

BILL ANALYSIS

Senate Research Center

C.S.S.B. 911
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Jurisprudence
3-25-97
Committee Report (Substituted)

DIGEST

In 1996 the federal government enacted legislation that extended protection from certain environmental claims to fiduciaries. This was in response to the growing number of environmentally burdened properties ending up in the hands of fiduciaries, thus exposing the fiduciaries to liability. Prior to federal relief, if the trust could not cover the cost of damages, the corporate trustee and the individual trustee/trustees administering the trust account could be held personally liable. In addition, it is generally held that a trustee may not delegate the responsibility for investments to a third party and mitigate liability for claims brought by a beneficiary specific to performance of those investments managed by a third party. As the knowledge of investments by beneficiaries expands, and the nature of the market changes, trustees are often not able to provide alternative investment strategies in the appropriate circumstances. This bill will bring the state statute in line with the federal law regarding fiduciary liability for an environmentally burdened property and will allow a release of the liability of the trustee when a third party outside investment advisor is hired.

PURPOSE

As proposed, C.S.S.B. 911 provides new regulations regarding fiduciary liability for an environmentally burdened property, and allows a release of the liability of the trustee when a third party outside investment advisor is hired.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 114.001, Property Code, by adding Subsection (e), to provide that the trustee has the same protection from liability provided for a fiduciary under 42 U.S.C. Section 9607(n).

SECTION 2. Amends Section 114.005, Property Code, to authorize a beneficiary who has full legal capacity and is acting on full information to release a trustee from liability for an investment made or recommended by an agent retained by the trustee for that purpose, including an agent who is an affiliate of the trustee and whose employment is determined by the beneficiary to be beneficial to the trust. Provides that the release is also a release as to a minor or unborn or unascertained person who is not otherwise represented to the extent that the person's interest is adequately represented by another party with a substantially identical interest in the trust estate. Requires the release under this section to be in writing and delivered to the trustee. Provides that a beneficiary is not precluded from bringing an action for breach of contract against an agent whose conduct is the basis of a release under Subsection (b). Requires, in that action, the conduct of the agent to be judged on the basis of the standard for trust management and investment prescribed by Section 113.056(a). Defines "affiliate." Makes a nonsubstantive change.

SECTION 3. Effective date: September 1, 1997.

SECTION 4. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 2.

Amends Section 114.005(a), Property Code, to make a nonsubstantive change.

Amends Section 114.005(b), Property Code, to require the beneficiary to be acting on full information in making the release; to include certain agents; and to delete the provision regarding pro rata share.

Adds Sections 114.005(d) and (e), Property Code, to provide for an action for breach of contract against an agent and to define "affiliate."