

SUBJECT: Specifying which trust beneficiaries may demand a trustee's accounting

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Deshotel, Orr, Bohac, Giddings, Quintanilla, Solomons,
Workman

1 nay — Garza

1 absent — S. Miller

WITNESSES: For — None

Against — Steven Dow, Community Bank & Trust, Waco, Texas; David Folz, Texas Capital Bank, Texas Bankers Association Trust Division; Janice Torgeson, Frost National Bank, Texas Bankers Association Trust Division; (*Registered, but did not testify*: Joe Benson, Nancy Sosa, Encore Trust Company; Kelly Rodgers, Wells Fargo Bank; John Brigance, Texas Bankers Association Trust Division; David Emerick, JP Morgan Chase)

BACKGROUND: Property Code, title 9, subtitle B is the Texas Trust Code. Within the Texas Trust Code, sec. 113.151(a) establishes the process by which a beneficiary of a trust can demand from the trustee a written accounting statement of transactions, including seeking a court order to require the trustee to deliver the statement. Sec. 111.004(2) defines a trust "beneficiary" as a person for whose benefit property is held in trust, regardless of the nature of the interest.

DIGEST: CSHB 1813 would specify that a beneficiary described in sec. 113.151(a) could be a person whose right to benefit from the trust was contingent, regardless of whether the right to benefit from the trust was vested.

The bill would take effect September 1, 2011.

SUPPORTERS SAY: CSHB 1813 would clarify the meaning of "beneficiary" for the purposes of demanding an accounting of transactions from a trustee. The Texas Trust Code definition of beneficiary already emphasizes that a person may be a beneficiary regardless of the nature of the interest. Further specifying

that a beneficiary's interest may be contingent or not yet vested would not be an expansion, only a clarification, of the definition. Nonetheless, to address concerns of the financial industry regarding potential unintended consequences of amending the definition that applies throughout the Trust Code, the committee substitute would only amend the definition within the section related to demanding an accounting.

Trust beneficiaries whose interests are contingent or not yet vested should still be able to inquire and receive an accounting of transactions. However, a court currently may interpret the definition of beneficiary as not including such individuals and decide not to order a trustee to provide an accounting, even if the beneficiary suspects foul play is draining the trust. The bill would ensure that courts protect all beneficiaries of a trust equally. Any trustor concerned about privacy of information that wished to prevent a beneficiary from obtaining such an accounting could remove that individual as a beneficiary from the trust.

**OPPONENTS
SAY:**

CSHB 1813 inappropriately would give an individual with no vested interest in a trust the legal right to make demands upon the trustee, access sensitive financial information, and intrude upon the privacy of the trustor. For example, an estranged child who had been cut out of his parents' will but left as a contingent beneficiary of a trust could use the bill's provisions to annually harass his parents and access their financial information.

NOTES:

The committee substitute differs from the bill as filed by adding the specification of persons included as beneficiaries to sec. 113.151(a), which relates only to demand for accounting by a trustee, instead of sec. 111.004(2) and sec. 111.004(7), which provide definitions for the entire subtitle related to the creation, operation, and termination of trusts.