

BILL ANALYSIS

C.S.H.B. 3216
By: Branch
Financial Institutions
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The creation of family-owned trust companies to serve as trustee of trusts that benefit family members has accelerated since the 1990s. The advantages of appointing a family-owned trust company as trustee of a family trust include greater fiduciary continuity, increased protection against liability for individuals who would be serving in their individual capacities as fiduciaries, and more involvement by family members in the management of family wealth. After Virginia enacted legislation that encourages the creation of family-owned trust companies, several other states are considering similar legislation.

C.S.H.B. 3216 imposes restrictions on the exercise of tax-sensitive trust distribution and management decisions by family members who own voting securities in a family-controlled state trust company or who otherwise hold an equity interest in or serve as a director, officer, manager, or employee of a family-controlled state trust company.

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

C.S.H.B. 3216 amends Chapter 183, Finance Code, to add Section 183.1065, LIMITATION OF POWERS IN RELATION TO FAMILY-CONTROLLED TRUST COMPANY. C.S.H.B. 3216 applies this section only to a family member who is an owner of voting securities in a family-controlled state trust company, or holds an equity interest in, or is serving as a director, officer, manager, agent, or employee of, a family-controlled state trust company.

C.S.H.B. 3216 states a family member may not participate in or otherwise have a voice in a discretionary decision by the family-controlled state trust company to exercise a power or make a decision with respect to a distribution of trust income or principal of any managed trust to or for the benefit of a family member unless the exercise of the discretion in exercising that power is limited by an ascertainable standard related to the health, education, maintenance, or support of the family member benefiting from the distribution and does not discharge a legal obligation of another family member, the distribution is necessary for the health, education, maintenance, or support of the family member exercising the discretion and the exercise of the discretion in exercising that power does not discharge a legal obligation of another family member, or the instrument governing the administration of that trust clearly provides for the exercise of that authority by the family member exercising the authority, the use or occupancy of any property of a managed trust by a beneficiary of the trust or by a family member of the beneficiary, unless use or occupancy of the property is necessary for the health, maintenance, or support of the beneficiary, the exercise of an incident of ownership with respect to any life insurance policy owned by a managed trust or a family-controlled state trust company, the voting, directly or indirectly, of stock in a corporation if the stock is held by a managed trust of which any family member is a grantor, and the corporation is a controlled corporation, as defined by Section 2036(b)(2) of the Internal Revenue Code of 1986, with respect to that grantor, the exercise of any power that, under the terms of the applicable trust instrument, must be held by a trustee who is "independent," is not a "related or subordinate" party, or is described by similar words of similar meaning, the exercise of any other power that if held by the family member would cause all or part of the trust to be included in the estate of a grantor or beneficiary of a managed trust for federal estate tax purposes or would cause a distribution from the trust to be treated as a

C.S.H.B. 3216 80(R)

transfer by a grantor or beneficiary for federal gift tax purposes. C.S.H.B. 3216 adds definitions for "current beneficiary of a managed trust", "descendant", "family-controlled state trust company", "family-controlled trust business", "family member" and "managed trust."

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 3216 amends the original by clarifying the persons to whom the limitations are applied.