

## **BILL ANALYSIS**

H.B. 3190  
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Business & Industry  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties contend that as the traditional roles and responsibilities of trustees have evolved, estate planning has grown more complex and the use of trusts for multi-generational planning by families has grown more widespread. While historically there has been one trustee responsible for the trust, trust law has progressed such that trustees may be authorized by the settlor to delegate investment decisions to third parties, such as investment trustees. The ability of the administrative trustee to delegate this type of authority is a recognition that the administrative trustee may not have the expertise needed to make sophisticated investment decisions designed to generate a reasonable rate of return for the trust and any beneficiaries. H.B. 3190 seeks to address issues relating to the power to direct certain actions of a trustee.

### **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**

H.B. 3190 amends the Property Code to establish that a protector of a trust has all the power and authority granted to the protector by the trust terms, which may include the power to remove and appoint trustees, advisors, trust committee members, and other protectors; the power to modify or amend the trust terms to achieve favorable tax status or to facilitate the efficient administration of the trust; and the power to modify, expand, or restrict the terms of a power of appointment granted to a beneficiary by the trust terms. The bill establishes that, if the terms of a trust give a person the authority to direct, consent to, or disapprove a trustee's actual or proposed investment decisions, distribution decisions, or other decisions, the person is considered to be an advisor and a fiduciary when exercising that authority, unless the trust terms provide that an advisor acts in a nonfiduciary capacity. The bill grants a trustee who acts in accordance with the direction of an advisor, as prescribed by the trust terms, immunity from liability for any loss resulting directly or indirectly from that act, except in cases of wilful misconduct on the part of the trustee. The bill grants a trustee, if the trust terms require a trustee to make decisions with the consent of an advisor, immunity from liability for any loss resulting directly or indirectly from any act taken or not taken as a result of the advisor's failure to provide the required consent after having been requested to do so by the trustee, except in cases of wilful misconduct or gross negligence on the part of the trustee.

H.B. 3190 establishes that a trustee, if the trust terms require a trustee to act in accordance with the direction of an advisor with respect to investment decisions, distribution decisions, or other

decisions of the trustee, does not, except to the extent the trust terms provide otherwise, have the duty to monitor the advisor's conduct, to provide advice to the advisor or consult with the advisor, or to communicate with, warn, or apprise any beneficiary or third party concerning instances in which the trustee would or might have exercised the trustee's own discretion in a manner different from the manner directed by the advisor. The bill establishes that, absent clear and convincing evidence to the contrary, a trustee's actions pertaining to matters within the scope of the advisor's authority are presumed to be administrative actions taken by the trustee solely to allow the trustee to perform those duties assigned to the trustee under the trust terms and that such administrative actions are not considered as constituting an undertaking by the trustee to monitor the advisor or otherwise participate in actions within the scope of the advisor's authority.

H.B. 3190, except as specifically provided by a trust term in effect before the bill's effective date, applies to a trust created before, on, or after the bill's effective date with respect to an action taken or not taken on or after September 1, 2015, by a trustee, advisor, or other person with respect to the trust. The bill establishes that, for purposes of its provisions, the term "advisor" includes a protector and that an advisor with authority with respect to investment decisions is an investment advisor.

H.B. 3190 repeals Section 114.003, Property Code, relating to a trustee's powers to direct.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.