

BILL ANALYSIS

C.S.H.B. 3503
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Judicial Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas supreme court recently issued its opinion in the case of *Texas Commerce Bank, N.A. v. Grizzle*, --- S.W.3d ---, 2002 WL 31890895 (Tex. 2002). The case involved a plaintiff who brought suit against a trustee alleging, among other things, self-dealing.

The *Grizzle* trust contained an exculpatory clause, which provided that the trustee “shall not be liable for any act or omission except in the case of gross negligence, bad faith, or fraud.” The question before the court was whether a trust’s exculpatory clause can exonerate a corporate trustee from liability for self-dealing without violating public policy. The *Grizzle* court concluded that it could.

The court stated that it recognized that the broad authority of a settlor of a trust to exonerate a corporate trustee from liability “can lead to harsh results,” but said that it “presume[d] the Legislature was aware of this when it enacted the Texas Trust Act” (predecessor to the current Trust Code). C.S.H.B. 3503 sets forth new provisions regarding exculpatory clauses in trusts.

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

C.S.H.B. 3503 amends the Property Code to provide that a trust created under Section 142.005, Property Code, is subject to Subtitle B, Title 9, Property Code. Notwithstanding the preceding, Section 142.005 prevails over a provision in Subtitle B, Title 9 that is in conflict with Section 142.005.

The bill provides that a provision in a trust created under Section 142.005 that relieves a trustee from a duty, responsibility or liability imposed by Section 142.005 or Subtitle B, Title 9, is enforceable only if: 1) the provision is limited to specific facts and circumstances unique to the property of that trust and is not applicable generally to the trust; and 2) the court creating or modifying the trust makes a specific finding that there is clear and convincing evidence that the inclusion of the provision is in the best interests of the beneficiary of the trust.

The bill amends the Probate Code to provide that provision in a trust created under Section 867, Probate Code, that relieves a trustee from a duty, responsibility or liability imposed by Subpart N, Part 4, Chapter XIII, Probate Code, or Subtitle B, Title 9, Property Code, is enforceable only if: 1) the provision is limited to specific facts and circumstances unique to the property of that trust and is not applicable generally to the trust; and 2) the court creating or modifying the trust makes a specific finding that there is clear and convincing evidence that the inclusion of the provision is in the best interests of the beneficiary of the trust.

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute deletes Sections 1-4 of the original, which contained certain provisions forbidding a settlor from including certain exculpatory clauses in a trust instrument.

The remaining provisions have minor semantic differences from the original due to Legislative Council drafting, but there are no substantive changes.