

- SUBJECT:** Providing for noncharitable trusts without an ascertainable beneficiary
- COMMITTEE:** Judiciary & Civil Jurisprudence — committee substitute recommended
- VOTE:** 8 ayes — Leach, Julie Johnson, Flores, Moody, Murr, Schofield, Slawson, Vasut
- 0 nays
- 1 absent — Davis
- WITNESSES:** For — Lois Ann Stanton, Osborne, Helman, Scott, Knisely & Stanton, LLP
- Against — William Pargaman, Texas Real Estate and Probate Institute (*Registered, but did not testify*: Craig Hopper, Texas Real Estate and Probate Institute)
- BACKGROUND:** Some have suggested that additional enforcement and administration procedures are needed for noncharitable trusts without an ascertainable beneficiary.
- DIGEST:** CSHB 2333 would allow a trust to be created for a noncharitable purpose, including seeking economic or other benefits, without a definite or definitely ascertainable beneficiary.
- The trust would have to be enforced by a person or persons appointed for that purpose. A trust enforcer would not be a beneficiary of the trust, but would have the rights of a beneficiary as provided by the bill and common law, or otherwise by the terms of the trust. A trust enforcer would exercise any authority granted under the terms of the trust or the provisions of CSHB 2333 as a fiduciary owing a duty to the trust and would be entitled to reasonable compensation. A trust enforcer could consent to, waive, object to, or petition a court regarding the trust.
- Except as otherwise provided by the terms of the trust, if more than one

person was acting as a trust enforcer, any action in that capacity would have to be decided by the majority vote of trust enforcers. In case of a tie, the decision of the trustee would control. The terms of the trust could provide for the succession of a trust enforcer or an appointment process for a successor. If no person was serving as a trust enforcer for a trust created under the bill, a court would appoint one or more persons for that purpose.

Property of a trust created under the bill could be applied only to the trust's intended purpose, except to the extent a court found that the value of trust property exceeded the amount required for that purpose. Property found by a court not to be required for the trust's intended purpose would have to be distributed as provided by the terms of the trust or, if the trust did not provide for such distribution, to the settlor if living or to the settlor's successors in interest.

The bill would not apply to a trust for care of an animal.

CSHB 2313 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2023.