

BILL ANALYSIS

Senate Research Center
83R21483 CLG-F

H.B. 2918
By: Thompson, Senfronia (Rodriguez)
Jurisprudence
5/3/2013
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties note that the power of attorney form promulgated by the National Conference of Commissioners on Uniform State Laws is an "opt-in" form, meaning that if the principal wants to provide for a power to be exercised by a designated agent, the party must affirmatively grant that power. However, the power of attorney form used in Texas is an "opt-out" form, which means that a person signing the form grants the designated agent general power of attorney unless the principal specifically restricts the powers given to the agent. Interested parties contend that Texas is the only state that utilizes an opt-out form for such purposes.

Some consumer groups have suggested that the opt-out form is an anti-consumer approach to power of attorney forms because people are often led to believe that certain parts of their property will be maintained by the agent operating under the power of attorney and do not realize that by signing the power of attorney, they are granting the agent the power not to do so. Observers note that in the past, Texas used an opt-in form, but the form was changed to an opt-out form by subsequent legislation.

H.B. 2918 amends current law relating to statutory durable 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 752.051, Estates Code, as effective January 1, 2014, as follows:

Sec. 752.051. FORM. Sets forth the language for the form known as a "statutory durable power of attorney."

SECTION 2. Amends Section 752.002, Estates Code, as effective January 1, 2014, to provide that a power of attorney is valid with respect to meeting the requirements for a statutory durable power of attorney regardless of certain facts, including that one or more of the categories of optional powers listed in the form prescribed by Section 752.051 are not initialed, rather than are struck.

SECTION 3. Provides that the changes in law made by this Act apply only to a power of attorney executed on or after the effective date of this Act. Provides that a power of attorney executed before the effective date of this Act is governed by the law in effect on the date the power of attorney was executed, and that law is continued in effect for that purpose.

SECTION 4. Effective date: January 1, 2014.