

By: Wray

H.B. No. 1354

A BILL TO BE ENTITLED

AN ACT

relating to trusts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 111.0035(b), Property Code, is amended to read as follows:

(b) The terms of a trust prevail over any provision of this subtitle, except that the terms of a trust may not limit:

(1) the requirements imposed under Section 112.031;

(2) the applicability of Section 114.007 to an exculpation term of a trust;

(3) the periods of limitation for commencing a judicial proceeding regarding a trust;

(4) a trustee's duty:

(A) with regard to an irrevocable trust, to respond to a demand for accounting made under Section 113.151 if the demand is from a beneficiary who, at the time of the demand:

(i) is entitled or permitted to receive distributions from the trust; or

(ii) would receive a distribution from the trust if the trust terminated at the time of the demand; and

(B) to act in good faith and in accordance with the purposes of the trust;

(5) the power of a court, in the interest of justice, to take action or exercise jurisdiction, including the power to:

(A) modify, reform, or terminate a trust or take other action under Section 112.054;

(B) remove a trustee under Section 113.082;

(C) exercise jurisdiction under Section 115.001;

(D) require, dispense with, modify, or terminate a trustee's bond; or

(E) adjust or deny a trustee's compensation if the trustee commits a breach of trust; or

(6) the applicability of Section 112.038.

SECTION 2. Section 112.035(e), Property Code, is amended to read as follows:

(e) A beneficiary of the trust may not be considered a settlor merely because of a lapse, waiver, or release of:

(1) a power described by Subsection (f); or

(2) the beneficiary's right to withdraw a part of the trust property to the extent that the value of the property affected by the lapse, waiver, or release in any calendar year does not exceed the greater of [~~the amount specified in~~]:

(A) the amount specified in Section 2041(b)(2) or 2514(e), Internal Revenue Code of 1986; or

(B) the amount specified in Section 2503(b), Internal Revenue Code of 1986, with respect to the contributions by each donor.

SECTION 3. Section 112.038, Property Code, is amended to read as follows:

Sec. 112.038. FORFEITURE CLAUSE. (a) A provision in a trust that would cause a forfeiture of or void an interest for

bringing any court action, including contesting a trust, is enforceable unless in a court action determining whether the forfeiture clause should be enforced, the person who brought the action contrary to the forfeiture clause establishes by a preponderance of the evidence that:

- (1) just cause existed for bringing the action; and
- (2) the action was brought and maintained in good faith.

(b) This section is not intended to and does not repeal any law, recognizing that forfeiture clauses generally will not be construed to prevent a beneficiary from seeking to compel a fiduciary to perform the fiduciary's duties, seeking redress against a fiduciary for a breach of the fiduciary's duties, or seeking a judicial construction of a will or trust.

SECTION 4. The heading to Section 112.054, Property Code, is amended to read as follows:

Sec. 112.054. JUDICIAL MODIFICATION, REFORMATION, OR TERMINATION OF TRUSTS.

SECTION 5. Section 112.054, Property Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (e) to read as follows:

(a) On the petition of a trustee or a beneficiary, a court may order that the trustee be changed, that the terms of the trust be modified or reformed, that the trustee be directed or permitted to do acts that are not authorized or that are forbidden by the terms of the trust, that the trustee be prohibited from performing acts required by the terms of the trust, or that the trust be

1 terminated in whole or in part, if:

2 (1) the purposes of the trust have been fulfilled or
3 have become illegal or impossible to fulfill;

4 (2) because of circumstances not known to or
5 anticipated by the settlor, the order will further the purposes of
6 the trust;

7 (3) modification of administrative, nondispositive
8 terms of the trust is necessary or appropriate to prevent waste or
9 ~~avoid~~ impairment of the trust's administration;

10 (4) the order is necessary or appropriate to achieve
11 the settlor's tax objectives or to qualify a distributee for
12 governmental benefits and is not contrary to the settlor's
13 intentions; ~~or~~

14 (5) subject to Subsection (d):

15 (A) continuance of the trust is not necessary to
16 achieve any material purpose of the trust; or

17 (B) the order is not inconsistent with a material
18 purpose of the trust; or

19 (6) the order is necessary to correct a scrivener's
20 error in the governing document, even if unambiguous, to conform
21 the terms to the settlor's intent.

22 (b) The court shall exercise its discretion to order a
23 modification, reformation, or termination under Subsection (a) in
24 the manner that conforms as nearly as possible to the probable
25 intention of the settlor. The court shall consider spendthrift
26 provisions as a factor in making its decision whether to modify,
27 reform, or terminate, but the court is not precluded from

exercising its discretion to modify, reform, or terminate solely because the trust is a spendthrift trust.

(c) The court may direct that an order described by Subsection (a)(4) or (6) has retroactive effect.

(e) An order described by Subsection (a)(6) may be issued only if the settlor's intent is established by clear and convincing evidence.

SECTION 6. Section [112.058](#)(a)(2), Property Code, is amended to read as follows:

(2) "Community trust" means a community trust as described by 26 C.F.R. Section [1.170A-9](#) (2008) [~~1.170A-9(e)(11) (1999)~~], including subsequent amendments.

SECTION 7. Sections [112.071](#)(5), (6), and (7), Property Code, are amended to read as follows:

(5) "Full discretion" means a ~~[the]~~ power to distribute principal to or for the benefit of one or more of the beneficiaries of a trust that is not a trust with limited discretion ~~[limited or modified by the terms of the trust in any way, including by restrictions that limit distributions to purposes such as the best interests, welfare, or happiness of the beneficiaries]~~.

(6) "Limited discretion" means:

(A) a power to distribute principal according to mandatory distribution provisions under which the trustee has no discretion; or

(B) a ~~[limited or modified]~~ power to distribute principal to or for the benefit of one or more beneficiaries of a trust that is limited by an ascertainable standard, including the

1 health, education, support, or maintenance of the beneficiary.

2 (7) "Presumptive remainder beneficiary," with respect
3 to a particular date, means a beneficiary of a trust on that date
4 who, in the absence of notice to the trustee of the exercise of the
5 power of appointment and assuming that any other powers of
6 appointment under the trust are not exercised, would be eligible to
7 receive a distribution from the trust if:

8 (A) the trust terminated on that date; or

9 (B) the interests of all current beneficiaries
10 ~~[currently eligible to receive income or principal from the trust]~~
11 ended on that date without causing the trust to terminate.

12 SECTION 8. Section 112.072(a), Property Code, is amended to
13 read as follows:

14 (a) An authorized trustee who has the full discretion to
15 distribute the principal of a trust may distribute all or part of
16 the principal of that trust in favor of a trustee of a second trust
17 for the benefit of one, ~~[or]~~ more than one, or all of the current
18 beneficiaries of the first trust ~~[who are eligible to receive~~
19 ~~income or principal from the trust]~~ and for the benefit of one, ~~[or]~~
20 more than one, or all of the successor or presumptive remainder
21 beneficiaries of the first trust ~~[who are eligible to receive~~
22 ~~income or principal from the trust]~~.

23 SECTION 9. Section 112.074, Property Code, is amended by
24 amending Subsection (c) and adding Subsections (e-1) and (e-2) to
25 read as follows:

26 (c) Except as provided by Subsection (e-1), in ~~[In]~~ addition
27 to the notice required under Subsection (a), the authorized trustee

shall give written notice of the trustee's decision to the attorney general if:

(1) a charity is entitled to notice;

(2) a charity entitled to notice is no longer in existence;

(3) the trustee has the authority to distribute trust assets to one or more charities that are not named in the trust instrument; or

(4) the trustee has the authority to make distributions for a charitable purpose described in the trust instrument, but no charity is named as a beneficiary for that purpose.

(e-1) The trustee is not required to give notice to the attorney general under Subsection (c) if the attorney general waives that requirement.

(e-2) For purposes of Subsection (e)(3), a beneficiary is considered to have waived the requirement that notice be given under this section if a person to whom notice is required to be given with respect to that beneficiary under Subsection (d) waives the requirement that notice be given under this section.

SECTION 10. Section 112.078, Property Code, is amended by adding Subsection (f) to read as follows:

(f) This section does not limit a beneficiary's right to bring an action against a trustee for a breach of trust.

SECTION 11. Section 112.085, Property Code, is amended to read as follows:

Sec. 112.085. EXCEPTIONS TO POWER OF DISTRIBUTION. An

authorized trustee may not exercise a power to distribute principal of a trust under Section 112.072 or 112.073 to:

(1) reduce, limit, or modify a beneficiary's current, vested right to:

(A) receive a mandatory distribution of income or principal;

(B) receive a mandatory annuity or unitrust interest;

(C) withdraw a percentage of the value of the trust; or

(D) withdraw a specified dollar amount from the trust;

~~(2) [materially impair the rights of any beneficiary of the trust,~~

~~(3)]~~ materially limit a trustee's fiduciary duty:

(A) under the terms of the trust; or

(B) in a manner that would be prohibited ~~[as described]~~ by Section 111.0035;

(3) ~~(4)]~~ decrease or indemnify against a trustee's liability;

(4) add a provision exonerating ~~[or exonerate]~~ a trustee from liability for failure to exercise reasonable care, diligence, and prudence;

(5) eliminate a provision granting another person the right to remove or replace the authorized trustee exercising the distribution power under Section 112.072 or 112.073; or

(6) reduce, limit, or modify in the second trust a

perpetuities provision included in the first trust, unless expressly permitted by the terms of the first trust.

SECTION 12. Section 113.018, Property Code, is amended to read as follows:

Sec. 113.018. EMPLOYMENT AND APPOINTMENT OF AGENTS. (a) A trustee may employ attorneys, accountants, agents, including investment agents, and brokers reasonably necessary in the administration of the trust estate.

(b) Without limiting the trustee's discretion under Subsection (a), a trustee may grant an agent powers with respect to property of the trust to act for the trustee in any lawful manner for purposes of real property transactions.

(c) A trustee acting under Subsection (b) may delegate any or all of the duties and powers to:

(1) execute and deliver any legal instruments relating to the sale and conveyance of the property, including affidavits, notices, disclosures, waivers, or designations or general or special warranty deeds binding the trustee with vendor's liens retained or disclaimed, as applicable, or transferred to a third-party lender;

(2) accept notes, deeds of trust, or other legal instruments;

(3) approve closing statements authorizing deductions from the sale price;

(4) receive trustee's net sales proceeds by check payable to the trustee;

(5) indemnify and hold harmless any third party who

1 accepts and acts under a power of attorney with respect to the sale;

2 (6) take any action, including signing any document,
3 necessary or appropriate to sell the property and accomplish the
4 delegated powers;

5 (7) contract to purchase the property for any price on
6 any terms;

7 (8) execute, deliver, or accept any legal instruments
8 relating to the purchase of the property or to any financing of the
9 purchase, including deeds, notes, deeds of trust, guaranties, or
10 closing statements;

11 (9) approve closing statements authorizing payment of
12 prorations and expenses;

13 (10) pay the trustee's net purchase price from funds
14 provided by the trustee;

15 (11) indemnify and hold harmless any third party who
16 accepts and acts under a power of attorney with respect to the
17 purchase; or

18 (12) take any action, including signing any document,
19 necessary or appropriate to purchase the property and accomplish
20 the delegated powers.

21 (d) A trustee who delegates a power under Subsection (b) is
22 liable to the beneficiaries or to the trust for an action of the
23 agent to whom the power was delegated.

24 (e) A delegation by the trustee under Subsection (b) must be
25 documented in a written instrument acknowledged by the trustee
26 before an officer authorized under the law of this state or another
27 state to take acknowledgments to deeds of conveyance and administer

1 oaths. A signature on a delegation by a trustee for purposes of
2 this subsection is presumed to be genuine if the trustee
3 acknowledges the signature in accordance with Chapter 121, Civil
4 Practice and Remedies Code.

5 (f) A delegation to an agent under Subsection (b) terminates
6 six months from the date of the acknowledgment of the written
7 delegation unless terminated earlier by:

8 (1) the death or incapacity of the trustee;

9 (2) the resignation or removal of the trustee; or

10 (3) a date specified in the written delegation.

11 (g) A person who in good faith accepts a delegation under
12 Subsection (b) without actual knowledge that the delegation is
13 void, invalid, or terminated, that the purported agent's authority
14 is void, invalid, or terminated, or that the agent is exceeding or
15 improperly exercising the agent's authority may rely on the
16 delegation as if:

17 (1) the delegation were genuine, valid, and still in
18 effect;

19 (2) the agent's authority were genuine, valid, and
20 still in effect; and

21 (3) the agent had not exceeded and had properly
22 exercised the authority.

23 (h) A trustee may delegate powers under Subsection (b) if
24 the governing instrument does not affirmatively permit the trustee
25 to hire agents or expressly prohibit the trustee from hiring
26 agents.

27 SECTION 13. Sections 115.002(b-1) and (b-2), Property Code,

are amended to read as follows:

(b-1) If there are multiple [~~noncorporate~~] trustees none of whom is a corporate trustee and the trustees maintain a principal office in this state, an action shall be brought in the county in which:

(1) the situs of administration of the trust is maintained or has been maintained at any time during the four-year period preceding the date the action is filed; or

(2) the trustees maintain the principal office.

(b-2) If there are multiple [~~noncorporate~~] trustees none of whom is a corporate trustee and the trustees do not maintain a principal office in this state, an action shall be brought in the county in which:

(1) the situs of administration of the trust is maintained or has been maintained at any time during the four-year period preceding the date the action is filed; or

(2) any trustee resides or has resided at any time during the four-year period preceding the date the action is filed.

SECTION 14. Section 181.083, Property Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) To the extent specified in an instrument in which a donee exercises a power, any estate or interest in real or personal property created through the exercise of the power by the donee is considered to have been created at the time of the exercise of the donee's power and not at the time of the creation of the donee's power, provided that in the instrument the donee:

(1) specifically refers to Section 181.083(c),

1 Property Code;

2 (2) specifically asserts an intention to exercise a
3 power of appointment by creating another power of appointment
4 described by Section 2041(a)(3) or 2514(d), Internal Revenue Code
5 of 1986; or

6 (3) specifically asserts an intention to postpone the
7 vesting of any estate or interest in the property that is subject to
8 the power, or suspend the absolute ownership or power of alienation
9 of that property, for a period ascertainable without regard to the
10 date of the creation of the donee's power.

11 (d) Subsection (c) applies regardless of whether the
12 donee's power may be exercised in favor of the donee, the donee's
13 creditors, the donee's estate, or the creditors of the donee's
14 estate.

15 SECTION 15. Section 240.0081, Property Code, is amended by
16 amending Subsection (c) and adding Subsections (e-1) and (e-2) to
17 read as follows:

18 (c) Except as provided by Subsection (e-1), in ~~In~~ addition
19 to the notice required under Subsection (a), the trustee shall give
20 written notice of the trustee's disclaimer to the attorney general
21 if:

22 (1) a charity is entitled to notice;

23 (2) a charity entitled to notice is no longer in
24 existence;

25 (3) the trustee has the authority to distribute trust
26 assets to one or more charities that are not named in the trust
27 instrument; or

1 (4) the trustee has the authority to make
2 distributions for a charitable purpose described in the trust
3 instrument, but no charity is named as a beneficiary for that
4 purpose.

5 (e-1) The trustee is not required to give notice to the
6 attorney general under Subsection (c) if the attorney general
7 waives that requirement.

8 (e-2) For purposes of Subsection (e)(3), a beneficiary is
9 considered to have waived the requirement that notice be given
10 under this section if a person to whom notice is required to be
11 given with respect to that beneficiary under Subsection (d) waives
12 the requirement that notice be given under this section.

13 SECTION 16. (a) Except as otherwise expressly provided by a
14 trust, a will creating a trust, or this section, the changes in law
15 made by this Act apply to a trust existing on or created on or after
16 September 1, 2017.

17 (b) For a trust existing on September 1, 2017, that was
18 created before that date, the changes in law made by this Act apply
19 only to an act or omission relating to the trust that occurs on or
20 after September 1, 2017.

21 SECTION 17. This Act takes effect September 1, 2017.