

BILL ANALYSIS

C.S.S.B. 801
By: Hughes
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Attorneys and other parties will often mistakenly draft a conveyance of property to the name of a trust instead of the name of the trustee. However, longstanding law in Texas establishes that a trust is not an entity. A recent decision by the Fifth Circuit Court of Appeals in *Fugedi v. Initram, Incorporated et al.*, correctly interpreted Texas statutes to recognize a conveyance into a trust instead of a trustee as a valid conveyance. Although Texas has a correction instruments statute that could be utilized to correct such an error, there are concerns that the potential for confusion on the matter remains and could result in such a conveyance not being recognized by a court. C.S.S.B. 801 seeks to address these concerns by clarifying the law relating to an instrument that names a trust as a party.

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.S.B. 801 amends the Property Code to establish that the trustee of a trust is considered for all purposes to be the named party to an instrument that names the trust as a party to the instrument in any capacity, unless the trust is a legal entity under state law, and that such consideration is effective as of the effective date of the original instrument. The bill authorizes, but expressly does not require, the trustee of a trust that is the named party to a recorded instrument to be identified by a correction instrument under provisions relating to nonmaterial corrections to a recorded original instrument of conveyance. The bill establishes that a document purporting to be a certification of trust that is recorded in the county in which real property of the trust is located is presumed to correctly identify the trust and the trustee and may be relied upon by a good faith purchaser or lender for value. The bill applies to an instrument executed on, before, or after the bill's effective date

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

C.S.S.B. 801 differs from the engrossed in minor or nonsubstantive ways to make technical corrections.