

By: Smithee

H.B. No. 2196

Substitute the following for H.B. No. 2196:

By: Schofield

C.S.H.B. No. 2196

A BILL TO BE ENTITLED

AN ACT

1

2 relating to trusts.

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

4 SECTION 1. Section 41.0021(a), Property Code, is amended to  
5 read as follows:

6 (a) In this section, "qualifying trust" means an express  
7 trust:

8 (1) in which the instrument or court order creating  
9 the express trust, an instrument transferring property to the  
10 trust, or any other agreement that is binding on the trustee  
11 provides that a settlor or beneficiary of the trust has the right  
12 to:

13 (A) revoke the trust without the consent of  
14 another person other than a spouse who is also a settlor of the  
15 trust;

16 (B) exercise an inter vivos general power of  
17 appointment over the property that qualifies for the homestead  
18 exemption, either alone or when aggregated with property subject to  
19 an inter vivos general power of appointment held by a spouse who is  
20 also a settlor of the trust; or

21 (C) use and occupy the residential property as  
22 the settlor's or beneficiary's principal residence at no cost, or  
23 rent free and without charge, except for [~~to the settlor or~~  
24 ~~beneficiary, other than payment of~~] taxes and other costs and

1 expenses specified in the instrument or court order:

2 (i) for the life of the settlor or  
3 beneficiary;

4 (ii) for the shorter of the life of the  
5 settlor or beneficiary or a term of years specified in the  
6 instrument or court order; or

7 (iii) until the date the trust is revoked or  
8 terminated by an instrument or court order that describes the  
9 property with sufficient certainty to identify the property and  
10 that is recorded in the real property records of the county in which  
11 the property is located [~~and that describes the property with~~  
12 ~~sufficient certainty to identify the property~~]; and

13 (2) the trustee of which acquires the property in an  
14 instrument of title or under a court order that:

15 (A) describes the property with sufficient  
16 certainty to identify the property and the interest acquired; and

17 (B) is recorded in the real property records of  
18 the county in which the property is located.

19 SECTION 2. Section [112.035](#), Property Code, is amended by  
20 adding Subsections (f-1), (f-2), and (f-3) to read as follows:

21 (f-1) A beneficiary of the trust or the estate of a  
22 beneficiary of the trust may not be considered to be a settlor  
23 merely because the beneficiary, in any capacity:

24 (1) held or exercised a testamentary power of  
25 appointment other than a general power of appointment;

26 (2) held a testamentary general power of appointment;

27 or

1           (3) exercised a testamentary general power of  
2 appointment in favor of or for the benefit of the takers in default  
3 of the appointive assets.

4           (f-2) If a beneficiary of the trust exercised a testamentary  
5 general power of appointment in favor of or for the benefit of any  
6 appointee other than the takers in default of the appointive  
7 assets, the appointive assets are:

8           (1) subject to the claims of creditors of the  
9 beneficiary, but only to the extent the beneficiary's own property  
10 is insufficient to meet the beneficiary's debts; and

11           (2) unless appointed to the beneficiary's estate, not  
12 subject to:

13                   (A) administration as a part of the beneficiary's  
14 estate;

15                   (B) recovery by the personal representative of  
16 the beneficiary's estate, except as provided by Section 2207B,  
17 Internal Revenue Code of 1986; or

18                   (C) the payment of taxes or administration  
19 expenses of the beneficiary's estate.

20           (f-3) For the purposes of Subsections (f-1) and (f-2),  
21 "general power of appointment" has the meaning assigned by Section  
22 2041(b)(1), Internal Revenue Code of 1986.

23           SECTION 3. Sections 112.036(b) and (c), Property Code, are  
24 amended to read as follows:

25           (b) For purposes of this section, the effective date [~~of a~~  
26 ~~trust~~] is the date the governing instrument creating an interest in  
27 the trust becomes irrevocable with respect to that interest. If an

1 interest in one trust is distributed to another trust with a  
2 different effective date, the effective date of that interest in  
3 the second trust becomes the earlier of the effective dates of the  
4 two trusts.

5 (c) An interest in a trust must vest, if at all:

6 (1) [~~not later than 300 years after the effective date~~  
7 ~~of the trust,~~] if the effective date [~~of the trust~~] is on or after  
8 September 1, 2021, not later than the later of:

9 (A) 300 years after the effective date; or

10 (B) 21 years after some life in being at the time  
11 of the effective date, plus a period of gestation; or

12 (2) if the effective date is before September 1, 2021,  
13 except as provided by Subsection (d), not later than 21 years after  
14 some life in being at the time of the effective date [~~creation of~~  
15 ~~the interest~~], plus a period of gestation [~~, if the effective date~~  
16 ~~of the trust is before September 1, 2021~~].

17 SECTION 4. Sections 112.0715(a) and (b), Property Code, are  
18 amended to read as follows:

19 (a) A second trust may be created by a distribution of  
20 principal under Section 112.072 or 112.073 to a second trust that  
21 retains the name used by the first trust. The second trust may  
22 retain, subject to applicable federal law, the tax identification  
23 number of the first trust [~~created under the same trust instrument~~  
24 ~~as the first trust from which the principal is distributed or to a~~  
25 ~~trust created under a different trust instrument~~].

26 (b) If a second trust is created by a distribution of  
27 principal under Section 112.072 or 112.073 to a trust that retains

1 ~~[created under]~~ the name of ~~[same trust instrument as]~~ the first  
2 trust ~~[from which the principal is distributed]~~, the property is  
3 not required to be retitled.

4 SECTION 5. Section 115.014(b), Property Code, is amended to  
5 read as follows:

6 (b) At any point in a proceeding a court may appoint an  
7 attorney ad litem to represent any interest that the court  
8 considers necessary, including an attorney ad litem to defend an  
9 action under Section 114.083 for a beneficiary of the trust who is a  
10 minor or who has been adjudged incompetent, if the court determines  
11 that representation of the interest otherwise would be inadequate.

12 SECTION 6. Section 112.0715(c), Property Code, is repealed.

13 SECTION 7. Sections 112.0715(a) and (b), Property Code, as  
14 amended by this Act, are intended by the legislature to be a  
15 codification of the common law of this state in effect immediately  
16 before the effective date of this Act.

17 SECTION 8. Except as otherwise provided by this Act, the  
18 changes in law made by this Act apply to a trust created before, on,  
19 or after the effective date of this Act.

20 SECTION 9. This Act takes effect immediately if it receives  
21 a vote of two-thirds of all the members elected to each house, as  
22 provided by Section 39, Article III, Texas Constitution. If this  
23 Act does not receive the vote necessary for immediate effect, this  
24 Act takes effect September 1, 2023.