

BILL ANALYSIS

C.S.H.B. 2196
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Practicing attorneys have identified areas of trust law that lack clarity and need to be modified so as to preclude unnecessary litigation. For instance, the Property Code and Tax Code have different provisions regarding what language is needed for a revocable trust to qualify as a homestead. There are other issues pertaining to trusts; last session, the legislature revised the rule against perpetuities, which has caused some people to believe that they get an additional 300 years for each trust created by the original trust, resulting in the belief that there is no rule against perpetuities. And with respect to a trust decanted into a new trust, there is confusion about whether the new trust can keep the name and employer identification number of the original trust. Lastly, there is an incongruity in which a court appointing a guardian ad litem in a trust proceeding must make a finding that a person's interests are inadequately represented but the same finding is not required with respect to an attorney ad litem. C.S.H.B. 2196 seeks to provide clarity to these issues in trust law.

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. 2196 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 align that definition 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. 2196 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. 2196 makes the following changes with respect to the rule against perpetuities:

- clarifies that the effective date of a trust is the date the governing instrument creating an interest in the trust becomes irrevocable;

- specifies that if an interest in one trust is distributed to a second trust with a different effective date, the effective date of that interest in the second trust becomes the earlier of the effective dates of the two trusts; and
- for a trust that has an effective date on or after September 1, 2021, requires an interest in the trust to vest not later than the later of:
 - 300 years after the effective date; or
 - 21 years after some life in being at the time of the effective date, plus a period of gestation.

C.S.H.B. 2196 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. 2196 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 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 own 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 federal Internal Revenue Code of 1986; or
- the payment of taxes or administration expenses of the beneficiary's estate.

C.S.H.B. 2196 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. 2196 applies to a trust created before, on, or after the bill's effective date, except as otherwise provided.

C.S.H.B. 2196 repeals Section 112.0715(c), Property Code.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 2196 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The introduced repealed the provision that prohibits a settlor of a trust from directing that a real property asset be retained or refusing that such an asset be sold for a period longer than 100 years and also established that, with respect to a trust that becomes irrevocable on or after September 1, 2021, terms of a trust instrument restricting the sale or requiring the retention of a real property asset are unenforceable after 100 years have elapsed from the trust's acquisition of the asset. The substitute does not repeal that Property Code provision or include a provision establishing that such a term is unenforceable.