

- SUBJECT:** Limiting the ability of a trust advisor to act in a nonfiduciary capacity
- COMMITTEE:** Judiciary and Civil Jurisprudence — favorable, without amendment
- VOTE:** 9 ayes — Leach, Farrar, Y. Davis, Julie Johnson, Krause, Meyer, Neave, Smith, White
- 0 nays
- WITNESSES:** For — Glenn Karisch, Real Estate, Probate, and Trust Law Section of the State Bar of Texas; (*Registered, but did not testify:* Lauren Hunt, Real Estate, Probate, and Trust Law Section of the State Bar of Texas, Council Member and Fiduciary Litigation Chair; Craig Hopper, William Pargaman, and Melissa Willms, Real Estate, Probate, and Trust Law Section of the State Bar of Texas; Guy Herman, Travis County Probate Court and Presiding Statutory Probate Judge of Texas)
- Against — None
- BACKGROUND:** Property Code sec. 114.0031(e) provides that a person is an advisor and a fiduciary of a trust when the person exercises the authority given under the terms of a trust to direct, consent to, or disapprove a trustee's decisions. However, the trust terms may provide that an advisor acts in a nonfiduciary capacity.
- DIGEST:** HB 2246 would prevent an advisor from acting in a nonfiduciary capacity, even if the trust terms allowed the advisor to do so, unless:
- the advisor's only power was to remove and appoint trustees, advisors, trust committee members, or other protectors; and
 - the advisor did not exercise that power to appoint the advisor's self to such a position.

The bill would not prohibit the exercise of a power in a nonfiduciary capacity that was necessary for a grantor or other person to be treated as the owner of any portion of a trust for federal income tax purposes.

The bill would take effect September 1, 2019, and would apply to any action taken with respect to a trust on or after that date, except as specifically provided by a trust term in effect before that date.