

- SUBJECT:** Modifying laws on power of attorney, supported decision-making
- COMMITTEE:** Judiciary and Civil Jurisprudence — favorable, without amendment
- VOTE:** 9 ayes — Smithee, Farrar, Gutierrez, Hernandez, Laubenberg, Murr, Neave, Rinaldi, Schofield
- 0 nays
- SENATE VOTE:** On final passage, April 5 — 30-0
- WITNESSES:** No public hearing
- BACKGROUND:** Under the Supported Decision-Making Act (Estates Code, ch. 1357), an adult with a disability may voluntarily enter into a supported decision-making agreement with another adult, called the supporter. Under an agreement, the adult with a disability may authorize the supporter to do any of the following:
- provide supported decision-making, including assistance in understanding the options, responsibilities, and consequences of the adult's life decisions, without making those decisions on behalf of the adult with a disability;
  - assist the adult in accessing, collecting, obtaining, and understanding information that is relevant to a given life decision; and
  - assist the adult in communicating the adult's decisions to appropriate persons.

Some observers suggest making modifications to laws governing arrangements used to support people who are incapacitated or have a disability, such as by addressing situations where two people may have conflicting authority to make financial decisions on behalf of a person with diminished capacity and clarifying the role of supporters in supported decision-making agreements.

DIGEST: SB 39 would revise certain laws related to powers of attorney, supported decision-making agreements, and guardianships.

**Revocation of a power of attorney.** SB 39 would provide that if a court appointed a permanent or temporary guardian of the estate after a principal executed a durable power of attorney, the authority of the attorney in fact or agent named in the power of attorney would be automatically revoked or suspended, respectively. However, in the case of a temporary guardian appointment, if the court entered an order that affirmed the power of attorney and confirmed the validity of the appointment of the attorney in fact or agent, the power of attorney would not be suspended.

SB 39 would create a procedure for removing an attorney in fact and appointing a successor. The bill would identify who could file a petition for removal and would authorize a probate court to enter an order removing the attorney in fact, authorizing the appointment of a successor, and addressing certain compensation issues. The court could enter such an order if the attorney in fact had breached his or her fiduciary duties, materially violated the terms of the durable power of attorney, was incapacitated, or failed to make a required accounting.

The above provisions would apply to a durable power of attorney executed before, on, or after the effective date of the bill.

The bill also would amend the statutory durable power of attorney form to account for the possibility of an attorney in fact being removed by court order. Changes would apply to a form executed on or after the effective date of the bill.

**Supported decision-making agreement.** SB 39 would define the fiduciary duties a supporter owed an adult with a disability under a supported decision-making agreement. These duties would apply regardless of whether the statutory form was used. The bill would provide that the relationship was one of trust and confidence and did not undermine the decision-making authority of the adult. The supported

decision-making agreement would be terminated if a temporary or permanent guardian of the person or estate was appointed for the adult.

The bill would allow the adult to designate an alternative supporter in certain circumstances to avoid potential conflicts of interest. The bill would apply to a supported decision-making agreement entered into before, on, or after the bill's effective date.

The bill would amend the statutory supported decision-making agreement form to specify certain duties the supporter owes to the adult, namely to:

- act in good faith;
- act within the authority granted in the agreement;
- act loyally and without self-interest; and
- to avoid conflicts of interest.

The bill would apply to the statutory supported decision-making form entered into on or after the bill's effective date.

**Intervention in guardianship proceeding.** Any person entitled to notice of a guardianship application, including the children or sibling of a proposed ward, would not need to file a motion to intervene and participate in a guardianship proceeding. This provision would apply to a guardianship proceeding pending or commenced on or after the bill's effective date.

**Omitting addresses.** The bill would expand who may omit their address from an application to appoint a guardian from only those persons who are under certain protective orders to include also those persons who were at one time under a protective order. The bill would apply to a guardianship application filed on or after the bill's effective date.

The bill would take effect September 1, 2017.