the operation of the business; and

(D) demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the business or entity and control and disburse the money in the operation of the business or entity;

(8) put additional capital into a business or entity in which the principal has an interest;

(9) join in a plan of reorganization, consolidation, interest exchange, conversion, or merger of the business or entity;

(10) sell or liquidate a business or entity or all or part of the assets of the business or entity, rather than sell or liquidate a business or part of the business at the time and on the terms that the attorney in fact or agent considers desirable;

(11) establish the value of a business or entity under a buy-out agreement to which the principal is a party;

(12) prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to a business or entity and make related payments, rather than prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to a business that are required by a governmental agency, department, or instrumentality, that the attorney in fact or agent considers desirable, and make related payments; and

(13) pay, compromise, or contest taxes or assessments and perform any other act, rather than any other act that the attorney in fact or agent considers desirable, to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments with respect to a business or entity, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

Deletes existing text providing that the language conferring authority with respect to business operating transactions in a statutory durable power of attorney empowers the attorney in fact or agent, to the extent that an attorney in fact or agent is permitted by law to act for a principal and subject to the terms of a partnership agreement, to perform a duty, discharge a liability, or exercise a right, power, privilege, or option that the principal has, may have, or claims to have under the partnership agreement, whether or not the principal is a general or limited partner; to enforce the terms of the partnership agreement by litigation, action, or otherwise; and to defend, submit to arbitration, settle, or compromise litigation or an action to which the principal is a party because of membership in the partnership. Deletes existing text providing that the language conferring authority with respect to business operating transactions in a statutory durable power of attorney empowers the attorney in fact or agent to exercise in person or by proxy, or enforce by litigation, action, or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of a bond, share, or other similar instrument and defend, submit to arbitration, settle, or compromise a legal proceeding to which the principal is a party because of a bond, share, or similar instrument. Makes conforming and nonsubstantive changes.

SECTION 5. Provides that Section 752.107, Estates Code, as amended by this Act, applies only to a durable power of attorney, including a statutory durable power of attorney, executed on or after the effective date of this Act. Provides that a durable power of attorney, including a statutory durable power of attorney, executed before the effective date of this Act is governed by the law in effect on the date the durable power of attorney was executed, and the former law is continued in effect for that purpose.

SECTION 6. Effective date: September 1, 2021.