

House Bill 564
Senate Amendments
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SECTION 1. Section 187.005(b), Finance Code, is amended to read as follows:

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

SECTION 2. 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) [~~3~~] the applicability of Section 114.007 to an exculpation term of a trust;
- (3) [~~4~~] the periods of limitation for commencing a judicial proceeding regarding a trust;
- (4) [~~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

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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
- (B) to act in good faith and in accordance with the purposes of the trust; ~~and~~
~~[(C) under Section 113.060 to a beneficiary 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, to take action or exercise jurisdiction, including the power to:
 - (A) modify or terminate a trust or take other action under Section 112.054;
 - (B) remove a trustee under Section 113.082;
 - (C) exercise jurisdiction under Section 115.001;
 - (D) require, dispense with, modify, or terminate a trustee's bond; or
 - (E) adjust or deny a trustee's compensation if the trustee commits a breach of trust.
- (c) The terms of a trust may not limit any common-law duty to keep a beneficiary of an irrevocable trust who is 25 years of age or older informed at any time during which the beneficiary:
 - (1) is entitled or permitted to receive distributions from the trust; or
 - (2) would receive a distribution from the trust if the trust were terminated.

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

(10) "Person" means:

(A) an individual;

(B) ~~]~~ a corporation;

(C) a limited liability company;

(D) ~~]~~ a partnership;

(E) a joint venture;

(F) ~~]~~ an association;

(G) ~~]~~ a joint-stock company;

(H) ~~]~~ a business trust;

(I) ~~]~~ an unincorporated organization;

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

(K) a government;

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

(M) a public corporation; or

(N) any other legal or commercial entity.

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

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

(d) If the settlor is also a beneficiary of the trust, a

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provision restraining the voluntary or involuntary transfer of the settlor's [his] beneficial interest does not prevent the settlor's [his] creditors from satisfying claims from the settlor's [his] interest in the trust estate. A settlor is not considered a beneficiary of a trust solely because a trustee who is not the settlor is authorized under the trust instrument to pay or reimburse the settlor for, or pay directly to the taxing authorities, any tax on trust income or principal that is payable by the settlor under the law imposing the tax.

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) the trust estate of the trust;

(B) the registry of the court; or

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

(2) conditioned on the faithful performance of the trustee's duties as trustee under the instrument creating

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

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

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

(b) Unless [a court orders otherwise or] the instrument creating the trust provides otherwise, a noncorporate trustee must give bond:

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

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

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~~the trust, this code, or the common law of trusts [The bond must be in an amount and with the sureties required by order of a court in a proceeding brought for this determination].~~

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

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

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

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

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

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

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

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

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

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(d) Any interested person may bring an action to increase or decrease the amount of a bond, require a bond, or ~~[to]~~ substitute or add sureties. Notwithstanding Subsection (b), for cause shown, a court may require a bond even if the instrument creating the trust provides otherwise.

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

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

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

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

(2) obtains:

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

(B) a copy of the trust instrument.

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

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

(e) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection

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~~provided by this section [A right or title derived from the trustee in consideration of the monetary payment under Subsection (a) of this section may not be impeached or questioned because of the trustee's misapplication of the money].~~

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

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

- (1) a statement that the trust exists and the date the trust instrument was executed;
- (2) the identity of the settlor;
- (3) the identity and mailing address of the currently acting trustee;
- (4) one or more powers of the trustee or a statement that the trust powers include at least all the powers granted a trustee by Subchapter A, Chapter 113;
- (5) the revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;
- (6) the authority of cotrustees to sign or otherwise authenticate and whether all or less than all of the cotrustees are required in order to exercise powers of the trustee; and
- (7) the manner in which title to trust property should be taken.

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

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

(d) A certification of trust:

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

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

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

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

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

(h) A person who in good faith enters into a transaction relying on a certification of trust may enforce the

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transaction against the trust property as if the representations contained in the certification are correct. This section does not create an implication that a person is liable for acting in reliance on a certification of trust that fails to contain all the information required by Subsection (a). A person's failure to demand a certification of trust does not:

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

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

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

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

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

No equivalent provision.

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

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

(1) construe a trust instrument;

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- (2) determine the law applicable to a trust instrument;
 - (3) appoint or remove a trustee;
 - (4) determine the powers, responsibilities, duties, and liability of a trustee;
 - (5) ascertain beneficiaries;
 - (6) make determinations of fact affecting the administration, distribution, or duration of a trust;
 - (7) determine a question arising in the administration or distribution of a trust;
 - (8) relieve a trustee from any or all of the duties, limitations, and restrictions otherwise existing under the terms of the trust instrument or of this subtitle;
 - (9) require an accounting by a trustee, review trustee fees, and settle interim or final accounts; and
 - (10) surcharge a trustee.
- (a-1) The list of proceedings described by Subsection (a) over which a district court has exclusive and original jurisdiction is not exhaustive. A district court has exclusive and original jurisdiction over a proceeding by or against a trustee or a proceeding concerning a trust under Subsection (a) whether or not the proceeding is listed in Subsection (a).
- (d) The jurisdiction of the district court [~~over proceedings concerning trusts~~] is exclusive except for jurisdiction conferred by law on:
 - (1) a statutory probate court;
 - (2) [7] a court that creates a trust under Section 867, Texas Probate Code;
 - (3) [~~5-0F~~] a court that creates a trust under Section 142.005;

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(4) a justice court under Chapter 27, Government Code;
or
(5) a small claims court under Chapter 28, Government Code.

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

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

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

SECTION 12. Same as House version.

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

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

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

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less

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

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

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

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

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

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

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

(4) If an amount is received from a working interest or

SECTION 14. Same as House version.

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any other interest not provided for in Subdivision (1), (2), or (3), the trustee must allocate the receipt equitably.

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

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

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

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

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

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

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

(11-a) "Qualified minor's trust" means a trust to which a

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SECTION 15. Same as House version.

SECTION 16. Same as House version, except designates the added subdivision as (12-a) rather than (11-a).

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gift is considered a present interest under Section 2503(c), Internal Revenue Code of 1986.

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

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

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

(a) Subject to Subsections (b) and (c), a person who is not subject to Section 141.006 or 141.007 and who holds property, including a benefit plan of a minor who does not have a guardian, or who owes a liquidated debt to a

SECTION 17. Same as House version.

SECTION 18. Same as House version.

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minor who does not have a guardian may make an irrevocable transfer to a custodian for the benefit of the minor under Section 141.010.

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

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

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

No equivalent provision.

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SECTION 19. Same as House version.

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

(a) Any [~~In a suit in which a minor who has no legal guardian or an incapacitated person is represented by a next friend or an appointed guardian ad litem, any~~] court of record with jurisdiction to hear a [~~the~~] suit involving a beneficiary may, on application [~~by the next friend or the guardian ad litem~~] and on a finding that the creation of a trust would be in the best interests of the beneficiary [~~minor or incapacitated person~~], enter a decree in the record directing the clerk to deliver any funds accruing to

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the beneficiary [~~minor or incapacitated person~~] under the judgment to a financial institution, except as provided by Subsections (m) and (n) [~~trust company or a state or national bank having trust powers in this state~~].

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

(1) The beneficiary shall be [~~the minor or incapacitated person is~~] the sole beneficiary of the trust.[:]

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

(3) The [~~the~~] income of the trust not disbursed under Subdivision (2) shall be [~~is~~] added to the principal of the trust.[:]

(4) If [~~if~~] the beneficiary is a minor, the trust shall terminate [~~terminates~~] on the death of the beneficiary, on the beneficiary's attaining an age stated in the trust, or on the 25th birthday of the beneficiary, whichever occurs first, or if the beneficiary is an incapacitated person, the trust shall terminate [~~terminates~~] on the death of the beneficiary or when the beneficiary regains capacity.[:]

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(5) A ~~the~~ trustee that is a financial institution shall serve ~~serve~~ without bond ~~and~~

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

(7) The first page of the trust instrument shall contain the following notice:

NOTICE: THE BENEFICIARY AND CERTAIN PERSONS INTERESTED IN THE WELFARE OF THE BENEFICIARY MAY HAVE REMEDIES UNDER SECTION 114.008 OR 142.005, PROPERTY CODE.

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

(k) In addition to ordering other appropriate remedies and grounds, the court may appoint a guardian ad litem to investigate and report to the court whether the trustee should be removed for failing or refusing to make distributions for the health, education, support, or

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maintenance of the beneficiary required under the terms of the trust if the court is petitioned by:

- (1) a parent of the beneficiary;
- (2) a next friend of the beneficiary;
- (3) a guardian of the beneficiary;
- (4) a conservator of the beneficiary;
- (5) a guardian ad litem for the beneficiary; or
- (6) an attorney ad litem for the beneficiary.

(l) A person listed in Subsection (k) shall be reimbursed from the trust for reasonable attorney's fees, not to exceed \$1,000, incurred in bringing the petition.

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

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

- (1) no financial institution is willing to serve as trustee;
- and
- (2) the appointment is in the beneficiary's best interests.

(o) In this section:

(1) "Beneficiary" means:

(A) a minor or incapacitated person who:

- (i) has no legal guardian; and
- (ii) is represented by a next friend or an appointed guardian ad litem; or

(B) a person with a physical disability.

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

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

SECTION 21. Except as otherwise provided by the terms of a trust, the changes in law made by this Act apply to a trust existing or created on or after the effective date of this Act.

SECTION 22. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2007.
(b) Section 111.0035, Property Code, as amended by this Act, and the repeal by this Act of Section 113.060, Property Code, take effect immediately if this Act receives a vote of two-thirds of all the members elected

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

SECTION 21. Same as House version.

SECTION 22. Same as House version.

SECTION 23. Same as House version.

SECTION 24. Same as House version.

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to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Section 111.0035, Property Code, as amended by this Act and the repeal by this Act of Section 113.060, Property Code, take effect September 1, 2007.

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