

HB 3503 – Exculpatory Clauses

Trust Code Sec. 113.059. POWER OF SETTLOR [~~TRUSTOR~~] TO ALTER TRUSTEE'S RESPONSIBILITIES. (a) Except as provided by [~~Subsection (b) of~~] this section, the settlor by provision in an instrument creating, modifying, amending, or revoking the trust may relieve the trustee from a duty, liability, or restriction imposed by this subtitle.

(b) A settlor may not relieve a corporate trustee from the duties, restrictions, or liabilities of Section 113.052 or 113.053 of this Act.

(c) A settlor may not relieve the trustee of liability for:

(1) a breach of trust committed:

(A) in bad faith;

(B) intentionally; or

(C) with reckless indifference to the interest of the beneficiary; or

(2) any profit derived by the trustee from a breach of trust.

(d) A provision in a trust instrument relieving the trustee of liability for a breach of trust is ineffective to the extent that the provision is inserted in the trust instrument as a result of an abuse by the trustee of a fiduciary duty to or confidential relationship with the settlor.

Section 142.005, Property Code, is amended by adding Subsections (h), (i), and (j) to read as follows:

(h) A trust created under this section is subject to Subtitle B, Title 9.

(i) Notwithstanding Subsection (h), this section prevails over a provision in Subtitle B, Title 9, that is in conflict or inconsistent with this section.

(j) A provision in a trust created under this section that relieves a trustee from a duty, responsibility, or liability imposed by this section or Subtitle B, Title 9, is enforceable only if:

(1) the provision is limited to specific facts and circumstances unique to the property of that trust and is not applicable generally to the trust; and

(2) the court creating or modifying the trust makes a specific finding that there is clear and convincing evidence that the inclusion of the provision is in the best interests of the beneficiary of the trust.

Section 868, Texas Probate Code, is amended by adding Subsection (c) to read as follows:

(c) A provision in a trust created under Section 867 that relieves a trustee from a duty, responsibility, or liability imposed by this subpart or Subtitle B, Title 9, Property Code, is enforceable only if:

(1) the provision is limited to specific facts and circumstances unique to the property of that trust and is not applicable generally to the trust; and

(2) the court creating or modifying the trust makes a specific finding that there is clear and convincing evidence that the inclusion of the provision is in the best interests of the beneficiary of the trust.

This Act takes effect September 1, 2003, and applies only to a trust existing on or created after that date.