2020 Regular Session

HOUSE BILL NO. 124

BY REPRESENTATIVE GREGORY MILLER

(On Recommendation of the Louisiana State Law Institute)

AN ACT
To amend and reenact R.S. 9:1783(A)(3) and 2207, relative to trusts; to provide with respect
to who may be a trustee; to provide for the release of a trustee from liability by the
beneficiary; and to provide for related matters.
Be it enacted by the Legislature of Louisiana:
Section 1. R.S. 9:1783(A)(3) and 2207 are hereby amended and reenacted to read
as follows:
§1783. Who may be trustee
A. Only the following persons or entities may serve as a trustee of a trust
established pursuant to this Code:
* * *
(3) A financial institution or trust company organized under the laws of
Louisiana or the United States, authorized to exercise trust or fiduciary powers under
the laws of Louisiana or of the United States, or trust company organized under the
laws of another state and operating in Louisiana pursuant to R.S. $6:626(A)(1)$ and
<u>(2)</u> .
* * *
§2207. Relief from liability by beneficiary
A competent beneficiary who is acting with knowledge of the material facts
and whose action is not improperly induced by the conduct of a trustee may, by
written instrument delivered to a trustee, relieve a trustee from liabilities that
otherwise would be imposed upon him. The instrument shall not be effective if it

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

1	purports to limit a trustee's liability for improperly advancing money or conveying
2	property to a beneficiary of a spendthrift trust or a trust under which a beneficiary's
3	right to alienate is restricted, or if it limits prospectively and in general terms a
4	trustee's liability for breach of the duty of loyalty to a beneficiary, or for breach of
5	trust in bad faith.
6	Revision Comments - 2020
7	This revision changes the law in two ways. First, it deletes the reference to
8	"competent" beneficiaries, as this provision is not intended to limit authorized
9	representatives of a beneficiary, such as a mandatary, tutor, or curator, from acting
10	on behalf of the beneficiary. Moreover, the term "competent" is not defined by the
11	Louisiana Trust Code and the corresponding concept in the Civil Code is "capacity"
12	rather than "competency." See, e.g., Civil Code Articles 27, 1470 through 1477, and
13	1918. Second, it removes the limitation that prevents a beneficiary from agreeing
14	to limit a trustee's liability for "improperly advancing money or conveying property"
15	to a beneficiary of a spendthrift trust or a trust with restrictions on the beneficiary's
16	right to alienate his interest. Even at the time of the enactment of the original
17	provision in 1964, this limitation was controversial. It has been deleted in light of
18	a modern trend not to so limit a beneficiary's ability to relieve a trustee of liability.
19	See, e.g., Unif. Trust Code § 1009; Restatement (Third) of Trusts § 97.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____