

## **BILL ANALYSIS**

Senate Research Center  
86R2877 BEE-F

S.B. 309  
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Business & Commerce  
5/1/2019  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

As part of its ongoing review of Texas law, the Real Estate, Probate, and Trust Law Section of the State Bar of Texas (a.k.a. the REPTL Section) has proposed S.B. 309, which provides an amendment to Section 114.0031 of the Property Code to avoid a trust being created with no true fiduciary.

More specifically, Section 114.0031(e) is amended to provide that an advisor is not a fiduciary when the trust terms state that an advisor acts in a nonfiduciary capacity and the advisor's only power is to remove and appoint trustees, advisors, trust committee members, or other protectors, and the advisor does not exercise such power to appoint himself.

Section 114.0031(e-1) is added to clarify that the exercise of a power under Internal Revenue Code Sections 674(a) or 675 where the intent of the trust is to deploy the income tax consequences of either of those Internal Revenue Code sections can be done in a nonfiduciary capacity.

As proposed, S.B. 309 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 if the terms of a trust give a person the authority to direct, consent to, or disapprove a trustee's actual or proposed investment decisions, distribution decisions, or other decisions, the person is an advisor. Provides that an advisor is a fiduciary regardless of trust terms to the contrary, rather than when exercising that authority, except that the trust terms may 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) if 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 changes in law made by this Act, except as specifically provided by a trust term in effect before September 1, 2019, 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) Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2019.