
DIGEST

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HB No. 1133

Abstract: Provides protection of the elderly from abuses by a mandatary by authorizing an individual with an interest to request the court to review the acts of the mandatary and to grant appropriate relief.

Proposed law (R.S. 9:3851) authorizes certain individuals with an interest in the principal's welfare to file an action on the principal's behalf requesting the court to review the mandate's acts and grant appropriate relief. It also specifies the required contents of the petition, and service and venue requirements.

Proposed law (R.S. 9:3852) provides that if the principal files a motion to dismiss the action, the principal shall testify in person or in certain cases by remote technology or deposition, and also provides that the court shall grant the motion to dismiss if the principal is able to comprehend generally the nature and consequences of the mandatary's act and is not subject to fraud, duress, or undue influence.

Proposed law (R.S. 9:3853) provides for substitution of the plaintiff by a curator or the principal's legal successor upon the principal's interdiction or death.

Proposed law (R.S. 9:3854) provides that if the court finds that the mandatary has violated a duty, it may grant any relief to which the principal is entitled and may also enjoin a mandatary from exercising some or all of the powers granted under the mandate. It also authorizes the court to take certain actions while the action is pending, including discovery, disclosure of information by financial institutions and healthcare providers, an accounting by a mandatary, temporarily enjoining a mandatary from exercising all or some of the powers granted by the mandate and appointing someone to temporarily exercise some or all of the powers granted by the mandate.

Proposed law lists certain factors for the court to consider in reaching its decision, including the principal's express wishes, fraud, duress, or undue influence, and the principal's ability to comprehend generally the nature and consequences of the mandatary's acts. It further specifies that a mandatary's unauthorized acts constitute irreparable injury for purposes of injunctive relief.

Proposed law (R.S. 9:3855) provides that the court may award costs and attorney fees against any party but not when the petition is dismissed on the merits.

Proposed law (R.S. 9:3856) provides that proposed law is also applicable to a procurator and representative but is not applicable when the mandate is irrevocable by law.

Present law (C.C. Art. 3029) provides that the mandate and the authority under the mandate terminate upon the mandate's notice of resignation to the principal.

Proposed law retains present law and adds that when the mandatary has reasonable grounds to believe that the mandatary lacks capacity, the termination is effective upon notice to other specified individuals.

Present law (R.S. 6:311.1) provides that a federally insured financial institution may rely on an original or certified copy of a power of attorney that is sufficient to authorize the named agent to transact business unless the institution receives written notice of the power of attorney's revocation.

Present law specifies that written notice is a writing indicating revocation of the power of attorney and that it has been received upon receipt by an institution's officer. It also relieves the institution of liability for transactions occurring prior to the receipt of notice.

Proposed law retains present law, provides for applicability to "procuration" and "mandate", expands "written notice" to include a court order, and expands applicability to notice of modification and termination in addition to revocation.

Present law (R.S. 6:333(B)(intro. para.)) provides for the restrictions on a bank's disclosure of a customer's records and exceptions to those restrictions.

Proposed law retains present law and adds as an additional exception, R.S. 3854(B)(2), that authorizes the court to order disclosure of financial records when it finds that a mandatary violated a duty under a contract of mandate.

(Amends C.C. Art. 3029, R.S. 6:311.1 and 333(B)(intro. para.); Adds R.S. 9:3851-3856)