

BILL ANALYSIS

Senate Research Center
81R4655 AJA-D

S.B. 666
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Jurisprudence
4/6/2009
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The "orphan trust" or charitable foundations set up by donors who have no heirs or other family that they wish to carry out their wills, are often entrusted to lawyers or local banks who will keep the money invested in the local community. However, when an attorney retires or local banks are sold to multinational financial institutions, the foundations are no longer run by the people and banks familiar with the donors' specific wishes. The corporate trustees have wide latitude to change the way the trust operates, and to decide which charities will receive grants and thus the danger of distorting or altogether ignoring the donor's intent is increased with each transaction. Banks give fewer and smaller charitable gifts from the trusts they manage, all the while increasing the foundation's assets, and increasing administrative fees that the banks charge to foundations for the services they provide. Additionally, banks as trustees will often provide grants which serve their own interests, but that do not honor the donor's favorite causes. Examples of this practice have been exposed in courts and in the national press. The consequences of charitable funds being moved and used as assets and revenue streams for large financial institutions is that communities that stood to benefit from the philanthropy of their citizens are denied the good works and good will of the original donors.

As proposed, S.B. 666 prohibits a charitable trust from changing municipality or county in which the trust originated or where the trust property is situated, except when a change is necessary to prevent the charitable purposes of the trust from being frustrated and the settlor of the trust consents to the relocation of the trust. The bill requires the attorney general to determine whether or not the new location proposed by the trustee would adequately serve the charitable purpose of the trust if a disagreement exists between the trustee and settlor on the relocation of the trust. S.B. 666 requires the attorney general to submit a written request to have a district court review the proposed location if it is determined by the attorney general that the trustee's proposed location would not serve the charitable purpose of the trust. S.B. 666 also prohibits the relocation of trust to another state except under certain conditions. The bill provides that a trustee's authority to sell real estate owned by a charitable trust is unaffected by this legislation. S.B. 666 requires that the proceeds of real estate sold by a charitable trust be situated at the same location as other money owned by the trust.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 113, Property Code, by adding Section 113.029, as follows:

Sec. 113.029. RELOCATION OF ADMINISTRATION OR PROPERTY OF CHARITABLE TRUST. (a) Defines "charitable entity" and "charitable trust."

(b) Prohibits the trustee of a charitable trust, except as provided by this section or specifically authorized by the terms of a trust, from changing the municipality or county in which the trust is administered or the trust property is situated.

(c) Requires the trustee to consult the settlor concerning the selection of a new location for the administration of the trust or the trust property and submit the

selection to the attorney general under Subsection (e) if the settlor is living and not incapacitated, or propose a new location and submit the proposal to the attorney general under Subsection (d) if the settlor is not living or is incapacitated, if the trustee determines that the municipality or county in which the trust is administered or the trust property is situated must be changed to prevent the charitable purpose of the trust from being frustrated.

(d) Requires the trustee to send notice to the attorney general of a new location for the administration of the trust or the trust property selected or proposed under Subsection (c). Requires the attorney general to request in writing, not later than the 21st day after the date the attorney general receives notice of the selection, that a district court in the county in which the trust was created review the selection if the settlor has not consented to the new location in writing and the attorney general determines that the new location does not adequately serve the charitable purpose of the trust. Requires the court to select the location for the administration of the trust or the trust property if the court agrees with the attorney general's determination. Authorizes the administration of the trust or the trust property to relocate as proposed by the trustee if the court finds that the attorney general's request for review is unreasonable, and authorizes the court to require the attorney general to pay all court costs of the parties involved.

(e) Requires the trustee, if the trustee and the settlor cannot agree on a selection of a new location under Subsection (c), to send notice of that fact to the attorney general not later than the 21st day after the date the trustee determines that an agreement cannot be reached. Requires the attorney general to refer the matter to a district court in the county in which the trust was created. Authorizes the trustee and the settlor to each recommend to the court a replacement location and requires the court to select the replacement location.

(f) Prohibits the administration of the trust or the trust property from relocating to another state under this section unless the settlor consents to the relocation in writing under Subsection (c) or the charitable purpose of the trust cannot be adequately fulfilled unless the administration of the trust or the trust property is moved to another state with the attorney general's consent and district court's authorization.

(g) Provides that this section does not affect a trustee's authority to sell real estate owned by a charitable trust. Requires that the proceeds of real estate sold by a charitable trust be situated at the same location as other money owned by the trust.

SECTION 2. Provides that except as otherwise provided by a will, the terms of a trust, or this Act, the changes in law made by this Act apply to a trust existing or created on or after January 1, 2010; the estate of a decedent who dies before January 1, 2010, if the probate or administration of the estate is pending on or after January 1, 2010; and the estate of a decedent who dies on or after January 1, 2010.

SECTION 3. Effective date: January 1, 2010.