

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 1471  
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Jurisprudence  
5/1/2003  
Committee Report (Substituted)

### **DIGEST AND PURPOSE**

Current law specifies that a trustee may be removed under certain conditions in accordance with the terms of the trust instrument or by a court. Issues have arisen regarding the failure of trustees to make an accounting as required by law or by the terms of the trust. A beneficiary may demand a written statement of accounts, and current law gives a trustee a reasonable time to comply.

C.S.H.B. 1471 authorizes a trustee to make certain adjustments to a trust; allows a court to remove a trustee for failure to make the required accounting; specifies the time by which a trustee must deliver financial statements; and allows a beneficiary to collect attorney's fees and court costs in certain circumstances.

### **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 Subchapter A, Chapter 113, Property Code, by adding Section 113.0211, as follows:

Sec. 113.0211. ADJUSTMENT OF CHARITABLE TRUST. (a) Defines "charitable entity" and "charitable trust."

(b) Authorizes the trustee of a charitable trust to acquire, exchange, sell, supervise, manage, or retain any type of investment, subject to restrictions and procedures established by the trustee and in an amount considered appropriate by the trustee, that a prudent investor, exercising reasonable skill, care and caution, would acquire or retain in light of the purposes, terms, distribution requirements, and other circumstances of the trust. Provides that the prudence of a trustee's actions under this subsection is judged with reference to the investment of all of the trust assets rather than with reference to a single trust investment.

(c) Authorizes the trustee of a charitable trust to make one or more adjustments between the principal and the income portions of a trust to the extent that the trustee considers the adjustment necessary for certain purposes.

(d) Provides that the authority to make adjustments under Subsection (c) includes the authority to allocate all or part of a capital gain to trust income.

(e) Requires the trustee, in making adjustments under Subsection (c), to consider certain factors.

SECTION 2. Amends Section 113.082, Property Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Authorizes a trustee to be removed in accordance with the terms of the trust instrument or, on the petition of an interested person and after hearing, a court to, in its

discretion, remove a trustee and deny part or all of the trustee's compensation if certain conditions exist, including that the trustee fails to make an accounting that is required by law or by the terms of the trust.

(c) Prohibits a trustee of a charitable trust from being removed solely on the grounds that the trustee exercised the trustee's power to adjust between principal and income under Section 113.0211.

SECTION 3. Amends Section 113.151(a), Property Code, to authorize any beneficiary of the trust, if the trustee fails or refuses to deliver the statement on or before the 90th day after the date the trustee receives the demand or after a longer period ordered by a court, rather than within a reasonable time after the demand is made, to file suit to compel the trustee to deliver the statement to all beneficiaries of the trust. Authorizes the court, if a beneficiary is successful in the suit to compel a statement under this section, to, in its discretion, award all or part of the costs of court and all of the suing beneficiary's reasonable and necessary attorney's fees and costs against the trustee in the trustee's individual capacity or in the trustee's capacity as trustee.

SECTION 4. Effective date: September 1, 2003. Makes application of this Act prospective.