

By: Hartnett

H.B. No. 3503

A BILL TO BE ENTITLED

AN ACT

relating to exculpatory clauses in trusts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 142.005, Property Code, is amended by adding Subsections (h), (i), and (j) to read as follows:

(h) A trust created under this section is subject to Subtitle B, Title 9.

(i) Notwithstanding Subsection (h), this section prevails over a provision in Subtitle B, Title 9, that is in conflict or inconsistent with this section.

(j) 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:

(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.

SECTION 2. Section 868, Texas Probate Code, is amended by adding Subsection (c) to read as follows:

(c) A provision in a trust created under Section 867 that

1 relieves a trustee from a duty, responsibility, or liability
2 imposed by this subpart or Subtitle B, Title 9, Property Code, is
3 enforceable only if:

4 (1) the provision is limited to specific facts and
5 circumstances unique to the property of that trust and is not
6 applicable generally to the trust; and

7 (2) the court creating or modifying the trust makes a
8 specific finding that there is clear and convincing evidence that
9 the inclusion of the provision is in the best interests of the
10 beneficiary of the trust.

11 SECTION 3. This Act takes effect September 1, 2003, and
12 applies only to a trust existing on or created after that date.