

BILL ANALYSIS

Senate Research Center

H.B. 3190
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Business & Commerce
5/20/2015
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 3190 amends current law relating to the authority of certain persons to direct, consent to, or disapprove a trustee's decisions.

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 114.003, Property Code, as follows:

Sec. 114.003. POWERS TO DIRECT: CHARITABLE TRUSTS. (a) Defines "charitable trust."

(a-1) Creates this subsection from existing text. Provides that the terms of a charitable trust may give a trustee or other person a power to direct the modification or termination of the trust.

(b) Requires the trustee, if the terms of a charitable trust give a person the power to direct certain actions of the trustee, to act in accordance with the person's direction unless:

(1) and (2) Makes no change to these subdivisions.

(c) Provides that a person, other than a beneficiary, who holds a power to direct with respect to a charitable trust is presumptively a fiduciary required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. Provides that the holder of a power to direct with respect to a charitable trust is liable for any loss that results from a breach of the person's fiduciary duty.

SECTION 2. Amends Subchapter A, Chapter 114, Property Code, by adding Section 114.0031, as follows:

Sec. 114.0031. DIRECTED TRUSTS; ADVISORS. (a) In this section:

(1) Defines "advisor."

(2) Defines "investment decision."

(b) Provides that this section does not apply to a charitable trust as defined by Section 123.001 (Definitions).

(c) Provides that an advisor with authority with respect to investment decisions, for purposes of this section, is an investment advisor.

(d) Provides that a protector has all the power and authority granted to the protector by the trust terms, which may include:

(1) the power to remove and appoint trustees, advisors, trust committee members, and other protectors;

(2) the power to modify or amend the trust terms to achieve favorable tax status or to facilitate the efficient administration of the trust; and

(3) the power to modify, expand, or restrict the terms of a power of appointment granted to a beneficiary by the trust terms.

(e) Provides that a person, if the terms of a trust give the person the authority to direct, consent to, or disapprove a trustee's actual or proposed investment decisions, distribution decisions, or other decisions, is considered to be an advisor and a fiduciary when exercising that authority except that the trust terms may provide that an advisor acts in a nonfiduciary capacity.

(f) Provides that a trustee who acts in accordance with the direction of an advisor, as prescribed by the trust terms, is not liable, except in cases of wilful misconduct on the part of the trustee so directed, for any loss resulting directly or indirectly from that act.

(g) Provides that a trustee, if the trust terms provide that the trustee must make decisions with the consent of an advisor, is not liable, except in cases of wilful misconduct or gross negligence on the part of the trustee, 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.

(h) Provides that the trustee, if the trust terms provide that a trustee must 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:

(1) monitor the conduct of the advisor;

(2) provide advice to the advisor or consult with the advisor; or

(3) communicate with or 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.

(i) Provides that, absent clear and convincing evidence to the contrary, the actions of a trustee pertaining to matters within the scope of the advisor's authority, such as confirming that the advisor's directions have been carried out and recording and reporting actions taken at the advisor's direction, 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 such administrative actions are not considered to constitute an undertaking by the trustee to monitor the advisor or otherwise participate in actions within the scope of the advisor's authority.

SECTION 3. (a) Provides that the changes in law made by this Act, except as specifically provided by a trust term in effect before the effective date of this Act, apply to a trust created before, on, or after the effective date of this Act with respect to an action taken or not taken on or after September 1, 2015, by a trustee or other person with respect to the trust.

(b) Provides that an action taken or not taken with respect to a trust before September 1, 2015, is governed by the law that applied to the action taken or not taken immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 4. Effective date: upon passage or September 1, 2015.