

By: Branch

H.B. No. 3216

Substitute the following for H.B. No. 3216:

By: Solomons

C.S.H.B. No. 3216

A BILL TO BE ENTITLED

AN ACT

relating to the participation of certain family members in a family-controlled state trust company.

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

SECTION 1. Subchapter B, Chapter 183, Finance Code, is amended by adding Section 183.1065 to read as follows:

Sec. 183.1065. LIMITATION OF POWERS IN RELATION TO FAMILY-CONTROLLED TRUST COMPANY. (a) This section applies only to a family member who:

(1) is an owner of voting securities in a family-controlled state trust company; or

(2) holds an equity interest in, or is serving as a director, officer, manager, agent, or employee of, a family-controlled state trust company.

(b) 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:

(1) a distribution of trust income or principal of any managed trust to or for the benefit of a family member unless:

(A) 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

1 obligation of another family member;

2 (B) the distribution is necessary for the health,  
3 education, maintenance, or support of the family member exercising  
4 the discretion and the exercise of the discretion in exercising  
5 that power does not discharge a legal obligation of another family  
6 member; or

7 (C) the instrument governing the administration  
8 of that trust clearly provides for the exercise of that authority by  
9 the family member exercising the authority;

10 (2) the use or occupancy of any property of a managed  
11 trust by a beneficiary of the trust or by a family member of the  
12 beneficiary, unless use or occupancy of the property is necessary  
13 for the health, maintenance, or support of the beneficiary;

14 (3) the exercise of an incident of ownership with  
15 respect to any life insurance policy owned by a managed trust or a  
16 family-controlled state trust company;

17 (4) the voting, directly or indirectly, of stock in a  
18 corporation if the stock is held by a managed trust of which any  
19 family member is a grantor, and the corporation is a controlled  
20 corporation, as defined by Section 2036(b)(2) of the Internal  
21 Revenue Code of 1986, with respect to that grantor;

22 (5) the exercise of any power that, under the terms of  
23 the applicable trust instrument, must be held by a trustee who is  
24 "independent," is not a "related or subordinate" party, or is  
25 described by similar words of similar meaning; and

26 (6) the exercise of any other power that if held by the  
27 family member would cause all or part of the trust to be included in

1 the estate of a grantor or beneficiary of a managed trust for  
2 federal estate tax purposes or would cause a distribution from the  
3 trust to be treated as a transfer by a grantor or beneficiary for  
4 federal gift tax purposes.

5 (c) In this section:

6 (1) "Current beneficiary of a managed trust" means a  
7 beneficiary of a managed trust who:

8 (A) is currently permitted or entitled to receive  
9 a distribution from the trust or who would receive a distribution  
10 from the trust if it were currently terminated; or

11 (B) possesses an interest in the trust with  
12 respect to which the likelihood of a distribution of any kind is not  
13 so remote as to be negligible, as defined by Treasury Regulation  
14 Section 26.2612-1(b)(iii).

15 (2) "Descendant" means a present and future lineal  
16 descendant of an individual, including an individual who becomes a  
17 lineal descendant by virtue of adoption.

18 (3) "Family-controlled state trust company" means a  
19 state trust company:

20 (A) that is organized primarily to engage in  
21 family-controlled trust business with one or more family members;  
22 and

23 (B) voting control for which is held, directly or  
24 indirectly, by one or more family members or trusts organized  
25 primarily for the benefit of family members.

26 (4) "Family-controlled trust business" means acting  
27 as or performing the duties of an executor, administrator,

1 conservator, guardian, or trustee for family members in the regular  
2 course of its business.

3 (5) "Family member" means:

4 (A) a grantor or current beneficiary of a managed  
5 trust;

6 (B) a spouse, parent, descendant, sibling, or  
7 employee of a person described by Paragraph (A); or

8 (C) a person who is otherwise related or  
9 subordinate, within the meaning of Section 672(c) of the Internal  
10 Revenue Code of 1986, to a person described by Paragraph (A), but  
11 only if a person described by Paragraph (A) or (B), acting alone or  
12 in conjunction with another, has the power to:

13 (i) remove the related or subordinate  
14 person from a position in which the related or subordinate person  
15 exercises a power described by Subsection (b); and

16 (ii) fill the vacancy under Subparagraph  
17 (i) with a person who:

18 (a) is described by Paragraph (A) or  
19 (B); or

20 (b) is otherwise related or  
21 subordinate, within the meaning of Section 672(c) of the Internal  
22 Revenue Code of 1986, to a person described by Paragraph (A).

23 (6) "Managed trust" means a trust with respect to  
24 which a family-controlled state trust company serves as trustee or  
25 cotrustee.

26 SECTION 2. This Act takes effect immediately if it receives  
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this  
2 Act does not receive the vote necessary for immediate effect, this  
3 Act takes effect September 1, 2007.