

BILL ANALYSIS

C.S.H.B. 1835
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

An interested party, as part of an ongoing review of Texas probate, guardianship, and trust law, has proposed several changes affecting trusts. C.S.H.B. 1835 seeks to codify these proposed changes.

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. 1835 amends the Property Code by adding a temporary provision that expires September 1, 2013, relating to an authorized person disclaiming an interest in certain trusts by evidencing the refusal in a written memorandum delivered to a certain person not later than a date that is nine months after a listed date, whichever of those dates is later. The bill includes in that list December 17, 2010, in the case of an interest in a trust created by reason of the death of a decedent dying before December 17, 2010, but after December 31, 2009, and to which provisions of law relating to the means of evidencing a disclaimer or renunciation of property or interest receivable from a decedent do not apply.

C.S.H.B. 1835, in a provision relating to the conditions under which a clause in a trust is unenforceable, for a clause that would cause a forfeiture of any court action, or void an interest for bringing the action, to condition the unenforceability on there being just cause for bringing the action, rather than probable cause. The bill authorizes a beneficiary to whom written notice is required to be given under provisions of law relating to division and combination of trusts to waive the notice requirement in a writing delivered to the trustee. The bill specifies that if all beneficiaries to whom such notice would otherwise be required to be given waive such a notice requirement, notice is not required. The bill requires such notice to be given to a guardian of the estate, guardian ad litem, or parent of a minor or incapacitated beneficiary, who may waive the notice requirement on behalf of the minor or incapacitated beneficiary.

C.S.H.B. 1835 provides for an additional exception to a district court's exclusive jurisdiction over all proceedings relating to trusts by adding a county court at law to the list of excepted courts. The bill authorizes an action involving the interpretation and administration of an inter vivos trust created by the settlor or a testamentary trust created by the settlor's will, if the settlor is deceased and an administration of the settlor's estate is pending in Texas, to be brought in a county in which venue is proper under state law or in the county in which the administration of the settlor's estate is pending. The bill, in a provision designating necessary parties to an action involving a trust, specifies that a necessary party is a beneficiary of the trust rather than a beneficiary and excepts a beneficiary designated by name whose interest has been distributed, extinguished, terminated, or paid from being a necessary party to the action. The bill removes a provision providing that a necessary party in such an action is a beneficiary designated by name in the instrument creating the trust.

C.S.H.B. 1835 makes a provision of law relating to an exercise of a trustee's power to make an adjustment that causes an individual to be treated as the owner of all or part of the trust for income tax purposes, when there is more than one trustee, applicable to a trustee in a provision in which the applicability creates a condition under which a cotrustee to whom the condition does not apply may make certain adjustments. The bill, in a provision that conditions the release of such a trustee's power on the trustee's uncertainty about whether exercising the power will cause certain results described by provisions of law, removes a result that the trustee is a beneficiary of the trust.

C.S.H.B. 1835 clarifies that an income tax on the trust's share of an entity's taxable income is required to be paid proportionately so that the portion of taxes paid for receipts received from income is allocated only to income and the portion of taxes paid for receipts received from principal is allocated only to principal, unless the tax exceeds the total receipts from the entity and must be paid from principal to the extent that the tax exceeds the total receipts from the entity. The bill requires the trustee, after applying provisions of law relating to taxes paid by a trustee, to adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary and removes a provision that receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

C.S.H.B. 1835 makes its provisions applicable to a trust existing or created on or after September 1, 2011; to the estate of a decedent who dies before September 1, 2011, if the probate or administration of the estate is pending as of that date; and the estate of a decedent who dies on or after September 1, 2011. The bill makes its provisions applicable only to an act or omission relating to a trust that occurs on or after September 1, 2011, if the trust already exists on that date. The bill makes a statement of intent and makes conforming and nonsubstantive changes.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1835 adds language not included in the original that causes to expire on September 1, 2013, the provision relating to the effectiveness of a memorandum delivered to a trustee or transferor of an interest on a date not later than the date that is nine months after December 17, 2010. The substitute differs from the original in nonsubstantive ways.