

BILL ANALYSIS

H.B. 2245
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

As part of its ongoing review of Texas law, the Real Estate, Probate, and Trust Law Section of the State Bar of Texas has proposed several updates to state law regarding trusts. H.B. 2245 seeks to implement those proposed updates.

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. 2245 amends the Property Code to prohibit the terms of a trust from limiting a court's power to order disgorgement of a trustee's compensation if the trustee commits a breach of trust or to make an award of costs and attorney's fees. The bill establishes that for a trust that is created and amendable or revocable by the settlor or by the settlor and the settlor's spouse, unless the trust terms provide otherwise, Estates Code provisions governing the construction and interpretation of wills apply at the settlor's death to the construction and interpretation of at-death transfers as if the settlor of the trust is the testator, the beneficiaries of the at-death transfer are devisees, and the at-death transfers are devises and that Estates Code provisions relating to abatement of bequests apply to the abatement of at-death transfers. The bill establishes that the following equivalences apply for purposes of those Estates Code provisions:

- an at-death transfer of specifically identifiable trust property is a specific bequest, devise, or legacy;
- an at-death transfer from the general assets of the trust that does not transfer specifically identifiable property is a general bequest, devise, or legacy; and
- an at-death transfer of trust property that remains after all specific and general transfers have been satisfied is the residuary estate.

The bill removes the authorization for a court to direct that a court order for reformation of a trust has retroactive effect and makes the reformation of a trust by court order effective instead as of the creation of the trust.

H.B. 2245 sets out provisions authorizing the creation of a second trust from distributed principal of a first trust and clarifies legislative intent for these provisions as a codification of the common law of Texas in effect immediately before September 1, 2019.

H.B. 2245 sets out provisions relating to the effect of the dissolution of a marriage on certain transfers in trust, including provisions:

- establishing that the dissolution revokes certain provisions in a trust instrument that was executed by a divorced individual as settlor before the individual's marriage was dissolved, establishing certain exceptions to that revocation, and establishing that the designation of a former spouse as a beneficiary of certain life insurance policies or as a beneficiary under certain retirement benefit plans or other financial plans is governed by applicable Family Code provisions;
- providing for the effect of certain such revocations on an interest granted in the revoked trust instrument provision;
- limiting the liability of certain purchasers of property from a divorced individual's former spouse or an applicable relative of the former spouse or recipients of a payment, benefit, or property from the former spouse or relative;
- requiring such a former spouse or applicable relative who, not for value, receives a payment, benefit, or property to which the spouse or relative is not entitled to return it to the entitled person and, if such an action is not taken, making the former spouse or relative personally liable to the entitled person for the received amount or value; and
- providing for the division of a trust created under a trust instrument that was executed by two married individuals as settlors whose marriage to each other is subsequently dissolved and that includes provisions revoked on dissolution of the marriage on the death of one of the divorced settlors, for related actions, and for the applicability of the bill's other provisions with respect to the two trusts resulting from the division.

H.B. 2245 changes a requirement regarding the termination date of a management trust established by court decree for property recovered in a suit in which the beneficiary is represented by a next friend or an appointed guardian ad litem to specify that if the court finds that a minor beneficiary is considered disabled for purposes of federal law, the trust must terminate on the beneficiary's death. The bill authorizes a court with continuing jurisdiction over an applicable management trust to order the transfer of all property in the trust to a pooled trust subaccount on determining that the transfer is in the beneficiary's best interests and sets out provisions relating to the appointment and expenses of an attorney ad litem or guardian ad litem in a related proceeding, the treatment of such a property transfer, and the termination of the applicable management trust.

H.B. 2245 specifies the persons who may apply to the appropriate court for the establishment of a pooled trust subaccount solely for the benefit of a proposed beneficiary who is a person for whom a management trust has been or could be established and provides for the appointment and expenses of an attorney ad litem for a minor or an incapacitated person who is the subject of such an application. The bill provides for the court's order for the establishment of the subaccount and for the transfer of applicable property to the subaccount, sets out requirements for the terms governing the subaccount, which are subject to a contrary court order, and provides for the authority of the manager or trustee of a pooled trust to assess fees against and pay fees from the subaccount and for the manager's or trustee's annual reporting of account with the court clerk. The bill establishes that the court that orders the establishment of a subaccount for a beneficiary has exclusive jurisdiction of a subsequent proceeding or action that relates to both the beneficiary and the subaccount and that such a proceeding or action may be brought only in that court.

H.B. 2245 provides for the applicability of its provisions.

EFFECTIVE DATE

September 1, 2019.