

## BILL ANALYSIS

Senate Research Center

S.B. 666  
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Jurisprudence  
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Enrolled

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The "orphan trust" or charitable foundations set up by donors who have no heirs or other family that they wish to carry out their wills, are often entrusted to lawyers or local banks who will keep the money invested in the local community. However, when an attorney retires or local banks are sold to multinational financial institutions, the foundations are no longer run by the people and banks familiar with the donors' specific wishes. The corporate trustees have wide latitude to change the way the trust operates, and to decide which charities will receive grants and thus the danger of distorting or altogether ignoring the donor's intent is increased with each transaction. Banks give fewer and smaller charitable gifts from the trusts they manage, all the while increasing the foundation's assets, and increasing administrative fees that the banks charge to foundations for the services they provide. Additionally, banks as trustees will often provide grants which serve their own interests, but that do not honor the donor's favorite causes. Examples of this practice have been exposed in courts and in the national press. The consequences of charitable funds being moved and used as assets and revenue streams for large financial institutions is that communities that stood to benefit from the philanthropy of their citizens are denied the good works and good will of the original donors.

S.B. 666 amends current law relating to the administration of charitable trusts.

### 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 Subchapter A, Chapter 113, Property Code, by adding Section 113.029, as follows:

Sec. 113.029. RELOCATION OF ADMINISTRATION OF CHARITABLE TRUST.  
(a) Defines "charitable entity," "charitable trust," and "trust administration."

(b) Prohibits the trustee of a charitable trust, except as provided by this section or specifically authorized by the terms of a trust, from changing the location in which the trust administration takes place from a location in this state to a location outside this state.

(c) Requires the trustee, if the trustee decides to change the location in which the trust is administered from a location in this state to a location outside this state, to consult the settlor concerning the selection of a new location for the administration of the trust and submit the selection to the attorney general if the settlor is living and not incapacitated, or propose a new location and submit the proposal to the attorney general if the settlor is not living or is incapacitated.

(d) Authorizes the trustee to file an action in the district court or statutory probate court in which the trust was created seeking a court order authorizing the trustee to change the location in which the trust is administered to a location outside this state. Authorizes the court to exercise its equitable powers to effectuate the original purpose of the trust.

(e) Prohibits the location in which the administration of the trust takes place, except as provided by Subsection (b), from being changed to a location outside this state unless the charitable purposes of the trust would not be impaired if the trust administration is moved and a district court or statutory probate court authorizes the relocation.

(f) Authorizes the attorney general to bring an action to enforce the provisions of this section. Authorizes the district court or statutory probate court in the county in which the trust administration was originally located, if a trustee of a charitable trust fails to comply with the provisions of this section, to remove the trustee and appoint a new trustee. Authorizes costs of a proceeding to remove a trustee, including reasonable attorney's fees, to be assessed against the removed trustee. Provides that this provision is in addition to and does not supersede the provisions of Chapter 123 (Attorney General Participation in Proceedings Involving Charitable Trusts).

(g) Provides that this section does not affect a trustee's authority to sell real estate owned by a charitable trust.

SECTION 2. Provides that except as otherwise provided by a will, the terms of a trust, or this Act, the changes in law made by this Act apply to a trust existing or created on or after September 1, 2009; the estate of a decedent who dies before September 1, 2009, if the probate or administration of the estate is pending on or after September 1, 2009; and the estate of a decedent who dies on or after September 1, 2009.

SECTION 3. Effective date: September 1, 2009.