

## **BILL ANALYSIS**

C.S.H.B. 1354  
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Judiciary & Civil Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties assert the need to update provisions of law relating to trusts to reflect recent developments in relevant case law and to clarify, correct, and simplify those provisions. The purpose of C.S.H.B. 1354 is to provide for this update.

### **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. 1354 amends the Property Code to prohibit the terms of a trust from limiting the power of a court to reform a trust in the interest of justice. The bill clarifies that, for purposes of a provision prohibiting a beneficiary of a spendthrift trust from being considered a settlor merely because of a lapse, waiver, or release of the beneficiary's right to withdraw a part of the trust property to the extent that the value of the property affected by the lapse, waiver, or release in any calendar year does not exceed the greater of two amounts specified in federal law, the amount specified by federal law relating to an exclusion of certain gifts from taxable gifts in a given calendar year is with respect to the contribution to the trust by each donor. The bill establishes that statutory provisions relating to a forfeiture clause in a trust are not intended to and do not repeal any law.

C.S.H.B. 1354 adds to the conditions under which judicial modification or termination of a trust is authorized the condition that the court order is necessary or appropriate to qualify a distributee for governmental benefits and is not contrary to the settlor's intentions. The bill authorizes a court, on the petition of a trustee or a beneficiary, to order that the terms of a trust be reformed if reformation of administrative, nondispositive terms of the trust is necessary or appropriate to prevent waste or impairment of the trust's administration, if reformation is necessary or appropriate to achieve the settlor's tax objectives or to qualify a distributee for governmental benefits and is not contrary to the settlor's intentions, or if reformation is necessary to correct a scrivener's error in the governing document, even if unambiguous, to conform the terms to the settlor's intent, but only if such intent is established by clear and convincing evidence. The bill establishes that such authorization is not intended to state the exclusive basis for reformation of trusts and that the bases for reformation of trusts in equity or common law are not affected by the authorization. The bill authorizes the court to direct that such an order has retroactive effect.

C.S.H.B. 1354 establishes that an authorized trustee who makes certain distributions to further

trusts or a trustee acting in a fiduciary capacity who makes certain disclaimers relating to interests in property is not required to give additional written notice relating to the charitable impact of the distribution or disclaimer, respectively, to the attorney general if the attorney general waives that requirement in writing. The bill establishes, for purposes of statutory provisions exempting such trustees from the requirement to provide notice of certain distributions to further trusts or notice of certain disclaimers relating to interests in property, as applicable, to a beneficiary who waives the notice requirement, that a beneficiary is considered to have so waived if the beneficiary's court-appointed guardian or conservator, or parent if the beneficiary is a minor for whom no guardian or conservator has been appointed, waives the requirement that such notice be given. The bill establishes that statutory provisions relating to court-ordered distributions to further trusts do not limit a beneficiary's right to bring an action against a trustee for a breach of trust. The bill removes from among the exceptions to an authorized trustee's power to distribute the principal of a trust to a second trust the exception for materially impairing the rights of any beneficiary of the trust.

C.S.H.B. 1354 authorizes a trustee to grant an agent powers with respect to property of a trust to act for the trustee in any lawful manner for purposes of real property transactions and authorizes a trustee so acting to delegate any or all of certain specified duties and powers. The bill provides for the form, termination, and good-faith acceptance of such a delegation. The bill authorizes a trustee to so delegate if the governing instrument does not affirmatively permit the trustee to hire agents or expressly prohibit the trustee from hiring agents. The bill makes a trustee who so delegates a power liable to the beneficiaries or to the trust for an action of the agent to whom the power was delegated.

C.S.H.B. 1354 establishes that the Uniform Principal and Income Act and the Uniform Prudent Investor Act do not apply to any institutional fund subject to the Uniform Prudent Management of Institutional Funds Act.

C.S.H.B. 1354 establishes that, to the extent specified in an instrument in which a donee exercises a power, any estate or interest in real or personal property created through the exercise of the power by the donee is considered to have been created at the time of the exercise of the donee's power and not at the time of the creation of the donee's power, provided that in the instrument the donee specifically refers to this bill provision; specifically asserts an intention to exercise a power of appointment by creating another power of appointment described by federal law; or specifically asserts an intention to postpone the vesting of any estate or interest in the property that is subject to the power, or suspend the absolute ownership or power of alienation of that property, for a period ascertainable without regard to the date of the creation of the donee's power. This provision applies regardless of whether the donee's power may be exercised in favor of the donee, the donee's creditors, the donee's estate, or the creditors of the donee's estate.

C.S.H.B. 1354 applies to a trust existing on or created on or after the bill's effective date, except as otherwise expressly provided by a trust or a will creating the trust and, for a trust existing on the bill's effective date that was created before that date, the bill applies only to an act or omission relating to the trust that occurs on or after the bill's effective date.

#### **EFFECTIVE DATE**

September 1, 2017.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1354 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 111.0035(b), Property Code, is amended.

SECTION 2. Section 112.035(e), Property Code, is amended.

SECTION 3. Section 112.038, Property Code, is amended.

SECTION 4. The heading to Section 112.054, Property Code, is amended.

SECTION 5. Section 112.054, Property Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (e) to read as follows:

(a) On the petition of a trustee or a beneficiary, a court may order that the trustee be changed, that the terms of the trust be modified or reformed, that the trustee be directed or permitted to do acts that are not authorized or that are forbidden by the terms of the trust, that the trustee be prohibited from performing acts required by the terms of the trust, or that the trust be terminated in whole or in part, if:

(1) the purposes of the trust have been fulfilled or have become illegal or impossible to fulfill;

(2) because of circumstances not known to or anticipated by the settlor, the order will further the purposes of the trust;

(3) modification of administrative, nondispositive terms of the trust is necessary or appropriate to prevent waste or ~~[avoid]~~ impairment of the trust's administration;

(4) the order is necessary or appropriate to achieve the settlor's tax objectives or to qualify a distributee for governmental benefits and is not contrary to the settlor's intentions; ~~[or]~~

(5) subject to Subsection (d):

(A) continuance of the trust is not necessary to achieve any material purpose of the trust; or

(B) the order is not inconsistent with a material purpose of the trust; or

(6) the order is necessary to correct a scrivener's error in the governing document, even if unambiguous, to conform the terms to the settlor's intent.

(b) The court shall exercise its discretion to order a modification, reformation, or

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.

SECTION 5. Section 112.054, Property Code, is amended by amending Subsections (a), (b), and (c) and adding Subsections (b-1), (e), and (f) to read as follows:

(a) On the petition of a trustee or a beneficiary, a court may order that the trustee be changed, that the terms of the trust be modified, that the trustee be directed or permitted to do acts that are not authorized or that are forbidden by the terms of the trust, that the trustee be prohibited from performing acts required by the terms of the trust, or that the trust be terminated in whole or in part, if:

(1) the purposes of the trust have been fulfilled or have become illegal or impossible to fulfill;

(2) because of circumstances not known to or anticipated by the settlor, the order will further the purposes of the trust;

(3) modification of administrative, nondispositive terms of the trust is necessary or appropriate to prevent waste or ~~[avoid]~~ impairment of the trust's administration;

(4) the order is necessary or appropriate to achieve the settlor's tax objectives or to qualify a distributee for governmental benefits and is not contrary to the settlor's intentions; or

(5) subject to Subsection (d):

(A) continuance of the trust is not necessary to achieve any material purpose of the trust; or

(B) the order is not inconsistent with a material purpose of the trust.

*(See Sec. 112.054(b-1)(3) below.)*

(b) The court shall exercise its discretion to order a modification or termination under

termination under Subsection (a) in the manner that conforms as nearly as possible to the probable intention of the settlor. The court shall consider spendthrift provisions as a factor in making its decision whether to modify, reform, or terminate, but the court is not precluded from exercising its discretion to modify, reform, or terminate solely because the trust is a spendthrift trust.

(See Sec. 112.054(a)(6) above.)

(c) The court may direct that an order described by Subsection (a)(4) or (6) has retroactive effect.

(e) An order described by Subsection (a)(6) may be issued only if the settlor's intent is established by clear and convincing evidence.

SECTION 6. Section 112.058(a)(2), Property Code, is amended.

SECTION 7. Sections 112.071(5), (6), and (7), Property Code, are amended.

SECTION 8. Section 112.072(a), Property Code, is amended.

SECTION 9. Section 112.074, Property Code, is amended by amending Subsection (c) and adding Subsections (e-1) and (e-2) to read as follows:

(c) Except as provided by Subsection (e-1), in [H] addition to the notice required under

Subsection (a) or reformation under Subsection (b-1) in the manner that conforms as nearly as possible to the probable intention of the settlor. The court shall consider spendthrift provisions as a factor in making its decision whether to modify, ~~[H]~~ terminate, or reform, but the court is not precluded from exercising its discretion to modify, ~~[H]~~ terminate, or reform solely because the trust is a spendthrift trust.

(b-1) On the petition of a trustee or a beneficiary, a court may order that the terms of the trust be reformed if:

(1) reformation of administrative, nondispositive terms of the trust is necessary or appropriate to prevent waste or impairment of the trust's administration;

(2) reformation is necessary or appropriate to achieve the settlor's tax objectives or to qualify a distributee for governmental benefits and is not contrary to the settlor's intentions; or

(3) reformation is necessary to correct a scrivener's error in the governing document, even if unambiguous, to conform the terms to the settlor's intent.

(c) The court may direct that an order described by Subsection (a)(4) or (b-1) has retroactive effect.

(e) An order described by Subsection (b-1)(3) may be issued only if the settlor's intent is established by clear and convincing evidence.

(f) Subsection (b-1) is not intended to state the exclusive basis for reformation of trusts, and the bases for reformation of trusts in equity or common law are not affected by this section.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.

SECTION 9. Section 112.074, Property Code, is amended by amending Subsection (c) and adding Subsections (e-1) and (e-2) to read as follows:

(c) Except as provided by Subsection (e-1), in [H] addition to the notice required under

Subsection (a), the authorized trustee shall give written notice of the trustee's decision to the attorney general if:

- (1) a charity is entitled to notice;
- (2) a charity entitled to notice is no longer in existence;
- (3) the trustee has the authority to distribute trust assets to one or more charities that are not named in the trust instrument; or
- (4) the trustee has the authority to make distributions for a charitable purpose described in the trust instrument, but no charity is named as a beneficiary for that purpose.

(e-1) The trustee is not required to give notice to the attorney general under Subsection (c) if the attorney general waives that requirement.

(e-2) For purposes of Subsection (e)(3), a beneficiary is considered to have waived the requirement that notice be given under this section if a person to whom notice is required to be given with respect to that beneficiary under Subsection (d) waives the requirement that notice be given under this section.

SECTION 10. Section 112.078, Property Code, is amended.

SECTION 11. Section 112.085, Property Code, is amended.

SECTION 12. Section 113.018, Property Code, is amended.

SECTION 13. Sections 115.002(b-1) and (b-2), Property Code, are amended.

No equivalent provision.

SECTION 14. Section 181.083, Property Code, is amended.

No equivalent provision.

Subsection (a), the authorized trustee shall give written notice of the trustee's decision to the attorney general if:

- (1) a charity is entitled to notice;
- (2) a charity entitled to notice is no longer in existence;
- (3) the trustee has the authority to distribute trust assets to one or more charities that are not named in the trust instrument; or
- (4) the trustee has the authority to make distributions for a charitable purpose described in the trust instrument, but no charity is named as a beneficiary for that purpose.

(e-1) The trustee is not required to give notice to the attorney general under Subsection (c) if the attorney general waives that requirement in writing.

(e-2) For purposes of Subsection (e)(3), a beneficiary is considered to have waived the requirement that notice be given under this section if a person to whom notice is required to be given with respect to that beneficiary under Subsection (d) waives the requirement that notice be given under this section.

SECTION 10. Same as introduced version.

SECTION 11. Same as introduced version.

SECTION 12. Same as introduced version.

SECTION 13. Same as introduced version.

SECTION 14. Section 163.011, Property Code, is amended to read as follows:  
Sec. 163.011. APPLICABILITY OF OTHER PARTS OF CODE. Chapters 116 and 117 do [Subtitle B, Title 9 (the Texas Trust Code), does] not apply to any institutional fund subject to this chapter.

SECTION 15. Same as introduced version.

SECTION 16. Section 240.002, Property Code, is amended by amending Subdivision (1) and adding Subdivision (1-a) to read as follows:  
(1) "Charity" means a charitable entity or a

charitable trust, as those terms are defined by Section 123.001.

(1-a) "Current beneficiary" and "presumptive remainder beneficiary" have the meanings assigned by Section 112.071.

SECTION 15. Section 240.0081, Property Code, is amended by amending Subsection (c) and adding Subsections (e-1) and (e-2) to read as follows:

(c) Except as provided by Subsection (e-1), in [H] addition to the notice required under Subsection (a), the trustee shall give written notice of the trustee's disclaimer to the attorney general if:

- (1) a charity is entitled to notice;
- (2) a charity entitled to notice is no longer in existence;
- (3) the trustee has the authority to distribute trust assets to one or more charities that are not named in the trust instrument; or
- (4) the trustee has the authority to make distributions for a charitable purpose described in the trust instrument, but no charity is named as a beneficiary for that purpose.

(e-1) The trustee is not required to give notice to the attorney general under Subsection (c) if the attorney general waives that requirement.

(e-2) For purposes of Subsection (e)(3), a beneficiary is considered to have waived the requirement that notice be given under this section if a person to whom notice is required to be given with respect to that beneficiary under Subsection (d) waives the requirement that notice be given under this section.

SECTION 16. (a) Except as otherwise expressly provided by a trust, a will creating a trust, or this section, the changes in law made by this Act apply to a trust existing on or created on or after September 1, 2017.

(b) For a trust existing on September 1, 2017, that was created before that date, the changes in law made by this Act apply only to an act or omission relating to the trust that occurs on or after September 1, 2017.

SECTION 17. This Act takes effect September 1, 2017.

SECTION 17. Section 240.0081, Property Code, is amended by amending Subsection (c) and adding Subsections (e-1) and (e-2) to read as follows:

(c) Except as provided by Subsection (e-1), in [H] addition to the notice required under Subsection (a), the trustee shall give written notice of the trustee's disclaimer to the attorney general if:

- (1) a charity is entitled to notice;
- (2) a charity entitled to notice is no longer in existence;
- (3) the trustee has the authority to distribute trust assets to one or more charities that are not named in the trust instrument; or
- (4) the trustee has the authority to make distributions for a charitable purpose described in the trust instrument, but no charity is named as a beneficiary for that purpose.

(e-1) The trustee is not required to give notice to the attorney general under Subsection (c) if the attorney general waives that requirement in writing.

(e-2) For purposes of Subsection (e)(3), a beneficiary is considered to have waived the requirement that notice be given under this section if a person to whom notice is required to be given with respect to that beneficiary under Subsection (d) waives the requirement that notice be given under this section.

SECTION 18. Same as introduced version.

SECTION 19. Same as introduced version.