

BILL ANALYSIS

C.S.H.B. 2179
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Real Estate, Probate, and Trust Law (REPTL) section of the State Bar of Texas has identified several areas of potential confusion in the standards and procedures established in state law regarding trusts, as well as dissonance in the law on qualification as a homestead. C.S.H.B. 2179 seeks to enact changes suggested by REPTL aimed at updating and clarifying state law and addressing that dissonance.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 2179 amends the Property Code to revise the definition of "qualifying trust" in provisions governing which property qualifies as the homestead of an express trust's settlor or beneficiary for purposes of certain protections available under state law and the Texas Constitution in order to bring that definition in line with the definition of "qualifying trust" used with respect to resident homestead property tax exemptions available under the Tax Code. The bill further revises that definition to clarify the rights of a settlor or beneficiary of a qualifying trust.

C.S.H.B. 2179 prohibits a beneficiary of a spendthrift trust or the beneficiary's estate from being considered a settlor merely because the beneficiary, in any capacity, did any of the following:

- held or exercised a testamentary power of appointment, other than a general power of appointment, as that power is defined in the federal Internal Revenue Code of 1986;
- held a testamentary general power of appointment; or
- exercised a testamentary general power of appointment in favor of or for the benefit of the takers in default of the appointive assets.

C.S.H.B. 2179 establishes that, if a beneficiary exercised a testamentary general power of appointment in favor of or for the benefit of any appointee other than the takers in a default of the appointive assets, the appointive assets are subject to the claims of the beneficiary's creditors, but only to the extent the beneficiary's owned property is insufficient to meet their debts. The assets are expressly not subject to any of the following, unless appointed to the beneficiary's estate:

- administration as a part of the beneficiary's estate;
- recovery by the personal representative of the beneficiary's estate, except as provided by the Internal Revenue Code of 1986; or
- the payment of taxes or administration expenses of the beneficiary's estate.

C.S.H.B. 2179 authorizes a second trust created by distribution of principal from an existing irrevocable inter vivos or testamentary trust to retain the name used by the first trust and, subject to applicable federal law, also retain the same tax identification number. The bill establishes that the legislature intends this to be a codification of state common law in effect immediately before the bill's effective date.

C.S.H.B. 2179 conditions a court's authority to appoint an attorney ad litem to represent any interest that the court considers necessary in a proceeding concerning a trust on the court first determining that representation of the interest otherwise would be inadequate.

C.S.H.B. 2179 applies to a trust created before, on, or after the bill's effective date.

C.S.H.B. 2179 repeals Section 112.0715(c), Property Code.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2179 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute clarifies the intent of the original with respect to the provisions establishing the circumstances under which a beneficiary of a spendthrift trust or the beneficiary's estate is prohibited from being considered a settlor and specifies that the testamentary general power of appointment to which those provisions apply is that power as defined in the federal Internal Revenue Code of 1986.