

1-1 By: Hartnett (Senate Sponsor - Wentworth) H.B. No. 564  
1-2 (In the Senate - Received from the House March 19, 2007;  
1-3 March 29, 2007, read first time and referred to Committee on  
1-4 Jurisprudence; April 27, 2007, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 4, Nays 0;  
1-6 April 27, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 564 By: Wentworth

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the administration and operation of certain trusts and  
1-11 other property interests held for the benefit of another.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 187.005(b), Finance Code, is amended to  
1-14 read as follows:

1-15 (b) Unless another law specifies governing law [~~and except~~  
1-16 ~~as provided in Subsection (c)~~], if a trust or its subject matter  
1-17 bears a reasonable relation to this state and also to another state  
1-18 or a foreign country, a trust institution and its affected client  
1-19 may agree that the law of this state or of the other state or country  
1-20 governs their rights and duties, including the law of a state or a  
1-21 foreign country where the affected client resides or where the  
1-22 trust institution has its principal office.

1-23 SECTION 2. Section 111.0035, Property Code, is amended by  
1-24 amending Subsection (b) and adding Subsection (c) to read as  
1-25 follows:

1-26 (b) The terms of a trust prevail over any provision of this  
1-27 subtitle, except that the terms of a trust may not limit:

1-28 (1) the requirements imposed under Section 112.031;

1-29 (2) [~~the duties and liabilities of and restrictions~~  
1-30 ~~placed on a corporate trustee under Section 113.052 or 113.053,~~

1-31 [~~(3)~~] the applicability of Section 114.007 to an  
1-32 exculpation term of a trust;

1-33 (3) [~~(4)~~] the periods of limitation for commencing a  
1-34 judicial proceeding regarding a trust;

1-35 (4) [~~(5)~~] a trustee's duty:

1-36 (A) with regard to an irrevocable trust, to  
1-37 respond to a demand for accounting made under Section 113.151 if the  
1-38 demand is from a beneficiary who, at the time of the demand:

1-39 (i) is entitled or permitted to receive  
1-40 distributions from the trust; or

1-41 (ii) would receive a distribution from the  
1-42 trust if the trust terminated at the time of the demand; and

1-43 (B) to act in good faith and in accordance with  
1-44 the purposes of the trust; [~~and~~

1-45 [~~(C) under Section 113.060 to a beneficiary~~  
1-46 ~~described by Paragraph (A) that is 25 years of age or older,~~] or

1-47 (5) [~~(6)~~] the power of a court, in the interest of  
1-48 justice, to take action or exercise jurisdiction, including the  
1-49 power to:

1-50 (A) modify or terminate a trust or take other  
1-51 action under Section 112.054;

1-52 (B) remove a trustee under Section 113.082;

1-53 (C) exercise jurisdiction under Section 115.001;

1-54 (D) require, dispense with, modify, or terminate  
1-55 a trustee's bond; or

1-56 (E) adjust or deny a trustee's compensation if  
1-57 the trustee commits a breach of trust.

1-58 (c) The terms of a trust may not limit any common-law duty to  
1-59 keep a beneficiary of an irrevocable trust who is 25 years of age or  
1-60 older informed at any time during which the beneficiary:

1-61 (1) is entitled or permitted to receive distributions  
1-62 from the trust; or

1-63 (2) would receive a distribution from the trust if the

2-1 trust were terminated.

2-2 SECTION 3. Sections 111.004(10) and (18), Property Code,  
2-3 are amended to read as follows:

2-4 (10) "Person" means:

2-5 (A) an individual;

2-6 (B) ~~[ ]~~ a corporation;

2-7 (C) a limited liability company;

2-8 (D) ~~[ ]~~ a partnership;

2-9 (E) a joint venture;

2-10 (F) ~~[ ]~~ an association;

2-11 (G) ~~[ ]~~ a joint-stock company;

2-12 (H) ~~[ ]~~ a business trust;

2-13 (I) ~~[ ]~~ an unincorporated organization;

2-14 (J) ~~[ ]~~ two or more persons having a joint or  
2-15 common interest, including an individual or a corporation acting as  
2-16 a personal representative or in any other fiduciary capacity;

2-17 (K) a government;

2-18 (L) a governmental subdivision, agency, or  
2-19 instrumentality;

2-20 (M) a public corporation; or

2-21 (N) any other legal or commercial entity.

2-22 (18) "Trustee" means the person holding the property  
2-23 in trust, including an original, additional, or successor trustee,  
2-24 whether or not the person is appointed or confirmed by a court.

2-25 SECTION 4. Section 112.035(d), Property Code, is amended to  
2-26 read as follows:

2-27 (d) If the settlor is also a beneficiary of the trust, a  
2-28 provision restraining the voluntary or involuntary transfer of the  
2-29 settlor's ~~[his]~~ beneficial interest does not prevent the settlor's  
2-30 ~~[his]~~ creditors from satisfying claims from the settlor's ~~[his]~~  
2-31 interest in the trust estate. A settlor is not considered a  
2-32 beneficiary of a trust solely because a trustee who is not the  
2-33 settlor is authorized under the trust instrument to pay or  
2-34 reimburse the settlor for, or pay directly to the taxing  
2-35 authorities, any tax on trust income or principal that is payable by  
2-36 the settlor under the law imposing the tax.

2-37 SECTION 5. Subchapter C, Chapter 112, Property Code, is  
2-38 amended by adding Section 112.059 to read as follows:

2-39 Sec. 112.059. TERMINATION OF UNECONOMIC TRUST. (a) After  
2-40 notice to beneficiaries who are distributees or permissible  
2-41 distributees of trust income or principal or who would be  
2-42 distributees or permissible distributees if the interests of the  
2-43 distributees or the trust were to terminate and no powers of  
2-44 appointment were exercised, the trustee of a trust consisting of  
2-45 trust property having a total value of less than \$50,000 may  
2-46 terminate the trust if the trustee concludes after considering the  
2-47 purpose of the trust and the nature of the trust assets that the  
2-48 value of the trust property is insufficient to justify the  
2-49 continued cost of administration.

2-50 (b) On termination of a trust under this section, the  
2-51 trustee shall distribute the trust property in a manner consistent  
2-52 with the purposes of the trust.

2-53 (c) A trustee may not exercise a power described by  
2-54 Subsection (a) if the trustee's possession of the power would cause  
2-55 the assets of the trust to be included in the trustee's estate for  
2-56 federal estate tax purposes.

2-57 (d) This section does not apply to an easement for  
2-58 conservation or preservation.

2-59 SECTION 6. Sections 113.058(b) and (d), Property Code, are  
2-60 amended to read as follows:

2-61 (b) Unless ~~[a court orders otherwise or]~~ the instrument  
2-62 creating the trust provides otherwise, a noncorporate trustee must  
2-63 give bond:

2-64 (1) payable to the trust estate of the trust, the  
2-65 registry of the court, or each person interested in the trust, as  
2-66 their interests may appear; and

2-67 (2) conditioned on the faithful performance of the  
2-68 trustee's duties.

2-69 (d) Any interested person may bring an action to increase or

3-1 decrease the amount of a bond, require a bond, or [~~to~~] substitute or  
3-2 add sureties. Notwithstanding Subsection (b), for cause shown, a  
3-3 court may require a bond even if the instrument creating the trust  
3-4 provides otherwise.

3-5 SECTION 7. Section 113.085(a), Property Code, is amended to  
3-6 read as follows:

3-7 (a) Cotrustees [~~that are unable to reach a unanimous~~  
3-8 ~~decision~~] may act by majority decision.

3-9 SECTION 8. Section 114.005(a), Property Code, is amended to  
3-10 read as follows:

3-11 (a) A beneficiary who has full legal capacity and is acting  
3-12 on full information may relieve a trustee from any duty,  
3-13 responsibility, restriction, or liability as to the beneficiary  
3-14 that would otherwise be imposed on the trustee by this subtitle,  
3-15 including liability for past violations[~~, except as to the duties,~~  
3-16 ~~restrictions, and liabilities imposed on corporate trustees by~~  
3-17 ~~Section 113.052 or 113.053 of this subtitle].~~

3-18 SECTION 9. Section 114.081, Property Code, is amended to  
3-19 read as follows:

3-20 Sec. 114.081. PROTECTION OF PERSON DEALING WITH [PAYMENT OF  
3-21 MONEY TO] TRUSTEE. (a) A person who deals with a trustee [actually  
3-22 and] in good faith and for fair value actually received by the trust  
3-23 is not liable to the trustee or the beneficiaries of the trust if  
3-24 the trustee has exceeded the trustee's authority in dealing with  
3-25 the person [pays to a trustee money that the trustee is authorized  
3-26 to receive is not responsible for the proper application of the  
3-27 money according to the trust].

3-28 (b) A person other than a beneficiary is not required to  
3-29 inquire into the extent of the trustee's powers or the propriety of  
3-30 the exercise of those powers if the person:

3-31 (1) deals with the trustee in good faith; and

3-32 (2) obtains:

3-33 (A) a certification of trust described by Section  
3-34 114.086; or

3-35 (B) a copy of the trust instrument.

3-36 (c) A person who in good faith delivers money or other  
3-37 assets to a trustee is not required to ensure the proper application  
3-38 of the money or other assets.

3-39 (d) A person other than a beneficiary who in good faith  
3-40 assists a former trustee, or who in good faith and for value deals  
3-41 with a former trustee, without knowledge that the trusteeship has  
3-42 terminated, is protected from liability as if the former trustee  
3-43 were still a trustee.

3-44 (e) Comparable protective provisions of other laws relating  
3-45 to commercial transactions or transfer of securities by fiduciaries  
3-46 prevail over the protection provided by this section [A right or  
3-47 title derived from the trustee in consideration of the monetary  
3-48 payment under Subsection (a) of this section may not be impeached or  
3-49 questioned because of the trustee's misapplication of the money].

3-50 SECTION 10. Chapter 114, Property Code, is amended by  
3-51 adding Section 114.086 to read as follows:

3-52 Sec. 114.086. CERTIFICATION OF TRUST. (a) As an  
3-53 alternative to providing a copy of the trust instrument to a person  
3-54 other than a beneficiary, the trustee may provide to the person a  
3-55 certification of trust containing the following information:

3-56 (1) a statement that the trust exists and the date the  
3-57 trust instrument was executed;

3-58 (2) the identity of the settlor;

3-59 (3) the identity and mailing address of the currently  
3-60 acting trustee;

3-61 (4) one or more powers of the trustee or a statement  
3-62 that the trust powers include at least all the powers granted a  
3-63 trustee by Subchapter A, Chapter 113;

3-64 (5) the revocability or irrevocability of the trust  
3-65 and the identity of any person holding a power to revoke the trust;

3-66 (6) the authority of cotrustees to sign or otherwise  
3-67 authenticate and whether all or less than all of the cotrustees are  
3-68 required in order to exercise powers of the trustee; and

3-69 (7) the manner in which title to trust property should

4-1 be taken.

4-2 (b) A certification of trust may be signed or otherwise  
4-3 authenticated by any trustee.

4-4 (c) A certification of trust must state that the trust has  
4-5 not been revoked, modified, or amended in any manner that would  
4-6 cause the representations contained in the certification to be  
4-7 incorrect.

4-8 (d) A certification of trust:

4-9 (1) is not required to contain the dispositive terms  
4-10 of a trust; and

4-11 (2) may contain information in addition to the  
4-12 information required by Subsection (a).

4-13 (e) A recipient of a certification of trust may require the  
4-14 trustee to furnish copies of the excerpts from the original trust  
4-15 instrument and later amendments to the trust instrument that  
4-16 designate the trustee and confer on the trustee the power to act in  
4-17 the pending transaction.

4-18 (f) A person who acts in reliance on a certification of  
4-19 trust without knowledge that the representations contained in the  
4-20 certification are incorrect is not liable to any person for the  
4-21 action and may assume without inquiry the existence of the facts  
4-22 contained in the certification.

4-23 (g) If a person has actual knowledge that the trustee is  
4-24 acting outside the scope of the trust, and the actual knowledge was  
4-25 acquired by the person before the person entered into the  
4-26 transaction with the trustee or made a binding commitment to enter  
4-27 into the transaction, the transaction is not enforceable against  
4-28 the trust.

4-29 (h) A person who in good faith enters into a transaction  
4-30 relying on a certification of trust may enforce the transaction  
4-31 against the trust property as if the representations contained in  
4-32 the certification are correct. This section does not create an  
4-33 implication that a person is liable for acting in reliance on a  
4-34 certification of trust that fails to contain all the information  
4-35 required by Subsection (a). A person's failure to demand a  
4-36 certification of trust does not:

4-37 (1) affect the protection provided to the person by  
4-38 Section 114.081; or

4-39 (2) create an inference as to whether the person has  
4-40 acted in good faith.

4-41 (i) A person making a demand for the trust instrument in  
4-42 addition to a certification of trust or excerpts as described by  
4-43 Subsection (e) is liable for damages if the court determines that  
4-44 the person did not act in good faith in making the demand.

4-45 (j) This section does not limit the right of a person to  
4-46 obtain a copy of the trust instrument in a judicial proceeding  
4-47 concerning the trust.

4-48 (k) This section does not limit the rights of a beneficiary  
4-49 of the trust against the trustee.

4-50 SECTION 11. Section 115.001, Property Code, is amended by  
4-51 amending Subsections (a) and (d) and adding Subsection (a-1) to  
4-52 read as follows:

4-53 (a) Except as provided by Subsection (d) of this section, a  
4-54 district court has original and exclusive jurisdiction over all  
4-55 proceedings by or against a trustee and all proceedings concerning  
4-56 trusts, including proceedings to:

4-57 (1) construe a trust instrument;

4-58 (2) determine the law applicable to a trust  
4-59 instrument;

4-60 (3) appoint or remove a trustee;

4-61 (4) determine the powers, responsibilities, duties,  
4-62 and liability of a trustee;

4-63 (5) ascertain beneficiaries;

4-64 (6) make determinations of fact affecting the  
4-65 administration, distribution, or duration of a trust;

4-66 (7) determine a question arising in the administration  
4-67 or distribution of a trust;

4-68 (8) relieve a trustee from any or all of the duties,  
4-69 limitations, and restrictions otherwise existing under the terms of

5-1 the trust instrument or of this subtitle;

5-2 (9) require an accounting by a trustee, review trustee  
5-3 fees, and settle interim or final accounts; and

5-4 (10) surcharge a trustee.

5-5 (a-1) The list of proceedings described by Subsection (a)  
5-6 over which a district court has exclusive and original jurisdiction  
5-7 is not exhaustive. A district court has exclusive and original  
5-8 jurisdiction over a proceeding by or against a trustee or a  
5-9 proceeding concerning a trust under Subsection (a) whether or not  
5-10 the proceeding is listed in Subsection (a).

5-11 (d) The jurisdiction of the district court [over  
5-12 proceedings concerning trusts] is exclusive except for  
5-13 jurisdiction conferred by law on:

5-14 (1) a statutory probate court;

5-15 (2) [7] a court that creates a trust under Section  
5-16 867, Texas Probate Code;

5-17 (3) [7, or] a court that creates a trust under Section  
5-18 142.005;

5-19 (4) a justice court under Chapter 27, Government Code;  
5-20 or

5-21 (5) a small claims court under Chapter 28, Government  
5-22 Code.

5-23 SECTION 12. Sections 116.002(9) and (13), Property Code,  
5-24 are amended to read as follows:

5-25 (9) "Person" has the meaning assigned by Section  
5-26 111.004 [means an individual, corporation, business trust, estate,  
5-27 trust, partnership, limited liability company, association, joint  
5-28 venture, government, governmental subdivision, agency, or  
5-29 instrumentality, public corporation, or any other legal or  
5-30 commercial entity].

5-31 (13) "Trustee" has the meaning assigned by Section  
5-32 111.004 [includes an original, additional, or successor trustee,  
5-33 whether or not appointed or confirmed by a court].

5-34 SECTION 13. Sections 116.172(c) and (e), Property Code, are  
5-35 amended to read as follows:

5-36 (c) If no part of a payment is characterized as interest, a  
5-37 dividend, or an equivalent payment, and all or part of the payment  
5-38 is required to be made, a trustee shall allocate to income the part  
5-39 of the payment that does not exceed an amount equal to:

5-40 (1) four percent of the fair market value of the future  
5-41 payment asset on the date specified in Subsection (d); less

5-42 (2) the total amount that the trustee has allocated to  
5-43 income for all previous payments received from the future payment  
5-44 asset during the same accounting period in which the payment is  
5-45 received [made].

5-46 (e) For each accounting period [year] a [future] payment  
5-47 [asset] is received [made], the amount determined under Subsection  
5-48 (c)(1) [(e)] must be prorated on a daily basis unless the  
5-49 determination of the fair market value of a future payment asset is  
5-50 made under Subsection (d)(2) and is for an accounting period of 365  
5-51 days or more.

5-52 SECTION 14. Section 116.174(a), Property Code, is amended  
5-53 to read as follows:

5-54 (a) To the extent that a trustee accounts for receipts from  
5-55 an interest in minerals or other natural resources pursuant to this  
5-56 section, the trustee shall allocate them as follows:

5-57 (1) If received as [nominal] delay rental or [nominal]  
5-58 annual rent on a lease, a receipt must be allocated to income.

5-59 (2) If received from a production payment, a receipt  
5-60 must be allocated to income if and to the extent that the agreement  
5-61 creating the production payment provides a factor for interest or  
5-62 its equivalent. The balance must be allocated to principal.

5-63 (3) If [an amount] received as a royalty, shut-in-well  
5-64 payment, take-or-pay payment, or bonus, [or delay rental is more  
5-65 than nominal], the trustee shall allocate the receipt equitably.

5-66 (4) If an amount is received from a working interest or  
5-67 any other interest not provided for in Subdivision (1), (2), or (3),  
5-68 the trustee must allocate the receipt equitably.

5-69 SECTION 15. Section 123.003(a), Property Code, is amended

6-1 to read as follows:

6-2 (a) Any party initiating a proceeding involving a  
6-3 charitable trust shall give notice of the proceeding to the  
6-4 attorney general by sending to the attorney general, by registered  
6-5 or certified mail, a true copy of the petition or other instrument  
6-6 initiating the proceeding involving a charitable trust within 30  
6-7 days of the filing of such petition or other instrument, but no less  
6-8 than 25 days prior to a hearing in such a proceeding. This  
6-9 subsection does not apply to a proceeding that [+

6-10 [~~(1)~~] is initiated by an application that exclusively  
6-11 seeks the admission of a will to probate, regardless of whether the  
6-12 application seeks the appointment of a personal representative, if  
6-13 the application:

6-14 (1) is uncontested; and [~~or~~]

6-15 (2) is not subject to [~~a proceeding under~~] Section 83,  
6-16 Texas Probate Code.

6-17 SECTION 16. Section 141.002, Property Code, is amended by  
6-18 amending Subdivision (2) and adding Subdivision (12-a) to read as  
6-19 follows:

6-20 (2) "Benefit plan" means a [~~an employer's plan for the~~  
6-21 ~~benefit of an employee or partner or an individual~~] retirement  
6-22 plan, including an interest described by Sections 111.004(19)-(23)  
6-23 [account].

6-24 (12-a) "Qualified minor's trust" means a trust to  
6-25 which a gift is considered a present interest under Section  
6-26 2503(c), Internal Revenue Code of 1986.

6-27 SECTION 17. Section 141.004(a), Property Code, is amended  
6-28 to read as follows:

6-29 (a) A person having the right to designate the recipient of  
6-30 property transferable on the occurrence of a future event may  
6-31 revocably nominate a custodian to receive the property for a minor  
6-32 beneficiary on the occurrence of that event by naming the custodian  
6-33 followed in substance by the words: "as custodian for \_\_\_\_\_ (name of  
6-34 minor) under the Texas Uniform Transfers to Minors Act." The  
6-35 nomination may name one or more persons as substitute custodians to  
6-36 whom the property must be transferred, in the order named, if the  
6-37 first nominated custodian dies before the transfer or is unable,  
6-38 declines, or is ineligible to serve. The nomination may be made in  
6-39 a will, a trust, a deed, an instrument exercising a power of  
6-40 appointment, or in a writing designating a beneficiary of  
6-41 contractual rights, including the right to receive payments from a  
6-42 benefit plan, that is registered with or delivered to the payor,  
6-43 issuer, or other obligor of the contractual rights.

6-44 SECTION 18. Sections 141.008(a) and (c), Property Code, are  
6-45 amended to read as follows:

6-46 (a) Subject to Subsections (b) and (c), a person who is not  
6-47 subject to Section 141.006 or 141.007 and who holds property,  
6-48 including a benefit plan of a minor who does not have a guardian, or  
6-49 who owes a liquidated debt to a minor who does not have a guardian  
6-50 may make an irrevocable transfer to a custodian for the benefit of  
6-51 the minor under Section 141.010.

6-52 (c) If a custodian has not been nominated under Section  
6-53 141.004, or all persons nominated as custodian die before the  
6-54 transfer or are unable, decline, or are ineligible to serve, a  
6-55 transfer under this section may be made to an adult member of the  
6-56 minor's family or to a trust company unless the property exceeds  
6-57 \$15,000 [~~\$10,000~~] in value.

6-58 SECTION 19. Section 141.015, Property Code, is amended by  
6-59 adding Subsection (b-1) to read as follows:

6-60 (b-1) A custodian may, without a court order, transfer all  
6-61 or part of the custodial property to a qualified minor's trust. A  
6-62 transfer of property under this subsection terminates the  
6-63 custodianship to the extent of the property transferred.

6-64 SECTION 20. Section 142.005, Property Code, is amended by  
6-65 amending Subsections (a), (b), and (g) and adding Subsections (k)  
6-66 through (o) to read as follows:

6-67 (a) Any [~~In a suit in which a minor who has no legal guardian~~  
6-68 ~~or an incapacitated person is represented by a next friend or an~~  
6-69 ~~appointed guardian ad litem, any]~~ court of record with jurisdiction

7-1 to hear a ~~[the]~~ suit involving a beneficiary may, on application ~~[by~~  
 7-2 ~~the next friend or the guardian ad litem]~~ and on a finding that the  
 7-3 creation of a trust would be in the best interests of the  
 7-4 beneficiary ~~[minor or incapacitated person]~~, enter a decree in the  
 7-5 record directing the clerk to deliver any funds accruing to the  
 7-6 beneficiary ~~[minor or incapacitated person]~~ under the judgment to a  
 7-7 financial institution, except as provided by Subsections (m) and  
 7-8 (n) ~~[trust company or a state or national bank having trust powers~~  
 7-9 ~~in this state].~~

7-10 (b) The decree shall provide for the creation of a trust for  
 7-11 the management of the funds for the benefit of the beneficiary  
 7-12 ~~[minor or incapacitated person]~~ and for terms, conditions, and  
 7-13 limitations of the trust, as determined by the court, that are not  
 7-14 in conflict with the following mandatory provisions:

7-15 (1) ~~The beneficiary shall be [the minor or~~  
 7-16 ~~incapacitated person is]~~ the sole beneficiary of the trust. ~~[+]~~

7-17 (2) ~~The [the] trustee may disburse amounts of the~~  
 7-18 ~~trust's principal, income, or both as the trustee in the trustee's~~  
 7-19 ~~[his] sole discretion determines to be reasonably necessary for the~~  
 7-20 ~~health, education, support, or maintenance of the beneficiary. The~~  
 7-21 ~~trustee may conclusively presume that medicine or treatments~~  
 7-22 ~~approved by a licensed physician are appropriate for the health of~~  
 7-23 ~~the beneficiary. [+]~~

7-24 (3) ~~The [the] income of the trust not disbursed under~~  
 7-25 ~~Subdivision (2) shall be [is] added to the principal of the~~  
 7-26 ~~trust. [+]~~

7-27 (4) ~~If [if] the beneficiary is a minor, the trust shall~~  
 7-28 ~~terminate [terminates] on the death of the beneficiary, on the~~  
 7-29 ~~beneficiary's attaining an age stated in the trust, or on the 25th~~  
 7-30 ~~birthday of the beneficiary, whichever occurs first, or if the~~  
 7-31 ~~beneficiary is an incapacitated person, the trust shall terminate~~  
 7-32 ~~[terminates] on the death of the beneficiary or when the~~  
 7-33 ~~beneficiary regains capacity. [+]~~

7-34 (5) ~~A [the] trustee that is a financial institution~~  
 7-35 ~~shall serve [serves] without bond. [+ and]~~

7-36 (6) ~~The [the] trustee shall receive [receives]~~  
 7-37 ~~reasonable compensation paid from trust's income, principal, or~~  
 7-38 ~~both on application to and approval of the court.~~

7-39 (7) ~~The first page of the trust instrument shall~~  
 7-40 ~~contain the following notice:~~

7-41 ~~NOTICE: THE BENEFICIARY AND CERTAIN PERSONS INTERESTED IN THE~~  
 7-42 ~~WELFARE OF THE BENEFICIARY MAY HAVE REMEDIES UNDER SECTION 114.008~~  
 7-43 ~~OR 142.005, PROPERTY CODE.~~

7-44 (g) ~~Notwithstanding any other provision of this chapter, if~~  
 7-45 ~~the court finds that it would be in the best interests of the~~  
 7-46 ~~beneficiary [minor or incapacitated person] for whom a trust is~~  
 7-47 ~~established [created] under this section, the court may omit or~~  
 7-48 ~~modify any terms required by Subsection (b) if the court determines~~  
 7-49 ~~that the omission or modification is necessary or appropriate to~~  
 7-50 ~~allow the beneficiary to be eligible to receive public benefits or~~  
 7-51 ~~assistance under a state or federal program. This section does not~~  
 7-52 ~~require a distribution from a trust if the distribution is~~  
 7-53 ~~discretionary under the terms of the trust [may contain provisions~~  
 7-54 ~~determined by the court to be necessary to establish a special needs~~  
 7-55 ~~trust as specified under 42 U.S.C. Section 1396p(d)(4)(A)].~~

7-56 (k) ~~In addition to ordering other appropriate remedies and~~  
 7-57 ~~grounds, the court may appoint a guardian ad litem to investigate~~  
 7-58 ~~and report to the court whether the trustee should be removed for~~  
 7-59 ~~failing or refusing to make distributions for the health,~~  
 7-60 ~~education, support, or maintenance of the beneficiary required~~  
 7-61 ~~under the terms of the trust if the court is petitioned by:~~

7-62 ~~(1) a parent of the beneficiary;~~

7-63 ~~(2) a next friend of the beneficiary;~~

7-64 ~~(3) a guardian of the beneficiary;~~

7-65 ~~(4) a conservator of the beneficiary;~~

7-66 ~~(5) a guardian ad litem for the beneficiary; or~~

7-67 ~~(6) an attorney ad litem for the beneficiary.~~

7-68 (1) ~~A person listed in Subsection (k) shall be reimbursed~~  
 7-69 ~~from the trust for reasonable attorney's fees, not to exceed~~

8-1 \$1,000, incurred in bringing the petition.

8-2 (m) If the value of the trust's principal is \$50,000 or  
8-3 less, the court may appoint a person other than a financial  
8-4 institution to serve as trustee of the trust only if the court finds  
8-5 the appointment is in the beneficiary's best interests.

8-6 (n) If the value of the trust's principal is more than  
8-7 \$50,000, the court may appoint a person other than a financial  
8-8 institution to serve as trustee of the trust only if the court finds  
8-9 that:

8-10 (1) no financial institution is willing to serve as  
8-11 trustee; and

8-12 (2) the appointment is in the beneficiary's best  
8-13 interests.

8-14 (o) In this section:

8-15 (1) "Beneficiary" means:

8-16 (A) a minor or incapacitated person who:

8-17 (i) has no legal guardian; and

8-18 (ii) is represented by a next friend or an  
8-19 appointed guardian ad litem; or

8-20 (B) a person with a physical disability.

8-21 (2) "Financial institution" means a financial  
8-22 institution, as defined by Section 201.101, Finance Code, that has  
8-23 trust powers, exists, and does business under the laws of this or  
8-24 another state or the United States.

8-25 SECTION 21. Section 187.005(c), Finance Code, and Section  
8-26 113.060, Property Code, are repealed.

8-27 SECTION 22. The enactment of Section 113.060, Property  
8-28 Code, by Chapter 148, Acts of the 79th Legislature, Regular  
8-29 Session, 2005, was not intended to repeal any common-law duty to  
8-30 keep a beneficiary of a trust informed, and the repeal by this Act  
8-31 of Section 113.060, Property Code, does not repeal any common-law  
8-32 duty to keep a beneficiary informed. The common-law duty to keep a  
8-33 beneficiary informed that existed immediately before January 1,  
8-34 2006, is continued in effect.

8-35 SECTION 23. Except as otherwise provided by the terms of a  
8-36 trust, the changes in law made by this Act apply to a trust existing  
8-37 or created on or after the effective date of this Act.

8-38 SECTION 24. (a) Except as provided by Subsection (b) of  
8-39 this section, this Act takes effect September 1, 2007.

8-40 (b) Section 111.0035, Property Code, as amended by this Act,  
8-41 and the repeal by this Act of Section 113.060, Property Code, take  
8-42 effect immediately if this Act receives a vote of two-thirds of all  
8-43 the members elected to each house, as provided by Section 39,  
8-44 Article III, Texas Constitution. If this Act does not receive the  
8-45 vote necessary for immediate effect, Section 111.0035, Property  
8-46 Code, as amended by this Act, and the repeal by this Act of Section  
8-47 113.060, Property Code, take effect September 1, 2007.

8-48 \* \* \* \* \*