

By: Smithee

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 [111.0035](#)(b), Property Code, is amended
20 to read as follows:

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

23 (1) the requirements imposed under Section [112.031](#);

24 (2) the applicability of Section [114.007](#) to an
25 exculpation term of a trust;

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

1 (4) a trustee's duty:

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

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

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

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

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

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

15 (B) remove a trustee under Section 113.082;

16 (C) exercise jurisdiction under Section 115.001;

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

19 (E) adjust, deny, or order disgorgement of a
20 trustee's compensation if the trustee commits a breach of trust; or

21 (F) make an award of costs and attorney's fees
22 under Section 114.064; ~~or~~

23 (6) the applicability of Section 112.038; or

24 (7) the applicability of Section 112.0365.

25 SECTION 3. Section 112.035, Property Code, is amended by
26 adding Subsections (f-1), (f-2), and (f-3) to read as follows:

27 (f-1) A beneficiary of the trust or the estate of a

1 beneficiary of the trust may not be considered to be a settlor
2 merely because the beneficiary, in any capacity:

3 (1) held or exercised a testamentary power of
4 appointment other than a general power of appointment;

5 (2) held a testamentary general power of appointment;
6 or

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

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

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

17 (2) unless appointed to the beneficiary's estate, not
18 subject to:

19 (A) administration as a part of the beneficiary's
20 estate;

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

24 (C) the payment of taxes or administration
25 expenses of the beneficiary's estate.

26 (f-3) For the purposes of Subsections (f-1) and (f-2),
27 "general power of appointment" has the meaning assigned by Section

1 2041(b)(1), Internal Revenue Code of 1986.

2 SECTION 4. Sections 112.036(b) and (c), Property Code, are
3 amended to read as follows:

4 (b) For purposes of this section, the effective date [~~of a~~
5 ~~trust~~] is the date the governing instrument creating an interest in
6 the trust becomes irrevocable with respect to that interest. If an
7 interest in one trust is distributed to another trust with a
8 different effective date, the effective date of that interest in
9 the second trust becomes the earlier of the effective dates of the
10 two trusts.

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

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

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

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

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

23 SECTION 5. Subchapter B, Chapter 112, Property Code, is
24 amended by adding Section 112.0365 to read as follows:

25 Sec. 112.0365. IMPERMISSIBLE RESTRAINTS ON ALIENATION. (a)

26 This section applies only to a trust that became irrevocable on or
27 after September 1, 2021.

1 (b) Terms of a trust instrument restricting the sale or
2 requiring the retention of a real property asset are unenforceable
3 after 100 years have elapsed from the trust's acquisition of that
4 real property asset. This section does not affect any common law
5 limit on restraint on alienation.

6 SECTION 6. Sections 112.0715(a) and (b), Property Code, are
7 amended to read as follows:

8 (a) A second trust may be created by a distribution of
9 principal under Section 112.072 or 112.073 to a second trust that
10 retains the name used by the first trust. The second trust may
11 retain, subject to applicable federal law, the tax identification
12 number of the first trust [~~created under the same trust instrument~~
13 ~~as the first trust from which the principal is distributed or to a~~
14 ~~trust created under a different trust instrument~~].

15 (b) If a second trust is created by a distribution of
16 principal under Section 112.072 or 112.073 to a trust that retains
17 [~~created under~~] the name of [~~same trust instrument as~~] the first
18 trust [~~from which the principal is distributed~~], the property is
19 not required to be retitled.

20 SECTION 7. Section 115.014(b), Property Code, is amended to
21 read as follows:

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

1 SECTION 8. Sections 112.036(f) and 112.0715(c), Property
2 Code, are repealed.

3 SECTION 9. Sections 112.0715(a) and (b), Property Code, as
4 amended by this Act, are intended by the legislature to be a
5 codification of the common law of this state in effect immediately
6 before the effective date of this Act.

7 SECTION 10. Except as otherwise provided by this Act, the
8 changes in law made by this Act apply to a trust created before, on,
9 or after the effective date of this Act.

10 SECTION 11. This Act takes effect immediately if it
11 receives a vote of two-thirds of all the members elected to each
12 house, as provided by Section 39, Article III, Texas Constitution.
13 If this Act does not receive the vote necessary for immediate
14 effect, this Act takes effect September 1, 2023.