

BILL ANALYSIS

Senate Research Center
88R23115 ATP-F

H.B. 2333
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Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

While trust beneficiaries should have more control over their personal or commercial trusts, additional enforcement for noncharitable trusts without an ascertainable beneficiary is also needed. H.B. 2333 seeks to ensure that noncharitable trusts without a definite or definitely ascertainable beneficiary are properly enforced and administered by providing for the appointment of one or more trust enforcers to ensure that the trust's purpose and terms are being carried out appropriately. Overall, this legislation seeks to provide a framework for the proper enforcement and administration of noncharitable trusts without a definite or definitely ascertainable beneficiary.

H.B. 2333 amends current law relating to noncharitable trusts without an ascertainable beneficiary.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 111.004(4), Property Code, to redefine "express trust."

SECTION 2. Amends Chapter 112, Property Code, by adding Subchapter F, as follows:

SUBCHAPTER F. NONCHARITABLE TRUST WITHOUT ASCERTAINABLE BENEFICIARY

Sec. 112.121. VALIDITY OF TRUST; APPLICABILITY. (a) Authorizes a trust to be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary. Authorizes a noncharitable purpose to include seeking economic or noneconomic benefits.

(b) Provides that this subchapter does not apply to a trust created under Section 112.037 (Trust for Care of Animal).

Sec. 112.122. ENFORCEMENT OF TRUST. (a) Requires a trust created under this subchapter to be enforced by one or more persons appointed in the terms of the trust to serve as a trust enforcer.

(b) Requires a trust enforcer to enforce the purpose and terms of the trust. Provides that the trust enforcer is not a beneficiary of the trust, but has the rights of a beneficiary provided under Title 9 (Trusts) and the common law of this state, or as otherwise provided by the terms of the trust.

(c) Provides that a trust enforcer is required to exercise any authority granted under the terms of the trust or the provisions of this section as a fiduciary owing a duty to the trust and is entitled to reasonable compensation for serving as trust enforcer.

(d) Authorizes a trust enforcer to consent to, waive, object to, or petition an appropriate court concerning any matter regarding the purpose or administration of the trust.

(e) Requires that any action in that capacity be decided by the majority vote of the persons acting as trust enforcers, except as otherwise provided by the terms of the trust, if more than one person is acting as a trust enforcer. Provides that the decision of the trustee controls if there are an even number of trust enforcers and a majority vote cannot be established.

(f) Authorizes the terms of the trust to provide for the succession of a trust enforcer or a process of appointing any successor trust enforcer.

(g) Requires a court properly exercising jurisdiction to appoint one or more persons to serve as the trust enforcer if no person is serving as a trust enforcer for a trust created under this subchapter.

Sec. 112.123. APPLICATION OR DISTRIBUTION OF TRUST PROPERTY. (a) Authorizes property of a trust created under this subchapter to be applied only to the intended purpose of the trust, except to the extent that a court finds that the value of the trust property exceeds the amount required for the intended purpose of the trust.

(b) Requires property found by a court not to be required for the trust's intended purpose, except as provided by the terms of the trust, to be distributed:

(1) as provided by the terms of the trust; or

(2) if the trust does not provide for the distribution of such property, to the settlor if then living or to the settlor's successors in interest.

SECTION 3. Makes application of Subchapter F, Chapter 112, as added by this Act prospective.

SECTION 4. Effective date: upon passage or September 1, 2023.