

1-1 By: Hartnett (Senate Sponsor - Harris) H.B. No. 1190  
1-2 (In the Senate - Received from the House April 4, 2005;  
1-3 April 6, 2005, read first time and referred to Committee on  
1-4 Jurisprudence; May 5, 2005, reported favorably by the following  
1-5 vote: Yeas 4, Nays 0; May 5, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to trusts.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Section 111.002, Property Code, is amended to  
1-11 read as follows:

1-12 Sec. 111.002. CONSTRUCTION OF SUBTITLE. [~~(a)~~ If the  
1-13 provisions of this subtitle and the terms of a trust conflict, the  
1-14 terms of the trust control except the settlor may not relieve a  
1-15 corporate trustee from the duties, restrictions, and liabilities  
1-16 under Section 113.052 or 113.053.

1-17 [~~(b)~~] This subtitle and the Texas Trust Act, as amended  
1-18 (Articles 7425b-1 through 7425b-48, Vernon's Texas Civil  
1-19 Statutes), shall be considered one continuous statute, and for the  
1-20 purposes of any statute or of any instrument creating a trust that  
1-21 refers to the Texas Trust Act, this subtitle shall be considered an  
1-22 amendment to ~~of~~ the Texas Trust Act.

1-23 SECTION 2. Chapter 111, Property Code, is amended by adding  
1-24 Section 111.0035 to read as follows:

1-25 Sec. 111.0035. DEFAULT AND MANDATORY RULES; CONFLICT  
1-26 BETWEEN TERMS AND STATUTE. (a) Except as provided by the terms of a  
1-27 trust and Subsection (b), this subtitle governs:

1-28 (1) the duties and powers of a trustee;

1-29 (2) relations among trustees; and

1-30 (3) the rights and interests of a beneficiary.

1-31 (b) The terms of a trust prevail over any provision of this  
1-32 subtitle, except that the terms of a trust may not limit:

1-33 (1) the requirements imposed under Section 112.031;

1-34 (2) the duties and liabilities of and restrictions  
1-35 placed on a corporate trustee under Section 113.052 or 113.053;

1-36 (3) the applicability of Section 114.007 to an  
1-37 exculpation term of a trust;

1-38 (4) the periods of limitation for commencing a  
1-39 judicial proceeding regarding a trust;

1-40 (5) a trustee's duty:

1-41 (A) with regard to an irrevocable trust, to  
1-42 respond to a demand for accounting made under Section 113.151 if the  
1-43 demand is from a beneficiary who, at the time of the demand:

1-44 (i) is entitled or permitted to receive  
1-45 distributions from the trust; or

1-46 (ii) would receive a distribution from the  
1-47 trust if the trust terminated at the time of the demand;

1-48 (B) to act in good faith and in accordance with  
1-49 the purposes of the trust; and

1-50 (C) under Section 113.060 to a beneficiary  
1-51 described by Paragraph (A) that is 25 years of age or older; or

1-52 (6) the power of a court, in the interest of justice,  
1-53 to take action or exercise jurisdiction, including the power to:

1-54 (A) modify or terminate a trust or take other  
1-55 action under Section 112.054;

1-56 (B) remove a trustee under Section 113.082;

1-57 (C) exercise jurisdiction under Section 115.001;

1-58 (D) require, dispense with, modify, or terminate  
1-59 a trustee's bond; or

1-60 (E) adjust or deny a trustee's compensation if  
1-61 the trustee commits a breach of trust.

1-62 SECTION 3. Section 111.004, Property Code, is amended by  
1-63 amending Subdivision (14) and adding Subdivision (25) to read as  
1-64 follows:

2-1 (14) "Settlor" means a [the] person who creates a  
 2-2 trust or contributes property to a trustee of a [the] trust. If  
 2-3 more than one person contributes property to a trustee of a trust,  
 2-4 each person is a settlor of the portion of the property in the trust  
 2-5 attributable to that person's contribution to the trust. The terms  
 2-6 "grantor" and "trustor" mean the same as "settlor."

2-7 (25) "Breach of trust" means a violation by a trustee  
 2-8 of a duty the trustee owes to a beneficiary.

2-9 SECTION 4. Section 112.009(a), Property Code, is amended to  
 2-10 read as follows:

2-11 (a) The signature of the person named as trustee on the  
 2-12 writing evidencing the trust or on a separate written acceptance is  
 2-13 conclusive evidence that the person accepted the trust. A person  
 2-14 named as trustee who exercises power or performs duties under the  
 2-15 trust is presumed to have accepted the trust, except that a person  
 2-16 named as trustee may engage in the following conduct without  
 2-17 accepting the trust:

2-18 (1) acting to preserve the trust property if, within a  
 2-19 reasonable time after acting, the person gives notice of the  
 2-20 rejection of the trust to:

2-21 (A) the settlor; or  
 2-22 (B) if the settlor is deceased or incapacitated,  
 2-23 all beneficiaries then entitled to receive trust distributions from  
 2-24 the trust; and

2-25 (2) inspecting or investigating trust property for any  
 2-26 purpose, including determining the potential liability of the trust  
 2-27 under environmental or other law.

2-28 SECTION 5. Section 112.035, Property Code, is amended by  
 2-29 amending Subsection (e) and adding Subsection (f) to read as  
 2-30 follows:

2-31 (e) A beneficiary of the trust may not be considered a  
 2-32 settlor merely because of a lapse, waiver, or release of:

2-33 (1) a power described by Subsection (f); or  
 2-34 (2) the beneficiary's right to withdraw a part of the  
 2-35 trust property to the extent that [if] the value of the property  
 2-36 affected by the lapse, waiver, or release [that could have been  
 2-37 withdrawn by exercising the right of withdrawal] in any calendar  
 2-38 year does not exceed [at the time of the lapse, waiver, or release]  
 2-39 the greater of the amount specified in:

2-40 (A) [~~(1)~~] Section 2041(b)(2) or 2514(e),  
 2-41 Internal Revenue Code of 1986; or

2-42 (B) [~~(2)~~] Section 2503(b), Internal Revenue Code  
 2-43 of 1986.

2-44 (f) A beneficiary of the trust may not be considered to be a  
 2-45 settlor, to have made a voluntary or involuntary transfer of the  
 2-46 beneficiary's interest in the trust, or to have the power to make a  
 2-47 voluntary or involuntary transfer of the beneficiary's interest in  
 2-48 the trust, merely because the beneficiary, in any capacity, holds  
 2-49 or exercises:

2-50 (1) a presently exercisable power to:  
 2-51 (A) consume, invade, appropriate, or distribute  
 2-52 property to or for the benefit of the beneficiary, if the power is:

2-53 (i) exercisable only on consent of another  
 2-54 person holding an interest adverse to the beneficiary's interest;  
 2-55 or

2-56 (ii) limited by an ascertainable standard,  
 2-57 including health, education, support, or maintenance of the  
 2-58 beneficiary; or

2-59 (B) appoint any property of the trust to or for  
 2-60 the benefit of a person other than the beneficiary, a creditor of  
 2-61 the beneficiary, the beneficiary's estate, or a creditor of the  
 2-62 beneficiary's estate;

2-63 (2) a testamentary power of appointment; or  
 2-64 (3) a presently exercisable right described by  
 2-65 Subsection (e)(2).

2-66 SECTION 6. Subchapter B, Chapter 112, Property Code, is  
 2-67 amended by adding Section 112.037 to read as follows:

2-68 Sec. 112.037. TRUST FOR CARE OF ANIMAL. (a) A trust may be  
 2-69 created to provide for the care of an animal alive during the

3-1 settlor's lifetime. The trust terminates on the death of the animal  
 3-2 or, if the trust is created to provide for the care of more than one  
 3-3 animal alive during the settlor's lifetime, on the death of the last  
 3-4 surviving animal.

3-5 (b) A trust authorized by this section may be enforced by a  
 3-6 person appointed in the terms of the trust or, if a person is not  
 3-7 appointed in the terms of the trust, by a person appointed by the  
 3-8 court. A person having an interest in the welfare of an animal that  
 3-9 is the subject of a trust authorized by this section may request the  
 3-10 court to appoint a person to enforce the trust or to remove a person  
 3-11 appointed to enforce the trust.

3-12 (c) Except as provided by Subsections (d) and (e), property  
 3-13 of a trust authorized by this section may be applied only to the  
 3-14 property's intended use under the trust.

3-15 (d) Property of a trust authorized by this section may be  
 3-16 applied to a use other than the property's intended use under the  
 3-17 trust to the extent the court determines that the value of the trust  
 3-18 property exceeds the amount required for the intended use.

3-19 (e) Except as otherwise provided by the terms of the trust,  
 3-20 property not required for the trust's intended use must be  
 3-21 distributed to:

3-22 (1) if the settlor is living at the time the trust  
 3-23 property is distributed, the settlor; or

3-24 (2) if the settlor is not living at the time the trust  
 3-25 property is distributed:

3-26 (A) if the settlor has a will, beneficiaries  
 3-27 under the settlor's will; or

3-28 (B) in the absence of an effective provision in a  
 3-29 will, the settlor's heirs.

3-30 (f) For purposes of Section 112.036, the lives in being used  
 3-31 to determine the maximum duration of a trust authorized by this  
 3-32 section are:

3-33 (1) the individual beneficiaries of the trust;

3-34 (2) the individuals named in the instrument creating  
 3-35 the trust; and

3-36 (3) if the settlor or settlors are living at the time  
 3-37 the trust becomes irrevocable, the settlor or settlors of the trust  
 3-38 or, if the settlor or settlors are not living at the time the trust  
 3-39 becomes irrevocable, the individuals who would inherit the settlor  
 3-40 or settlors' property under the law of this state had the settlor or  
 3-41 settlors died intestate at the time the trust becomes irrevocable.

3-42 SECTION 7. Section 112.054, Property Code, is amended to  
 3-43 read as follows:

3-44 Sec. 112.054. JUDICIAL MODIFICATION OR TERMINATION OF  
 3-45 TRUSTS. (a) On the petition of a trustee or a beneficiary, a court  
 3-46 may order that the trustee be changed, that the terms of the trust  
 3-47 be modified, that the trustee be directed or permitted to do acts  
 3-48 that are not authorized or that are forbidden by the terms of the  
 3-49 trust, that the trustee be prohibited from performing acts required  
 3-50 by the terms of the trust, or that the trust be terminated in whole  
 3-51 or in part, if:

3-52 (1) the purposes of the trust have been fulfilled or  
 3-53 have become illegal or impossible to fulfill; ~~or~~

3-54 (2) because of circumstances not known to or  
 3-55 anticipated by the settlor, the order will further the purposes of  
 3-56 the trust;

3-57 (3) modification of administrative, nondispositive  
 3-58 terms of the trust is necessary or appropriate to prevent waste or  
 3-59 avoid impairment of the trust's administration;

3-60 (4) the order is necessary or appropriate to achieve  
 3-61 the settlor's tax objectives and is not contrary to the settlor's  
 3-62 intentions; or

3-63 (5) subject to Subsection (d):

3-64 (A) continuance of the trust is not necessary to  
 3-65 achieve any material purpose of the trust; or

3-66 (B) the order is not inconsistent with a material  
 3-67 purpose of the trust [~~compliance with the terms of the trust would~~  
 3-68 ~~defeat or substantially impair the accomplishment of the purposes~~  
 3-69 ~~of the trust].~~

4-1 (b) The court shall exercise its discretion to order a  
 4-2 modification or termination under Subsection (a) in the manner that  
 4-3 conforms as nearly as possible to the probable intention of the  
 4-4 settlor. The court shall consider spendthrift provisions as a  
 4-5 factor in making its decision whether to modify or terminate, but  
 4-6 the court is not precluded from exercising its discretion to modify  
 4-7 or terminate solely because the trust is a spendthrift trust.

4-8 (c) The court may direct that an order described by  
 4-9 Subsection (a)(4) has retroactive effect.

4-10 (d) The court may not take the action permitted by  
 4-11 Subsection (a)(5) unless all beneficiaries of the trust have  
 4-12 consented to the order or are deemed to have consented to the order.  
 4-13 A minor, incapacitated, unborn, or unascertained beneficiary is  
 4-14 deemed to have consented if a person representing the beneficiary's  
 4-15 interest under Section 115.013(c) has consented or if a guardian ad  
 4-16 litem appointed to represent the beneficiary's interest under  
 4-17 Section 115.014 consents on the beneficiary's behalf.

4-18 SECTION 8. The heading to Section 112.057, Property Code,  
 4-19 is amended to read as follows:

4-20 Sec. 112.057. DIVISION AND COMBINATION OF TRUSTS.

4-21 SECTION 9. Sections 112.057(a), (c), and (d), Property  
 4-22 Code, are amended to read as follows:

4-23 (a) The trustee may, unless expressly prohibited by the  
 4-24 terms of the instrument establishing the trust, divide a trust into  
 4-25 two or more separate trusts without a judicial proceeding if the  
 4-26 result does not impair the rights of any beneficiary or adversely  
 4-27 affect achievement of the purposes of the original trust [~~trustee~~  
 4-28 ~~reasonably determines that the division of the trust could result~~  
 4-29 ~~in a significant decrease in current or future federal income,~~  
 4-30 ~~gift, estate, generation-skipping transfer taxes, or any other tax~~  
 4-31 ~~imposed on trust property. If the trustee divides the trust, the~~  
 4-32 ~~terms of the separate trusts must be identical to the terms of the~~  
 4-33 ~~original trust, but differing tax elections may be made for the~~  
 4-34 ~~separate trusts]. The trustee may make a division under this~~  
 4-35 subsection by:

4-36 (1) giving written notice of the division, not later  
 4-37 than the 30th day before the date of a division under this  
 4-38 subsection, to each beneficiary who might then be entitled to  
 4-39 receive distributions from the trust or may be entitled to receive  
 4-40 distributions from the trust once it is funded; and

4-41 (2) executing a written instrument, acknowledged  
 4-42 before a notary public or other person authorized to take  
 4-43 acknowledgements of conveyances of real estate stating that the  
 4-44 trust has been divided pursuant to this section and that the notice  
 4-45 requirements of this subsection have been satisfied.

4-46 (c) The trustee may, unless expressly prohibited by the  
 4-47 terms of the instrument establishing a [~~the~~] trust, combine [~~merge~~]  
 4-48 two or more trusts into a single trust without a judicial proceeding  
 4-49 if the result does not impair the rights of any beneficiary or  
 4-50 adversely affect achievement of the purposes of one of the separate  
 4-51 trusts [~~having identical terms into a single trust if the trustee~~  
 4-52 ~~reasonably determines that merging the trusts could result in a~~  
 4-53 ~~significant decrease in current or future federal income, gift,~~  
 4-54 ~~estate, generation-skipping transfer taxes, or any other tax~~  
 4-55 ~~imposed on trust property]. The trustee shall complete the trust~~  
 4-56 combination [~~merger~~] by:

4-57 (1) giving a written notice of the combination  
 4-58 [~~merger~~], not later than the 30th day before the effective date of  
 4-59 the combination [~~merger~~], to each beneficiary who might then be  
 4-60 entitled to receive distributions from the separate trusts being  
 4-61 combined [~~merged~~] or to each beneficiary who might be entitled to  
 4-62 receive distributions from the separate trusts once the trusts are  
 4-63 funded; and

4-64 (2) executing a written instrument, acknowledged  
 4-65 before a notary public or other person authorized to take  
 4-66 acknowledgments of conveyances of real estate stating that the  
 4-67 trust has been combined [~~merged~~] pursuant to this section and that  
 4-68 the notice requirements of this subsection have been satisfied.

4-69 (d) The trustee may divide or combine [~~merge~~] a testamentary

5-1 trust after the will establishing the trust has been admitted to  
 5-2 probate, even if the trust will not be funded until a later date.  
 5-3 The trustee may divide or combine [~~merge~~] any other trust before it  
 5-4 is funded [~~if the instrument establishing the trust is not~~  
 5-5 ~~revocable at the time of the division or merger~~].

5-6 SECTION 10. Subchapter A, Chapter 113, Property Code, is  
 5-7 amended by adding Section 113.003 to read as follows:

5-8 Sec. 113.003. OPTIONS. A trustee may:

5-9 (1) grant an option involving a sale, lease, or other  
 5-10 disposition of trust property, including an option exercisable  
 5-11 beyond the duration of the trust; or

5-12 (2) acquire and exercise an option for the acquisition  
 5-13 of property, including an option exercisable beyond the duration of  
 5-14 the trust.

5-15 SECTION 11. Section 113.021(a), Property Code, is amended  
 5-16 to read as follows:

5-17 (a) A trustee may make a distribution required or permitted  
 5-18 to be made to any beneficiary in any of the following ways when the  
 5-19 beneficiary is a minor or a person who in the judgment of the  
 5-20 trustee is incapacitated by reason of legal incapacity or physical  
 5-21 or mental illness or infirmity:

5-22 (1) to the beneficiary directly;

5-23 (2) to the guardian of the beneficiary's person or  
 5-24 estate;

5-25 (3) by utilizing the distribution, without the  
 5-26 interposition of a guardian, for the health, support, maintenance,  
 5-27 or education of the beneficiary;

5-28 (4) to a custodian for the minor beneficiary under the  
 5-29 Texas Uniform Transfers [~~Gifts~~] to Minors Act (Chapter 141) or a  
 5-30 uniform gifts or transfers to minors act of another state; [~~or~~]

5-31 (5) by reimbursing the person who is actually taking  
 5-32 care of the beneficiary, even though the person is not the legal  
 5-33 guardian, for expenditures made by the person for the benefit of the  
 5-34 beneficiary; or

5-35 (6) by managing the distribution as a separate fund on  
 5-36 the beneficiary's behalf, subject to the beneficiary's continuing  
 5-37 right to withdraw the distribution.

5-38 SECTION 12. Subchapter A, Chapter 113, Property Code, is  
 5-39 amended by adding Section 113.027 to read as follows:

5-40 Sec. 113.027. DISTRIBUTIONS GENERALLY. When distributing  
 5-41 trust property or dividing or terminating a trust, a trustee may:

5-42 (1) make distributions in divided or undivided  
 5-43 interests;

5-44 (2) allocate particular assets in proportionate or  
 5-45 disproportionate shares;

5-46 (3) value the trust property for the purposes of  
 5-47 acting under Subdivision (1) or (2); and

5-48 (4) adjust the distribution, division, or termination  
 5-49 for resulting differences in valuation.

5-50 SECTION 13. Section 113.051, Property Code, is amended to  
 5-51 read as follows:

5-52 Sec. 113.051. GENERAL DUTY. The trustee shall administer  
 5-53 the trust in good faith according to its terms and this subtitle.  
 5-54 In the absence of any contrary terms in the trust instrument or  
 5-55 contrary provisions of this subtitle, in administering the trust  
 5-56 the trustee shall perform all of the duties imposed on trustees by  
 5-57 the common law.

5-58 SECTION 14. Section 113.058(b), Property Code, is amended  
 5-59 to read as follows:

5-60 (b) Unless a court orders otherwise or the instrument  
 5-61 creating the trust provides otherwise, a noncorporate trustee must  
 5-62 give bond:

5-63 (1) payable to each person interested in the trust, as  
 5-64 their interests may appear; and

5-65 (2) conditioned on the faithful performance of the  
 5-66 trustee's duties.

5-67 SECTION 15. Subchapter B, Chapter 113, Property Code, is  
 5-68 amended by adding Section 113.060 to read as follows:

5-69 Sec. 113.060. INFORMING BENEFICIARIES. The trustee shall

6-1 keep the beneficiaries of the trust reasonably informed concerning:  
 6-2 (1) the administration of the trust; and  
 6-3 (2) the material facts necessary for the beneficiaries  
 6-4 to protect the beneficiaries' interests.

6-5 SECTION 16. Section 113.082(a), Property Code, is amended  
 6-6 to read as follows:

6-7 (a) A trustee may be removed in accordance with the terms of  
 6-8 the trust instrument, or, on the petition of an interested person  
 6-9 and after hearing, a court may, in its discretion, remove a trustee  
 6-10 and deny part or all of the trustee's compensation if:

6-11 (1) the trustee materially violated or attempted to  
 6-12 violate the terms of the trust and the violation or attempted  
 6-13 violation results in a material financial loss to the trust;

6-14 (2) the trustee becomes incapacitated [~~incompetent~~]  
 6-15 or insolvent;

6-16 (3) the trustee fails to make an accounting that is  
 6-17 required by law or by the terms of the trust; or

6-18 (4) [~~in the discretion of~~] the court finds [~~for~~]  
 6-19 other cause for removal.

6-20 SECTION 17. Section 113.085, Property Code, is amended to  
 6-21 read as follows:

6-22 Sec. 113.085. EXERCISE OF POWERS BY MULTIPLE TRUSTEES. (a)  
 6-23 Cotrustees that are unable to reach a unanimous decision may act by  
 6-24 majority decision.

6-25 (b) If a vacancy occurs in a cotrusteeship, the remaining  
 6-26 cotrustees may act for the trust.

6-27 (c) A cotrustee shall participate in the performance of a  
 6-28 trustee's function unless the cotrustee:

6-29 (1) is unavailable to perform the function because of  
 6-30 absence, illness, disqualification under other law, or other  
 6-31 temporary incapacity; or

6-32 (2) has delegated the performance of the function to  
 6-33 another trustee in accordance with the terms of the trust or  
 6-34 applicable law, has communicated the delegation to all other  
 6-35 cotrustees, and has filed the delegation in the records of the  
 6-36 trust.

6-37 (d) If a cotrustee is unavailable to participate in the  
 6-38 performance of a trustee's function for a reason described by  
 6-39 Subsection (c)(1) and prompt action is necessary to achieve the  
 6-40 purposes of the trust or to avoid injury to the trust property, the  
 6-41 remaining cotrustee or a majority of the remaining cotrustees may  
 6-42 act for the trust.

6-43 (e) A trustee may delegate to a cotrustee the performance of  
 6-44 a trustee's function unless the settlor specifically directs that  
 6-45 the function be performed jointly. Unless a cotrustee's delegation  
 6-46 under this subsection is irrevocable, the cotrustee making the  
 6-47 delegation may revoke the delegation. [~~Except as otherwise~~  
 6-48 ~~provided by the trust instrument or by court order.~~

6-49 [~~(1) a power vested in three or more trustees may be~~  
 6-50 ~~exercised by a majority of the trustees; and~~

6-51 [~~(2) if two or more trustees are appointed by a trust~~  
 6-52 ~~instrument and one or more of the trustees die, resign, or are~~  
 6-53 ~~removed, the survivor or survivors may administer the trust and~~  
 6-54 ~~exercise the discretionary powers given to the trustees jointly.]~~

6-55 SECTION 18. Section 113.171(a), Property Code, is amended  
 6-56 to read as follows:

6-57 (a) A bank or trust company qualified to act as a fiduciary  
 6-58 in this state may establish common trust funds to provide  
 6-59 investments to itself as a fiduciary, including as a custodian  
 6-60 under the Texas Uniform Transfers [~~Gifts~~] to Minors Act (Chapter  
 6-61 141) or a uniform gifts or transfers to minors act of another state  
 6-62 or to itself and others as cofiduciaries.

6-63 SECTION 19. Section 114.003, Property Code, is amended to  
 6-64 read as follows:

6-65 Sec. 114.003. POWERS TO DIRECT. (a) The terms of a trust  
 6-66 may give a trustee or other person a power to direct the  
 6-67 modification or termination of the trust.

6-68 (b) If the terms of a trust give a person the power to direct  
 6-69 certain actions of the trustee, the trustee shall act in accordance

7-1 with the person's direction unless:

7-2 (1) the direction is manifestly contrary to the terms  
7-3 of the trust; or

7-4 (2) the trustee knows the direction would constitute a  
7-5 serious breach of a fiduciary duty that the person holding the power  
7-6 to direct owes to the beneficiaries of the trust.

7-7 (c) A person, other than a beneficiary, who holds a power to  
7-8 direct is presumptively a fiduciary required to act in good faith  
7-9 with regard to the purposes of the trust and the interests of the  
7-10 beneficiaries. The holder of a power to direct is liable for any  
7-11 loss that results from a breach of the person's fiduciary duty.

7-12 ~~[PERSON OTHER THAN TRUSTEE IN CONTROL. If a trust instrument~~  
7-13 ~~reserves or vests authority in any person to the exclusion of the~~  
7-14 ~~trustee, including the settlor, an advisory or investment~~  
7-15 ~~committee, or one or more cotrustees, to direct the making or~~  
7-16 ~~retention of an investment or to perform any other act in the~~  
7-17 ~~management or administration of the trust, the excluded trustee or~~  
7-18 ~~cotrustee is not liable for a loss resulting from the exercise of~~  
7-19 ~~the authority in regard to the investments, management, or~~  
7-20 ~~administration of the trust.]~~

7-21 SECTION 20. Section 114.006, Property Code, is amended to  
7-22 read as follows:

7-23 Sec. 114.006. LIABILITY OF COTRUSTEES FOR ACTS OF OTHER  
7-24 COTRUSTEES. (a) A trustee who does not join in an action of a  
7-25 cotrustee is not liable for the cotrustee's action, unless the  
7-26 trustee does not exercise reasonable care as provided by Subsection  
7-27 (b).

7-28 (b) Each trustee shall exercise reasonable care to:  
7-29 (1) prevent a cotrustee from committing a serious  
7-30 breach of trust; and

7-31 (2) compel a cotrustee to redress a serious breach of  
7-32 trust.

7-33 (c) Subject to Subsection (b), a dissenting trustee who  
7-34 joins in an action at the direction of the majority of the trustees  
7-35 and who has notified any cotrustee of the dissent in writing at or  
7-36 before the time of the action is not liable for the action. ~~[POWER~~

7-37 ~~EXERCISED BY MAJORITY. (a) A trustee who does not join in~~  
7-38 ~~exercising a power held by three or more cotrustees is not liable to~~  
7-39 ~~a beneficiary of the trust or to others for the consequences of the~~  
7-40 ~~exercise nor is a dissenting trustee liable for the consequences of~~  
7-41 ~~an act in which the trustee joins at the direction of the majority~~  
7-42 ~~trustees if the trustee expressed the dissent in writing to any of~~  
7-43 ~~the cotrustees at or before the time of joinder.~~

7-44 ~~[(b) This section does not excuse a cotrustee from liability~~  
7-45 ~~for failure to discharge the cotrustee's duties as a trustee.]~~

7-46 SECTION 21. Subchapter A, Chapter 114, Property Code, is  
7-47 amended by adding Sections 114.007 and 114.008 to read as follows:

7-48 Sec. 114.007. EXCULPATION OF TRUSTEE. (a) A term of a  
7-49 trust relieving a trustee of liability for breach of trust is  
7-50 unenforceable to the extent that the term relieves a trustee of  
7-51 liability for:

7-52 (1) a breach of trust committed:  
7-53 (A) in bad faith;  
7-54 (B) intentionally; or  
7-55 (C) with reckless indifference to the interest of  
7-56 a beneficiary; or

7-57 (2) any profit derived by the trustee from a breach of  
7-58 trust.

7-59 (b) A term in a trust instrument relieving the trustee of  
7-60 liability for a breach of trust is ineffective to the extent that  
7-61 the term is inserted in the trust instrument as a result of an abuse  
7-62 by the trustee of a fiduciary duty to or confidential relationship  
7-63 with the settlor.

7-64 (c) This section applies only to a term of a trust that may  
7-65 otherwise relieve a trustee from liability for a breach of trust.  
7-66 Except as provided in Section 111.0035, this section does not  
7-67 prohibit the settlor, by the terms of the trust, from expressly:

7-68 (1) relieving the trustee from a duty or restriction  
7-69 imposed by this subtitle or by common law; or

8-1 (2) directing or permitting the trustee to do or not to  
 8-2 do an action that would otherwise violate a duty or restriction  
 8-3 imposed by this subtitle or by common law.

8-4 Sec. 114.008. REMEDIES FOR BREACH OF TRUST. (a) To remedy  
 8-5 a breach of trust that has occurred or might occur, the court may:

8-6 (1) compel the trustee to perform the trustee's duty or  
 8-7 duties;

8-8 (2) enjoin the trustee from committing a breach of  
 8-9 trust;

8-10 (3) compel the trustee to redress a breach of trust,  
 8-11 including compelling the trustee to pay money or to restore  
 8-12 property;

8-13 (4) order a trustee to account;

8-14 (5) appoint a receiver to take possession of the trust  
 8-15 property and administer the trust;

8-16 (6) suspend the trustee;

8-17 (7) remove the trustee as provided under Section  
 8-18 113.082;

8-19 (8) reduce or deny compensation to the trustee;

8-20 (9) subject to Subsection (b), void an act of the  
 8-21 trustee, impose a lien or a constructive trust on trust property, or  
 8-22 trace trust property of which the trustee wrongfully disposed and  
 8-23 recover the property or the proceeds from the property; or

8-24 (10) order any other appropriate relief.

8-25 (b) Notwithstanding Subsection (a)(9), a person other than  
 8-26 a beneficiary who, without knowledge that a trustee is exceeding or  
 8-27 improperly exercising the trustee's powers, in good faith assists a  
 8-28 trustee or in good faith and for value deals with a trustee is  
 8-29 protected from liability as if the trustee had or properly  
 8-30 exercised the power exercised by the trustee.

8-31 SECTION 22. Sections 115.001(c) and (d), Property Code, are  
 8-32 amended to read as follows:

8-33 (c) The court may intervene in the administration of a trust  
 8-34 to the extent that the court's jurisdiction is invoked by an  
 8-35 interested person or as otherwise provided by law. A trust is not  
 8-36 subject to continuing judicial supervision unless the court orders  
 8-37 continuing judicial supervision. ~~[Unless specifically directed by~~  
 8-38 ~~a written order of the court, a proceeding does not result in~~  
 8-39 ~~continuing supervision by the court over the administration of the~~  
 8-40 ~~trust.]~~

8-41 (d) The jurisdiction of the district court over proceedings  
 8-42 concerning trusts is exclusive except for jurisdiction conferred by  
 8-43 law on a statutory probate court, ~~[or]~~ a court that creates a trust  
 8-44 under Section 867, Texas Probate Code, or a court that creates a  
 8-45 trust under Section 142.005.

8-46 SECTION 23. Section 115.011(b), Property Code, is amended  
 8-47 to read as follows:

8-48 (b) Contingent beneficiaries designated as a class are not  
 8-49 necessary parties to an action under Section 115.001 ~~[of this Act]~~.  
 8-50 The only necessary parties to such an action are:

8-51 (1) a beneficiary on whose act or obligation the  
 8-52 action is predicated;

8-53 (2) a beneficiary ~~[person]~~ designated by name in the  
 8-54 instrument creating the trust; ~~[and]~~

8-55 (3) a person who is actually receiving distributions  
 8-56 from the trust estate at the time the action is filed; and

8-57 (4) the trustee, if a trustee is serving at the time  
 8-58 the action is filed.

8-59 SECTION 24. Section 115.014, Property Code, is amended by  
 8-60 adding Subsection (c) to read as follows:

8-61 (c) A guardian ad litem may consider general benefit  
 8-62 accruing to the living members of a person's family.

8-63 SECTION 25. Section 116.005(c), Property Code, is amended  
 8-64 to read as follows:

8-65 (c) A trustee may not make an adjustment:

8-66 (1) ~~[that diminishes the income interest in a trust~~  
 8-67 ~~that requires all of the income to be paid at least annually to a~~  
 8-68 ~~spouse and for which an estate tax or gift tax marital deduction~~  
 8-69 ~~would be allowed, in whole or in part, if the trustee did not have~~



9-1 ~~the power to make the adjustment;~~

9-2 ~~[(2)]~~ that reduces the actuarial value of the income  
9-3 interest in a trust to which a person transfers property with the  
9-4 intent to qualify for a gift tax exclusion;

9-5 (2) ~~[(3)]~~ that changes the amount payable to a  
9-6 beneficiary as a fixed annuity or a fixed fraction of the value of  
9-7 the trust assets;

9-8 (3) ~~[(4)]~~ from any amount that is permanently set  
9-9 aside for charitable purposes under a will or the terms of a trust  
9-10 unless both income and principal are so set aside;

9-11 (4) ~~[(5)]~~ if possessing or exercising the power to  
9-12 make an adjustment causes an individual to be treated as the owner  
9-13 of all or part of the trust for income tax purposes, and the  
9-14 individual would not be treated as the owner if the trustee did not  
9-15 possess the power to make an adjustment;

9-16 (5) ~~[(6)]~~ if possessing or exercising the power to  
9-17 make an adjustment causes all or part of the trust assets to be  
9-18 included for estate tax purposes in the estate of an individual who  
9-19 has the power to remove a trustee or appoint a trustee, or both, and  
9-20 the assets would not be included in the estate of the individual if  
9-21 the trustee did not possess the power to make an adjustment;

9-22 (6) ~~[(7)]~~ if the trustee is a beneficiary of the  
9-23 trust; or

9-24 (7) ~~[(8)]~~ if the trustee is not a beneficiary, but the  
9-25 adjustment would benefit the trustee directly or indirectly.

9-26 SECTION 26. Sections 116.172(c) and (d), Property Code, are  
9-27 amended to read as follows:

9-28 (c) If no part of a payment is characterized as interest, a  
9-29 dividend, or an equivalent payment, and all or part of the payment  
9-30 is required to be made, a trustee shall allocate to income the part  
9-31 of the payment that does not exceed an amount equal to:

9-32 (1) four percent of the fair market value of the future  
9-33 payment asset on the date specified in ~~[as determined under]~~  
9-34 Subsection (d); less

9-35 (2) the total amount that the trustee has allocated to  
9-36 income for all ~~[a]~~ previous payments ~~[payment]~~ received from the  
9-37 future payment asset during the same accounting period in which the  
9-38 payment is made ~~[prescribed by Subsection (d)]~~.

9-39 (d) For purposes of Subsection (c)(1), the determination of  
9-40 the fair market value of a future payment asset is made on the later  
9-41 of:

9-42 (1) the date on which the future payment asset ~~[right]~~  
9-43 first becomes subject to the trust; or

9-44 (2) the last ~~[first]~~ day of the ~~[trust's]~~ accounting  
9-45 period of the trust that immediately precedes the accounting period  
9-46 during which the ~~[future]~~ payment ~~[asset]~~ is received.

9-47 SECTION 27. Section 121.003, Property Code, is amended to  
9-48 read as follows:

9-49 Sec. 121.003. APPLICATION OF TEXAS TRUST CODE ~~[ACT]~~. The  
9-50 Texas Trust Code ~~[Act]~~ (Chapters 111 through 117 ~~[115]~~) applies to a  
9-51 pension trust.

9-52 SECTION 28. Sections 142.005(a) and (d), Property Code, are  
9-53 amended to read as follows:

9-54 (a) In a suit in which a minor who has no legal guardian or  
9-55 an incapacitated person is represented by a next friend or an  
9-56 appointed guardian ad litem, any ~~[the]~~ court of record with  
9-57 jurisdiction to hear the suit may, on application by the next friend  
9-58 or the guardian ad litem and on a finding that the creation of a  
9-59 trust would be in the best interests of the minor or incapacitated  
9-60 person, enter a decree in the record directing the clerk to deliver  
9-61 any funds accruing to the minor or incapacitated person under the  
9-62 judgment to a trust company or a state or national bank having trust  
9-63 powers in this state.

9-64 (d) A court that creates a trust under this section has  
9-65 continuing jurisdiction and supervisory power over the trust,  
9-66 including the power to construe, amend, revoke, modify, or  
9-67 terminate the trust. A trust created under this section ~~[may be~~  
9-68 ~~amended, modified, or revoked by the court at any time before its~~  
9-69 ~~termination, but]~~ is not subject to revocation by the beneficiary

10-1 or a guardian of the beneficiary's estate. If the trust is revoked  
10-2 by the court before the beneficiary is 18 years old, the court may  
10-3 provide for the management of the trust principal and any  
10-4 undistributed income as authorized by this chapter. If the trust is  
10-5 revoked by the court after the beneficiary is 18 years old, the  
10-6 trust principal and any undistributed income shall be delivered to  
10-7 the beneficiary after the payment of all proper and necessary  
10-8 expenses.

10-9 SECTION 29. Section 113.059, Property Code, is repealed.

10-10 SECTION 30. (a) Section 5 of this Act is intended to  
10-11 clarify existing law, but only as expressly provided by that  
10-12 section. An inference may not be drawn from the amendments made by  
10-13 that section for situations not specifically described by that  
10-14 section.

10-15 (b) Section 26 of this Act is intended to clarify existing  
10-16 law.

10-17 SECTION 31. (a) Except as otherwise provided by a will, the  
10-18 terms of a trust, or this Act, the changes in law made by this Act  
10-19 apply to:

10-20 (1) a trust existing or created on or after January 1,  
10-21 2006;

10-22 (2) the estate of a decedent who dies before January 1,  
10-23 2006, if the probate or administration of the estate is pending on  
10-24 or after January 1, 2006; and

10-25 (3) the estate of a decedent who dies on or after  
10-26 January 1, 2006.

10-27 (b) For a trust existing on January 1, 2006, that was  
10-28 created before that date, the changes in law made by this Act apply  
10-29 only to an act or omission relating to the trust that occurs on or  
10-30 after January 1, 2006.

10-31 SECTION 32. This Act takes effect January 1, 2006.

10-32 \* \* \* \* \*