

BILL ANALYSIS

H.B. 336
By: Hartnett
Judiciary
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Texas Legislature, in its 2005 regular session, enacted Property Code Section 113.060, a statute requiring trustees to keep beneficiaries reasonably informed concerning administration of the trust and matters of material interest to the beneficiary. A common law duty of this nature was already in existence, and this section was enacted to provide a statutory reference for the new Trust Code Section 111.0035, which places limits on the ability of a settler to modify this duty.

Since the passage of Section 113.060, a number of concerns have been raised about the scope of the duty it imposes upon trustees. These include the inability of a settler to modify this duty (within the limits of Trust Code Section 111.0035) with respect to a trust that is already irrevocable; what "reasonably informed" means; whether periodic reports must be sent to all potential beneficiaries; and the effect of the existence, exercise, or non-exercise of a power of appointment on the identification.

Trustees and attorneys active in the probate and trust areas have indicated that they are more comfortable with the common law than with the statute. Accordingly, this bill would repeal the statute. The bill also intends to clarify and emphasize that the common law duty will continue to exist as it existed prior to the enactment of Property Code Section 113.060. The bill would also specify the extent to which a settler may override the common law in the instrument creating the trust.

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

Section 1 of the bill amends Section 111.035 of the Property code to eliminate a reference to Section 113.060, Property Code, and to provide that the terms of a trust may not limit any common-law duty to keep a beneficiary informed regarding a trust so long as the beneficiary is at least 25 years old and (i) is entitled or permitted to receive distributions from the trust; or (ii) would receive a distribution from the trust if the trust were terminated.

Section 2 repeals Property Code Section 113.060.

Section 3 provides that the enactment of Section 113.060 by the 79th Legislature was not intended to repeal any common law duty to keep a beneficiary of a trust informed, and the repeal thereof does not repeal any such common law duty. The common law duty to keep a beneficiary informed that existed immediately before January 1, 2006 is continued in effect.

EFFECTIVE DATE

Immediately on receipt of required vote, otherwise September 1, 2007.