

By: Wray

H.B. No. 2246

A BILL TO BE ENTITLED

AN ACT

relating to the fiduciary status of a directed trust advisor.

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

SECTION 1. Section 114.0031, Property Code, is amended by amending Subsection (e) and adding Subsection (e-1) to read as follows:

(e) 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 ~~[considered to be]~~ an advisor. An advisor is [and] a fiduciary regardless of trust terms to the contrary [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) the advisor does not exercise that power to appoint the advisor's self to a position described by Subdivision (1).

(e-1) 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) Except as specifically provided by a trust

1 term in effect before September 1, 2019, the changes in law made by
2 this Act apply to a trust created before, on, or after September 1,
3 2019, with respect to an action taken or not taken on or after
4 September 1, 2019, by a trustee, custodian, or other person with
5 respect to the trust.

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

10 SECTION 3. This Act takes effect September 1, 2019.