

BILL ANALYSIS

Senate Research Center

H.B. 1883
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Jurisprudence
5/11/2001
Engrossed

This analysis is based on the House Committee Report, which is the most recent version available to the Senate Research Center.

BACKGROUND AND PURPOSE

Adult Protective Services has indicated that reports of elderly abuse, neglect, and exploitation have risen by 267 percent in the last decade. As a result, the Silver-Haired Legislature this past year recommended amending the Durable Power of Attorney Act to institute a waiting period for certain transactions involving an elderly principal and to require an attorney to file a bond, obtain court approval, or both, before completing such a transaction. H.B. 1883 institutes a three-day waiting period for certain transactions involving an elderly principal and requires an attorney in fact or agent to file a bond, obtain court approval, or both, before completing such a transaction.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

H.B. 1883 amends the Texas Probate Code to prohibit an attorney in fact or agent (attorney) acting under a durable power of attorney for a principal who is 55 years of age or older on the date of the transaction from selling, leasing, or otherwise transferring the principal's interest in property with a reasonable market value of \$15,000 or more but less than \$50,000 unless a court in the county in which the principal resides approves the transaction or the attorney files, with the clerk of a court in the county in which the principal resides, a surety bond in the amount of \$50,000 payable to the court. If the property's market value is \$50,000 or more, the court must approve the transaction for an attorney to sell, lease, or transfer the principal's interest. The court is authorized to require an independent appraisal of the property to establish the property's value. The bill authorizes a court in the county in which the principal resides, on the motion of the court or of a person interested in the principal's welfare, after notice and hearing, to revoke a durable power of attorney if the court determines by a preponderance of the evidence that revocation of the instrument would be in the best interest of the principal or that the attorney violated the above provisions. Such a transaction does not take effect until midnight of the third business day after the date on which the attorney signs the agreement.

The bill authorizes a person who executes a durable power of attorney that confers authority with respect to the person's property to empower the attorney designated under the instrument to act with respect to all or part of the property without the requirement of a bond or court approval if the durable power of attorney contains a clear statement to that effect.

Effective date: September 1, 2001.