

BILL ANALYSIS

C.S.H.B. 2183
By: Moody
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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. C.S.H.B. 2183 makes these clarifications and updates.

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

C.S.H.B. 2183 amends the Estates Code to make the following clarifications to the Durable Power of Attorney Act:

- a principal who signs or directs the signing of a durable power of attorney is an adult individual;
- the consideration of whether an actor is disabled or incapacitated applies to an individual; and
- the actor who may empower an agent through a statutory durable power of attorney is an individual.

C.S.H.B. 2183 expands the applicability of a statutory durable power of attorney, as it relates to authority with respect to business operating transactions, to include powers relating to an entity or entity ownership interest, subject to the terms of an agreement or other document governing or relating to that entity or interest. The bill revises the enumerated powers that may be exercised by the agent with respect to business transactions to reflect this expansion, including as follows:

- by removing language restricting certain powers to actions taken specifically under a partnership agreement;
- with respect to a sole ownership, by specifying that related powers apply to ownership of an entity as well as to ownership of a business; and
- by specifying that the following powers, as revised by the bill, relate to a certificated or uncertificated ownership interest held by the principal:

- the power 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 such an interest; and
- the power to defend, submit to alternative dispute resolution, settle, or compromise litigation to which the principal is a party concerning such an interest.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2183 differs from the original in minor or nonsubstantive ways by conforming to certain bill drafting conventions.