

## **BILL ANALYSIS**

Senate Research Center  
83R19266 EES-F

C.S.S.B. 1752  
By: Uresti  
Health & Human Services  
4/23/2013  
Committee Report (Substituted)

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

When patients suffering from mental illness decompensate, family, friends, and health care providers are often left guessing regarding the wishes of the patient.

There is currently a section of the Civil Practice and Remedies Code that provides for advanced directives for patients with mental illness whereby, while lucid, they can specify their wishes regarding the care they would like to receive should they decompensate. However, mental health advocates, attorneys, and judges are largely unaware of this provision as it does not appear in a section of the code with which they are familiar.

The unfortunate result is that this tool, though on the books, is severely underutilized.

C.S.S.B. 1752 seeks to increase the awareness and utilization of mental health advanced directives by moving the language from the Civil Practice and Remedies Code to the Health and Safety Code.

C.S.S.B. 1752 amends current law relating to declarations for mental health treatment.

### **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. Transfers Chapter 137, Civil Practice and Remedies Code, to Chapter 576, Health and Safety Code, redesignates it as Subchapter C, Chapter 576, Health and Safety Code, and amends it as follows:

#### **SUBCHAPTER C. DECLARATION FOR MENTAL HEALTH TREATMENT**

Sec. 576.051. **DEFINITIONS.** Redesignates existing Section 137.001 as Section 576.051 and redefines "health care provider," "incapacitated," and "mental health treatment" for this section.

Sec. 576.052. **PERSONS WHO MAY EXECUTE DECLARATION FOR MENTAL HEALTH TREATMENT; PERIOD OF VALIDITY.** Redesignates existing Section 137.002 as Section 576.052 and makes no further change to this section.

Sec. 576.053. **EXECUTION AND WITNESSES.** Redesignates existing Section 137.003 as Section 576.053 and makes no further change to this section.

Sec. 576.054. **HEALTH CARE PROVIDER TO ACT IN ACCORDANCE WITH DECLARATION FOR MENTAL HEALTH TREATMENT.** Redesignates existing Section 137.004 as Section 576.054 and makes no further change to this section.

Sec. 576.055. **LIMITATION ON LIABILITY.** Redesignates existing Section 137.005 as Section 576.055 and makes no further change to this section.

Sec. 576.056. DISCRIMINATION RELATING TO EXECUTION OF DECLARATION FOR MENTAL HEALTH TREATMENT. Redesignates existing Section 137.006 as Section 576.056 and makes no further change to this section.

Sec. 576.057. USE AND EFFECT OF DECLARATION FOR MENTAL HEALTH TREATMENT. Redesignates existing Section 137.007 as Section 576.057 and makes no further change to this section.

Sec. 576.058. DISREGARD OF DECLARATION FOR MENTAL HEALTH TREATMENT. Redesignates existing Section 137.008 as Section 576.058 and makes nonsubstantive changes.

Sec. 576.059. CONFLICTING OR CONTRARY PROVISIONS. Redesignates existing Section 137.009 as Section 576.059. (a) Provides that mental health treatment instructions contained in a declaration executed in accordance with this chapter (Rights of Patients) supersede any contrary or conflicting instructions given by:

(1) a durable power of attorney under Subchapter D (Medical Power of Attorney), Chapter 166 (Advance Directives), rather than Chapter 135 (Durable Power of Attorney for Health Care (redesignated)); or

(2) Makes no change to this subdivision.

(b) Makes a nonsubstantive change.

Sec. 576.060. REVOCATION. Redesignates existing Section 137.010 as Section 576.060 and makes no further change to this section.

Sec. 576.061. FORM OF DECLARATION FOR MENTAL HEALTH TREATMENT. Redesignates existing Section 137.011 as Section 576.061 and makes no further change to this section.

SECTION 2. (a) Amends Section 576.051(6), Health and Safety Code, as effective September 1, 2013, to redefine "incapacitated" for this section.

(b) Effective date, this section: January 1, 2014.

SECTION 3. (a) Amends Section 576.059(a), Health and Safety Code, as effective September 1, 2013, to provide that mental health treatment instructions contained in a declaration executed in accordance with this chapter supersede any contrary or conflicting instructions given by a guardian appointed under Title 3 (Guardianship and Related Procedures), Estates Code, rather than Chapter XIII (Guardianship), Texas Probate Code, after the execution of the declaration.

(b) Effective date, this section: January 1, 2014.

SECTION 4. Effective date, except as otherwise provided by this Act: September 1, 2013.