

By: Villalba

H.B. No. 3190

A BILL TO BE ENTITLED

AN ACT

relating to the authority of certain persons to direct, consent to,
or disapprove a trustee's decisions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 114.003, Property Code, is amended to
read as follows:

Sec. 114.003. POWERS TO DIRECT: CHARITABLE TRUSTS. (a) In
this section, "charitable trust" has the meaning assigned by
Section 123.001.

(a-1) The terms of a charitable trust may give a trustee or
other person a power to direct the modification or termination of
the trust.

(b) If the terms of a charitable trust give a person the
power to direct certain actions of the trustee, the trustee shall
act in accordance with the person's direction unless:

(1) the direction is manifestly contrary to the terms
of the trust; or

(2) the trustee knows the direction would constitute a
serious breach of a fiduciary duty that the person holding the power
to direct owes to the beneficiaries of the trust.

(c) A person, other than a beneficiary, who holds a power to
direct with respect to a charitable trust is presumptively a
fiduciary required to act in good faith with regard to the purposes
of the trust and the interests of the beneficiaries. The holder of

1 a power to direct with respect to a charitable trust is liable for
2 any loss that results from a breach of the person's fiduciary duty.

3 SECTION 2. Subchapter A, Chapter 114, Property Code, is
4 amended by adding Section 114.0031 to read as follows:

5 Sec. 114.0031. DIRECTED TRUSTS; ADVISORS. (a) In this
6 section:

7 (1) "Advisor" includes protector.

8 (2) "Investment decision" means, with respect to any
9 investment, the retention, purchase, sale, exchange, tender, or
10 other transaction affecting the ownership of the investment or
11 rights in the investment and, with respect to a nonpublicly traded
12 investment, the valuation of the investment.

13 (b) This section does not apply to a charitable trust as
14 defined by Section 123.001.

15 (c) For purposes of this section, an advisor with authority
16 with respect to investment decisions is an investment advisor.

17 (d) A protector has all the power and authority granted to
18 the protector by the trust terms, which may include:

19 (1) the power to remove and appoint trustees,
20 advisors, trust committee members, and other protectors;

21 (2) the power to modify or amend the trust terms to
22 achieve favorable tax status or to facilitate the efficient
23 administration of the trust; and

24 (3) the power to modify, expand, or restrict the terms
25 of a power of appointment granted to a beneficiary by the trust
26 terms.

27 (e) If the terms of a trust give a person the authority to

1 direct, consent to, or disapprove a trustee's actual or proposed
2 investment decisions, distribution decisions, or other decisions,
3 the person is considered to be an advisor and a fiduciary when
4 exercising that authority except that the trust terms may provide
5 that an advisor acts in a nonfiduciary capacity.

6 (f) A trustee who acts in accordance with the direction of
7 an advisor, as prescribed by the trust terms, is not liable, except
8 in cases of wilful misconduct on the part of the trustee so
9 directed, for any loss resulting directly or indirectly from that
10 act.

11 (g) If the trust terms provide that a trustee must make
12 decisions with the consent of an advisor, the trustee is not liable,
13 except in cases of wilful misconduct or gross negligence on the part
14 of the trustee, for any loss resulting directly or indirectly from
15 any act taken or not taken as a result of the advisor's failure to
16 provide the required consent after having been requested to do so by
17 the trustee.

18 (h) If the trust terms provide that a trustee must act in
19 accordance with the direction of an advisor with respect to
20 investment decisions, distribution decisions, or other decisions
21 of the trustee, the trustee does not, except to the extent the trust
22 terms provide otherwise, have the duty to:

23 (1) monitor the conduct of the advisor;
24 (2) provide advice to the advisor or consult with the
25 advisor; or

26 (3) communicate with or warn or apprise any
27 beneficiary or third party concerning instances in which the

1 trustee would or might have exercised the trustee's own discretion
2 in a manner different from the manner directed by the advisor.

3 (i) Absent clear and convincing evidence to the contrary,
4 the actions of a trustee pertaining to matters within the scope of
5 the advisor's authority, such as confirming that the advisor's
6 directions have been carried out and recording and reporting
7 actions taken at the advisor's direction, are presumed to be
8 administrative actions taken by the trustee solely to allow the
9 trustee to perform those duties assigned to the trustee under the
10 trust terms, and such administrative actions are not considered to
11 constitute an undertaking by the trustee to monitor the advisor or
12 otherwise participate in actions within the scope of the advisor's
13 authority.

14 SECTION 3. (a) Except as specifically provided by a trust
15 term in effect before the effective date of this Act, the changes in
16 law made by this Act apply to a trust created before, on, or after
17 the effective date of this Act with respect to an action taken or
18 not taken on or after September 1, 2015, by a trustee or other
19 person with respect to the trust.

20 (b) An action taken or not taken with respect to a trust
21 before September 1, 2015, is governed by the law that applied to the
22 action taken or not taken immediately before the effective date of
23 this Act, and that law is continued in effect for that purpose.

24 SECTION 4. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2015.