

BILL ANALYSIS

H.B. 4376
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

A constituent in House District 1 who works as an attorney has expressed concern that current Texas law does not provide asset protection methods that are as effective as such methods in other states. Many other states have domestic asset protection trust laws that enable an individual to protect their assets through first-party asset protection trusts, wherein an individual, also known as the trust settlor, can create an asset protection trust for themselves. A law permitting this type of trust in Texas will ensure that an individual can protect and secure their assets in a manner that does not defraud creditors. H.B. 4376 seeks to address the issues that settlors of a trust encounter when conducting business in Texas. A domestic asset protection, such as that proposed by this legislation, offers strong and fair asset protection from creditors, lawsuits, or other judgments against an individual's estate. These types of trusts can also deter costly litigation. By enabling domestic asset protection laws, parties are incentivized to conduct business in Texas.

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

H.B. 4376 amends the Property Code to establish that a spendthrift trust of which the settlor is a beneficiary is considered to be a self-settled asset protection trust if the trust meets the following conditions:

- the trust is created in a writing signed by the settlor, is irrevocable, does not require that any part of the income or principal of the trust be distributed to the settlor, and is not intended to hinder, delay, or defraud known creditors; and
- at least one trustee of the trust is an individual who resides in and is domiciled in Texas, a trust company that is organized under federal or any state law and maintains an office in Texas for the transaction of business, or a qualifying financial institution.

If the spendthrift trust satisfies these requirements, the trust is considered a self-settled asset protection trust and a restraint by the trust of the voluntary or involuntary transfer of the settlor's beneficial interest in the trust prevents the settlor's creditors from satisfying claims from that interest, except as provided by the bill's provisions.

H.B. 4376 establishes that a spendthrift trust may be considered a self-settled asset protection trust even if under the trust terms:

- the settlor may prevent a distribution from the trust;

- the settlor holds a special lifetime or testamentary power of appointment, so long as that power cannot be exercised in favor of the settlor, the settlor's estate, a creditor of the settlor, or a creditor of the settlor's estate;
- the settlor is a beneficiary of a trust that qualifies as a charitable remainder trust under applicable federal law, even if the settlor has the right to release all or part of the settlor's retained interest in that trust in favor of one or more of the remainder beneficiaries of the trust;
- the settlor may or is entitled to receive a percentage of the value of the trust each year as specified in the trust instrument, whether of the initial value of the trust assets or their value determined from time to time as provided by the trust instrument, so long as the authorized annual distribution does not exceed a specified cap;
- the settlor may or is entitled to receive income or principal from a grantor retained annuity trust paying out a qualified annuity interest or a grantor retained unitrust paying out a qualified unitrust interest;
- the settlor:
 - may or is entitled to use real property held under a qualified personal residence trust as described in applicable federal regulations; or
 - may possess or actually possesses a qualified annuity interest within the meaning of applicable federal regulations;
- the settlor may receive income or principal from the trust, so long as the authorized distribution is subject to the discretion of another person; or
- the settlor may use real or personal property owned by the trust.

H.B. 4376 prohibits its provisions regarding the creation of a self-settled asset protection trust from being construed to prohibit the settlor of such a trust from holding any power under the trust, whether or not the settlor is a cotrustee, including the power to remove and replace a trustee, direct trust investments, or execute other management powers. The bill prohibits the settlor from holding a power to make distributions to himself or herself without the consent of another person. The bill establishes that such a trust is created if by the terms of the writing creating the trust the settlor manifests an intention to create a self-settled asset protection trust. No specific language is required for the creation of a self-settled asset protection trust under the bill's provisions.

H.B. 4376 sets out provisions that do the following with respect to a self-settled asset protection trust:

- establish that the settlor of the trust has only those powers and rights conferred by the trust instrument and that an agreement or understanding, express or implied, between the settlor and the trustee that attempts to grant or permit the retention of greater rights or authority than is stated in the trust instrument is void;
- require the beneficiary of the trust to be named or clearly referred to in the trust instrument;
- provide for a trust beneficiary's support, education, maintenance, and benefit, without reference to or limitation by the beneficiary's needs, station in life, or mode of life, or the needs of any other person, whether dependent upon the beneficiary or not;
- provide for absolute discretion of the trustee of the trust with respect to certain matters;
- prohibit such discretion from being interfered with for any uncertainty or on any pretext or for any consideration of the needs, station in life, or mode of life of a beneficiary;
- establish that the giving of such discretion to a trustee does not invalidate the trust;
- establish that a self-settled asset protection trust restrains and prohibits the assignment, alienation, acceleration, and anticipation of any interest of a beneficiary by the voluntary or involuntary act of the beneficiary, by operation of law, by any process, or otherwise;
- prohibit the trust estate, or the corpus or capital of the trust estate, from being assigned, alienated, diminished, or impaired by any alienation, transfer, or seizure that would cut off or diminish payments, rents, profits, earnings, or income of the estate that would otherwise be available for the benefit of a beneficiary;

- restrict the payment of mandatory or discretionary payments by a trustee of the trust to a beneficiary under certain circumstances;
- prohibit a beneficiary of the trust from ordering the disposition of the trust income, regardless of whether the order is voluntary or involuntary or is made on the order or direction of a bankruptcy court or other court;
- establish that an interest of a beneficiary of the trust is not subject to any process of attachment issued against the beneficiary and prohibit such interest from being taken in execution under any legal process directed against a beneficiary, a trustee, the trust estate, or the trust income;
- require the trustee to apply the entire trust estate and trust income solely for the benefit of a beneficiary, free, clear, and discharged of any obligations of the beneficiary and from any responsibility for that application;
- require the trustee to disregard and defeat any assignment or other act, voluntary or involuntary, that is contrary to the bill's provisions;
- establish that a beneficiary of the trust has no legal estate in the corpus of the trust estate with certain exceptions;
- authorize an accumulation of the income from the trust property to be directed in the trust instrument for the benefit of one or more beneficiaries, beginning within the time permitted for the vesting of future interests and not to extend beyond the period limiting the time within which the absolute power of alienation of property may be suspended;
- makes void a direction of the trust income made by the trust instrument that is for a longer term than permitted by law only as to the excess time, without regard to whether the direction is severable from other provisions in the trust instrument; and
- authorize such a direction of accumulated trust income that is voided to be paid and distributed to the next succeeding beneficiary in interest.

H.B. 4376 authorizes certain creditors to bring claims against the trust within a specified period after a transfer to the trust or the transfer was discovered, as provided by the bill. The bill sets out limitations on actions for the following individuals with respect to a transfer made to a self-settled asset protection trust:

- a person who is a settlor's creditor when the transfer is made;
- a person who becomes a settlor's creditor after the transfer is made; and
- a person other than a beneficiary or settlor of the trust.

The bill provides for the following if more than one transfer is made to a self-settled asset protection trust:

- each subsequent transfer to the trust must be disregarded for the purpose of determining whether a person may bring an action with respect to a previous transfer to the trust; and
- any distribution to a beneficiary from the trust is considered to have been made from the most recent transfer made to the trust.

H.B. 4376 establishes that if a trustee of a self-settled asset protection trust exercises the trustee's discretion or authority to distribute trust income or principal to or for the settlor of the trust by appointing the property of the original trust in favor of a second trust for the benefit of the settlor, the second trust is considered to be a self-settled asset protection trust so long as it satisfies the bill's requirements other than the self-settlement requirement. Property transferred to the second trust is considered to have been transferred on the date the settlor of the original self-settled asset protection trust transferred the property into the trust, regardless of the fact that the property has been transferred to a second trust. The bill provides for a trust the domicile of which is changed to Texas to be considered a self-settled asset protection trust under certain conditions. Unless the trust instrument expressly provides otherwise, the bill's provisions govern the construction, operation, and enforcement of a self-settled asset protection trust in the state, regardless of whether the trust was created inside or outside of the state if:

- any of the trust assets are in Texas;
- the trust affects personal property and the declared domicile of the creator of the trust is in Texas; or

- at least one applicable trustee located or residing in Texas has the power to maintain records and prepare income tax returns and at least part of the trust administration is performed in Texas.

H.B. 4376 applies only to a transfer of property on or after the bill's effective date. The bill establishes that property transferred before the bill's effective date to a trust that on or after that date satisfies the bill's requirements is considered transferred to the trust on the earliest date on or after the bill's effective date on which the trust terms satisfy those requirements. The bill applies with respect to transfers made to the trust before, on, or after the bill's effective date.

EFFECTIVE DATE

September 1, 2023.