

By: Hartnett

H.B. No. 564

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the administration and operation of certain trusts and
3 other property interests held for the benefit of another.

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

5 SECTION 1. Section 187.005(b), Finance Code, is amended to
6 read as follows:

7 (b) Unless another law specifies governing law [~~and except~~
8 ~~as provided in Subsection (c)~~], if a trust or its subject matter
9 bears a reasonable relation to this state and also to another state
10 or a foreign country, a trust institution and its affected client
11 may agree that the law of this state or of the other state or country
12 governs their rights and duties, including the law of a state or a
13 foreign country where the affected client resides or where the
14 trust institution has its principal office.

15 SECTION 2. Section 111.0035, Property Code, is amended by
16 amending Subsection (b) and adding Subsection (c) to read as
17 follows:

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

20 (1) the requirements imposed under Section 112.031;

21 (2) [~~the duties and liabilities of and restrictions~~
22 ~~placed on a corporate trustee under Section 113.052 or 113.053,~~

23 [~~3~~] the applicability of Section 114.007 to an
24 exculpation term of a trust;

1 (3) [~~(4)~~] the periods of limitation for commencing a
2 judicial proceeding regarding a trust;

3 (4) [~~(5)~~] a trustee's duty:

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

7 (i) is entitled or permitted to receive
8 distributions from the trust; or

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

11 (B) to act in good faith and in accordance with
12 the purposes of the trust; [~~and~~

13 [~~(C) under Section 113.060 to a beneficiary~~
14 ~~described by Paragraph (A) that is 25 years of age or older,~~] or

15 (5) [~~(6)~~] the power of a court, in the interest of
16 justice, to take action or exercise jurisdiction, including the
17 power to:

18 (A) modify or terminate a trust or take other
19 action under Section 112.054;

20 (B) remove a trustee under Section 113.082;

21 (C) exercise jurisdiction under Section 115.001;

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

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

26 (c) The terms of a trust may not limit any common-law duty to
27 keep a beneficiary of an irrevocable trust who is 25 years of age or

1 older informed at any time during which the beneficiary:

2 (1) is entitled or permitted to receive distributions
3 from the trust; or

4 (2) would receive a distribution from the trust if the
5 trust were terminated.

6 SECTION 3. Section 111.004, Property Code, is amended by
7 amending Subdivisions (10) and (18) to read as follows:

8 (10) "Person" means:

9 (A) an individual;

10 (B) [~~T~~] a corporation;

11 (C) a limited liability company;

12 (D) [~~T~~] a partnership;

13 (E) a joint venture;

14 (F) [~~T~~] an association;

15 (G) [~~T~~] a joint-stock company;

16 (H) [~~T~~] a business trust;

17 (I) [~~T~~] an unincorporated organization;

18 (J) [~~T or~~] two or more persons having a joint or
19 common interest, including an individual or a corporation acting as
20 a personal representative or in any other fiduciary capacity;

21 (K) a government;

22 (L) a governmental subdivision, agency, or
23 instrumentality;

24 (M) a public corporation; or

25 (N) any other legal or commercial entity.

26 (18) "Trustee" means the person holding the property
27 in trust, including an original, additional, or successor trustee,

1 whether or not the person is appointed or confirmed by a court.

2 SECTION 4. Section 112.035(d), Property Code, is amended to
3 read as follows:

4 (d) If the settlor is also a beneficiary of the trust, a
5 provision restraining the voluntary or involuntary transfer of the
6 settlor's [~~his~~] beneficial interest does not prevent the settlor's
7 [~~his~~] creditors from satisfying claims from the settlor's [~~his~~]
8 interest in the trust estate. A settlor is not considered a
9 beneficiary of a trust solely because a trustee who is not the
10 settlor is authorized under the trust instrument to pay or
11 reimburse the settlor for, or pay directly to the taxing
12 authorities, any tax on trust income or principal that is payable by
13 the settlor under the law imposing the tax.

14 SECTION 5. Subchapter C, Chapter 112, Property Code, is
15 amended by adding Section 112.059 to read as follows:

16 Sec. 112.059. TERMINATION OF UNECONOMIC TRUST. (a) After
17 notice to beneficiaries who are distributees or permissible
18 distributees of trust income or principal or who would be
19 distributees or permissible distributees if the interests of the
20 distributees or the trust were to terminate and no powers of
21 appointment were exercised, the trustee of a trust consisting of
22 trust property having a total value of less than \$50,000 may
23 terminate the trust if the trustee concludes after considering the
24 purpose of the trust and the nature of the trust assets that the
25 value of the trust property is insufficient to justify the
26 continued cost of administration.

27 (b) On termination of a trust under this section, the

1 trustee shall distribute the trust property in a manner consistent
2 with the purposes of the trust.

3 (c) This section does not apply to an easement for
4 conservation or preservation.

5 SECTION 6. Section 113.058, Property Code, is amended by
6 amending Subsections (b), (c), and (d) to read as follows:

7 (b) Unless a court orders otherwise or the instrument
8 creating the trust provides otherwise, a noncorporate trustee is
9 not required to [~~must~~] give a bond[~~+~~

10 [~~(1) payable to each person interested in the trust,~~
11 ~~as their interests may appear; and~~

12 [~~(2) conditioned on the faithful performance of the~~
13 ~~trustee's duties].~~

14 (c) A bond required by the instrument creating the trust
15 must be conditioned, payable, and in the amount as provided in the
16 instrument. A bond required by a court must be:

17 (1) in an amount and with the sureties required by the
18 court order and payable to:

19 (A) the trust estate of the trust;

20 (B) the registry of the court; or

21 (C) each person interested in the trust, as their
22 interests may appear; and

23 (2) conditioned on the faithful performance of the
24 trustee's duties as trustee under the instrument creating the
25 trust, this code, or the common law of trusts [~~The bond must be in an~~
26 ~~amount and with the sureties required by order of a court in a~~
27 ~~proceeding brought for this determination].~~

1 (d) Any interested person may bring an action to:

2 (1) require a bond, including a bond for a
3 noncorporate trustee who is not required to provide a bond by the
4 instrument creating the trust;

5 (2) terminate a requirement for a bond, including a
6 bond that is required by the instrument creating the trust;

7 (3) increase or decrease the amount of a bond; or

8 (4) [~~to~~] substitute or add sureties.

9 SECTION 7. Section 113.085(a), Property Code, is amended to
10 read as follows:

11 (a) Cotrustees [~~that are unable to reach a unanimous~~
12 ~~decision~~] may act by majority decision.

13 SECTION 8. Section 114.005(a), Property Code, is amended to
14 read as follows:

15 (a) A beneficiary who has full legal capacity and is acting
16 on full information may relieve a trustee from any duty,
17 responsibility, restriction, or liability as to the beneficiary
18 that would otherwise be imposed on the trustee by this subtitle,
19 including liability for past violations[~~, except as to the duties,~~
20 ~~restrictions, and liabilities imposed on corporate trustees by~~
21 ~~Section 113.052 or 113.053 of this subtitle].~~

22 SECTION 9. Section 114.081, Property Code, is amended to
23 read as follows:

24 Sec. 114.081. PROTECTION OF PERSON DEALING WITH [~~PAYMENT OF~~
25 ~~MONEY TO~~] TRUSTEE. (a) A person who deals with a trustee [~~actually~~
26 ~~and~~] in good faith and for fair value actually received by the trust
27 is not liable to the trustee or the beneficiaries of the trust if

1 the trustee has exceeded the trustee's authority in dealing with
2 the person [~~pays to a trustee money that the trustee is authorized~~
3 ~~to receive is not responsible for the proper application of the~~
4 ~~money according to the trust~~].

5 (b) A person other than a beneficiary is not required to
6 inquire into the extent of the trustee's powers or the propriety of
7 the exercise of those powers if the person:

8 (1) deals with the trustee in good faith; and

9 (2) obtains:

10 (A) a certification of trust described by Section
11 114.086; or

12 (B) a copy of the trust instrument.

13 (c) A person who in good faith delivers money or other
14 assets to a trustee is not required to ensure the proper application
15 of the money or other assets.

16 (d) A person other than a beneficiary who in good faith
17 assists a former trustee, or who in good faith and for value deals
18 with a former trustee, without knowledge that the trusteeship has
19 terminated, is protected from liability as if the former trustee
20 were still a trustee.

21 (e) Comparable protective provisions of other laws relating
22 to commercial transactions or transfer of securities by fiduciaries
23 prevail over the protection provided by this section [~~A right or~~
24 ~~title derived from the trustee in consideration of the monetary~~
25 ~~payment under Subsection (a) of this section may not be impeached or~~
26 ~~questioned because of the trustee's misapplication of the money].~~

27 SECTION 10. Chapter 114, Property Code, is amended by

1 adding Section 114.086 to read as follows:

2 Sec. 114.086. CERTIFICATION OF TRUST. (a) As an
3 alternative to providing a copy of the trust instrument to a person
4 other than a beneficiary, the trustee may provide to the person a
5 certification of trust containing the following information:

6 (1) a statement that the trust exists and the date the
7 trust instrument was executed;

8 (2) the identity of the settlor;

9 (3) the identity and mailing address of the currently
10 acting trustee;

11 (4) one or more powers of the trustee or a statement
12 that the trust powers include at least all the powers granted a
13 trustee by Subchapter A, Chapter 113;

14 (5) the revocability or irrevocability of the trust
15 and the identity of any person holding a power to revoke the trust;

16 (6) the authority of cotrustees to sign or otherwise
17 authenticate and whether all or less than all of the cotrustees are
18 required in order to exercise powers of the trustee; and

19 (7) the manner in which title to trust property should
20 be taken.

21 (b) A certification of trust may be signed or otherwise
22 authenticated by any trustee.

23 (c) A certification of trust must state that the trust has
24 not been revoked, modified, or amended in any manner that would
25 cause the representations contained in the certification to be
26 incorrect.

27 (d) A certification of trust:

1 (1) is not required to contain the dispositive terms
2 of a trust; and

3 (2) may contain information in addition to the
4 information required by Subsection (a).

5 (e) A recipient of a certification of trust may require the
6 trustee to furnish copies of the excerpts from the original trust
7 instrument and later amendments to the trust instrument that
8 designate the trustee and confer on the trustee the power to act in
9 the pending transaction.

10 (f) A person who acts in reliance on a certification of
11 trust without knowledge that the representations contained in the
12 certification are incorrect is not liable to any person for the
13 action and may assume without inquiry the existence of the facts
14 contained in the certification.

15 (g) If a person has actual knowledge that the trustee is
16 acting outside the scope of the trust, and the actual knowledge was
17 acquired by the person before the person entered into the
18 transaction with the trustee or made a binding commitment to enter
19 into the transaction, the transaction is not enforceable against
20 the trust.

21 (h) A person who in good faith enters into a transaction
22 relying on a certification of trust may enforce the transaction
23 against the trust property as if the representations contained in
24 the certification are correct. This section does not create an
25 implication that a person is liable for acting in reliance on a
26 certification of trust that fails to contain all the information
27 required by Subsection (a). A person's failure to demand a

1 certification of trust does not:

2 (1) affect the protection provided to the person by
3 Section 114.081; or

4 (2) create an inference as to whether the person has
5 acted in good faith.

6 (i) A person making a demand for the trust instrument in
7 addition to a certification of trust or excerpts as described by
8 Subsection (e) is liable for damages if the court determines that
9 the person did not act in good faith in making the demand.

10 (j) This section does not limit the right of a person to
11 obtain a copy of the trust instrument in a judicial proceeding
12 concerning the trust.

13 (k) This section does not limit the rights of a beneficiary
14 of the trust against the trustee.

15 SECTION 11. Section 116.002, Property Code, is amended by
16 amending Subdivisions (9) and (13) to read as follows:

17 (9) "Person" has the meaning assigned by Section
18 111.004 [~~means an individual, corporation, business trust, estate,~~
19 ~~trust, partnership, limited liability company, association, joint~~
20 ~~venture, government, governmental subdivision, agency, or~~
21 ~~instrumentality, public corporation, or any other legal or~~
22 ~~commercial entity~~].

23 (13) "Trustee" has the meaning assigned by Section
24 111.004 [~~includes an original, additional, or successor trustee,~~
25 ~~whether or not appointed or confirmed by a court~~].

26 SECTION 12. Section 116.172, Property Code, is amended by
27 amending Subsections (c) and (e) to read as follows:

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

5 (1) four percent of the fair market value of the future
6 payment asset on the date specified in Subsection (d); less

7 (2) the total amount that the trustee has allocated to
8 income for all previous payments received from the future payment
9 asset during the same accounting period in which the payment is
10 received ~~made~~.

11 (e) For each accounting period ~~year~~ a ~~future~~ payment
12 ~~asset~~ is received ~~made~~, the amount determined under Subsection
13 (c)(1) ~~(c)~~ must be prorated on a daily basis unless the
14 determination of the fair market value of a future payment asset is
15 made under Subsection (d)(2) and is for an accounting period of 365
16 days or more.

17 SECTION 13. Section 116.174(a), Property Code, is amended
18 to read as follows:

19 (a) To the extent that a trustee accounts for receipts from
20 an interest in minerals or other natural resources pursuant to this
21 section, the trustee shall allocate them as follows:

22 (1) If received as ~~nominal~~ delay rental or ~~nominal~~
23 annual rent on a lease, a receipt must be allocated to income.

24 (2) If received from a production payment, a receipt
25 must be allocated to income if and to the extent that the agreement
26 creating the production payment provides a factor for interest or
27 its equivalent. The balance must be allocated to principal.

1 (3) If [~~an amount~~] received as a royalty, shut-in-well
2 payment, take-or-pay payment, or bonus, [~~or delay rental is more~~
3 ~~than nominal,~~] the trustee shall allocate the receipt equitably.

4 (4) If an amount is received from a working interest or
5 any other interest not provided for in Subdivision (1), (2), or (3),
6 the trustee must allocate the receipt equitably.

7 SECTION 14. Section 123.003(a), Property Code, is amended
8 to read as follows:

9 (a) Any party initiating a proceeding involving a
10 charitable trust shall give notice of the proceeding to the
11 attorney general by sending to the attorney general, by registered
12 or certified mail, a true copy of the petition or other instrument
13 initiating the proceeding involving a charitable trust within 30
14 days of the filing of such petition or other instrument, but no less
15 than 25 days prior to a hearing in such a proceeding. This
16 subsection does not apply to a proceeding that[+]

17 [~~(1)~~] is initiated by an application that exclusively
18 seeks the admission of a will to probate, regardless of whether the
19 application seeks the appointment of a personal representative, if
20 the application:

21 (1) is uncontested; and [~~or~~]

22 (2) is not subject to [~~a proceeding under~~] Section 83,
23 Texas Probate Code.

24 SECTION 15. Section 141.002, Property Code, is amended by
25 amending Subdivision (2) and adding Subdivision (11-a) to read as
26 follows:

27 (2) "Benefit plan" means a [~~an employer's plan for the~~

1 ~~benefit of an employee or partner or an individual]~~ retirement
2 plan, including an interest described by Sections 111.004(19)-(23)
3 ~~[account].~~

4 (11-a) "Qualified minor's trust" means a trust to
5 which a gift is considered a present interest under Section
6 2503(c), Internal Revenue Code of 1986.

7 SECTION 16. Section 141.004(a), Property Code, is amended
8 to read as follows:

9 (a) A person having the right to designate the recipient of
10 property transferable on the occurrence of a future event may
11 revocably nominate a custodian to receive the property for a minor
12 beneficiary on the occurrence of that event by naming the custodian
13 followed in substance by the words: "as custodian for (name of
14 minor) under the Texas Uniform Transfers to Minors Act." The
15 nomination may name one or more persons as substitute custodians to
16 whom the property must be transferred, in the order named, if the
17 first nominated custodian dies before the transfer or is unable,
18 declines, or is ineligible to serve. The nomination may be made in
19 a will, a trust, a deed, an instrument exercising a power of
20 appointment, or in a writing designating a beneficiary of
21 contractual rights, including the right to receive payments from a
22 benefit plan, that is registered with or delivered to the payor,
23 issuer, or other obligor of the contractual rights.

24 SECTION 17. Section 141.008, Property Code, is amended by
25 amending Subsections (a) and (c) to read as follows:

26 (a) Subject to Subsections (b) and (c), a person who is not
27 subject to Section 141.006 or 141.007 and who holds property,

1 including a benefit plan of a minor who does not have a guardian, or
2 who owes a liquidated debt to a minor who does not have a guardian
3 may make an irrevocable transfer to a custodian for the benefit of
4 the minor under Section 141.010.

5 (c) If a custodian has not been nominated under Section
6 141.004, or all persons nominated as custodian die before the
7 transfer or are unable, decline, or are ineligible to serve, a
8 transfer under this section may be made to an adult member of the
9 minor's family or to a trust company unless the property exceeds
10 \$15,000 [~~\$10,000~~] in value.

11 SECTION 18. Section 141.015, Property Code, is amended by
12 adding Subsection (b-1) to read as follows:

13 (b-1) A custodian may, without a court order, transfer all
14 or part of the custodial property to a qualified minor's trust. A
15 transfer of property under this subsection terminates the
16 custodianship to the extent of the property transferred.

17 SECTION 19. Section 187.005(c), Finance Code, and Section
18 113.060, Property Code, are repealed.

19 SECTION 20. The enactment of Section 113.060, Property
20 Code, by Chapter 148, Acts of the 79th Legislature, Regular
21 Session, 2005, was not intended to repeal any common-law duty to
22 keep a beneficiary of a trust informed, and the repeal by this Act
23 of Section 113.060, Property Code, does not repeal any common-law
24 duty to keep a beneficiary informed. The common-law duty to keep a
25 beneficiary informed that existed immediately before January 1,
26 2006, is continued in effect.

27 SECTION 21. Except as otherwise provided by the terms of a

1 trust, the changes in law made by this Act apply to a trust existing
2 or created on or after the effective date of this Act.

3 SECTION 22. (a) Except as provided by Subsection (b) of
4 this section, this Act takes effect September 1, 2007.

5 (b) Section 111.0035, Property Code, as amended by this Act,
6 and the repeal by this Act of Section 113.060, Property Code, take
7 effect immediately if this Act receives a vote of two-thirds of all
8 the members elected to each house, as provided by Section 39,
9 Article III, Texas Constitution. If this Act does not receive the
10 vote necessary for immediate effect, Section 111.0035, Property
11 Code, as amended by this Act and the repeal by this Act of Section
12 113.060, Property Code, take effect September 1, 2007.