

COMMITTEE AMENDMENT ANALYSIS

Bill: Senate Bill 621

Printer's No.: 597

Amendment No.: A06935

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Summary: The amendment incorporates recommendations relating to powers of attorney made by the Advisory Committee on Decedents' Estates Laws in its March 2010 report "Powers of Attorney: Proposed Amendments to the Probate, Estates and Fiduciaries Code." In addition to the changes to Chapter 56 of the Probate Code, relating to powers of attorney, there are amendments relating to the jurisdiction of the orphans' court, health care powers of attorney, and trusts.

Section 712 relates to the exercise of jurisdiction by the orphans' court. A provision is added stating that if section 3546, relating to the determination of title to a decedent's interest in real estate, applies, the procedure in section 3546 shall apply; otherwise, for actions to quiet title, section 712 applies. Section 3546 is amended to make clear that the procedure in sections 3546 applies if there is a conflict with certain sections of The Fiscal Code.

Section 5456 is amended to make clear that a health care agent has the power to authorize admission to medical, nursing, residential or a similar facility, or to enter into agreements for the principal's care. Section 5460(a), relating to the accountability of a health care agent, provides that a court, in its guardianship order and determination of a person's incapacity, shall determine the extent to which the health care agent's authority to act remains in effect.

Section 5602 provides for the form of a power of attorney. The specific powers, "to operate a business entity" and "to provide for personal and family maintenance" are added. These powers are further explained in section 5603. Section 5604, relating to a durable power of attorney, provides that a court, in its guardianship order and determination of a person's incapacity, shall determine whether and the extent to which the incapacitated person's durable power of attorney remains in effect.

Section 5610, relating to the agent's account, authorizes the court to assess the costs of the accounting proceeding as it deems appropriate. Section 5612 is added to govern the jurisdiction and venue for any matter pertaining to the exercise of a power by an agent acting under a power of attorney.

Regarding trusts, sections 7780.3 and 7785 are amended so that the trustee may rely upon the current beneficiary's nomination of another person to receive the required notices until the trustee receives a written rescission or a written declination.