

BILL ANALYSIS

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S.B. 778
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A trust is a legal arrangement created on behalf of a beneficiary, and is managed by a fiduciary known as a trustee. A trust may hold money, real property, or personal property. Some changes are needed in laws governing trusts in order to allow trustees to better meet the needs and desires of trust beneficiaries, including giving a trustee authority to purchase insurance for a beneficiary from an affiliate bank in order to obtain competitive pricing, allowing flexibility in the manner in which a trustee is compensated, and allowing the trustee the flexibility to retain trust assets with sentimental value.

S.B. 778 addresses several issues related to the legal responsibilities and authority of a trustee. S.B. 778 grants a trustee who is an employee of a bank the ability to purchase insurance and receive reasonable compensation from an affiliate company, a division within the financial institution, or an associated group of banks; authorizes a trustee to charge a portion or all of his or her compensation against either a trust's principal or income; and authorizes a trustee to deviate from the standard general risk and return investment strategy with respect to certain trust assets with sentimental value to the beneficiary.

As proposed, S.B. 778 amends current law relating to trusts.

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 Section 113.053(f), Property Code, as follows:

(f) Authorizes a national banking association, a state-chartered corporation, including a state-chartered bank or trust company, a state or federal savings and loan association that has the right to exercise trust powers and that is serving as trustee, or such an institution that is serving as custodian with respect to an individual retirement account, as defined by Section 408, Internal Revenue Code, or an employee benefit plan, as defined by Section 3(3), Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(3)), regardless of whether the custodial account is, or would otherwise be, considered a trust for purposes of this subtitle, to, subject to its fiduciary duties:

(1) employ an affiliate or division within a financial institution to provide brokerage, investment, administrative, custodial, or other account services for the trust or custodial account and charge the trust or custodial account for the services;

(2) purchase insurance underwritten or otherwise distributed by an affiliate, a division within the financial institution, or a syndicate or a selling group that includes the financial institution or an affiliate and charge the trust or custodial account for the services, unless the instrument governing the fiduciary relationship expressly prohibits the purchase or charge; and

(3) receive a fee or compensation, directly or indirectly, on account of the services performed or the insurance product sold by the affiliate, division within the financial institution, syndicate, or selling group, whether in the form of shared commissions, fees, or otherwise, provided that any amount charged by the affiliate, division, syndicate, or selling group for the services or insurance product is disclosed and does not exceed the customary or prevailing amount that is charged by the affiliate, division, syndicate, or selling group, or a comparable entity, for comparable services rendered or insurance provided to a person other than the trust, rather than receive compensation, directly or indirectly, on account of the services performed by the affiliate or division within the financial institution, whether in the form of shared commissions, fees, or otherwise, provided that any amount charged by the affiliate or division for the services is disclosed and does not exceed the customary or prevailing amount that is charged by the affiliate or division, or a comparable entity, for comparable services rendered to a person other than the trust.

Deletes existing text of Subdivision (1) providing that nothing in this section shall allow an affiliate or division to engage in the sale or business of insurance if not otherwise permitted to do so. Makes nonsubstantive changes.

SECTION 2. Amends Section 116.201, Property Code, as follows:

Sec. 116.201. DISBURSEMENTS FROM INCOME. (a) Creates this subsection from existing text. Requires a trustee to make the following disbursements from income to the extent that they are not disbursements to which Section 116.051(2)(B) (relating to payment of certain disbursements from income or principal relating to determining certain income) or (C) (relating to payment of other disbursements from principal) applies:

(1) except as provided by Subsection (b) or (c), one-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee be made from income; and

(2)-(4) Makes no changes to these subdivisions.

(b) Authorizes all of the trustee's compensation for services performed, if the trust is a revocable living trust, to be charged against income during the lifetime of the grantor, unless otherwise directed by the grantor.

(c) Authorizes the trustee, if charging a part or all of the trustee's compensation to income, in the judgment of the trustee, is impracticable because of the lack of sufficient income or is inadvisable because of a desire to provide increased income to the beneficiary, to pay part or all of the compensation out of principal. Provides that the decision of the trustee to pay a larger portion or all of the trustee's compensation out of the principal is conclusive.

SECTION 3. Amends Section 116.202, Property Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires a trustee to make the following disbursements from principal:

(1) except as provided by Subsection (c), the remaining part of the disbursements described in Sections 116.201(a)(1) and (2) (requiring that a disbursement, to a certain extent, of one-half of all expenses for certain matters be made from income), rather than the remaining one-half of the disbursements described in Sections 116.201(1) and (2);

(2)-(4) Makes no changes to these subdivisions;

(5) Makes a conforming change; and

(6)-(7) Makes no changes to these subdivisions.

(c) Authorizes the trustee, if charging a part or all of the trustee's compensation to principal, in the judgment of the trustee, is impracticable because of the lack of sufficient cash and readily marketable assets or is inadvisable because of the nature of the principal assets, to determine to pay part or all of the compensation out of income. Provides that the decision of the trustee to pay a larger portion or all of the trustee's compensation out of income is conclusive, and that the income of the trust is not entitled to reimbursement from principal.

SECTION 4. Amends Section 117.005, Property Code, as follows:

Sec. 117.005. DIVERSIFICATION. (a) Creates this subsection from existing text. Requires a trustee, except as provided by Subsection (b), to diversify the investments of the trust, unless the trustee makes a certain determination.

(b) Authorizes the trustee, if trust assets include farm or ranch property, a closely held family business, life insurance, or interests in timber, oil, gas, or minerals, to elect to retain the assets unless otherwise directed by a majority of adult trust beneficiaries. Provides that a trustee's exercise of discretion to retain the assets is not a breach of the trustee's duty to diversify investments.

SECTION 5. (a) Provides that, 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 or created on or after September 1, 2013.

(b) Provides that for a trust existing on September 1, 2013, 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, 2013.

SECTION 6. Effective date: September 1, 2013.