

2020 Regular Session

HOUSE BILL NO. 124

BY REPRESENTATIVE GREGORY MILLER

(On Recommendation of the Louisiana State Law Institute)

TRUSTS: Provides for continuous revisions to the Trust Code

1 AN ACT

2 To amend and reenact R.S. 9:1783(A)(3) and 2207, relative to trusts; to provide with respect
3 to who may be a trustee; to provide for the release of a trustee from liability by the
4 beneficiary; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 9:1783(A)(3) and 2207 are hereby amended and reenacted to read
7 as follows:

8 §1783. Who may be trustee

9 A. Only the following persons or entities may serve as a trustee of a trust
10 established pursuant to this Code:

11 * * *

12 (3) A financial institution or trust company organized under the laws of
13 Louisiana or the United States, authorized to exercise trust or fiduciary powers under
14 the laws of Louisiana or of the United States, or trust company organized under the
15 laws of another state and operating in Louisiana pursuant to R.S. 6:626(A)(1) and
16 (2).

17 * * *

18 §2207. Relief from liability by beneficiary

19 A ~~competent~~ beneficiary who is acting with knowledge of the material facts
20 and whose action is not improperly induced by the conduct of a trustee may, by

1 written instrument delivered to a trustee, relieve a trustee from liabilities that
 2 otherwise would be imposed upon him. The instrument shall not be effective ~~if it~~
 3 ~~purports to limit a trustee's liability for improperly advancing money or conveying~~
 4 ~~property to a beneficiary of a spendthrift trust or a trust under which a beneficiary's~~
 5 ~~right to alienate is restricted,~~ or if it limits prospectively and in general terms a
 6 trustee's liability for breach of the duty of loyalty to a beneficiary, or for breach of
 7 trust in bad faith.

8 Revision Comments - 2020

9 This revision changes the law in two ways. First, it deletes the reference to
 10 "competent" beneficiaries, as this provision is not intended to limit authorized
 11 representatives of a beneficiary, such as a mandatary, tutor, or curator, from acting
 12 on behalf of the beneficiary. Moreover, the term "competent" is not defined by the
 13 Louisiana Trust Code and the corresponding concept in the Civil Code is "capacity"
 14 rather than "competency." See, e.g., Civil Code Articles 27, 1470 through 1477, and
 15 1918. Second, it removes the limitation that prevents a beneficiary from agreeing
 16 to limit a trustee's liability for "improperly advancing money or conveying property"
 17 to a beneficiary of a spendthrift trust or a trust with restrictions on the beneficiary's
 18 right to alienate his interest. Even at the time of the enactment of the original
 19 provision in 1964, this limitation was controversial. It has been deleted in light of
 20 a modern trend not to so limit a beneficiary's ability to relieve a trustee of liability.
 21 See, e.g., Unif. Trust Code § 1009; Restatement (Third) of Trusts § 97.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 124 Original

2020 Regular Session

Gregory Miller

Abstract: Provides for continuous revisions to the Trust Code.

Present law (R.S. 9:1783(A)(3)) provides for who can serve as a trustee and includes out-of-state trust companies operating in Louisiana pursuant to present law (R.S. 6:626).

Proposed law amends present law to exclude out-of-state trust companies that establish a trust representative office in Louisiana from those out-of-state trust companies that may serve as a trustee.

Present law (R.S. 9:2207) permits a competent beneficiary to relieve a trustee from liability in certain circumstances but includes an exception for releases concerning the improper advancement of money or conveyance of property to a beneficiary of a spendthrift trust or a trust with restrictions on the beneficiary's right to alienate.

Proposed law changes present law by removing both the exception and the competency requirement.

(Amends R.S. 9:1783(A)(3) and 2207)