

BILL ANALYSIS

H.B. 1472
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Judicial Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

A power of appointment is a common tool in estate planning whereby a person who does not own a property is given the right to designate to whom that property will be transferred. For instance, a father creates a trust with his son as beneficiary. Under a power of appointment, the father would grant the son the right to designate who would receive the remainder interest upon the son's death even though he never legally "owned" the property in question.

In well-drafted wills and trusts, the creator will be very specific as to the power of appointment given. For instance, the father may wish to keep the trust proceeds within his blood family. In such a case, a power of appointment would be restricted to his son's children and would exclude his son's wife.

Unfortunately, not all wills and trusts are well-drafted, and this has caused confusion in cases where the creator of the will or trust did not clearly specify the powers of appointment granted. H.B. 1472 creates a set of default rules thereby preventing disputes and litigation over poorly drafted trusts and wills.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 1472 amends the Property Code to define the "object of the power of appointment."

The bill also provides that unless an instrument creating a power of appointment expressly provides to the contrary, the donee (the person who may exercise a power) may exercise a power in any manner consistent with the Property Code.

The bill also provides that in exercising a power of appointment, a donee may make an appointment 1) of present, future, or present and future interests; 2) with conditions and limitations; 3) with restraints on alienation; 4) of interests to a trustee for the benefit of one or more objects of the power; and 5) that creates any right existing under common law.

The bill also provides that in exercising a power, a donee, depending on the terms of the original power of appointment, may make appointments that create additional powers of appointment under certain circumstances.

EFFECTIVE DATE

September 1, 2003.

