

## **BILL ANALYSIS**

Senate Research Center  
78R17295 QS-D

C.S.H.B. 3503  
By: Hartnett (Harris)  
Jurisprudence  
5/22/2003  
Committee Report (Substituted)

### **DIGEST AND PURPOSE**

The Texas Supreme Court recently issued its opinion in the case of *Texas Commerce Bank, N.A. v. Grizzle*, 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 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**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Section 113.059, Property Code, to read as follows:

Sec. 113.059. POWER OF SETTLOR TO ALTER TRUSTEE'S RESPONSIBILITIES.

SECTION 2. Amends Section 113.059, Property Code, by amending Subsection (a) and adding Subsections (c) and (d), as follows:

- (a) Deletes a reference to Subsection (b) in existing text.
- (c) Prohibits a settlor from relieving the trustee of liability for certain conditions.
- (d) Provides that a provision in a trust instrument relieving the trustee of a liability for a breach of trust is ineffective to the extent that the provision is inserted in the trust instrument as a result of an abuse by the trustee of a fiduciary duty to or confidential relationship with the settlor.

SECTION 3. Amends Section 142.005, Property Code, by adding Subsections (h), (i), and (j), as follows:

- (h) Provides that a trust created under this section is subject to Subtitle B, Title 9.
- (i) Provides that notwithstanding Subsection (h), this section prevails over a provision in Subtitle B, Title 9, that is in conflict or inconsistent with this section.

(j) Provides that a provision in a trust created under this section that relieves a trustee from a duty, responsibility, or liability imposed by this section or Subtitle B, Title 9, is enforceable only if certain conditions are met.

SECTION 4. Amends Section 868, Texas Probate Code, by adding Subsection (c) to provide that a provision in a trust created under Section 867 that relieves a trustee from a duty, responsibility, or liability imposed by this subpart or Subtitle B, Title 9, Property Code, is enforceable only if certain conditions are met.

SECTION 5. Effective date: September 1, 2003.  
Makes application of this Act prospective.