

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) of full disclosure without demand to a
21 settlor of a revocable trust or a beneficiary described by
22 Paragraph (A); and

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

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

27 (B) remove a trustee under Section 113.082;

- 1 (C) exercise jurisdiction under Section 115.001;
2 (D) require, dispense with, modify, or terminate
3 a trustee's bond; or
4 (E) adjust or deny a trustee's compensation if
5 the trustee commits a breach of trust.

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

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

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

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

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

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

1 rejection of the trust to:

2 (A) the settlor; or

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

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

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

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

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

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

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

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

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

1 voluntary or involuntary transfer of the beneficiary's interest in
2 the trust, merely because the beneficiary, in any capacity, holds
3 or exercises:

4 (1) a presently exercisable power to:

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

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

9 or

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

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

17 (2) a testamentary power of appointment; or

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

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

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

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

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

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

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

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

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

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

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

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

1 section are:

2 (1) the individual beneficiaries of the trust;

3 (2) the individuals named in the instrument creating
4 the trust; and

5 (3) if the settlor or settlors are living at the time
6 the trust becomes irrevocable, the settlor or settlors of the trust
7 or, if the settlor or settlors are not living at the time the trust
8 becomes irrevocable, the individuals who would inherit the settlor
9 or settlors' property under the law of this state had the settlor or
10 settlors died intestate at the time the trust becomes irrevocable.

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

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

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

23 (2) because of circumstances not known to or
24 anticipated by the settlor, the order will further the purposes of
25 the trust ~~[compliance with the terms of the trust would defeat or~~
26 ~~substantially impair the accomplishment of the purposes of the~~
27 ~~trust];~~

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

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

7 (5) subject to Subsection (d):

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

10 (B) the order is not inconsistent with a material
11 purpose of the trust.

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

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

21 (d) The court may not take the action permitted by
22 Subsection (a)(5) unless all beneficiaries of the trust have
23 consented to the order or are deemed to have consented to the order.

24 A minor, incapacitated, unborn, or unascertained beneficiary is
25 deemed to have consented if a person representing the beneficiary's
26 interest under Section 115.013(c) has consented or if a guardian ad
27 litem appointed to represent the beneficiary's interest under

1 Section 115.014 consents on the beneficiary's behalf.

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

4 Sec. 112.057. DIVISION AND COMBINATION OF TRUSTS.

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

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

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

25 (2) executing a written instrument, acknowledged
26 before a notary public or other person authorized to take
27 acknowledgements of conveyances of real estate stating that the

1 trust has been divided pursuant to this section and that the notice
2 requirements of this subsection have been satisfied.

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

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

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

26 (d) The trustee may divide or combine ~~merge~~ a testamentary
27 trust after the will establishing the trust has been admitted to

1 probate, even if the trust will not be funded until a later date.
2 The trustee may divide or combine [~~merge~~] any other trust before it
3 is funded [~~if the instrument establishing the trust is not~~
4 ~~revocable at the time of the division or merger~~].

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

7 Sec. 113.003. OPTIONS. A trustee may:

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

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

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

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

21 (1) to the beneficiary directly;

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

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

27 (4) to a custodian for the minor beneficiary under the

1 Texas Uniform Transfers [~~Gifts~~] to Minors Act (Chapter 141) or a
2 uniform gifts or transfers to minors act of another state; [~~or~~]

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

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

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

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

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

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

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

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

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

24 Sec. 113.051. GENERAL DUTY. The trustee shall administer
25 the trust in good faith according to its terms and this subtitle.

26 In the absence of any contrary terms in the trust instrument or
27 contrary provisions of this subtitle, in administering the trust

1 the trustee shall perform all of the duties imposed on trustees by
2 the common law.

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

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

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

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

12 SECTION 15. Section 113.082(a), Property Code, is amended
13 to read as follows:

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

18 (1) the trustee materially violated or attempted to
19 violate the terms of the trust and the violation or attempted
20 violation results in a material financial loss to the trust;

21 (2) the trustee becomes incapacitated [~~incompetent~~]
22 or insolvent;

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

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

27 SECTION 16. Section 113.085, Property Code, is amended to

1 read as follows:

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

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

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

9 (1) is unavailable to perform the function because of
10 absence, illness, disqualification under other law, or other
11 temporary incapacity; or

12 (2) has properly delegated the performance of the
13 function to another trustee.

14 (d) If a cotrustee is unavailable to participate in the
15 performance of a trustee's function for a reason described by
16 Subsection (c)(1) and prompt action is necessary to achieve the
17 purposes of the trust or to avoid injury to the trust property, the
18 remaining cotrustee or a majority of the remaining cotrustees may
19 act for the trust.

20 (e) A trustee may delegate to a cotrustee the performance of
21 a trustee's function unless the settlor specifically directs that
22 the function be performed jointly. Unless a cotrustee's delegation
23 under this subsection is irrevocable, the cotrustee making the
24 delegation may revoke the delegation. [~~Except as otherwise~~
25 provided by the trust instrument or by court order.

26 ~~[(1) a power vested in three or more trustees may be~~
27 ~~exercised by a majority of the trustees, and~~

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

5 SECTION 17. Section 113.171(a), Property Code, is amended
6 to read as follows:

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

13 SECTION 18. Section 114.003, Property Code, is amended to
14 read as follows:

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

18 (b) If the terms of a trust give a person the power to direct
19 certain actions of the trustee, the trustee shall act in accordance
20 with the person's direction unless:

21 (1) the direction is manifestly contrary to the terms
22 of the trust; or

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

26 (c) A person, other than a beneficiary, who holds a power to
27 direct is presumptively a fiduciary required to act in good faith

1 with regard to the purposes of the trust and the interests of the
2 beneficiaries. The holder of a power to direct is liable for any
3 loss that results from a breach of the person's fiduciary duty.

4 ~~[PERSON OTHER THAN TRUSTEE IN CONTROL. If a trust instrument~~
5 ~~reserves or vests authority in any person to the exclusion of the~~
6 ~~trustee, including the settlor, an advisory or investment~~
7 ~~committee, or one or more cotrustees, to direct the making or~~
8 ~~retention of an investment or to perform any other act in the~~
9 ~~management or administration of the trust, the excluded trustee or~~
10 ~~cotrustee is not liable for a loss resulting from the exercise of~~
11 ~~the authority in regard to the investments, management, or~~
12 ~~administration of the trust.]~~

13 SECTION 19. Section 114.006, Property Code, is amended to
14 read as follows:

15 Sec. 114.006. LIABILITY OF COTRUSTEES FOR ACTS OF OTHER
16 COTRUSTEES. (a) A trustee who does not join in an action of a
17 cotrustee is not liable for the cotrustee's action, unless the
18 trustee does not exercise reasonable care as provided by Subsection
19 (b).

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

21 (1) prevent a cotrustee from committing a serious
22 breach of trust; and

23 (2) compel a cotrustee to redress a serious breach of
24 trust.

25 (c) A dissenting trustee who joins in an action at the
26 direction of the majority of the trustees and who has notified any
27 cotrustee of the dissent at or before the time of the action is not

1 liable for the action, unless the action is a serious breach of
2 trust. [~~POWER EXERCISED BY MAJORITY. (a) A trustee who does not~~
3 ~~join in exercising a power held by three or more cotrustees is not~~
4 ~~liable to a beneficiary of the trust or to others for the~~
5 ~~consequences of the exercise nor is a dissenting trustee liable for~~
6 ~~the consequences of an act in which the trustee joins at the~~
7 ~~direction of the majority trustees if the trustee expressed the~~
8 ~~dissent in writing to any of the cotrustees at or before the time of~~
9 ~~joinder.~~

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

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

14 Sec. 114.007. EXCULPATION OF TRUSTEE. (a) A term of a
15 trust relieving a trustee of liability for breach of trust is
16 unenforceable to the extent that the term relieves a trustee of
17 liability for:

18 (1) a breach of trust committed:

19 (A) in bad faith;

20 (B) intentionally; or

21 (C) with reckless indifference to the interest of
22 a beneficiary; or

23 (2) any profit derived by the trustee from a breach of
24 trust.

25 (b) A term in a trust instrument relieving the trustee of
26 liability for a breach of trust is ineffective to the extent that
27 the term is inserted in the trust instrument as a result of an abuse

1 by the trustee of a fiduciary duty to or confidential relationship
2 with the settlor.

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

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

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

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

14 (1) compel the trustee to perform the trustee's duty or
15 duties;

16 (2) enjoin the trustee from committing a breach of
17 trust;

18 (3) compel the trustee to redress a breach of trust,
19 including compelling the trustee to pay money or to restore
20 property;

21 (4) order a trustee to account;

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

24 (6) suspend the trustee;

25 (7) remove the trustee as provided under Section
26 113.082;

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

1 (9) void an act of the trustee, impose a lien or a
2 constructive trust on trust property, or trace trust property of
3 which the trustee wrongfully disposed and recover the property or
4 the proceeds from the property; or

5 (10) order any other appropriate relief.

6 SECTION 21. Section 114.032(a), Property Code, is amended
7 to read as follows:

8 (a) A written agreement between a trustee and a beneficiary,
9 including a release, consent, or other agreement relating to a
10 trustee's duty, power, responsibility, restriction, or liability,
11 is final and binding on the beneficiary and any person represented
12 by a beneficiary as provided by this section if:

13 (1) the instrument is signed by the beneficiary;

14 (2) the beneficiary has legal capacity to sign the
15 instrument; and

16 (3) the beneficiary is acting on full information [~~has~~
17 ~~full knowledge of the circumstances surrounding the agreement~~].

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

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

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

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

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

11 (1) a beneficiary on whose act or obligation the
12 action is predicated;

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

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

17 (4) the trustee, if a trustee is serving at the time
18 the action is filed.

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

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

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

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

26 (1) ~~[that diminishes the income interest in a trust~~
27 ~~that requires all of the income to be paid at least annually to a~~

1 ~~spouse and for which an estate tax or gift tax marital deduction~~
2 ~~would be allowed, in whole or in part, if the trustee did not have~~
3 ~~the power to make the adjustment;~~

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

7 (2) ~~(3)~~ that changes the amount payable to a
8 beneficiary as a fixed annuity or a fixed fraction of the value of
9 the trust assets;

10 (3) ~~(4)~~ from any amount that is permanently set
11 aside for charitable purposes under a will or the terms of a trust
12 unless both income and principal are so set aside;

13 (4) ~~(5)~~ if possessing or exercising the power to
14 make an adjustment causes an individual to be treated as the owner
15 of all or part of the trust for income tax purposes, and the
16 individual would not be treated as the owner if the trustee did not
17 possess the power to make an adjustment;

18 (5) ~~(6)~~ if possessing or exercising the power to
19 make an adjustment causes all or part of the trust assets to be
20 included for estate tax purposes in the estate of an individual who
21 has the power to remove a trustee or appoint a trustee, or both, and
22 the assets would not be included in the estate of the individual if
23 the trustee did not possess the power to make an adjustment;

24 (6) ~~(7)~~ if the trustee is a beneficiary of the
25 trust; or

26 (7) ~~(8)~~ if the trustee is not a beneficiary, but the
27 adjustment would benefit the trustee directly or indirectly.

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

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

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

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

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

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

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

22 SECTION 27. Section 121.003, Property Code, is amended to
23 read as follows:

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

27 SECTION 28. Sections 142.005(a) and (d), Property Code, are

1 amended to read as follows:

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

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

26 SECTION 29. Section 5(e), Probate Code, is amended to read
27 as follows:

1 (e) A statutory probate court has concurrent jurisdiction
2 with the district court in all personal injury, survival, or
3 wrongful death actions by or against a person in the person's
4 capacity as a personal representative, in all actions involving an
5 inter vivos trust, in all actions involving a charitable trust, in
6 all actions involving a testamentary trust, and in all actions
7 involving a personal representative of an estate in which each
8 other party aligned with the personal representative is not an
9 interested person in that estate.

10 SECTION 30. The following laws are repealed:

11 (1) Section 113.059, Property Code; and

12 (2) Section 114.005, Property Code.

13 SECTION 31. (a) Section 5 of this Act is intended to
14 clarify existing law, but only as expressly provided by that
15 section. An inference may not be drawn from the amendments made by
16 that section for situations not specifically described by that
17 section.

18 (b) Sections 26 and 29 of this Act are intended to clarify
19 existing law.

20 SECTION 32. (a) Except as otherwise provided by a will, the
21 terms of a trust, or this Act, the changes in law made by this Act
22 apply to:

23 (1) a trust existing or created on or after September
24 1, 2005;

25 (2) the estate of a decedent who dies before September
26 1, 2005, if the probate or administration of the estate is pending
27 on or after September 1, 2005; and

1 (3) the estate of a decedent who dies on or after
2 September 1, 2005.

3 (b) For a trust existing on September 1, 2005, that was
4 created before that date, the changes in law made by this Act apply
5 only to an act or omission relating to the trust that occurs on or
6 after September 1, 2005.

7 SECTION 33. This Act takes effect September 1, 2005.