

BILL ANALYSIS

Senate Research Center
86R2877 BEE-F

H.B. 2246
By: Wray (Rodríguez)
Business & Commerce
5/8/2019
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 2246 amends current law relating to the fiduciary status of a directed trust advisor.

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 114.0031, Property Code, by amending Subsection (e) and adding Subsection (e-1), as follows:

(e) Provides that a person, if the terms of a trust give the person the authority to direct, consent to, or disapprove a trustee's actual or proposed investment decisions, distribution decisions, or other decisions, is an advisor, rather than is considered to be an advisor and a fiduciary when exercising that authority except that the trust terms are authorized to provide that an advisor acts in a nonfiduciary capacity. Provides that an advisor is a fiduciary regardless of trust terms to the contrary except that the trust terms are authorized to provide that an advisor acts in a nonfiduciary capacity if:

(1) the advisor's only power is to remove and appoint trustees, advisors, trust committee members, or other protectors; and

(2) the advisor does not exercise that power to appoint the advisor's self to a position described by Subdivision (1).

(e-1) Provides that Subsection (e) does not prohibit the exercise of a power in a nonfiduciary capacity as required by the Internal Revenue Code for a grantor or other person to be treated as the owner of any portion of the trust for federal income tax purposes.

SECTION 2. (a) Provides that, except as specifically provided by a trust term in effect before September 1, 2019, the changes in law made by this Act apply to a trust created before, on, or after September 1, 2019, with respect to an action taken or not taken on or after September 1, 2019, by a trustee, custodian, or other person with respect to the trust.

(b) Provides that an action taken or not taken with respect to a trust before September 1, 2019, is governed by the law that applied to the action taken or not taken immediately before September 1, 2019, and that law is continued in effect for that purpose.

SECTION 3. Effective date: September 1, 2019.