

The seal of the Pennsylvania Bar Association is a circular emblem. It features a central torch with a flame, set against a background of a shield. The shield is divided into four quadrants, each containing a different symbol: a scale of justice, a book, a quill pen, and a gavel. The words "PENNSYLVANIA BAR ASSOCIATION" are written in a circular path around the central elements. At the bottom of the seal, the year "1895" is inscribed.

**James L. Hollinger, Esquire**

**Pennsylvania Bar Association**

**Testimony Before the House of Representatives  
Judiciary Committee**

**House Bill 326**

**Tuesday, October 10, 1995**

Good morning, ladies and gentlemen. I am James Hollinger. Members of my law firm and I have been involved in a Pennsylvania wills and trust practice and in making recommendations for legislation in that field for many years. Currently, I serve as vice chair for probate and trust law with the Pennsylvania Bar Association Real Property, Probate and Trust Law Section.

At a recent meeting, we considered House Bill 326 and recommended to the Pennsylvania Bar Association that it adopt a position encouraging retention of existing Pennsylvania law which emphasizes the intent of creators of trusts with respect to appointment and retention of trustees. Since the Pennsylvania Bar Association has not yet acted, I speak as an individual here today.

Grounds for removal of trustees under present Pennsylvania law are set forth in Title 20 of Pennsylvania Consolidated Statutes §§7121 and 3182 and exclusive authority for removal is placed on the Orphans' Court Division of the Court of Common Pleas. Grounds include mismanagement, insolvency, failure to perform duties, incapacity, removal from the Commonwealth and "when, for any other reason, the interest of the . . . [trust] are likely to be jeopardized by his continuance in office."

House Bill 326 proposes to permit trust beneficiaries to vote on whether a trustee should be replaced. This is a radical departure from current law, which would give beneficiaries (to whom the creator of the trust was unwilling to give full authority over trust assets) an authority which could have the effect of pressuring trustees to

make distributions which they would not have made using their unrestricted good judgment.

Since the creator of the trust made a decision about who he wanted as trustee, Pennsylvania law gives great respect to that choice, and it is disturbed only if substantial grounds exist for removal.

Removal power and authority to appoint a new trustee has rested solely with the Orphans' Court Division and House Bill 326 proposes the undesirable imposition of another office, "special trustee", to act on removal of a trustee and appointment of a new trustee. The special trustee would be charged with making decisions about the functioning of the trust which should be reserved to a constitutionally designated judge. The standards suggested are vague, using the word "sufficiently".

House Bill 326 also proposes to make other significant changes in current law by changing long established rules encouraging persons and institutions to act as trustees by reimbursing them for expense involved in administering trusts and successfully defending their acts as trustees when questions are raised. This Bill would alter public policy which encourages qualified trustees and would deny reimbursement to trustees who have committed no wrong which would be a basis for removal. All the trustees have done is raise the ire of beneficiaries who then seek their removal without cause.

House Bill 326 would also place additional expenses incurred by beneficiaries seeking removal of the trustee on the trust, while at

the same time depriving trustees who have committed no wrong of their right to reimbursement for expenses incurred in defending their conduct.

One additional provision requires comment. When the creator of a trust selects a particular trustee, he expresses confidence in that trustee. The Bill provides that a "substantial change of ownership or management of the trustee" should eliminate any presumption that the creator had special confidence in the trustee. Pennsylvania law already provides for this circumstance in the Banking Code of 1965, 7 P.S. §1608(c), which permits any person with an interest in a trust to request appointment of a new trustee if the merger or consolidation would have an adverse effect on trust administration.

In summary, House Bill 326 would not make a helpful or desirable change in Pennsylvania trust law. Existing grounds for removal of trustees constitute a fair and equitable basis for removal, considering the intent of the creator of the trust which should be maintained as the paramount consideration when dealing with trusts. Policy changes proposed by the Bill are not in the interests of persons making wills and trusts who are all members of the public whose rights to deal with their own assets should not be imposed on by legislative action. A small group of disgruntled trust beneficiaries should not be the constituency which produces major policy changes in the estate and trust field, an area of Pennsylvania law which has been the model for national simplification of procedures.

Thank you for the privilege of commenting on this Bill. Our Section and the Pennsylvania Bar Association stand willing to assist the Legislature whenever you wish our assistance.