

- SUBJECT:** Specifying a 90-day deadline for trust accounting
- COMMITTEE:** Judicial Affairs — committee substitute recommended
- VOTE:** 6 ayes — Hartnett, T. Smith, Solis, Alonzo, Hughes, Rodriguez
0 nays
3 absent — Corte, Telford, Wilson
- WITNESSES:** For — Jerry Jones, State Bar of Texas
Against — John Brigance, Texas Bankers Association
- BACKGROUND:** Property Code, sec. 113.151 allows the beneficiary of a trust to request an accounting from the trustee covering all transactions since the last accounting or since the creation of the trust, whichever is later. If the trustee fails or refuses to do this within a “reasonable time” after the request, the beneficiary may sue to compel the trustee to deliver the accounting, and the court may require the trustee to deliver a written statement of account to all beneficiaries. A trustee need not account to the beneficiaries more often than once every 12 months, unless a court requires a more frequent accounting.
- Probate Code, sec. 149A applies similar provisions to accounting by the independent executor of an estate. Sec. 149A(b) imposes a 60-day deadline for an executor to respond to a beneficiary’s accounting demand.
- Property Code, sec. 113.082 allows a trustee to be removed and all or part of the trustee’s compensation denied if the trustee violates the terms of the trust or becomes insolvent or incompetent or for other cause determined by the court.
- DIGEST:** CSHB 1471 would set a deadline of 90 days for a trustee to respond to a beneficiary’s request for an accounting. It would specify that a court has the discretion to remove a trustee and to deny any or all compensation if the trustee violated the terms of the trust or became insolvent or incompetent or

for other cause. A court also could remove a trustee for failing to make an accounting required by law or by terms of the trust.

If a beneficiary were successful in suing to compel an accounting, the court could award all or part of the court costs and all of the suing beneficiary's reasonable attorney's fees and costs against the trustee in that person's capacity as an individual or as a trustee.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 1471 would prevent trustees from depriving beneficiaries of a rightful accounting. It would specify for beneficiaries and trustees exactly when an accounting must be provided, rather than leaving it open to only a reasonable time. Under current law, beneficiaries who cannot receive an accounting from a trustee are forced to sue for the accounting at their own expense, because costs and attorney's fees related to the suit are taken from the trust. Beneficiaries should not have to pay the cost of compelling something that the trustee is supposed to do. CSHB 1471 would help alleviate this problem by giving a judge the discretion to assess the costs and fees against a trustee when necessary.

The 90-day deadline for accounting would be more expansive than the 60-day deadline specified in the Probate Code for accounting of an estate. It would be reasonable and attainable by trustees and fair to beneficiaries. Most trustees could meet this deadline, considering that they must report taxes on the trust annually to the U.S. Internal Revenue Service and must perform an accounting of assets to do so. Also, many trustees maintain the balance of the trust's financial documents on their computers, so providing an accounting to a beneficiary often involves only printing out a few documents. If, for some reason, a trustee found it impossible to meet the 90-day deadline, CSHB 1471 would allow the trustee to seek an extension from the court.

CSHB 1471 would clarify that a court has the discretion but is not required to remove a trustee for certain violations. Although the current statute says that the court "may" remove the trustee, Texas courts sometimes have interpreted this provision as mandating removal. The simple change in this bill would reduce litigation and prevent unnecessary expenses for trusts.

The importance of required accountings justifies adding the failure to provide an accounting as a basis for removing a trustee. This change also would be consistent with the approach applied to independent executors.

“Beneficiary” is defined under current law. CSHB 1471 would not change the current definition nor impose any additional burden on trustees in cases of multiple beneficiaries.

**OPPONENTS
SAY:**

CSHB 1471 is unnecessary. Existing law requires a trustee to provide an accounting in a reasonable time. Specifying a 90-day deadline in all cases would result in more litigation and increased costs to trusts. Under this bill, a trustee acting in good faith and with good intentions still could be removed even if 90 days were not a reasonable time for providing an accounting. Many trustees would go to court to seek an extension if they had any doubt about meeting the 90-day deadline. This would result in additional costs to beneficiaries and could prevent some beneficiaries from pursuing accountings when they should.

CSHB 1471 would impose the greatest burden on individual trustees, who often do not have as convenient access to trust records as corporate trustees have. Most corporate trusts must account yearly, quarterly, or even monthly. CSHB 1471 would not allow for situations that could make an accounting in 90 days impossible. For example, in a trust with 20 beneficiaries, a trustee might have to provide multiple accountings, the only limitation being that the trustee would have to provide an accounting to each beneficiary only once in a 12-month period. Such accountings are burdensome to the trustee and costly to the trust because they divert the trustee’s time and attention from managing the trust.

NOTES:

The committee substitute changed the filed version of HB 1471 by specifying that the removal of a trustee would be within the discretion of the court; increasing the proposed time limit for an accounting from 60 to 90 days; and specifying that the award of attorney’s fees and costs from the trustee’s personal funds would be at the court’s discretion.

HB 1471
House Research Organization
page 4

The companion bill, SB 574 by Harris, has been referred to the Senate Jurisprudence Committee.