

1-1 By: Hartnett (Senate Sponsor - Harris) H.B. No. 1471
1-2 (In the Senate - Received from the House April 3, 2003;
1-3 April 7, 2003, read first time and referred to Committee on
1-4 Jurisprudence; May 5, 2003, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 5, Nays 0;
1-6 May 5, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1471 By: Harris

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the duties and removal of a trustee.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subchapter A, Chapter 113, Property Code, is
1-13 amended by adding Section 113.0211 to read as follows:

1-14 Sec. 113.0211. ADJUSTMENT OF CHARITABLE TRUST. (a) In this
1-15 section:

1-16 (1) "Charitable entity" has the meaning assigned by
1-17 Section 123.001(1).

1-18 (2) "Charitable trust" means a trust:

1-19 (A) the stated purpose of which is to benefit
1-20 only one or more charitable entities; and

1-21 (B) that qualifies as a charitable entity.

1-22 (b) The trustee of a charitable trust may acquire, exchange,
1-23 sell, supervise, manage, or retain any type of investment, subject
1-24 to restrictions and procedures established by the trustee and in an
1-25 amount considered appropriate by the trustee, that a prudent
1-26 investor, exercising reasonable skill, care, and caution, would
1-27 acquire or retain in light of the purposes, terms, distribution
1-28 requirements, and other circumstances of the trust. The prudence
1-29 of a trustee's actions under this subsection is judged with
1-30 reference to the investment of all of the trust assets rather than
1-31 with reference to a single trust investment.

1-32 (c) The trustee of a charitable trust may make one or more
1-33 adjustments between the principal and the income portions of a
1-34 trust to the extent that the trustee considers the adjustments
1-35 necessary:

1-36 (1) to comply with the terms of the trust, if any, that
1-37 describe the amount that may or must be distributed to a charitable
1-38 entity beneficiary by referring to the income portion of the trust;
1-39 and

1-40 (2) to administer the trust in order to carry out the
1-41 purposes of the charitable trust.

1-42 (d) The authority to make adjustments under Subsection (c)
1-43 includes the authority to allocate all or part of a capital gain to
1-44 trust income.

1-45 (e) In making adjustments under Subsection (c), the trustee
1-46 shall consider:

1-47 (1) except to the extent that the terms of the trust
1-48 clearly manifest an intention that the trustee shall or may favor
1-49 one or more charitable entity beneficiaries, the needs of a
1-50 charitable entity beneficiary, based on what is fair and reasonable
1-51 to all other charitable entity beneficiaries of the trust, if any;
1-52 and

1-53 (2) the need of the trust to maintain the purchasing
1-54 power of the trust's investments over time.

1-55 SECTION 2. Section 113.082, Property Code, is amended by
1-56 amending Subsection (a) and adding Subsection (c) to read as
1-57 follows:

1-58 (a) A trustee may be removed in accordance with the terms of
1-59 the trust instrument, or, on the petition of an interested person
1-60 and after hearing, a court may, in its discretion, remove a trustee
1-61 and deny part or all of the trustee's compensation if:

1-62 (1) the trustee materially violated or attempted to
1-63 violate the terms of the trust and the violation or attempted

2-1 violation results in a material financial loss to the trust;
 2-2 (2) the trustee becomes incompetent or insolvent; ~~[or]~~
 2-3 (3) the trustee fails to make an accounting that is
 2-4 required by law or by the terms of the trust; or
 2-5 (4) in the discretion of the court, for other cause.
 2-6 (c) A trustee of a charitable trust may not be removed
 2-7 solely on the grounds that the trustee exercised the trustee's
 2-8 power to adjust between principal and income under Section
 2-9 113.0211.

2-10 SECTION 3. Section 113.151(a), Property Code, is amended to
 2-11 read as follows:

2-12 (a) A beneficiary by written demand may request the trustee
 2-13 to deliver to each beneficiary of the trust a written statement of
 2-14 accounts covering all transactions since the last accounting or
 2-15 since the creation of the trust, whichever is later. If the trustee
 2-16 fails or refuses to deliver the statement on or before the 90th day
 2-17 after the date the trustee receives the demand or after a longer
 2-18 period ordered by a court ~~[within a reasonable time after the demand~~
 2-19 ~~is made]~~, any beneficiary of the trust may file suit to compel the
 2-20 trustee to deliver the statement to all beneficiaries of the trust.
 2-21 The court may require the trustee to deliver a written statement of
 2-22 account to all beneficiaries on finding that the nature of the
 2-23 beneficiary's interest in the trust or the effect of the
 2-24 administration of the trust on the beneficiary's interest is
 2-25 sufficient to require an accounting by the trustee. However, the
 2-26 trustee is not obligated or required to account to the
 2-27 beneficiaries of a trust more frequently than once every 12 months
 2-28 unless a more frequent accounting is required by the court. If a
 2-29 beneficiary is successful in the suit to compel a statement under
 2-30 this section, the court may, in its discretion, award all or part of
 2-31 the costs of court and all of the suing beneficiary's reasonable and
 2-32 necessary attorney's fees and costs against the trustee in the
 2-33 trustee's individual capacity or in the trustee's capacity as
 2-34 trustee.

2-35 SECTION 4. This Act takes effect September 1, 2003, and
 2-36 applies only to a demand for an accounting made on or after that
 2-37 date.

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