

## **BILL ANALYSIS**

S.B. 41  
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Judiciary & Civil Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties raise concerns that a person who has executed a power of attorney and has subsequently become incapacitated is vulnerable to potential financial exploitation because the person may not suspect the need for an accounting from the attorney in fact or agent named in the power of attorney or may lack the ability to request it. S.B. 41 seeks to mitigate such exploitation by authorizing certain other persons to demand such an accounting.

### **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**

S.B. 41 amends the Estates Code to authorize the following persons to demand an accounting under the Durable Power of Attorney Act by the attorney in fact or agent if the principal is unable to demand an accounting because of the principal's mental or physical condition: a guardian or spouse of the principal; a person named as a successor attorney in fact or agent in the durable power of attorney; an agent of the principal authorized to make health care decisions on the principal's behalf by a medical power of attorney; an attorney who represents the principal; or any other family member of the principal who the court, for good cause shown, finds has standing to demand an accounting. The bill authorizes such persons to file suit to compel the attorney in fact or agent to deliver an accounting or the assets if the attorney in fact or agent fails or refuses to deliver the accounting to such person within 60 days of a demand for the accounting or a longer or shorter period as demanded by the person or ordered by a court. The bill revises the form for a statutory durable power of attorney to reflect the bill's provisions.

S.B. 41 makes the bill's provisions relating to a demand for an accounting and to the effect of a failure to comply with such a demand applicable to a durable power of attorney, including a statutory durable power of attorney, executed before, on, or after the bill's effective date.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.