

## **BILL ANALYSIS**

C.S.H.B. 3198  
By: Hartnett  
Judiciary  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

On some occasions it may be desirable to remove the trustee originally selected for a trust. The purpose of this bill is to provide a statutory method for removing a trustee in certain circumstances.

### **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**

The bill would amend existing subsections of Section 113.028, Property Code, and add new subsections to such statute. The bill would provide that each settlor as well as each beneficiary must provide written notice of opposition to a trustee's prosecution or assertion of a claim for damages against a non-beneficiary before the trustee would be barred from pursuing the claim (and shielded from liability for failure to do so). The bill would also provide that if a trustee continues to assert or prosecute a claim after receiving the notice, and there are no provisions in the trust instrument regarding procedure for removal of the trustee, the trustee shall be removed if each settler and each beneficiary give the trustee written notice of removal. On receipt of such notice, the trustee may resign, petition the court for a discharge, or for a determination of the validity of the notice. If the trustee is removed under these provisions or resigns, the trustee may, before turning over the trust property to the remaining trustees or successor trustee, pay itself compensation it is owed, reimburse itself for expenses for which it is owed reimbursement and keep a reasonable allowance to pay its costs and expenses in connection with a judicial discharge. However, the trustee may not keep such an allowance if it has already received a complete written discharge from each settler and each beneficiary. Such a release would not release the duty to turn over the balance of the trust property after the trustee has received the compensation and reimbursement it is owed. The bill also provides for the execution of a notice by a minor, unborn, or unascertained beneficiary through virtual representation by certain persons having no conflict of interest with such beneficiary.

### **EFFECTIVE DATE**

The act takes effect September 1, 2007, and applies to a claim for damages under Section 113.028(a), Property Code, first prosecuted or asserted by the trustee after the effective date.

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

The original bill amended Section 113.082, Property Code, to provide for a mandatory removal of a trustee on the written notice signed by the grantor and each beneficiary, defined for purposes of the act as a current income beneficiary. The original bill contained no provisions allowing the trustee to pay itself compensation or reimbursement or retain any property to pursue a judicial discharge or to contest the validity of the notice. The substitute contains these provisions, and moves them to a different section of the code, Section 113.028, Property Code, which some practitioners believe is a more appropriate location. The original bill also did not affect the right of a trustee to assert or prosecute a claim for damages, which is addressed in the substitute. Furthermore, the substitute limits the unanimous removal notice to the narrow situation in which the trustee has violated the express wishes of the settlor(s) and beneficiaries regarding such a claim, while the original bill contained no such limitation and permitted a removal notice at any time.