

By: Hartnett

H.B. No. 564

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Section 111.0035, Property Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

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

(1) the requirements imposed under Section 112.031;

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

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

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

(5) a trustee's duty:

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

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

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

1 (B) to act in good faith and in accordance with
2 the purposes of the trust; ~~and~~

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

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

7 (A) modify or terminate a trust or take other
8 action under Section 112.054;

9 (B) remove a trustee under Section 113.082;

10 (C) exercise jurisdiction under Section 115.001;

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

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

15 (c) The terms of a trust may not limit any common-law duty to
16 keep a beneficiary of an irrevocable trust who is 25 years of age or
17 older informed at any time during which the beneficiary:

18 (1) is entitled or permitted to receive distributions
19 from the trust; or

20 (2) would receive a distribution from the trust if the
21 trust were terminated.

22 SECTION 2. Section 111.004, Property Code, is amended by
23 amending Subdivisions (10) and (18) to read as follows:

24 (10) "Person" means:

25 (A) an individual;

26 (B) [7] a corporation;

27 (C) a limited liability company;

- 1 (D) [7] a partnership;
- 2 (E) a joint venture;
- 3 (F) [7] an association;
- 4 (G) [7] a joint-stock company;
- 5 (H) [7] a business trust;
- 6 (I) [7] an unincorporated organization;
- 7 (J) [~~7~~] two or more persons having a joint or
8 common interest, including an individual or a corporation acting as
9 a personal representative or in any other fiduciary capacity;
- 10 (K) a government;
- 11 (L) a governmental subdivision, agency, or
12 instrumentality;
- 13 (M) a public corporation; or
- 14 (N) any other legal or commercial entity.

15 (18) "Trustee" means the person holding the property
16 in trust, including an original, additional, or successor trustee,
17 whether or not the person is appointed or confirmed by a court.

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

20 (d) If the settlor is also a beneficiary of the trust, a
21 provision restraining the voluntary or involuntary transfer of the
22 settlor's [his] beneficial interest does not prevent the settlor's
23 [his] creditors from satisfying claims from the settlor's [his]
24 interest in the trust estate. A settlor is not considered a
25 beneficiary of a trust solely because a trustee who is not the
26 settlor is authorized under the trust instrument to pay or
27 reimburse the settlor for, or pay directly to the taxing

1 authorities, any tax on trust income or principal that is payable by
2 the settlor under the law imposing the tax.

3 SECTION 4. Section 113.058, Property Code, is amended by
4 amending Subsections (b), (c), and (d) to read as follows:

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

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

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

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

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

17 (A) the trust estate of the trust;

18 (B) the registry of the court; or

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

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

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

27 (1) require a bond, including a bond for a

1 noncorporate trustee who is not required to provide a bond by the
2 instrument creating the trust;

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

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

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

7 SECTION 5. Section 113.085(a), Property Code, is amended to
8 read as follows:

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

11 SECTION 6. Section 114.081, Property Code, is amended to
12 read as follows:

13 Sec. 114.081. PROTECTION OF PERSON DEALING WITH [~~PAYMENT OF~~
14 ~~MONEY TO~~] TRUSTEE. (a) A person other than a beneficiary who
15 actually, [~~and~~] in good faith, and for value deals with a trustee,
16 without knowledge that the trustee is exceeding or improperly
17 exercising the trustee's powers, is protected from liability as if
18 the trustee properly exercised the trustee's power [~~pays to a~~
19 ~~trustee money that the trustee is authorized to receive is not~~
20 ~~responsible for the proper application of the money according to~~
21 ~~the trust~~].

22 (b) A person other than a beneficiary who in good faith
23 deals with a trustee is not required to inquire into the extent of
24 the trustee's powers or the propriety of the exercise of those
25 powers.

26 (c) A person who in good faith delivers assets to a trustee
27 is not required to ensure the proper application of the assets.

1 (d) A person other than a beneficiary who in good faith
2 assists a former trustee, or who in good faith and for value deals
3 with a former trustee, without knowledge that the trusteeship has
4 terminated is protected from liability as if the former trustee
5 were still a trustee.

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

12 SECTION 7. Chapter 114, Property Code, is amended by adding
13 Section 114.086 to read as follows:

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

18 (1) a statement that the trust exists and the date the
19 trust instrument was executed;

20 (2) the identity of the settlor;

21 (3) the identity and mailing address of the currently
22 acting trustee;

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

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

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

4 (7) the manner in which title to trust property should
5 be taken.

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

8 (c) A certification of trust must state that the trust has
9 not been revoked, modified, or amended in any manner that would
10 cause the representations contained in the certification to be
11 incorrect.

12 (d) A certification of trust:

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

15 (2) may contain information in addition to the
16 information required by Subsection (a).

17 (e) A recipient of a certification of trust may require the
18 trustee to furnish copies of the excerpts from the original trust
19 instrument and later amendments to the trust instrument that
20 designate the trustee and confer on the trustee the power to act in
21 the pending transaction.

22 (f) A person who acts in reliance on a certification of
23 trust without knowledge that the representations contained in the
24 certification are incorrect is not liable to any person for the
25 action and may assume without inquiry the existence of the facts
26 contained in the certification.

27 (g) If a person has actual knowledge that the trustee is

1 acting outside the scope of the trust, and the actual knowledge was
2 acquired by the person before the person entered into the
3 transaction with the trustee or made a binding commitment to enter
4 into the transaction, the transaction is not enforceable against
5 the trust.

6 (h) A person who in good faith enters into a transaction
7 relying on a certification of trust may enforce the transaction
8 against the trust property as if the representations contained in
9 the certification are correct. This section does not create an
10 implication that a person is liable for acting in reliance on a
11 certification of trust that fails to contain all the information
12 required by Subsection (a). A person's failure to demand a
13 certification of trust does not:

14 (1) affect the protection provided to the person by
15 Section 114.081; or

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

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

22 (j) This section does not limit the right of a person to
23 obtain a copy of the trust instrument in a judicial proceeding
24 concerning the trust.

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

27 SECTION 8. Section 116.002, Property Code, is amended by

1 amending Subdivisions (9) and (13) to read as follows:

2 (9) "Person" has the meaning assigned by Section
3 111.004 [~~means an individual, corporation, business trust, estate,~~
4 ~~trust, partnership, limited liability company, association, joint~~
5 ~~venture, government, governmental subdivision, agency, or~~
6 ~~instrumentality, public corporation, or any other legal or~~
7 ~~commercial entity~~].

8 (13) "Trustee" has the meaning assigned by Section
9 111.004 [~~includes an original, additional, or successor trustee,~~
10 ~~whether or not appointed or confirmed by a court~~].

11 SECTION 9. Section 116.172, Property Code, is amended by
12 amending Subsections (c) and (e) to read as follows:

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

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

19 (2) the total amount that the trustee has allocated to
20 income for all previous payments received from the future payment
21 asset during the same accounting period in which the payment is
22 received [~~made~~].

23 (e) For each accounting period [~~year~~] a [~~future~~] payment
24 [~~asset~~] is received [~~made~~], the amount determined under Subsection
25 (c)(1) [~~(c)~~] must be prorated on a daily basis unless the
26 determination of the fair market value of a future payment asset is
27 made under Subsection (d)(2) and is for an accounting period of 365

1 days or more.

2 SECTION 10. Section 116.174(a), Property Code, is amended
3 to read as follows:

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

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

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

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

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

19 SECTION 11. Section 123.003(a), Property Code, is amended
20 to read as follows:

21 (a) Any party initiating a proceeding involving a
22 charitable trust shall give notice of the proceeding to the
23 attorney general by sending to the attorney general, by registered
24 or certified mail, a true copy of the petition or other instrument
25 initiating the proceeding involving a charitable trust within 30
26 days of the filing of such petition or other instrument, but no less
27 than 25 days prior to a hearing in such a proceeding. This

1 subsection does not apply to a proceeding that [+

2 [~~1~~] is initiated by an application that exclusively
3 seeks the admission of a will to probate, regardless of whether the
4 application seeks the appointment of a personal representative, if
5 the application:

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

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

9 SECTION 12. Section 141.002, Property Code, is amended by
10 amending Subdivision (2) and adding Subdivision (12-a) to read as
11 follows:

12 (2) "Benefit plan" means a [~~an employer's plan for the~~
13 ~~benefit of an employee or partner or an individual~~] retirement
14 plan, including an interest described by Section 111.004(19)-(23)
15 [account].

16 (12-a) "Qualified minor's trust" means a trust to which
17 a gift is considered a present interest under Section 2503(c),
18 Internal Revenue Code of 1986.

19 SECTION 13. Section 141.004(a), Property Code, is amended
20 to read as follows:

21 (a) A person having the right to designate the recipient of
22 property transferable on the occurrence of a future event may
23 revocably nominate a custodian to receive the property for a minor
24 beneficiary on the occurrence of that event by naming the custodian
25 followed in substance by the words: "as custodian for (name of
26 minor) under the Texas Uniform Transfers to Minors Act." The
27 nomination may name one or more persons as substitute custodians to

1 whom the property must be transferred, in the order named, if the
2 first nominated custodian dies before the transfer or is unable,
3 declines, or is ineligible to serve. The nomination may be made in
4 a will, a trust, a deed, an instrument exercising a power of
5 appointment, or in a writing designating a beneficiary of
6 contractual rights, including the right to receive payments from a
7 benefit plan, that is registered with or delivered to the payor,
8 issuer, or other obligor of the contractual rights.

9 SECTION 14. Section 141.008, Property Code, is amended by
10 amending Subsections (a) and (c) to read as follows:

11 (a) Subject to Subsections (b) and (c), a person who is not
12 subject to Section 141.006 or 141.007 and who holds property,
13 including a benefit plan of a minor who does not have a guardian, or
14 who owes a liquidated debt to a minor who does not have a guardian
15 may make an irrevocable transfer to a custodian for the benefit of
16 the minor under Section 141.010.

17 (c) If a custodian has not been nominated under Section
18 141.004, or all persons nominated as custodian die before the
19 transfer or are unable, decline, or are ineligible to serve, a
20 transfer under this section may be made to an adult member of the
21 minor's family or to a trust company unless the property exceeds
22 \$15,000 [~~\$10,000~~] in value.

23 SECTION 15. Section 141.015, Property Code, is amended by
24 adding Subsection (b-1) to read as follows:

25 (b-1) A custodian may, without a court order, transfer all
26 or part of the custodial property to a qualified minor's trust. A
27 transfer of property under this subsection terminates the

1 custodianship to the extent of the property transferred.

2 SECTION 16. Section 113.060, Property Code, is repealed.

3 SECTION 17. The enactment of Section 113.060, Property
4 Code, by Chapter 148, Acts of the 79th Legislature, Regular
5 Session, 2005, was not intended to repeal any common-law duty to
6 keep a beneficiary of a trust informed, and the repeal by this Act
7 of Section 113.060, Property Code, does not repeal any common-law
8 duty to keep a beneficiary informed. The common-law duty to keep a
9 beneficiary informed that existed immediately before January 1,
10 2006, is continued in effect.

11 SECTION 18. (a) Except as provided by Subsection (b) of
12 this section, this Act takes effect September 1, 2007.

13 (b) Section 111.0035, Property Code, as amended by this Act,
14 and the repeal by this Act of Section 113.060, Property Code, take
15 effect immediately if this Act receives a vote of two-thirds of all
16 the members elected to each house, as provided by Section 39,
17 Article III, Texas Constitution. If this Act does not receive the
18 vote necessary for immediate effect, Section 111.0035, Property
19 Code, as amended by this Act and the repeal by this Act of Section
20 113.060, Property Code, take effect September 1, 2007.