ACT No. 18

HOUSE BILL NO. 124

BY REPRESENTATIVE GREGORY MILLER

(On Recommendation of the Louisiana State Law Institute)

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:
1	* * *
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	<u>(2)</u> .
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
21	written instrument delivered to a trustee, relieve a trustee from liabilities that
22	otherwise would be imposed upon him. The instrument shall not be effective if it

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

HB NO. 124 ENROLLED

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 Louisiana Trust Code and the corresponding concept in the Civil Code is "capacity" 11 12 rather than "competency." See, e.g., Civil Code Articles 27, 1470 through 1477, and 1918. Second, it removes the limitation that prevents a beneficiary from agreeing 13 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: _____