

BILL ANALYSIS

S.B. 617
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties assert the need to update provisions of law relating to trusts to reflect recent developments in relevant case law and to clarify, correct, and simplify those provisions. The purpose of S.B. 617 is to provide for this update.

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. 617 amends the Property Code to prohibit the terms of a trust from limiting the power of a court to reform a trust in the interest of justice. The bill clarifies that, for purposes of a provision prohibiting a beneficiary of a spendthrift trust from being considered a settlor merely because of a lapse, waiver, or release of the beneficiary's right to withdraw a part of the trust property to the extent that the value of the property affected by the lapse, waiver, or release in any calendar year does not exceed the greater of two amounts specified in federal law, the amount specified by federal law relating to an exclusion of certain gifts from taxable gifts in a given calendar year is with respect to the contribution to the trust by each donor. The bill establishes that statutory provisions relating to a forfeiture clause in a trust are not intended to and do not repeal any law.

S.B. 617 adds to the conditions under which judicial modification or termination of a trust is authorized the condition that the court order is necessary or appropriate to qualify a distributee for governmental benefits and is not contrary to the settlor's intentions. The bill authorizes a court, on the petition of a trustee or a beneficiary, to order that the terms of a trust be reformed if reformation of administrative, nondispositive terms of the trust is necessary or appropriate to prevent waste or impairment of the trust's administration, if reformation is necessary or appropriate to achieve the settlor's tax objectives or to qualify a distributee for governmental benefits and is not contrary to the settlor's intentions, or if reformation is necessary to correct a scrivener's error in the governing document, even if unambiguous, to conform the terms to the settlor's intent, but only if such intent is established by clear and convincing evidence. The bill establishes that such authorization is not intended to state the exclusive basis for reformation of trusts and that the bases for reformation of trusts in equity or common law are not affected by the authorization. The bill authorizes the court to direct that such an order has retroactive effect.

S.B. 617 establishes that an authorized trustee who makes certain distributions to further trusts or a trustee acting in a fiduciary capacity who makes certain disclaimers relating to interests in

property is not required to give additional written notice relating to the charitable impact of the distribution or disclaimer, respectively, to the attorney general if the attorney general waives that requirement in writing. The bill establishes, for purposes of statutory provisions exempting such trustees from the requirement to provide notice of certain distributions to further trusts or notice of certain disclaimers relating to interests in property, as applicable, to a beneficiary who waives the notice requirement, that a beneficiary is considered to have so waived if the beneficiary's court-appointed guardian or conservator, or parent if the beneficiary is a minor for whom no guardian or conservator has been appointed, waives the requirement that such notice be given. The bill establishes that statutory provisions relating to court-ordered distributions to further trusts do not limit a beneficiary's right to bring an action against a trustee for a breach of trust. The bill removes from among the exceptions to an authorized trustee's power to distribute the principal of a trust to a second trust the exception for materially impairing the rights of any beneficiary of the trust.

S.B. 617 authorizes a trustee to grant an agent powers with respect to property of a trust to act for the trustee in any lawful manner for purposes of real property transactions and authorizes a trustee so acting to delegate any or all of certain specified duties and powers. The bill provides for the form, termination, and good-faith acceptance of such a delegation. The bill authorizes a trustee to so delegate if the governing instrument does not affirmatively permit the trustee to hire agents or expressly prohibit the trustee from hiring agents. The bill makes a trustee who so delegates a power liable to the beneficiaries or to the trust for an action of the agent to whom the power was delegated.

S.B. 617 establishes that the Uniform Principal and Income Act and the Uniform Prudent Investor Act do not apply to any institutional fund subject to the Uniform Prudent Management of Institutional Funds Act.

S.B. 617 applies to a trust existing on or created on or after the bill's effective date, except as otherwise expressly provided by a trust or a will creating the trust and, for a trust existing on the bill's effective date that was created before that date, the bill applies only to an act or omission relating to the trust that occurs on or after the bill's effective date.

EFFECTIVE DATE

September 1, 2017.