

BILL ANALYSIS

Senate Research Center

S.B. 998
By: Harris
Jurisprudence
3-19-97
As Filed

DIGEST

Currently, the law is not clear as to the status of a beneficiary who has allowed the right of withdrawal of assets from a trust to lapse. The settlor, generally the person who creates or makes the initial contribution to the trust, has certain creditor liabilities that are not intended to be passed on to the beneficiary. A beneficiary may be required to take on these liabilities simply because the beneficiary has not exercised the withdrawal rights. Additionally, a Texas Supreme Court decision has called into question the court's discretion in removing a trustee. This bill will prohibit the beneficiary of a trust from being considered the settlor if the beneficiary fails to exercise withdrawal rights and will provide that the court has the discretion to remove the trustee under certain conditions.

PURPOSE

As proposed, S.B. 998 prohibits the beneficiary of a trust from being considered the settlor if the beneficiary fails to exercise withdrawal rights and provides that the court has the discretion to remove the trustee under certain conditions.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 112.035, Property Code, by adding Subsection (e), to prohibit a beneficiary of the trust from being considered the settlor merely because of a lapse, waiver, or release of the beneficiary's right to withdraw a part of the trust property if the value of the property in any calendar year during which the right of withdrawal could have been exercised does not exceed at the time of the lapse, waiver, or release the greater of the amount specified in certain sections of the Internal Revenue Code of 1986.

SECTION 2. Amends Section 113.082(a), Property Code, to authorize a court, in its discretion, to remove a trustee and deny part or all of the trustee's compensation for cause, including certain reasons. Makes nonsubstantive changes.

SECTION 3. Makes application of SECTION 2 of this Act prospective.

SECTION 4. Effective date: September 1, 1997.

SECTION 5. Emergency clause.