86R2877 BEE-F

By:  Wray H.B. No. 2246

A BILL TO BE ENTITLED

AN ACT

relating to the fiduciary status of a directed trust advisor.

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

SECTION 1.  Section 114.0031, Property Code, is amended by amending Subsection (e) and adding Subsection (e-1) to read as follows:

(e)  If the terms of a trust give a person the authority to direct, consent to, or disapprove a trustee's actual or proposed investment decisions, distribution decisions, or other decisions, the person is [~~considered to be~~] an advisor. An advisor is [~~and~~] a fiduciary regardless of trust terms to the contrary [~~when exercising that authority~~] except that the trust terms may provide that an advisor acts in a nonfiduciary capacity if:

(1)  the advisor's only power is to remove and appoint trustees, advisors, trust committee members, or other protectors; and

(2)  the advisor does not exercise that power to appoint the advisor's self to a position described by Subdivision (1).

(e-1)  Subsection (e) does not prohibit the exercise of a power in a nonfiduciary capacity as required by the Internal Revenue Code for a grantor or other person to be treated as the owner of any portion of the trust for federal income tax purposes.

SECTION 2.  (a)  Except as specifically provided by a trust term in effect before September 1, 2019, the changes in law made by this Act apply to a trust created before, on, or after September 1, 2019, with respect to an action taken or not taken on or after September 1, 2019, by a trustee, custodian, or other person with respect to the trust.

(b)  An action taken or not taken with respect to a trust before September 1, 2019, is governed by the law that applied to the action taken or not taken immediately before September 1, 2019, and that law is continued in effect for that purpose.

SECTION 3.  This Act takes effect September 1, 2019.