

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 564
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Jurisprudence
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

During the interim between legislative sessions, it is the practice of the Real Estate, Probate, and Trust Law Section of the State Bar of Texas to recommend improvements to the Texas Trust Code for adoption by the next legislature.

C.S.H.B. 564 enacts the changes to statutory law recommended by the State Bar of Texas, including a revision of statutory duty to keep beneficiaries informed, clarification on when a trust is considered "self-settled," a reversal of the default rule requiring bonds of trustees, and an authorization of a custodian to create a trust that would last beyond a child's 21st birthday provided that certain requirements are met.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 187.005(b), Finance Code, as follows:

(b) Authorizes a trust institution and its affected client, if a trust or its subject matter bears a reasonable relation to this state and also to another state or foreign county, to agree that the law of this state or of the other state or county governs their rights and duties, including the law thereof where the affected client resides or where the trust institution has its principal office. Deletes existing text providing an exception to this subsection as provided in Subsection (c).

SECTION 2. Amends Section 111.0035, Property Code, by amending Subsection (b) and adding Subsections (c), as follows:

(b) Provides that the terms of a trust prevail over any provision of this subtitle, except the terms are prohibited from placing certain limitations. Deletes from the prohibited limitations the duties and liabilities of and restrictions placed on a corporate trustee under Section 113.052 (Loan of Trust Funds to Trustee) or 113.053 (Purchase or Sale of Trustee Property by Trustee); and a trust's duty under Section 113.060 (Informing Beneficiaries) to certain beneficiaries who are 25 years of age or older.

(c) Prohibits the terms of a trust from limiting any common-law duty to keep a beneficiary of an irrevocable trust who is 25 years of age or older informed at any time during which the beneficiary is entitled or permitted to receive distributions from the trust or would receive a distribution from the trust if the trust were terminated.

SECTION 3. Amends Section 111.004, Property Code, by amending Subdivisions (10) and (18), to redefine "person" and "trustee."

SECTION 4. Amends Section 112.035(d), Property Code, as follows:

(d) Provides that if the settlor is also a beneficiary of the trust, a provision restraining the voluntary or involuntary transfer of the settlor's beneficial interest does not prevent the settlor's creditors from satisfying claims from the settlor's interest in the trust estate.

Provides that a settlor is not considered a beneficiary of a trust solely because a trustee who is not the settlor is authorized under the trust instrument to pay or reimburse the settlor for, or pay directly to the taxing authorities, any tax on trust income or principal that is payable by the settlor under the law imposing the tax.

SECTION 5. Amends Subchapter C, Chapter 112, Property Code, by adding Section 112.059, as follows:

Sec. 112.059. TERMINATION OF UNECONOMIC TRUST. (a) Authorizes the trustee of a trust consisting of trust property having a total value of less than \$50,000, after notice to certain beneficiaries, to terminate the trust if the trustee concludes after considering the purpose of the trust and the nature of the trust assets that the value of the trust property is insufficient to justify the continued cost of administration.

(b) Requires the trustee, on termination of a trust under this section, to distribute the trust property in a manner consistent with the purpose of that trust.

(c) Prohibits a trustee from exercising a power described by Subsection (a) if the trustee's possession of the power would cause the assets of the trust to be included in the trustee's estate for federal estate tax purposes.

(d) Provides that this section does not apply to an easement for conservation or preservation.

SECTION 6. Amends Section 113.058(b) and (d), Property Code, as follows:

(b) Requires a noncorporate trustee to give a bond payable to the trust estate of the trust, the registry of the court, or to each person interested in the trust and conditioned on the faithful performance of the trustee's duties unless the instrument creating the trust provides otherwise, rather than unless a court orders otherwise or the instrument creating the trust provides otherwise.

(d) Authorizes any interested person to bring certain actions, including to require a bond. Authorizes a court, notwithstanding Subsection (b), for cause shown, to require a bond even if the instrument creating the trust provides otherwise.

SECTION 7. Amends Section 113.085(a), Property Code, to make a nonsubstantive change.

SECTION 8. Amends Section 114.005(a), Property Code, to make conforming changes.

SECTION 9. Amends Section 114.081, Property Code, as follows:

Sec. 114.081. New heading: PROTECTION OF PERSON DEALING WITH TRUSTEE.

(a) Provides that a person who deals with a trustee in good faith and for fair value actually received by the trust is not liable to the trustee or the beneficiaries of the trust if the trustee has exceeded his or her authority in dealing with the person. Deletes existing text providing that a person who actually and in good faith pays to a trustee money that the trustee is authorized to receive is not responsible for the proper application of the money according to the trust.

(b) Provides that a person other than a beneficiary is not required to inquire into the extent of the trustee's powers or the propriety of the exercise of those powers if the person takes certain actions.

(c) Provides that a trustee who in good faith delivers money or other assets to a trustee is not required to ensure the proper application of the money or other assets.

(d) Provides that a person other than a beneficiary who in good faith assists or deals with a former trustee, without knowledge that the trusteeship has terminated, is protected from liability as if the former trustee were still a trustee.

(e) Provides that comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section. Deletes existing text prohibiting a right or title derived from the trustee in consideration of the monetary payment from being imposed or questioned because of the trustee's misapplication of the money.

SECTION 10. Amends Chapter 114, Property Code, by adding Section 114.086, as follows:

Sec. 114.086. CERTIFICATION OF TRUST. (a) Authorizes a trustee, as an alternative to providing a copy of the trust instrument to a person other than a beneficiary, to provide to the person a certification of trust containing certain information.

(b) Authorizes a certification of trust to be signed or otherwise authenticated by any trustee.

(c) Requires a certification of trust to state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification to be incorrect.

(d) Provides that a certification of trust is not required to contain dispositive terms of a trust and is authorized to contain information in addition to the information described in Subsection (a).

(e) Authorizes a recipient of a certification of trust to require the trustee to furnish copies of the excerpts from the original trust instrument and later amendments to the trust instrument that designate the trustee and confer on the trustee the power to act in the pending transaction.

(f) Provides that a person who acts in reliance on a certification of trust without knowledge that the representations contained in the certification are incorrect is not liable to any person for the action and is authorized to assume without injury the existence of the facts contained in the certification.

(g) Provides that if a person has actual knowledge that the trustee is acting outside the scope of the trust, and that knowledge was acquired by the person before entering into the transaction with the trustee or made in a binding commitment to enter into the transaction, the transaction is not enforceable against the trust.

(h) Authorizes a person who in good faith enters into a transaction relying on a certification of trust to enforce the transaction against the trust property as if the representations contained in the certification are correct. Provides that this section does not create an implication that a person is liable for acting in reliance on a certification of trust that fails to contain all the information required. Provides that a person's failure to demand a certification of trust does not affect the protection provided by Section 114.081 or does not create an inference as to whether the person has acted in good faith.

(i) Provides that a person making a demand for the trust instrument in addition to a certification of trust or excerpts as described by Subsection (e) is liable for damages if the court determines that the person did not act in good faith in making the demand.

(j) Provides that this section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

(k) Provides that this section does not limit the rights of a beneficiary of the trust against the trustee.

SECTION 11. Amends Section 115.001, Property Code, by amending Subsections (a) and (d) and adding Subsection (a-1), as follows:

(a) Provides that a district court, except as provided by Subsection (d) of this section, has original and exclusive jurisdiction over all proceedings by or against a trustee and all proceedings concerning trusts, including certain proceedings.

(a-1) Provides that the list of proceedings described in Subsection (a) over which a district court has exclusive and original jurisdiction is not exhaustive. Provides that a district court has exclusive and original jurisdiction over a proceeding by or against a trustee or proceeding concerning a trust under Subsection (a) whether or not the proceeding is listed in Subsection (a).

(d) Provides that the jurisdiction of the district court is exclusive except for jurisdiction conferred by law on certain courts, including a justice court under Chapter 27 (Justice Courts) or a small claims court under Chapter 28 (Small Claims Courts), Government Code.

SECTION 12. Amends Sections 116.002(9) and (13), Property Code, to redefine "person" and "trustee."

SECTION 13. Amends Sections 116.172(c) and (e), Property Code, as follows:

(c) Requires a trustee, under certain conditions, to allocate to income the part of the payment that does not exceed an amount equal to four percent of the fair market value of the future payment asset on the date specified in Subsection (d); less the total amount that the trustee has allocated to income for all previous payments received from the future payment asset during the same accounting period in which the payment is received, rather than made.

(e) Requires the amount determined under Subsection (c)(1), for each accounting period, rather than year, a payment is received, to be prorated on a daily basis unless the determination of the fair market value of a future payment asset is made under Subsection (d)(2) and is for an accounting period of 365 days or more.

SECTION 14. Amends Section 116.174(a), Property Code, to require a trustee, to the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant this section (Mineral, Water, and Other Natural Resources), to allocate those receipts in a certain manner, including a receipts required to be allocated to income the receipt is received as delay rental or annual rent on a lease, rather than as nominal delay rental or nominal annual rent on a lease. Makes conforming changes.

SECTION 15. Amends Section 123.003(a), Property Code, to require any party initiating a proceeding involving charitable trust to give notice of the proceeding to the attorney general in a certain manner and within a certain timeframe and provides that this subsection does not apply to certain proceedings, including a proceeding that is not subject to Section 83, Texas Probate Code.

SECTION 16. Amends Section 141.002, Property Code, by amending Subdivision (2) and adding Subdivision (11-a), to redefine "benefit plan" and define "qualified minor's trust."

SECTION 17. Amends Section 141.004(a), Property Code, to set forth the procedural requirements for a person to revocably nominate a custodian to receive the property for a minor beneficiary, including the authorization that such nomination be made in a will, trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights, including the right to receive payments form a benefit plan.

SECTION 18. Amends Sections 141.008(a) and (c), Property Code, as follows:

(a) Authorizes a person, subject to Subsections (b) and (c), who is not subject to certain sections of law and who holds property, including a benefit plan, of a minor who does not have a guardian, or who owes a liquidated debt to a minor who does not have a guardian, to make an irrevocable transfer to a custodian for the benefit of the minor.

(c) Authorizes a transfer under this section, if a custodian has not been nominated under Section 141.004, or all persons nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, to be made to an adult member of the minor's family or to a trust company unless the property exceeds \$15,000, rather than \$10,000, in value.

SECTION 19. Amends Section 141.015, Property Code, by adding Subsection (b-1), to authorize a custodian, without a court order, to transfer all or part of the custodial property to a qualified minor's trust and to provide that such a transfer of property terminates the custodianship to the extent of the property transferred.

SECTION 20. Amends Section 142.005, Property Code, by amending Subsections (a), (b), and (g) and adding Subsections (k) through (o), as follows:

(a) Authorizes any court of record with jurisdiction to hear a suit involving a beneficiary, on application and on finding that the creation of a trust would be in the best interests of the beneficiary, rather than minor or incapacitated person, to enter a decree in the record directing the clerk to deliver any funds accruing to the beneficiary under the judgment to a financial institution, rather than to a trust company or a state or national bank having trust powers in this state, except as provided by Subsections (m) and (n). Deletes existing text authorizing a court, in a suit in which a minor who has no legal guardian or an incapacitated person is represented by a next friend or an appointed guardian, under certain circumstances to enter a decree in the record directing the clerk to deliver certain funds to a trust company or a state or national bank having trust powers in this state.

(b) Requires the decree to provide for the creation of a trust for the management of the funds for the benefit of the beneficiary and for terms, conditions, and limitations of the trust, as determined by the court, that are not in conflict with certain provisions, including provisions to authorize the trustee to conclusively presume that medicine or treatments approved by a licensed physician are appropriate for the health of beneficiary; to require a trustee that is a financial institution to serve without bond; and to require the first page of the trust instrument to contain a specified notice. Makes conforming changes.

(g) Authorizes the court, notwithstanding any other provision of this chapter and if the court finds that it would be in the best interests of the beneficiary for whom a trust is established, to omit or modify any terms required by Subsection (b) if the omission or modification is necessary or appropriate to allow the beneficiary to be eligible to receive public benefits or assistance under a state or federal program. Provides that this section (Trust for Property) does not require a distribution from a trust if the distribution is discretionary under the terms of the trust. Deletes existing text authorizing the trust to contain provisions determined by the court to be necessary to establish a special needs trust. Makes conforming changes.

(k) Authorizes the court, in addition to ordering other appropriate remedies and grounds, to appoint a guardian ad litem to investigate and report to the court whether the trustee should be removed for failing or refusing to make distributions for the health, education, support, or maintenance of the beneficiary required under the terms of the trust if the court is petitioned by certain persons.

(l) Requires a person listed in Subsection (k) to be reimbursed from the trust for reasonable attorney's fees, not to exceed \$1,000, incurred in bringing the petition.

(m) Authorizes the court, if the value of the trust's principal is \$50,000 or less, to appoint a person other than a financial institution to serve as trustee of the trust only if the court finds that no financial institution is willing to serve as trustee and the appointment is in the beneficiary's best interests.

(n) Authorizes the court, if the value of the trust's principal is more than \$50,000, to appoint a person other than a financial institution to serve as trustee of the trust only if the

court finds that no financial institution is willing to serve as trustee and that the appointment is in the beneficiary's best interests.

(o) Defines "beneficiary" and "financial institution."

SECTION 21. Repealer: Section 187.005(c) (relating to a trust institution subject to Sections 113.052 and 113.053, Property Code), Finance Code.

Repealer: Section 113.060 (Informing Beneficiaries), Property Code.

SECTION 22. Provides that the enactment of Section 113.060, Property Code, by Chapter 148, Acts of the 79th Legislature, Regular Session, 2005, was not intended to repeal any common-law duty to keep a beneficiary of a trust informed, and the repeal by this Act of Section 113.060, Property Code, does not repeal any common-law duty to keep a beneficiary informed. Provides that the common-law duty to keep a beneficiary informed that existed immediately before January 1, 2006, is continued in effect.

SECTION 23. Makes application of this Act prospective, except as otherwise provided by the terms of a trust.

SECTION 24. (a) Effective date: September 1, 2007, except as provided by Subsection (b).

(b) Effective date: upon passage or September 1, 2007 for Section 111.0035, Property Code, as amended by this Act, and the repeal by this Act of Section 113.060, Property Code.