

By: Carona

S.B. No. 778

A BILL TO BE ENTITLED

AN ACT

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relating to trusts.

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

SECTION 1. Section 113.053(f), 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) purchase insurance underwritten or otherwise

1 distributed by an affiliate, a division within the financial  
2 institution, or a syndicate or a selling group that includes the  
3 financial institution or an affiliate and charge the trust or  
4 custodial account for the services, unless the instrument governing  
5 the fiduciary relationship expressly prohibits the purchase or  
6 charge; and

7           (3) receive a fee or compensation, directly or  
8 indirectly, on account of the services performed or the insurance  
9 product sold by the affiliate, ~~[or]~~ division within the financial  
10 institution, syndicate, or selling group, whether in the form of  
11 shared commissions, fees, or otherwise, provided that any amount  
12 charged by the affiliate, ~~[or]~~ division, syndicate, or selling  
13 group for the services or insurance product is disclosed and does  
14 not exceed the customary or prevailing amount that is charged by the  
15 affiliate, ~~[or]~~ division, syndicate, or selling group, or a  
16 comparable entity, for comparable services rendered or insurance  
17 provided to a person other than the trust.

18           SECTION 2. Section 116.201, Property Code, is amended to  
19 read as follows:

20           Sec. 116.201. DISBURSEMENTS FROM INCOME. (a) A trustee  
21 shall make the following disbursements from income to the extent  
22 that they are not disbursements to which Section 116.051(2)(B) or  
23 (C) applies:

24           (1) except as provided by Subsection (b) or (c),  
25 one-half of the regular compensation of the trustee and of any  
26 person providing investment advisory or custodial services to the  
27 trustee;

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

4           (3) all of the other ordinary expenses incurred in  
5 connection with the administration, management, or preservation of  
6 trust property and the distribution of income, including interest,  
7 ordinary repairs, regularly recurring taxes assessed against  
8 principal, and expenses of a proceeding or other matter that  
9 concerns primarily the income interest; and

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

12           (b) If the trust is a revocable living trust, all of the  
13 trustee's compensation for services performed may be charged  
14 against income during the lifetime of the grantor, unless otherwise  
15 directed by the grantor.

16           (c) If charging a part or all of the trustee's compensation  
17 to income, in the judgment of the trustee, is impracticable because  
18 of the lack of sufficient income or is inadvisable because of a  
19 desire to provide increased income to the beneficiary, the trustee  
20 may pay part or all of the compensation out of principal. The  
21 decision of the trustee to pay a larger portion or all of the  
22 trustee's compensation out of the principal is conclusive.

23           SECTION 3. Section 116.202, Property Code, is amended by  
24 amending Subsection (a) and adding Subsection (c) to read as  
25 follows:

26           (a) A trustee shall make the following disbursements from  
27 principal:

1           (1) except as provided by Subsection (c), the  
2 remaining part [~~one-half~~] of the disbursements described in  
3 Sections 116.201(a)(1) [~~116.201(1)~~] and (2);

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

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

8           (4) expenses of a proceeding that concerns primarily  
9 principal, including a proceeding to construe the trust or to  
10 protect the trust or its property;

11           (5) premiums paid on a policy of insurance not  
12 described in Section 116.201(a)(4) [~~116.201(4)~~] of which the trust  
13 is the owner and beneficiary;

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

16           (7) disbursements related to environmental matters,  
17 including reclamation, assessing environmental conditions,  
18 remedying and removing environmental contamination, monitoring  
19 remedial activities and the release of substances, preventing  
20 future releases of substances, collecting amounts from persons  
21 liable or potentially liable for the costs of those activities,  
22 penalties imposed under environmental laws or regulations and other  
23 payments made to comply with those laws or regulations, statutory  
24 or common law claims by third parties, and defending claims based on  
25 environmental matters.

26           (c) If charging a part or all of the trustee's compensation  
27 to principal, in the judgment of the trustee, is impracticable

1 because of the lack of sufficient cash and readily marketable  
2 assets or is inadvisable because of the nature of the principal  
3 assets, the trustee may determine to pay part or all of the  
4 compensation out of income. The decision of the trustee to pay a  
5 larger portion or all of the trustee's compensation out of income is  
6 conclusive, and the income of the trust is not entitled to  
7 reimbursement from principal.

8 SECTION 4. Section 117.005, Property Code, is amended to  
9 read as follows:

10 Sec. 117.005. DIVERSIFICATION. (a) Except as provided by  
11 Subsection (b), a [A] trustee shall diversify the investments of  
12 the trust unless the trustee reasonably determines that, because of  
13 special circumstances, the purposes of the trust are better served  
14 without diversifying.

15 (b) If trust assets include farm or ranch property, a  
16 closely held family business, life insurance, or interests in  
17 timber, oil, gas, or minerals, the trustee may elect to retain the  
18 assets unless otherwise directed by a majority of adult trust  
19 beneficiaries. A trustee's exercise of discretion to retain the  
20 assets is not a breach of the trustee's duty to diversify  
21 investments.

22 SECTION 5. (a) Except as otherwise expressly provided by a  
23 trust, a will creating a trust, or this section, the changes in law  
24 made by this Act apply to a trust existing or created on or after  
25 September 1, 2013.

26 (b) For a trust existing on September 1, 2013, that was  
27 created before that date, the changes in law made by this Act apply

1 only to an act or omission relating to the trust that occurs on or  
2 after September 1, 2013.

3 SECTION 6. This Act takes effect September 1, 2013.