

BILL ANALYSIS

C.S.H.B. 2333

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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

While trust beneficiaries should have more control over their personal trusts or a commercial trust, additional enforcement for noncharitable trusts without an ascertainable beneficiary is also needed. C.S.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.

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. 2333 amends the Property Code to authorize the creation of a trust for a noncharitable purpose without a definite or definitely ascertainable beneficiary and to establish that such a noncharitable purpose may include seeking economic or noneconomic benefits. The bill establishes the following with respect to the trust:

- the trust must be enforced by one or more persons appointed in the trust to serve as trust enforcer who must enforce the purpose and terms of the trust and exercise any authority granted under the trust or the bill's provisions as a fiduciary owing a duty to the trust;
- the trust enforcer or enforcers are entitled to reasonable compensation for serving as such;
- the enforcer or enforcers are not beneficiaries of the trust but have the rights of a beneficiary provided under applicable Property Code provisions and state common law, or as otherwise provided by the trust;
- a trust enforcer may consent to, waive, object to, or petition an appropriate court concerning any matter regarding the purpose or administration of the trust;
- except as provided by the trust, if more than one person is acting as a trust enforcer, any action in that capacity must be decided by the majority vote of the persons acting as trust enforcers;
- if there are an even number of trust enforcers and a majority vote cannot be established, the decision of the trustee controls; and
- the terms of the trust may provide for the succession of a trust enforcer or a process of appointing any successor trust enforcer.

If no person is serving as the enforcer, a court properly exercising jurisdiction must appoint one or more persons to serve in that capacity.

C.S.H.B. 2333 restricts the use of trust property to the intended purpose of the trust, except to the extent that a court finds the value of the trust property exceeds the amount required for the intended purpose. Except as provided by the trust, property that a court finds is not required for the trust's intended purpose must be distributed as provided by the terms of the trust or to the settlor if then living or to the settlor's successors in interest. The bill's provisions regarding a noncharitable trust without an ascertainable beneficiary expressly do not apply to a trust created for the care of an animal.

C.S.H.B. 2333 expands the definition of "express trust" under the Texas Trust Code to include a fiduciary relationship with respect to property which arises as a manifestation by the settlor of an intention to create the relationship and which subjects the person holding title to the property to equitable duties to deal with the property for a particular purpose in the case of a trust subject to the bill's provisions.

C.S.H.B. 2333 applies only to a trust created on or after the bill's effective date.

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. 2333 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 substitute contains a provision absent from the introduced that expands the definition of "express trust" to include a fiduciary relationship with respect to property which arises as a manifestation by the settlor of an intention to create the relationship and which subjects the person holding title to the property to equitable duties to deal with the property for a particular purpose in the case of a trust subject to the bill's provisions.

The substitute includes a provision absent from the introduced establishing that a noncharitable purpose with respect to a noncharitable trust without an ascertainable beneficiary may include seeking economic or noneconomic benefits.

The substitute omits provisions from the introduced relating to the creation of a commercial legacy trust, a business committee established for such a trust, and a required report by that committee.