

By: Hartnett

H.B. No. 1190

A BILL TO BE ENTITLED

AN ACT

relating to trusts.

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

SECTION 1. Section 111.002, Property Code, is amended to read as follows:

Sec. 111.002. CONSTRUCTION OF SUBTITLE. ~~[(a) If the provisions of this subtitle and the terms of a trust conflict, the terms of the trust control except the settlor may not relieve a corporate trustee from the duties, restrictions, and liabilities under Section 113.052 or 113.053.~~

~~[(b)]~~ This subtitle and the Texas Trust Act, as amended (Articles 7425b-1 through 7425b-48, Vernon's Texas Civil Statutes), shall be considered one continuous statute, and for the purposes of any statute or of any instrument creating a trust that refers to the Texas Trust Act, this subtitle shall be considered an amendment to ~~of~~ the Texas Trust Act.

SECTION 2. Chapter 111, Property Code, is amended by adding Section 111.0035 to read as follows:

Sec. 111.0035. DEFAULT AND MANDATORY RULES; CONFLICT BETWEEN TERMS AND STATUTE. (a) Except as provided by the terms of a trust and Subsection (b), this subtitle governs:

(1) the duties and powers of a trustee;

(2) relations among trustees; and

(3) the rights and interests of a beneficiary.

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

3 (1) the requirements imposed under Section 112.031;

4 (2) the duties and liabilities of and restrictions
5 placed on a corporate trustee under Section 113.052 or 113.053;

6 (3) the applicability of Section 114.007 to an
7 exculpation term of a trust;

8 (4) the periods of limitation for commencing a
9 judicial proceeding regarding a trust;

10 (5) a trustee's duty:

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

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

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

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

20 (C) under Section 113.060 to a beneficiary
21 described by Paragraph (A) that is 25 years of age or older; or

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

24 (A) modify or terminate a trust or take other
25 action under Section 112.054;

26 (B) remove a trustee under Section 113.082;

27 (C) exercise jurisdiction under Section 115.001;

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

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

5 SECTION 3. Section 111.004, Property Code, is amended by
6 amending Subdivision (14) and adding Subdivision (25) to read as
7 follows:

8 (14) "Settlor" means a [the] person who creates a
9 trust or contributes property to a trustee of a [the] trust. If
10 more than one person contributes property to a trustee of a trust,
11 each person is a settlor of the portion of the property in the trust
12 attributable to that person's contribution to the trust. The terms
13 "grantor" and "trustor" mean the same as "settlor."

14 (25) "Breach of trust" means a violation by a trustee
15 of a duty the trustee owes to a beneficiary.

16 SECTION 4. Section 112.009(a), Property Code, is amended to
17 read as follows:

18 (a) The signature of the person named as trustee on the
19 writing evidencing the trust or on a separate written acceptance is
20 conclusive evidence that the person accepted the trust. A person
21 named as trustee who exercises power or performs duties under the
22 trust is presumed to have accepted the trust, except that a person
23 named as trustee may engage in the following conduct without
24 accepting the trust:

25 (1) acting to preserve the trust property if, within a
26 reasonable time after acting, the person gives notice of the
27 rejection of the trust to:

1 (A) the settlor; or

2 (B) if the settlor is deceased or incapacitated,
3 all beneficiaries then entitled to receive trust distributions from
4 the trust; and

5 (2) inspecting or investigating trust property for any
6 purpose, including determining the potential liability of the trust
7 under environmental or other law.

8 SECTION 5. Section 112.035, Property Code, is amended by
9 amending Subsection (e) and adding Subsection (f) to read as
10 follows:

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

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

14 (2) the beneficiary's right to withdraw a part of the
15 trust property to the extent that [~~if~~] the value of the property
16 affected by the lapse, waiver, or release [~~that could have been~~
17 ~~withdrawn by exercising the right of withdrawal~~] in any calendar
18 year does not exceed [~~at the time of the lapse, waiver, or release~~]
19 the greater of the amount specified in:

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

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

24 (f) A beneficiary of the trust may not be considered to be a
25 settlor, to have made a voluntary or involuntary transfer of the
26 beneficiary's interest in the trust, or to have the power to make a
27 voluntary or involuntary transfer of the beneficiary's interest in

1 the trust, merely because the beneficiary, in any capacity, holds
2 or exercises:

3 (1) a presently exercisable power to:

4 (A) consume, invade, appropriate, or distribute
5 property to or for the benefit of the beneficiary, if the power is:

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

9 (ii) limited by an ascertainable standard,
10 including health, education, support, or maintenance of the
11 beneficiary; or

12 (B) appoint any property of the trust to or for
13 the benefit of a person other than the beneficiary, a creditor of
14 the beneficiary, the beneficiary's estate, or a creditor of the
15 beneficiary's estate;

16 (2) a testamentary power of appointment; or

17 (3) a presently exercisable right described by
18 Subsection (e)(2).

19 SECTION 6. Subchapter B, Chapter 112, Property Code, is
20 amended by adding Section 112.037 to read as follows:

21 Sec. 112.037. TRUST FOR CARE OF ANIMAL. (a) A trust may be
22 created to provide for the care of an animal alive during the
23 settlor's lifetime. The trust terminates on the death of the animal
24 or, if the trust is created to provide for the care of more than one
25 animal alive during the settlor's lifetime, on the death of the last
26 surviving animal.

27 (b) A trust authorized by this section may be enforced by a

1 person appointed in the terms of the trust or, if a person is not
2 appointed in the terms of the trust, by a person appointed by the
3 court. A person having an interest in the welfare of an animal that
4 is the subject of a trust authorized by this section may request the
5 court to appoint a person to enforce the trust or to remove a person
6 appointed to enforce the trust.

7 (c) Except as provided by Subsections (d) and (e), property
8 of a trust authorized by this section may be applied only to the
9 property's intended use under the trust.

10 (d) Property of a trust authorized by this section may be
11 applied to a use other than the property's intended use under the
12 trust to the extent the court determines that the value of the trust
13 property exceeds the amount required for the intended use.

14 (e) Except as otherwise provided by the terms of the trust,
15 property not required for the trust's intended use must be
16 distributed to:

17 (1) if the settlor is living at the time the trust
18 property is distributed, the settlor; or

19 (2) if the settlor is not living at the time the trust
20 property is distributed:

21 (A) if the settlor has a will, beneficiaries
22 under the settlor's will; or

23 (B) in the absence of an effective provision in a
24 will, the settlor's heirs.

25 (f) For purposes of Section 112.036, the lives in being used
26 to determine the maximum duration of a trust authorized by this
27 section are:

- 1 (1) the individual beneficiaries of the trust;
2 (2) the individuals named in the instrument creating
3 the trust; and
4 (3) if the settlor or settlors are living at the time
5 the trust becomes irrevocable, the settlor or settlors of the trust
6 or, if the settlor or settlors are not living at the time the trust
7 becomes irrevocable, the individuals who would inherit the settlor
8 or settlors' property under the law of this state had the settlor or
9 settlors died intestate at the time the trust becomes irrevocable.

10 SECTION 7. Section 112.054, Property Code, is amended to
11 read as follows:

12 Sec. 112.054. JUDICIAL MODIFICATION OR TERMINATION OF
13 TRUSTS. (a) On the petition of a trustee or a beneficiary, a court
14 may order that the trustee be changed, that the terms of the trust
15 be modified, that the trustee be directed or permitted to do acts
16 that are not authorized or that are forbidden by the terms of the
17 trust, that the trustee be prohibited from performing acts required
18 by the terms of the trust, or that the trust be terminated in whole
19 or in part, if:

20 (1) the purposes of the trust have been fulfilled or
21 have become illegal or impossible to fulfill; ~~or~~

22 (2) because of circumstances not known to or
23 anticipated by the settlor, the order will further the purposes of
24 the trust;

25 (3) modification of administrative, nondispositive
26 terms of the trust is necessary or appropriate to prevent waste or
27 avoid impairment of the trust's administration;

1 (4) the order is necessary or appropriate to achieve
2 the settlor's tax objectives and is not contrary to the settlor's
3 intentions; or

4 (5) subject to Subsection (d):

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

7 (B) the order is not inconsistent with a material
8 purpose of the trust [~~compliance with the terms of the trust would~~
9 ~~defeat or substantially impair the accomplishment of the purposes~~
10 ~~of the trust~~].

11 (b) The court shall exercise its discretion to order a
12 modification or termination under Subsection (a) in the manner that
13 conforms as nearly as possible to the probable intention of the
14 settlor. The court shall consider spendthrift provisions as a
15 factor in making its decision whether to modify or terminate, but
16 the court is not precluded from exercising its discretion to modify
17 or terminate solely because the trust is a spendthrift trust.

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

20 (d) The court may not take the action permitted by
21 Subsection (a)(5) unless all beneficiaries of the trust have
22 consented to the order or are deemed to have consented to the order.
23 A minor, incapacitated, unborn, or unascertained beneficiary is
24 deemed to have consented if a person representing the beneficiary's
25 interest under Section 115.013(c) has consented or if a guardian ad
26 litem appointed to represent the beneficiary's interest under
27 Section 115.014 consents on the beneficiary's behalf.

1 SECTION 8. The heading to Section 112.057, Property Code,
2 is amended to read as follows:

3 Sec. 112.057. DIVISION AND COMBINATION OF TRUSTS.

4 SECTION 9. Sections 112.057(a), (c), and (d), Property
5 Code, are amended to read as follows:

6 (a) The trustee may, unless expressly prohibited by the
7 terms of the instrument establishing the trust, divide a trust into
8 two or more separate trusts without a judicial proceeding if the
9 result does not impair the rights of any beneficiary or adversely
10 affect achievement of the purposes of the original trust [~~trustee~~
11 ~~reasonably determines that the division of the trust could result~~
12 ~~in a significant decrease in current or future federal income,~~
13 ~~gift, estate, generation-skipping transfer taxes, or any other tax~~
14 ~~imposed on trust property. If the trustee divides the trust, the~~
15 ~~terms of the separate trusts must be identical to the terms of the~~
16 ~~original trust, but differing tax elections may be made for the~~
17 ~~separate trusts~~]. The trustee may make a division under this
18 subsection by:

19 (1) giving written notice of the division, not later
20 than the 30th day before the date of a division under this
21 subsection, to each beneficiary who might then be entitled to
22 receive distributions from the trust or may be entitled to receive
23 distributions from the trust once it is funded; and

24 (2) executing a written instrument, acknowledged
25 before a notary public or other person authorized to take
26 acknowledgements of conveyances of real estate stating that the
27 trust has been divided pursuant to this section and that the notice

1 requirements of this subsection have been satisfied.

2 (c) The trustee may, unless expressly prohibited by the
3 terms of the instrument establishing a ~~[the]~~ trust, combine ~~[merge]~~
4 two or more trusts into a single trust without a judicial proceeding
5 if the result does not impair the rights of any beneficiary or
6 adversely affect achievement of the purposes of one of the separate
7 trusts ~~[having identical terms into a single trust if the trustee~~
8 ~~reasonably determines that merging the trusts could result in a~~
9 ~~significant decrease in current or future federal income, gift,~~
10 ~~estate, generation-skipping transfer taxes, or any other tax~~
11 ~~imposed on trust property]~~. The trustee shall complete the trust
12 combination ~~[merger]~~ by:

13 (1) giving a written notice of the combination
14 ~~[merger]~~, not later than the 30th day before the effective date of
15 the combination ~~[merger]~~, to each beneficiary who might then be
16 entitled to receive distributions from the separate trusts being
17 combined ~~[merged]~~ or to each beneficiary who might be entitled to
18 receive distributions from the separate trusts once the trusts are
19 funded; and

20 (2) executing a written instrument, acknowledged
21 before a notary public or other person authorized to take
22 acknowledgments of conveyances of real estate stating that the
23 trust has been combined ~~[merged]~~ pursuant to this section and that
24 the notice requirements of this subsection have been satisfied.

25 (d) The trustee may divide or combine ~~[merge]~~ a testamentary
26 trust after the will establishing the trust has been admitted to
27 probate, even if the trust will not be funded until a later date.

1 The trustee may divide or combine [~~merge~~] any other trust before it
2 is funded [~~if the instrument establishing the trust is not~~
3 ~~revocable at the time of the division or merger~~].

4 SECTION 10. Subchapter A, Chapter 113, Property Code, is
5 amended by adding Section 113.003 to read as follows:

6 Sec. 113.003. OPTIONS. A trustee may:

7 (1) grant an option involving a sale, lease, or other
8 disposition of trust property, including an option exercisable
9 beyond the duration of the trust; or

10 (2) acquire and exercise an option for the acquisition
11 of property, including an option exercisable beyond the duration of
12 the trust.

13 SECTION 11. Section 113.021(a), Property Code, is amended
14 to read as follows:

15 (a) A trustee may make a distribution required or permitted
16 to be made to any beneficiary in any of the following ways when the
17 beneficiary is a minor or a person who in the judgment of the
18 trustee is incapacitated by reason of legal incapacity or physical
19 or mental illness or infirmity:

20 (1) to the beneficiary directly;

21 (2) to the guardian of the beneficiary's person or
22 estate;

23 (3) by utilizing the distribution, without the
24 interposition of a guardian, for the health, support, maintenance,
25 or education of the beneficiary;

26 (4) to a custodian for the minor beneficiary under the
27 Texas Uniform Transfers [~~Gifts~~] to Minors Act (Chapter 141) or a

1 uniform gifts or transfers to minors act of another state; [~~or~~]

2 (5) by reimbursing the person who is actually taking
3 care of the beneficiary, even though the person is not the legal
4 guardian, for expenditures made by the person for the benefit of the
5 beneficiary; or

6 (6) by managing the distribution as a separate fund on
7 the beneficiary's behalf, subject to the beneficiary's continuing
8 right to withdraw the distribution.

9 SECTION 12. Subchapter A, Chapter 113, Property Code, is
10 amended by adding Section 113.027 to read as follows:

11 Sec. 113.027. DISTRIBUTIONS GENERALLY. When distributing
12 trust property or dividing or terminating a trust, a trustee may:

13 (1) make distributions in divided or undivided
14 interests;

15 (2) allocate particular assets in proportionate or
16 disproportionate shares;

17 (3) value the trust property for the purposes of
18 acting under Subdivision (1) or (2); and

19 (4) adjust the distribution, division, or termination
20 for resulting differences in valuation.

21 SECTION 13. Section 113.051, Property Code, is amended to
22 read as follows:

23 Sec. 113.051. GENERAL DUTY. The trustee shall administer
24 the trust in good faith according to its terms and this subtitle.
25 In the absence of any contrary terms in the trust instrument or
26 contrary provisions of this subtitle, in administering the trust
27 the trustee shall perform all of the duties imposed on trustees by

1 the common law.

2 SECTION 14. Section 113.058(b), Property Code, is amended
3 to read as follows:

4 (b) Unless a court orders otherwise or the instrument
5 creating the trust provides otherwise, a noncorporate trustee must
6 give bond:

7 (1) payable to each person interested in the trust, as
8 their interests may appear; and

9 (2) conditioned on the faithful performance of the
10 trustee's duties.

11 SECTION 15. Subchapter B, Chapter 113, Property Code, is
12 amended by adding Section 113.060 to read as follows:

13 Sec. 113.060. INFORMING BENEFICIARIES. The trustee shall
14 keep the beneficiaries of the trust reasonably informed concerning:

15 (1) the administration of the trust; and

16 (2) the material facts necessary for the beneficiaries
17 to protect the beneficiaries' interests.

18 SECTION 16. Section 113.082(a), Property Code, is amended
19 to read as follows:

20 (a) A trustee may be removed in accordance with the terms of
21 the trust instrument, or, on the petition of an interested person
22 and after hearing, a court may, in its discretion, remove a trustee
23 and deny part or all of the trustee's compensation if:

24 (1) the trustee materially violated or attempted to
25 violate the terms of the trust and the violation or attempted
26 violation results in a material financial loss to the trust;

27 (2) the trustee becomes incapacitated [~~incompetent~~]

1 or insolvent;

2 (3) the trustee fails to make an accounting that is
3 required by law or by the terms of the trust; or

4 (4) [~~in the discretion of~~] the court finds [~~, for~~]
5 other cause for removal.

6 SECTION 17. Section 113.085, Property Code, is amended to
7 read as follows:

8 Sec. 113.085. EXERCISE OF POWERS BY MULTIPLE TRUSTEES. (a)
9 Cotrustees that are unable to reach a unanimous decision may act by
10 majority decision.

11 (b) If a vacancy occurs in a cotrusteeship, the remaining
12 cotrustees may act for the trust.

13 (c) A cotrustee shall participate in the performance of a
14 trustee's function unless the cotrustee:

15 (1) is unavailable to perform the function because of
16 absence, illness, disqualification under other law, or other
17 temporary incapacity; or

18 (2) has delegated the performance of the function to
19 another trustee in accordance with the terms of the trust or
20 applicable law, has communicated the delegation to all other
21 cotrustees, and has filed the delegation in the records of the
22 trust.

23 (d) If a cotrustee is unavailable to participate in the
24 performance of a trustee's function for a reason described by
25 Subsection (c)(1) and prompt action is necessary to achieve the
26 purposes of the trust or to avoid injury to the trust property, the
27 remaining cotrustee or a majority of the remaining cotrustees may

1 act for the trust.

2 (e) A trustee may delegate to a cotrustee the performance of
3 a trustee's function unless the settlor specifically directs that
4 the function be performed jointly. Unless a cotrustee's delegation
5 under this subsection is irrevocable, the cotrustee making the
6 delegation may revoke the delegation. [~~Except as otherwise~~
7 provided by the trust instrument or by court order.

8 [~~(1) a power vested in three or more trustees may be~~
9 ~~exercised by a majority of the trustees; and~~

10 [~~(2) if two or more trustees are appointed by a trust~~
11 ~~instrument and one or more of the trustees die, resign, or are~~
12 ~~removed, the survivor or survivors may administer the trust and~~
13 ~~exercise the discretionary powers given to the trustees jointly.]~~

14 SECTION 18. Section 113.171(a), Property Code, is amended
15 to read as follows:

16 (a) A bank or trust company qualified to act as a fiduciary
17 in this state may establish common trust funds to provide
18 investments to itself as a fiduciary, including as a custodian
19 under the Texas Uniform Transfers [~~Gifts~~] to Minors Act (Chapter
20 141) or a uniform gifts or transfers to minors act of another state
21 or to itself and others as cofiduciaries.

22 SECTION 19. Section 114.003, Property Code, is amended to
23 read as follows:

24 Sec. 114.003. POWERS TO DIRECT. (a) The terms of a trust
25 may give a trustee or other person a power to direct the
26 modification or termination of the trust.

27 (b) If the terms of a trust give a person the power to direct

1 certain actions of the trustee, the trustee shall act in accordance
2 with the person's direction unless:

3 (1) the direction is manifestly contrary to the terms
4 of the trust; or

5 (2) the trustee knows the direction would constitute a
6 serious breach of a fiduciary duty that the person holding the power
7 to direct owes to the beneficiaries of the trust.

8 (c) A person, other than a beneficiary, who holds a power to
9 direct is presumptively a fiduciary required to act in good faith
10 with regard to the purposes of the trust and the interests of the
11 beneficiaries. The holder of a power to direct is liable for any
12 loss that results from a breach of the person's fiduciary duty.

13 ~~[PERSON OTHER THAN TRUSTEE IN CONTROL. If a trust instrument~~
14 ~~reserves or vests authority in any person to the exclusion of the~~
15 ~~trustee, including the settlor, an advisory or investment~~
16 ~~committee, or one or more cotrustees, to direct the making or~~
17 ~~retention of an investment or to perform any other act in the~~
18 ~~management or administration of the trust, the excluded trustee or~~
19 ~~cotrustee is not liable for a loss resulting from the exercise of~~
20 ~~the authority in regard to the investments, management, or~~
21 ~~administration of the trust.]~~

22 SECTION 20. Section 114.006, Property Code, is amended to
23 read as follows:

24 Sec. 114.006. LIABILITY OF COTRUSTEES FOR ACTS OF OTHER
25 COTRUSTEES. (a) A trustee who does not join in an action of a
26 cotrustee is not liable for the cotrustee's action, unless the
27 trustee does not exercise reasonable care as provided by Subsection

1 (b).

2 (b) Each trustee shall exercise reasonable care to:

3 (1) prevent a cotrustee from committing a serious
4 breach of trust; and

5 (2) compel a cotrustee to redress a serious breach of
6 trust.

7 (c) Subject to Subsection (b), a dissenting trustee who
8 joins in an action at the direction of the majority of the trustees
9 and who has notified any cotrustee of the dissent in writing at or
10 before the time of the action is not liable for the action. [POWER
11 EXERCISED BY MAJORITY. (a) A trustee who does not join in
12 exercising a power held by three or more cotrustees is not liable to
13 a beneficiary of the trust or to others for the consequences of the
14 exercise nor is a dissenting trustee liable for the consequences of
15 an act in which the trustee joins at the direction of the majority
16 trustees if the trustee expressed the dissent in writing to any of
17 the cotrustees at or before the time of joinder.

18 ~~[(b) This section does not excuse a cotrustee from liability~~
19 ~~for failure to discharge the cotrustee's duties as a trustee.]~~

20 SECTION 21. Subchapter A, Chapter 114, Property Code, is
21 amended by adding Sections 114.007 and 114.008 to read as follows:

22 Sec. 114.007. EXCULPATION OF TRUSTEE. (a) A term of a
23 trust relieving a trustee of liability for breach of trust is
24 unenforceable to the extent that the term relieves a trustee of
25 liability for:

26 (1) a breach of trust committed:

27 (A) in bad faith;

1 (B) intentionally; or
2 (C) with reckless indifference to the interest of
3 a beneficiary; or
4 (2) any profit derived by the trustee from a breach of
5 trust.

6 (b) A term in a trust instrument relieving the trustee of
7 liability for a breach of trust is ineffective to the extent that
8 the term is inserted in the trust instrument as a result of an abuse
9 by the trustee of a fiduciary duty to or confidential relationship
10 with the settlor.

11 (c) This section applies only to a term of a trust that may
12 otherwise relieve a trustee from liability for a breach of trust.
13 Except as provided in Section 111.0035, this section does not
14 prohibit the settlor, by the terms of the trust, from expressly:

15 (1) relieving the trustee from a duty or restriction
16 imposed by this subtitle or by common law; or

17 (2) directing or permitting the trustee to do or not to
18 do an action that would otherwise violate a duty or restriction
19 imposed by this subtitle or by common law.

20 Sec. 114.008. REMEDIES FOR BREACH OF TRUST. (a) To remedy
21 a breach of trust that has occurred or might occur, the court may:

22 (1) compel the trustee to perform the trustee's duty or
23 duties;

24 (2) enjoin the trustee from committing a breach of
25 trust;

26 (3) compel the trustee to redress a breach of trust,
27 including compelling the trustee to pay money or to restore

1 property;

2 (4) order a trustee to account;

3 (5) appoint a receiver to take possession of the trust
4 property and administer the trust;

5 (6) suspend the trustee;

6 (7) remove the trustee as provided under Section
7 113.082;

8 (8) reduce or deny compensation to the trustee;

9 (9) subject to Subsection (b), void an act of the
10 trustee, impose a lien or a constructive trust on trust property, or
11 trace trust property of which the trustee wrongfully disposed and
12 recover the property or the proceeds from the property; or

13 (10) order any other appropriate relief.

14 (b) Notwithstanding Subsection (a)(9), a person other than
15 a beneficiary who, without knowledge that a trustee is exceeding or
16 improperly exercising the trustee's powers, in good faith assists a
17 trustee or in good faith and for value deals with a trustee is
18 protected from liability as if the trustee had or properly
19 exercised the power exercised by the trustee.

20 SECTION 22. Sections 115.001(c) and (d), Property Code, are
21 amended to read as follows:

22 (c) The court may intervene in the administration of a trust
23 to the extent that the court's jurisdiction is invoked by an
24 interested person or as otherwise provided by law. A trust is not
25 subject to continuing judicial supervision unless the court orders
26 continuing judicial supervision. [~~Unless specifically directed by~~
27 a written order of the court, a proceeding does not result in

1 ~~continuing supervision by the court over the administration of the~~
2 ~~trust.]~~

3 (d) The jurisdiction of the district court over proceedings
4 concerning trusts is exclusive except for jurisdiction conferred by
5 law on a statutory probate court, ~~[or]~~ a court that creates a trust
6 under Section 867, Texas Probate Code, or a court that creates a
7 trust under Section 142.005.

8 SECTION 23. Section 115.011(b), Property Code, is amended
9 to read as follows:

10 (b) Contingent beneficiaries designated as a class are not
11 necessary parties to an action under Section 115.001 ~~[of this Act]~~.
12 The only necessary parties to such an action are:

13 (1) a beneficiary on whose act or obligation the
14 action is predicated;

15 (2) a beneficiary ~~[person]~~ designated by name in the
16 instrument creating the trust; ~~[and]~~

17 (3) a person who is actually receiving distributions
18 from the trust estate at the time the action is filed; and

19 (4) the trustee, if a trustee is serving at the time
20 the action is filed.

21 SECTION 24. Section 115.014, Property Code, is amended by
22 adding Subsection (c) to read as follows:

23 (c) A guardian ad litem may consider general benefit
24 accruing to the living members of a person's family.

25 SECTION 25. Section 116.005(c), Property Code, is amended
26 to read as follows:

27 (c) A trustee may not make an adjustment:

1 (1) [~~that diminishes the income interest in a trust~~
2 ~~that requires all of the income to be paid at least annually to a~~
3 ~~spouse and for which an estate tax or gift tax marital deduction~~
4 ~~would be allowed, in whole or in part, if the trustee did not have~~
5 ~~the power to make the adjustment;~~

6 [~~(2)~~] that reduces the actuarial value of the income
7 interest in a trust to which a person transfers property with the
8 intent to qualify for a gift tax exclusion;

9 (2) [~~(3)~~] that changes the amount payable to a
10 beneficiary as a fixed annuity or a fixed fraction of the value of
11 the trust assets;

12 (3) [~~(4)~~] from any amount that is permanently set
13 aside for charitable purposes under a will or the terms of a trust
14 unless both income and principal are so set aside;

15 (4) [~~(5)~~] if possessing or exercising the power to
16 make an adjustment causes an individual to be treated as the owner
17 of all or part of the trust for income tax purposes, and the
18 individual would not be treated as the owner if the trustee did not
19 possess the power to make an adjustment;

20 (5) [~~(6)~~] if possessing or exercising the power to
21 make an adjustment causes all or part of the trust assets to be
22 included for estate tax purposes in the estate of an individual who
23 has the power to remove a trustee or appoint a trustee, or both, and
24 the assets would not be included in the estate of the individual if
25 the trustee did not possess the power to make an adjustment;

26 (6) [~~(7)~~] if the trustee is a beneficiary of the
27 trust; or

1 (7) [~~(8)~~] if the trustee is not a beneficiary, but the
2 adjustment would benefit the trustee directly or indirectly.

3 SECTION 26. Sections 116.172(c) and (d), Property Code, are
4 amended to read as follows:

5 (c) If no part of a payment is characterized as interest, a
6 dividend, or an equivalent payment, and all or part of the payment
7 is required to be made, a trustee shall allocate to income the part
8 of the payment that does not exceed an amount equal to:

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

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

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

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

21 (2) the last [~~first~~] day of the [~~trust's~~] accounting
22 period of the trust that immediately precedes the accounting period
23 during which the [~~future~~] payment [~~asset~~] is received.

24 SECTION 27. Section 121.003, Property Code, is amended to
25 read as follows:

26 Sec. 121.003. APPLICATION OF TEXAS TRUST CODE [~~ACT~~]. The
27 Texas Trust Code [~~Act~~] (Chapters 111 through 117 [~~115~~]) applies to a

1 pension trust.

2 SECTION 28. Sections 142.005(a) and (d), Property Code, are
3 amended to read as follows:

4 (a) In a suit in which a minor who has no legal guardian or
5 an incapacitated person is represented by a next friend or an
6 appointed guardian ad litem, any [the] court of record with
7 jurisdiction to hear the suit may, on application by the next friend
8 or the guardian ad litem and on a finding that the creation of a
9 trust would be in the best interests of the minor or incapacitated
10 person, enter a decree in the record directing the clerk to deliver
11 any funds accruing to the minor or incapacitated person under the
12 judgment to a trust company or a state or national bank having trust
13 powers in this state.

14 (d) A court that creates a trust under this section has
15 continuing jurisdiction and supervisory power over the trust,
16 including the power to construe, amend, revoke, modify, or
17 terminate the trust. A trust created under this section [~~may be~~
18 ~~amended, modified, or revoked by the court at any time before its~~
19 ~~termination, but~~] is not subject to revocation by the beneficiary
20 or a guardian of the beneficiary's estate. If the trust is revoked
21 by the court before the beneficiary is 18 years old, the court may
22 provide for the management of the trust principal and any
23 undistributed income as authorized by this chapter. If the trust is
24 revoked by the court after the beneficiary is 18 years old, the
25 trust principal and any undistributed income shall be delivered to
26 the beneficiary after the payment of all proper and necessary
27 expenses.

1 SECTION 29. Section 113.059, Property Code, is repealed.

2 SECTION 30. (a) Section 5 of this Act is intended to
3 clarify existing law, but only as expressly provided by that
4 section. An inference may not be drawn from the amendments made by
5 that section for situations not specifically described by that
6 section.

7 (b) Section 26 of this Act is intended to clarify existing
8 law.

9 SECTION 31. (a) Except as otherwise provided by a will, the
10 terms of a trust, or this Act, the changes in law made by this Act
11 apply to:

12 (1) a trust existing or created on or after January 1,
13 2006;

14 (2) the estate of a decedent who dies before January 1,
15 2006, if the probate or administration of the estate is pending on
16 or after January 1, 2006; and

17 (3) the estate of a decedent who dies on or after
18 January 1, 2006.

19 (b) For a trust existing on January 1, 2006, that was
20 created before that date, the changes in law made by this Act apply
21 only to an act or omission relating to the trust that occurs on or
22 after January 1, 2006.

23 SECTION 32. This Act takes effect January 1, 2006.