

By: Hartnett

H.B. No. 564

Substitute the following for H.B. No. 564:

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C.S.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) [ ] a corporation;

11 (C) a limited liability company;

12 (D) [ ] a partnership;

13 (E) a joint venture;

14 (F) [ ] an association;

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

16 (H) [ ] a business trust;

17 (I) [ ] an unincorporated organization;

18 (J) [ ] ~~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 (12-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 (12-a) "Qualified minor's trust" means a trust to which  
5 a gift is considered a present interest under Section 2503(c),  
6 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.