

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1197
By: Rodriguez
Jurisprudence
4/27/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.S.B. 1197 deals with several issues in the Property Code relating to trusts. The bill is endorsed by the Real Estate, Probate and Trust Law Section of the State Bar of Texas.

C.S.S.B. 1197 amends current law relating to 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 Section 112.010, Property Code, by adding Subsection (c-3), as follows:

(c-3) Provides that, notwithstanding the deadline prescribed by Subsection (c-2)(2) for delivering the memorandum required by that subsection, in the case of an interest in a trust created by reason of the death of a decedent who died after December 31, 2009, and before December 17, 2010, and to which Section 37A, Probate Code, does not apply, a memorandum delivered under Subsection (c-2)(2) is also effective to disclaim an interest in the trust if delivered not later than the date that is nine months after December 17, 2010. Provides that this subsection expires September 1, 2013.

SECTION 2. Amends Section 112.038, Property Code, as follows:

Sec. 112.038. FORFEITURE CLAUSE. Provides that a provision in a trust that would cause a forfeiture of or void an interest for bringing any court action, including contesting a trust, is unenforceable if:

- (1) just cause existed for bringing the action, rather than probable cause exists for bringing the action; and
- (2) Makes no changes to this subdivision.

SECTION 3. Amends Section 112.057, Property Code, by adding Subsections (e) and (f), as follows:

(e) Authorizes a beneficiary to whom written notice is required to be given under this section to waive the notice requirement in a writing delivered to the trustee. Provides that notice is not required if all beneficiaries to whom notice would otherwise be required to be given under this section waive the notice requirement.

(f) Requires notice required under this section to be given to a guardian of the estate, guardian ad litem, or parent of a minor or incapacitated beneficiary. Authorizes a guardian of the estate, guardian ad litem, or parent of a minor or incapacitated beneficiary to waive the notice requirement in accordance with this section on behalf of the minor or incapacitated beneficiary.

SECTION 4. Amends Section 115.001(d), Property Code, to provide that the jurisdiction of the district court is exclusive except for jurisdiction conferred by law on certain courts, including a county court at law.

SECTION 5. Amends Section 115.002, Property Code, by adding Subsection (c-1), as follows:

(c-1) Authorizes an action involving the interpretation and administration of an inter vivos trust created by the settlor or a testamentary trust created by the settlor's will, if the settlor is deceased and an administration of the settlor's estate is pending in this state, to be brought, notwithstanding Subsections (b) (relating to dictating venue if there is a single, noncorporate trustee) and (c) (relating to dictating venue if there are multiple trustees or a corporate trustee):

- (1) in a county in which venue is proper under Subsection (b) or (c); or
- (2) in the county in which the administration of the settlor's estate is pending.

SECTION 6. Amends Section 115.011(b), Property Code, as follows:

(b) Provides that the only necessary parties to action under Section 115.001 (Jurisdiction) are:

- (1) a beneficiary of the trust on whose act or obligation the action is predicated;
- (2) a beneficiary of the trust designated by name, other than a beneficiary whose interest has been distributed, extinguished, terminated, or paid, rather than a beneficiary designated by name in the instrument creating the trust is a necessary party to action under Section 115.001; and
- (3) and (4) Makes no changes to these subdivisions.

SECTION 7. Amends Sections 116.005(d) and (e), Property Code, to make conforming changes.

SECTION 8. Amends Sections 116.205(c) and (d), Property Code, as follows:

(c) Requires that a tax required to be paid by a trustee on the trust's share of an entity's taxable income be paid, rather than paid proportionately:

- (1) Makes a nonsubstantive change;
- (2) from principal to the extent that receipts from the entity are allocated only to principal;
- (3) proportionately from principal and income to the extent that receipts from the entity are allocated to both principal and income; and
- (4) from principal to the extent that the tax exceeds the total receipts from the entity.

Deletes existing text requiring that a tax required to be paid by a trustee on the trust's share of an entity's taxable income be paid proportionately from principal to the extent that receipts from the entity are allocated to principal and the trust's share of the entity's taxable income exceeds the total receipts described in Subdivisions (1) and (2)(A). Makes nonsubstantive changes.

(d) Requires the trustee, after applying the other provisions of this section, to adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary. Deletes existing text requiring receipts allocated to principal or income to be reduced by the amount

distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax for purposes of this section.

SECTION 9. (a) Provides that, except as otherwise expressly provided by the will, the trust, or this Act, the changes in law made by this Act apply to:

(1) a trust existing or created on or after September 1, 2011;

(2) the estate of a decedent who dies before September 1, 2011, if the probate or administration of the estate is pending as of September 1, 2011; and

(3) the estate of a decedent who dies on or after September 1, 2011.

(b) Provides that for a trust existing on September 1, 2011, that was created before that date, the changes in law made by this Act apply only to an act or omission relating to the trust that occurs on or after September 1, 2011.

(c) Makes application of Sections 112.038, 115.002, and 115.011, Property Code, as amended by this Act, prospective.

(d) Provides that the amendment by this Act of Section 115.001, Property Code, is intended to clarify rather than change existing law.

SECTION 10. Effective date: September 1, 2011.