

AN ACT

relating to trusts.

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

SECTION 1. Subsection (f), Section 113.053, Property Code, is amended to read as follows:

(f) A national banking association, a state-chartered corporation, including a state-chartered bank or trust company, a state or federal savings and loan association that has the right to exercise trust powers and that is serving as trustee, or such an institution that is serving as custodian with respect to an individual retirement account, as defined by Section 408, Internal Revenue Code, or an employee benefit plan, as defined by Section 3(3), Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(3)), regardless of whether the custodial account is, or would otherwise be, considered a trust for purposes of this subtitle, may, subject to its fiduciary duties:

(1) employ an affiliate or division within a financial institution to provide brokerage, investment, administrative, custodial, or other account services for the trust or custodial account and charge the trust or custodial account for the services [~~provided, however, nothing in this section shall allow an affiliate or division to engage in the sale or business of insurance if not otherwise permitted to do so~~]; [~~and~~]

(2) unless the instrument governing the fiduciary

1 relationship expressly prohibits the purchase or charge, purchase
2 insurance underwritten or otherwise distributed by an affiliate, a
3 division within the financial institution, or a syndicate or
4 selling group that includes the financial institution or an
5 affiliate and charge the trust or custodial account for the
6 insurance premium, provided that:

7 (A) the person conducting the insurance
8 transaction is appropriately licensed if required by applicable
9 licensing and regulatory requirements administered by a functional
10 regulatory agency of this state; and

11 (B) the insurance product and premium are the
12 same or similar to a product and premium offered by organizations
13 that are not an affiliate, a division within the financial
14 institution, or a syndicate or selling group that includes the
15 financial institution or an affiliate; and

16 (3) receive a fee or compensation, directly or
17 indirectly, on account of the services performed or the insurance
18 product sold by the affiliate, ~~or~~ division within the financial
19 institution, or syndicate or selling group that includes the
20 financial institution or an affiliate, whether in the form of
21 shared commissions, fees, or otherwise, provided that any amount
22 charged by the affiliate, ~~or~~ division, or syndicate or selling
23 group that includes the financial institution or an affiliate for
24 the services or insurance product is disclosed and does not exceed
25 the customary or prevailing amount that is charged by the
26 affiliate, ~~or~~ division, or syndicate or selling group that
27 includes the financial institution or an affiliate, or a comparable

1 entity, for comparable services rendered or insurance provided to a
2 person other than the trust.

3 SECTION 2. Section 116.201, Property Code, is amended to
4 read as follows:

5 Sec. 116.201. DISBURSEMENTS FROM INCOME. A trustee shall
6 make the following disbursements from income to the extent that
7 they are not disbursements to which Section 116.051(2)(B) or (C)
8 applies:

9 (1) one-half of the regular compensation of the
10 trustee and of any person providing investment advisory or
11 custodial services to the trustee unless, consistent with the
12 trustee's fiduciary duties, the trustee determines that a different
13 portion, none, or all of the compensation should be allocated to
14 income;

15 (2) one-half of all expenses for accountings, judicial
16 proceedings, or other matters that involve both the income and
17 remainder interests;

18 (3) all of the other ordinary expenses incurred in
19 connection with the administration, management, or preservation of
20 trust property and the distribution of income, including interest,
21 ordinary repairs, regularly recurring taxes assessed against
22 principal, and expenses of a proceeding or other matter that
23 concerns primarily the income interest; and

24 (4) recurring premiums on insurance covering the loss
25 of a principal asset or the loss of income from or use of the asset.

26 SECTION 3. Subsection (a), Section 116.202, Property Code,
27 is amended to read as follows:

1 (a) A trustee shall make the following disbursements from
2 principal:

3 (1) the remaining one-half of the disbursements
4 described in Section [~~Sections~~] 116.201(1) unless, consistent with
5 the trustee's fiduciary duties, the trustee determines that a
6 different portion, none, or all of those disbursements should be
7 allocated to income, in which case that portion of the
8 disbursements that are not allocated to income shall be allocated
9 to principal;

10 (1-a) the remaining one-half of the disbursements
11 described in Section 116.201(2) [~~and (2)~~];

12 (2) all of the trustee's compensation calculated on
13 principal as a fee for acceptance, distribution, or termination,
14 and disbursements made to prepare property for sale;

15 (3) payments on the principal of a trust debt;

16 (4) expenses of a proceeding that concerns primarily
17 principal, including a proceeding to construe the trust or to
18 protect the trust or its property;

19 (5) premiums paid on a policy of insurance not
20 described in Section 116.201(4) of which the trust is the owner and
21 beneficiary;

22 (6) estate, inheritance, and other transfer taxes,
23 including penalties, apportioned to the trust; and

24 (7) disbursements related to environmental matters,
25 including reclamation, assessing environmental conditions,
26 remedying and removing environmental contamination, monitoring
27 remedial activities and the release of substances, preventing

1 future releases of substances, collecting amounts from persons
2 liable or potentially liable for the costs of those activities,
3 penalties imposed under environmental laws or regulations and other
4 payments made to comply with those laws or regulations, statutory
5 or common law claims by third parties, and defending claims based on
6 environmental matters.

7 SECTION 4. (a) Except as otherwise expressly provided by a
8 trust, a will creating a trust, or this section, the changes in law
9 made by this Act apply to a trust existing or created on or after
10 September 1, 2013.

11 (b) For a trust existing on September 1, 2013, that was
12 created before that date, the changes in law made by this Act apply
13 only to an act or omission relating to the trust that occurs on or
14 after September 1, 2013.

15 SECTION 5. This Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 778 passed the Senate on April 16, 2013, by the following vote: Yeas 28, Nays 1; and that the Senate concurred in House amendment on May 23, 2013, by the following vote: Yeas 30, Nays 1.

Secretary of the Senate

I hereby certify that S.B. No. 778 passed the House, with amendment, on May 20, 2013, by the following vote: Yeas 147, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor