

## **BILL ANALYSIS**

C.S.H.B. 564  
By: Hartnett  
Judiciary  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

During the interim between legislative sessions, it is the practice of the Real Estate, Probate and Trust Law Section of the State Bar of Texas to recommend improvements to the Texas Trust Code for adoption by the next legislature. This bill contains section recommendations for the 80th Legislature.

### **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. Amends subsection (b) of Section 187.005 of the Finance Code to reflect the repeal of subsection (c) of that section.

SECTION 2. Amends Section 111.0035, Property Code, by deleting Subsections (b)(2), which refers to limitations against loans of trust funds and transactions in trust property, and (b)(5)(C), which refers to a trustee's statutory duty to keep beneficiaries informed and adds Subsection (c) which refers to a trustee's common law duty to keep beneficiaries informed, which is reinstated. This change (and the repeal of Section 113.060, Property Code, by this bill) is intended to address concerns regarding potential overbroad judicial interpretation of the scope of the statutory duty to keep beneficiaries informed.

SECTION 3. Amends Section 111.004, Property Code, by revising the definitions of "person" and "trustee." This change (and the change to Section 116.002, Property Code, contained in Section 8 of this bill) is intended to reconcile and update certain overlapping definitions applying generally to the Texas Trust Code and specifically to the Uniform Principal and Income Act provisions (Chapter 116, Property Code).

SECTION 4. Amends Section 112.035, Property Code, by amending Subsection (d) to clarify that a trust will not be considered "self-settled" merely because a non-settlor trustee has the discretion to reimburse the settlor for income tax liability attributable to the inclusion of the trust's income in the settlor's taxable income.

SECTION 5. Adds Section 112.059 to the Property Code to permit and provide procedure for the termination of certain trusts of insufficient value to justify the costs of administration.

SECTION 6. Amends Section 113.058, Property Code, by amending Subsections (b) through (d) to reverse the default rule requiring bonds of trustees. Most trust agreements already waive bond. This amendment adopts the Uniform Trust Code concept making that the default rule. The section still allows the trust instrument or the court, "for good cause shown," to impose a bond requirement.

SECTION 7. Amends Section 113.085, Property Code, by amending Subsection (a) to address the possibility that transfer agents might require all trustees to join in any transaction absent a written delegation since it would otherwise be impossible for the transfer agent to verify whether or not the trustees were "unable to reach a unanimous decision." This reinstates the old rule allowing a majority of trustees to bind the trust and its beneficiaries (as to third parties), absent a different provision in the trust instrument.

SECTION 8. Amends Section 114.005(a) of the Property Code to reflect the deletion of Section 113.052 and 113.053 which currently prevent a beneficiary from relieving a corporate trustee of restrictions, duties and liabilities relating to loans to the trustee by the trust and the purchase or sale of trust property by the trustee.

SECTION 9. Amends Section 114.081, Property Code, to conform its protection of third parties with the protection afforded by Section 1012 of the Uniform Trust Code, especially since the statutory remedies have been expanded to allow a court to void an act of a trustee (see Section 114.008, Property Code, Subsection (a)(9)). The omission of these third party protection provisions was brought up during hearings on H.B. 1190 during the 79<sup>th</sup> Legislature, Regular Session, by a witness objecting to the remedies added to Section 114.008.

SECTION 10. Amends Chapter 114, Property Code, by adding Section 114.086. This section is a trust certification statute broader than that set out in the Finance Code designed to (i) protect privacy interests by lessening the need to provide copies of the full trust instrument to third parties and (ii) protect third parties who rely on the certification in good faith. The language is derived from Uniform Trust Code Section 1013, with modifications based on existing similar provisions in the Finance Code and similar statutes of other states.

SECTION 11. Amends Section 116.002, Property Code, by revising the definitions of “person” and “trustee” to refer back to the revised definitions contained in Section 111.004, Property Code (see Section 2 of this bill).

SECTION 12. Amends Sections 116.172(c) and (e), Property Code, to make technical corrections to the provision that was first enacted in 2003.

SECTION 13. Amends Section 116.174, Property Code, by amending Subsection (a) to eliminate references to “nominal” receipts in this section in order to avoid the potential confusion caused by different rules applicable to nominal receipts under this section and “insubstantial” allocations under Section 116.171, Property Code.

SECTION 14. Amends Section 123.003, Property Code, by amending Subsection (a) to correct a problem with a 2005 legislative change to this section. The prior change was intended to give the Attorney General more time to respond to a notice of the filing of a proceeding involving a charitable trust, while making it clear that the notice requirement is not intended to apply to uncontested proceedings. However, as adopted, the literal language of the notice requirement did not apply unless the proceeding was a second application to probate a will under Section 83, Probate Code.

SECTION 15. Amends the definition of benefit plan and adds a definition of qualified minor's trust in Section 141.002, Property Code.

SECTION 16 – 18. Amend Section 141.004(a), Property Code, by amending Subsection (a); Section 141.008, Property Code, by amending Subsection (a) and (c); and Section 141.015, Property Code, by adding Subsection (b-1). These changes are based on recent Florida changes to its Uniform Transfers to Minors Act which grant authority to a custodian to transfer custodial property to a trust that qualifies for annual gift tax exclusions under Section 2503(c), Internal Revenue Code. This allows the custodian to create a trust what would last beyond age 21 so long as the child possesses (and does not exercise) a right to withdraw the entire trust estate at that age. The changes also expand the application to certain retirement benefit plans.

SECTION 19. Repeals Section 113.060 (Informing Beneficiaries), Property Code (see explanation of Section 1 of this bill) and Section 187.005(c), Finance Code.

SECTION 20. Provides that neither the enactment of Section 113.060, Property Code, in 2005, nor the repeal of that section by this Act is intended to repeal a trustee's common law duty to keep a beneficiary informed, which is continued in effect as it existed immediately before the original effective date of Section 113.060.

SECTION 21. Provides that the changes made by this act will apply to all trusts, regardless of the date of their creation, except as otherwise provided by the terms of the trust itself.

### **EFFECTIVE DATE**

The amendments to Section 111.0035 and the repeal of Section 111.060 of the Property Code take effect immediately if the act receives the required vote; otherwise these sections take effect September 1, 2007, which is the effective date for the remainder of the act.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The text of Section 1 of the bill is new in the substitute.

The deletion of Section 111.0035(b)(2) is new in the substitute.

The text of Section 5 is new in the substitute.

The text of Section 8 is new in the substitute.

The amendments to Section 114.081(b) which pertain to the actions to be taken by a person other than a beneficiary are added in the substitute. The substitute adds money in addition to assets in Section 114.081(c).

The substitute adds the repeal of Section 187.005(c), Finance Code.

The text of Section 21 of the bill is new in the substitute.