

By: Branch

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, 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 trust to or for the benefit of a family member or for the discharge of a legal obligation of the 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;

1 (B) the distribution is necessary for the health,
2 education, maintenance, or support of the family member; or

3 (C) the instrument governing the administration
4 of that trust clearly provides for the exercise of that authority;

5 (2) the use or occupancy of any property of a trust by
6 a beneficiary of the trust or by a family member of the beneficiary,
7 unless use or occupancy of the property is necessary for the health,
8 maintenance, or support of the beneficiary;

9 (3) the exercise of an incident of ownership with
10 respect to any life insurance policy owned by a trust or a
11 family-controlled state trust company;

12 (4) the voting of stock in a corporation that is a
13 controlled corporation, as defined by Section 2036(b)(2) of the
14 Internal Revenue Code of 1986, with respect to any living grantor of
15 a trust;

16 (5) the exercise of any power that, under the terms of
17 the applicable trust instrument, must be held by a trustee who is
18 "independent," is not a "related or subordinate" party, or is
19 described by similar words of similar meaning; or

20 (6) the exercise of any other power that if held by a
21 grantor or beneficiary of a trust would cause all or part of the
22 trust to be included in the grantor's or beneficiary's estate for
23 federal estate tax purposes and would cause a distribution from the
24 trust to be treated as a transfer by the grantor or beneficiary for
25 federal gift tax purposes.

26 (c) In this section:

27 (1) "Degree of kinship," with respect to two

1 individuals, means:

2 (A) a degree of lineal kinship computed by
3 counting one degree for each individual in the line of ascent or
4 descent, exclusive of the individual from whom the computation
5 begins; or

6 (B) a degree of collateral kinship computed by
7 beginning with one of the individuals and ascending from that
8 individual to a common ancestor, descending from that ancestor to
9 the other individual, and counting one degree for each individual
10 in the line of ascent and in the line of descent, exclusive of the
11 individual from whom the computation begins, the total to represent
12 the degree of the kinship.

13 (2) "Designated relative" means the individual to or
14 through whom the family members are related.

15 (3) "Family" means a designated relative and family
16 members of the designated relative.

17 (4) "Family-controlled state trust company" means a
18 state trust company that:

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

22 (B) does not transact trust business with the
23 public.

24 (5) "Family-controlled trust business" means acting
25 as or performing the duties of an executor, administrator,
26 conservator, guardian, or trustee for family members in the regular
27 course of its business.

1 (6) "Family member" means a designated relative and:

2 (A) an individual within the fifth degree of
3 lineal kinship to the designated relative, or the ninth degree of
4 collateral kinship to the designated relative, for which purposes
5 only a legally adopted individual shall be treated as a natural
6 child of the adoptive parents;

7 (B) the current or former spouse of the
8 designated relative and of an individual who is considered a family
9 member under Paragraph (A);

10 (C) a trust established by a family member or
11 exclusively for the benefit of one or more family members;

12 (D) a corporation, limited partnership, or
13 limited liability company, all of the capital stock, partnership
14 interests, membership interests, or other equity interests of which
15 are owned by one or more family members, family members' spouses as
16 described by Paragraph (B), family members' trusts as described by
17 Paragraph (C), or family members' estates as described by Paragraph
18 (E);

19 (E) the estate of a family member; or

20 (F) a charitable organization or other
21 charitable entity created by a family member.

22 SECTION 2. This Act takes effect immediately if it receives
23 a vote of two-thirds of all the members elected to each house, as
24 provided by Section 39, Article III, Texas Constitution. If this
25 Act does not receive the vote necessary for immediate effect, this
26 Act takes effect September 1, 2007.