

## BILL ANALYSIS

C.S.S.B. 666  
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Committee Report (Substituted)

### BACKGROUND AND PURPOSE

The "orphan trust" or charitable foundations set up by donors who have no heirs or other family that they wish to carry out their wills, are often entrusted to lawyers or local banks who will keep the money invested in the local community. However, when an attorney retires or local banks are sold to multinational financial institutions, the foundations are no longer run by the people and banks familiar with the donors' specific wishes. The corporate trustees have wide latitude to change the way the trust operates, and to decide which charities will receive grants and thus the danger of distorting or altogether ignoring the donor's intent is increased with each transaction. Banks give fewer and smaller charitable gifts from the trusts they manage, all the while increasing the foundation's assets, and increasing administrative fees that the banks charge to foundations for the services they provide. Additionally, banks as trustees will often provide grants which serve their own interests, but that do not honor the donor's favorite causes. Examples of this practice have been exposed in courts and in the national press. The consequences of charitable funds being moved and used as assets and revenue streams for large financial institutions is that communities that stood to benefit from the philanthropy of their citizens are denied the good works and good will of the original donors.

C.S.S.B. 666 amends current law relating to the administration of charitable trusts.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 113, Property Code, by adding Section 113.029, as follows:

Sec. 113.029. RELOCATION OF ADMINISTRATION OR PROPERTY OF CHARITABLE TRUST. (a) Defines "charitable entity," "charitable trust," and "trust administration."

(b) Prohibits the trustee of a charitable trust, except as provided by this section or specifically authorized by the terms of a trust, from changing the location in which the trust administration takes place from a location in this state to a location outside this state.

(c) Requires the trustee to consult the settlor concerning the selection of a new location for the administration of the trust or the trust property and submit the selection to the attorney general if the settlor is living and not incapacitated, or propose a new location and submit the proposal to the attorney general if the settlor is not living or is incapacitated.

(d) Allows the trustee to file an action in a district court or statutory probate court in the county in which the trust was created seeking a court order authorizing the trustee to change the location in which the trust is administered to a location outside this state. The court may exercise its equitable powers to effectuate the original purpose of the trust.

(e) The location in which the administration of the trust takes place cannot be changed to a location outside this state unless the charitable purposes of the trust cannot be adequately fulfilled unless the trust administration is moved and a district or statutory probate court authorizes the relocation.

(f) The attorney general may bring an action to enforce this section. If a trustee fails to comply with the provisions of this section, a district or statutory probate court in the county in which the trust administration was originally located may remove the trustee and appoint a new trustee. Cost of a proceeding to remove a trustee and appoint a new trustee including reasonable attorney's fees may be assessed against the removed trustee.

(g) Provides that this section does not affect a trustee's authority to sell real estate owned by a charitable trust.

SECTION 2. Provides that except as otherwise provided by a will, the terms of a trust, or this Act, the changes in law made by this Act apply to a trust existing or created on or after September 1, 2009; the estate of a decedent who dies before September 1, 2009, if the probate or administration of the estate is pending on or after September 1, 2009; and the estate of a decedent who dies on or after September 1, 2009.

SECTION 3. Effective date: September 1, 2009.

#### **EFFECTIVE DATE**

September 1, 2009.

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

The substitute makes two minor changes to the engrossed bill. First, in the caption of Sec. 113.029, Property Code, the words "OR PROPERTY" are eliminated. This was a reference in a prior version of the bill, and was a drafting mistake.

Second, Sec. 113.029(e)(1) is changed to read "Except as provided by Subsection (b), the location in which the administration of the trust takes place may not be changed to a location outside this state unless: (1) the charitable purposes of the trust would not be impaired if the trust administration is moved: and..."

The language in the engrossed bill proposed a standard which is impossible to meet. That is, proving that the "purposes of a trust cannot be adequately fulfilled unless the trust administration is moved" is like proving a negative. There are numerous, legitimate reasons for relocating trust functions such as: efficiency, cost reduction, convenience of the grant-making body, or a family member with grant-making authority who wants to move for personal or professional reasons. None of those impair the "purposes of a trust" but could struggle to meet that standard. The standard should be determining that the purposes of the trust would not be impaired if relocated.