

By: Hartnett

H.B. No. 3198

Substitute the following for H.B. No. 3198:

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C.S.H.B. No. 3198

A BILL TO BE ENTITLED

AN ACT

relating to the removal of a trustee.

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

SECTION 1. Section 113.028, Property Code, is amended by amending Subsections (a) and (c) and adding Subsections (d) through (i) to read as follows:

(a) During the lifetime of all settlors only, a [A] trustee may not prosecute or assert a claim for damages in a cause of action against a party who is not a beneficiary of the trust if each settlor and each beneficiary of the trust provides written notice to the trustee of the settlor's or beneficiary's opposition to the trustee's prosecuting or asserting the claim in the cause of action.

(c) The trustee is not liable for failing to prosecute or assert a claim in a cause of action if prohibited by the settlors and beneficiaries under Subsection (a).

(d) If, after receiving the written notice described by Subsection (a), a trustee continues to prosecute or assert the claim, and the trust instrument does not contain provisions regarding the procedure for removal of the trustee, the trustee shall be removed if each settlor and each beneficiary of the trust provides a written notice to the trustee of the trustee's removal. On receipt of a notice under this subsection, the trustee may resign or petition a court for discharge or for a determination as to the

1 validity of the notice.

2 (e) A trustee who has been removed or resigns under
3 Subsection (d) must deliver the trust property to the remaining
4 trustees or the successor trustee within a reasonable time.

5 (f) Before delivering the trust property to the remaining
6 trustees or the successor trustee or after the acceptance of the
7 trust property by a successor trustee, a trustee who has been
8 removed or resigns under Subsection (d) is entitled to:

9 (1) pay to the trustee the compensation to which the
10 trustee is entitled at the time of removal or resignation under the
11 terms of the trust or Section 114.061;

12 (2) reimburse the trustee for any unpaid
13 reimbursements to which the trustee is entitled at the time of
14 removal or resignation under the terms of the trust or Section
15 114.063; and

16 (3) retain a reasonable allowance to pay the trustee's
17 cost and expenses in connection with obtaining a judicial
18 discharge.

19 (g) A trustee may not retain the allowance described by
20 Subsection (f)(3) if each settlor and each beneficiary provides a
21 written release of the trustee from any duty, responsibility,
22 restriction, or liability as to the settlor or beneficiary that
23 would otherwise be imposed on the trustee by this subtitle or common
24 law, including liability for past acts or omissions. A release
25 described by this subsection is binding on any successor trustee.

26 (h) A release of the removed trustee described by Subsection
27 (g) does not release the removed trustee from the duty to deliver

1 the balance of the trust property to the remaining trustees or the
2 successor trustee after payment of the compensation and
3 reimbursements described by Subsections (f)(1) and (2).

4 (i) A notice described by Subsection (a) or (d) on behalf of
5 a minor, incapacitated, unborn, or unascertained beneficiary or a
6 release described by Subsection (g) on behalf of one of those
7 beneficiaries may be executed by the following persons:

8 (1) the beneficiary's guardian, if no conflict of
9 interest exists;

10 (2) if the beneficiary has no guardian, or if a
11 conflict of interest with the beneficiary's guardian exists, the
12 beneficiary's surviving parent or parents, if no conflict of
13 interest exists with the surviving parent or parents; or

14 (3) if the beneficiary does not have a guardian or a
15 parent without a conflict of interest, any other beneficiary of the
16 trust having no conflict of interest and a substantially identical
17 interest in the trust as the minor, incapacitated, unborn, or
18 unascertained beneficiary.

19 SECTION 2. The change in law made by this Act applies only
20 to a claim for damages described by Section 113.028, Property Code,
21 as amended by this Act, first prosecuted or asserted by the trustee
22 on or after the effective date of this Act. A claim first
23 prosecuted or asserted before the effective date of this Act is
24 governed by the law in effect immediately before that date, and that
25 law is continued in effect for that purpose.

26 SECTION 3. This Act takes effect September 1, 2007.