BILL ANALYSIS

S.B. 778
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

A trust is a legal arrangement that is created on behalf of a beneficiary and is managed by a fiduciary known as a trustee. A trust may hold money, real property, or personal property. Interested parties contend that changes are needed in laws governing trusts in order to allow trustees to better meet the needs and desires of trust beneficiaries, including giving a trustee authority to purchase insurance for a beneficiary from an affiliate bank in order to obtain competitive pricing and allowing flexibility in the manner in which a trustee is compensated. S.B. 778 seeks to address those 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

S.B. 778 amends the Property Code to authorize certain financial institutions that serve as a trustee or as a custodian of specified accounts to purchase insurance underwritten or otherwise distributed by an affiliate, a division within the financial institution, or a syndicate or selling group that includes the financial institution or an affiliate and charge the trust or custodial account for the insurance premium, provided that the insurance product and premium are the same or similar to a product and premium offered by organizations that are not an affiliate, a division within the financial institution, or a syndicate or selling group that includes the financial institution or an affiliate, unless the instrument governing the fiduciary relationship expressly prohibits the purchase or charge. The bill authorizes the institution to receive a fee or compensation on account of the insurance product sold by the affiliate, division within the financial institution, or syndicate or selling group that includes the financial institution or an affiliate, provided that any amount charged for the product is disclosed and does not exceed the customary or prevailing amount that is charged for comparable insurance provided to a person other than the trust. The bill clarifies that such authority, as well as the authority for such a financial institution to employ an affiliate or division within a financial institution to provide certain services and to receive compensation on account of the services performed, is subject to the institution's fiduciary duties.

S.B. 778 creates an exception to the requirement that a trustee disburse one-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee from income and disburse the remaining one-half of such compensation from principal if, consistent with the trustee's fiduciary duties, the trustee determines that a different portion, none, or all of the compensation should be allocated to income, in which case that portion of the disbursements that are not allocated to income are required to be allocated to principal.

S.B. 778 applies its provisions to a trust existing or created on or after September 1, 2013, except as otherwise expressly provided by a trust or a will creating a trust, and establishes that for a trust existing on September 1, 2013, that was created before that date, the bill's provisions apply only to an act or omission relating to the trust that occurs on or after September 1, 2013.

EFFECTIVE DATE

September 1, 2013.