

By: Hartnett

H.B. No. 3

A BILL TO BE ENTITLED

AN ACT

relating to trusts.

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

SECTION 1. Section 112.035, Property Code, is amended by amending Subsection (e) and adding Subsection (f) 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to the extent that [if] the value of the property affected by the lapse, waiver, or release [that could have been withdrawn by exercising the right of withdrawal] in any calendar year does not exceed [at the time of the lapse, waiver, or release] the greater of the amount specified in:

(A) [(1)] Section 2041(b)(2) or 2514(e), Internal Revenue Code of 1986; or

(B) [(2)] Section 2503(b), Internal Revenue Code of 1986.

(f) A beneficiary of the trust may not be considered to be a settlor, to have made a voluntary or involuntary transfer of the beneficiary's interest in the trust, or to have the power to make a voluntary or involuntary transfer of the beneficiary's interest in the trust solely because the beneficiary, in any capacity, holds or

1 exercises:

2 (1) a presently exercisable power to consume, invade,  
3 appropriate, or distribute property to or for the benefit of the  
4 beneficiary, if the power is:

5 (A) exercisable only on consent of another person  
6 holding an interest adverse to the beneficiary's interest; or

7 (B) limited by an ascertainable standard, such as  
8 health, education, support, or maintenance of the beneficiary;

9 (2) a presently exercisable power to appoint any  
10 property of the trust to or for the benefit of a person other than  
11 the beneficiary, a creditor of the beneficiary, the beneficiary's  
12 estate, or a creditor of the beneficiary's estate;

13 (3) a testamentary power of appointment; or

14 (4) a presently exercisable power described by  
15 Subsection (e)(2).

16 SECTION 2. Section 115.001(d), Property Code, is amended to  
17 read as follows:

18 (d) The jurisdiction of the district court over proceedings  
19 concerning trusts is exclusive except for jurisdiction conferred by  
20 law on a statutory probate court, ~~or~~ a court that creates a trust  
21 under Section 867, Texas Probate Code, or a court that creates a  
22 trust under Section 142.005.

23 SECTION 3. Sections 116.172(c) and (d), Property Code, are  
24 amended to read as follows:

25 (c) If no part of a payment is characterized as interest, a  
26 dividend, or an equivalent payment, and all or part of the payment  
27 is required to be made, a trustee shall allocate to income the part

1 of the payment that does not exceed an amount equal to:

2 (1) four percent of the fair market value of the future  
3 payment asset on the date specified in [~~as determined under~~]  
4 Subsection (d); less

5 (2) the total amount that the trustee has allocated to  
6 income for all [~~a~~] previous payments [~~payment~~] received from the  
7 future payment asset during the same accounting period in which the  
8 payment is made [~~prescribed by Subsection (d)~~].

9 (d) For purposes of Subsection (c)(1), the determination of  
10 the fair market value of a future payment asset is made on the later  
11 of:

12 (1) the date on which the future payment asset [~~right~~]  
13 first becomes subject to the trust; or

14 (2) the first day of the trust's accounting period  
15 during which a [~~the future~~] payment from the asset is received.

16 SECTION 4. Section 142.005, Property Code, is amended by  
17 adding Subsection (a-1) and amending Subsection (d) to read as  
18 follows:

19 (a-1) A court of record with jurisdiction to hear a suit  
20 described by Subsection (a) may create a trust on the court's own  
21 initiative under this section.

22 (d) A court that creates a trust under this section has  
23 continuing jurisdiction and supervisory power over the trust,  
24 including the power to construe, amend, revoke, modify, or  
25 terminate the trust. A trust created under this section [~~may be~~  
26 ~~amended, modified, or revoked by the court at any time before its~~  
27 ~~termination, but~~] is not subject to revocation by the beneficiary

1 or a guardian of the beneficiary's estate. If the trust is revoked  
2 by the court before the beneficiary is 18 years old, the court may  
3 provide for the management of the trust principal and any  
4 undistributed income as authorized by this chapter. If the trust is  
5 revoked by the court after the beneficiary is 18 years old, the  
6 trust principal and any undistributed income shall be delivered to  
7 the beneficiary after the payment of all proper and necessary  
8 expenses.

9 SECTION 5. Section 5(e), Texas Probate Code, is amended to  
10 read as follows:

11 (e) A statutory probate court has concurrent jurisdiction  
12 with the district court in all personal injury, survival, or  
13 wrongful death actions by or against a person in the person's  
14 capacity as a personal representative, in all actions involving an  
15 inter vivos trust, in all actions involving a charitable trust, in  
16 all actions involving a testamentary trust, and in all actions  
17 involving a personal representative of an estate in which each  
18 other party aligned with the personal representative is not an  
19 interested person in that estate.

20 SECTION 6. (a) Sections 1 and 2 of this Act are intended to  
21 clarify the law, but only as expressly provided by those sections.  
22 An inference may not be drawn from the amendments made by those  
23 sections for situations not specifically described by those  
24 sections.

25 (b) This Act applies to a trust existing on or created on or  
26 after the effective date of this Act.

27 SECTION 7. This Act takes effect immediately if it receives

1 a vote of two-thirds of all the members elected to each house, as  
2 provided by Section 39, Article III, Texas Constitution. If this  
3 Act does not receive the vote necessary for immediate effect, this  
4 Act takes effect on the 91st day after the last day of the  
5 legislative session.