

- SUBJECT:** District court jurisdiction over suits concerning trusts
- COMMITTEE:** Judiciary — committee substitute recommended.
- VOTE:** 7 ayes — Hartnett, Hopson, Alonzo, R. Cook, Gonzales, Goolsby, Krusee
0 nays
2 absent — Homer, Hughes
- WITNESSES:** For — Glen Karisch, Texas Academy of Probate Lawyers. (*Registered, but did not testify:* Guy Herman, Texas Statutory Probate Judges and Travis County Probate Court #1; William Pargaman, Texas Academy of Probate Lawyers)

Against — None
- BACKGROUND:** Property Code, sec. 115.001(a) governs the jurisdiction of district courts over trusts. It grants these courts jurisdiction over all proceedings concerning trusts and includes a list specifying the types of trust-related proceedings over which these courts have jurisdiction.

Property Code, sec. 115.001(d) states that the jurisdiction of district courts over proceedings concerning trusts is exclusive except for the jurisdiction conferred by law on statutory probate courts and courts that properly have created a trust. Probate Code, sec. 5(e) grants statutory probate courts concurrent jurisdiction with district courts "in all actions by or against a trustee."

In *In re Guardianship of Gibbs* in 2006, the Second Court of Appeals in Fort Worth cited several recent state appellate opinions in determining that the jurisdiction of statutory probate courts over trust matters is concurrent with that of district courts and that district courts' jurisdiction over actions concerning trusts is limited to the list contained in sec. 115.001(a).
- DIGEST:** CSHB 334 would amend Property Code, sec. 115.001(a) to state that the list of enumerated proceedings concerning trusts over which a district court has jurisdiction is not exhaustive. The bill would grant a district

court exclusive and original jurisdiction over any proceeding concerning a trust regardless of whether the proceeding was listed in sec. 115.001. CSHB 334 would grant district courts original and exclusive jurisdiction over all proceedings by or against a trustee, with certain exceptions.

The bill also would amend section 115.001(d) to grant justice of the peace courts and small claims courts jurisdiction over trust proceedings as conferred on those courts by law.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 334 would restore the traditional understanding of sec. 115.001 of the Property Code, which was that the enumerated list of proceedings concerning trusts over which district courts have jurisdiction was not exhaustive. In recent cases, several appeals courts have ruled that the list is exhaustive, so district courts, and therefore also statutory probate courts, which have concurrent jurisdiction, are not able to hear proceedings concerning trusts unless such actions are explicitly allowed by sec. 115.001(a).

By clarifying explicitly that the list of proceedings concerning trusts that grant jurisdiction to a district court is not exhaustive, CSHB 334 unambiguously would grant district courts jurisdiction over all matters concerning trusts and trustees. Clarifying the jurisdiction of district courts over trust matters also would apply to statutory probate courts, which have concurrent jurisdiction in this area of the law. Restoring this understanding would ensure that an appropriate court with jurisdiction to hear trust and trustee issues always was available.

CSHB 334 also would create a more efficient disposition of trust cases by allowing litigants to direct their cases to the most appropriate court. Under current law, most cases concerning trusts are filed in a district or statutory probate court. This means that cases involving small dollar amounts are sent to these courts rather than to a small claims court. Also, as sec. 115.001 of the Property Code now stands, an eviction case involving a trust or an estate as a party has to be filed in a probate or district court rather than in a justice of the peace (JP) court, which is the traditional venue for evictions.

Current law also directs some trust and trustee cases away from statutory probate courts because they do not involve one of the specified proceedings listed in sec. 115.001. As a result, other courts have to hear trust issues that more efficiently are dealt with by the expertise of probate courts.

District and probate courts already hear trust cases and would not be overburdened by additional cases due to the clarification made by this bill. Further, JP courts would not be overburdened by arcane issues of trust law. Instead, they would be dealing with normal small claims issues in which a trust happened to be a party. This change also would not cause a significant increase in the case load of JP courts as evictions involving trusts are rare.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The original version of HB 334 would have deleted the list specifying the types of trust-related proceedings over which district courts have jurisdiction. The committee substitute retained the specified list of trust proceedings and added a section stating that the list was not exhaustive. The substitute also added justice courts and small claims courts to the exceptions to exclusive district court jurisdiction.