

By: Hartnett

H.B. No. 3503

A BILL TO BE ENTITLED

AN ACT

relating to trusts.

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

SECTION 1. Section 111.002, Property Code, is amended to read as follows:

(a) Except as provided by Subsections (b) or (c) of this section, if [~~If~~] the provisions of this subtitle and the terms of a trust conflict, the terms of the trust control.

(b) The [~~except the~~] settlor may not relieve a corporate trustee from the duties, restriction, and liabilities under Section 113.052 or 113.053.

(c) The settlor may not modify or eliminate the power of the court to remove a trustee under Section 113.082.

(d) This subtitle and the Texas Trust Act, as amended (Articles 7425b-1 through 7425b-48, Vernon's Texas Civil Statutes), shall be considered one continuous statute, and for the purposes of any statute or of any instrument creating a trust that refers to the Texas Trust Act, this subtitle shall be considered an amendment of the Texas Trust Act.

SECTION 2. The heading of Section 113.059, Property Code, is amended to read as follows:

Sec. 113.059. POWER OF SETTLOR [~~TRUSTOR~~] TO ALTER TRUSTEE'S DUTIES AND RESPONSIBILITIES.

SECTION 3. Section 113.059, Property Code, is amended to

1 read as follows:

2 (a) Except as provided by Subsections (c), (d), (e) or (f)  
3 ~~[(b)]~~ of this section, the settlor by provision in an instrument  
4 creating, modifying, amending, or revoking the trust may relieve  
5 the trustee from a duty~~[, liability,]~~ or restriction imposed by  
6 this subtitle or by common law.

7 (b) In order to relieve a trustee from any such duty or  
8 restriction, the settlor must specifically and explicitly provide  
9 in the instrument creating, modifying, amending or revoking the  
10 trust that the duty or restriction is modified or eliminated.

11 (c) A settlor may not relieve a corporate trustee from the  
12 duties or restrictions ~~[, restrictions, or liabilities]~~ of Section  
13 113.052 or 113.053 of this Act.

14 (d) A settlor may not modify or eliminate the power of the  
15 court to remove a trustee as provided in this subtitle.

16 (e) A settlor may not modify or eliminate a beneficiary's  
17 right to a trust accounting as provided in this subtitle.

18 (f) A settlor may not authorize the trustee to act in bad  
19 faith; to intentionally commit a breach of trust; to act with  
20 reckless indifference to the interest of the beneficiary; or to  
21 obtain any profit from a breach of trust.

22 (g) An exculpatory provision in a trust instrument is not,  
23 by itself, effective to modify or eliminate any of the trustee's  
24 duties or restrictions.

25 SECTION 4. Chapter 113, Subtitle B, Title 9, Property Code,  
26 is amended by adding Section 113.0591 to read as follows:

27 Sec. 113.0591. EXCULPATORY PROVISIONS. (a) Except as

1 provided by Subsections (b), (c) and (d) of this section, the  
2 settlor by provision in the instrument creating, modifying,  
3 amending or revoking the trust may relieve the trustee from  
4 liability for breach of trust.

5 (b) A settlor may not relieve a corporate trustee from the  
6 liabilities of Section 113.052 or 113.053 of this Act.

7 (c) A provision in the trust instrument is not effective to  
8 relieve the trustee of liability for breach of trust committed in  
9 bad faith or intentionally or with reckless indifference to the  
10 interest of the beneficiary, or of liability for any profit which  
11 the trustee has derived from a breach of trust.

12 (d) To the extent to which a provision relieving the trustee  
13 of liability for breaches of trust is inserted in the trust  
14 instrument as the result of an abuse by the trustee of a fiduciary  
15 or confidential relationship to the settlor, such provision is  
16 ineffective.

17 SECTION 5. Subsections (h), (i) and (j) are added to Section  
18 142.005, Property Code, to read as follows:

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

21 (i) To the extent of a conflict between Subtitle B, Title 9,  
22 Property Code, and a provision of this section, the provision of  
23 this section controls.

24 (j) No provision in a trust created under this section which  
25 relieves a trustee from any duty, responsibility or liability  
26 otherwise imposed by this section or by Subtitle B, Title 9,  
27 Property Code, is enforceable unless:

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

4           (2) the court creating or modifying the trust makes a  
5 specific finding by clear and convincing evidence that the  
6 inclusion of the provision is in the best interests of the  
7 beneficiary of the trust.

8           SECTION 6. Subsections (c) is added to Section 868, Probate  
9 Code, to read as follows:

10          (c) No provision in a trust created under Section 867 which  
11 relieves a trustee from any duty, responsibility or liability  
12 otherwise imposed by this subpart or by Subtitle B, Title 9,  
13 Property Code, is enforceable unless:

14           (1) the provision is limited to specific facts and  
15 circumstances unique to the property of that trust and is not  
16 applicable generally to the trust; and

17           (2) the court creating or modifying the trust makes a  
18 specific finding by clear and convincing evidence that the  
19 inclusion of the provision is in the best interests of the  
20 beneficiary of the trust.

21          SECTION 7. This Act takes effect September 1, 2003, and  
22 applies only to a trust existing on or created after that date.