

By: Hartnett

H.B. No. 1835

Substitute the following for H.B. No. 1835:

By: Jackson

C.S.H.B. No. 1835

A BILL TO BE ENTITLED

AN ACT

1

2 relating to trusts.

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

4 SECTION 1. Section 112.010, Property Code, is amended by
5 adding Subsection (c-3) to read as follows:

6 (c-3) Notwithstanding the deadline prescribed by Subsection
7 (c-2)(2) for delivering the memorandum required by that subsection,
8 in the case of an interest in a trust created by reason of the death
9 of a decedent who died after December 31, 2009, and before December
10 17, 2010, and to which Section 37A, Probate Code, does not apply, a
11 memorandum delivered under Subsection (c-2)(2) is also effective to
12 disclaim an interest in the trust if delivered not later than the
13 date that is nine months after December 17, 2010. This subsection
14 expires September 1, 2013.

15 SECTION 2. Section 112.038, Property Code, is amended to
16 read as follows:

17 Sec. 112.038. FORFEITURE CLAUSE. A provision in a trust
18 that would cause a forfeiture of or void an interest for bringing
19 any court action, including contesting a trust, is unenforceable
20 if:

21 (1) just [~~probable~~] cause existed [~~exists~~] for
22 bringing the action; and

23 (2) the action was brought and maintained in good
24 faith.

1 SECTION 3. Section 112.057, Property Code, is amended by
2 adding Subsections (e) and (f) to read as follows:

3 (e) A beneficiary to whom written notice is required to be
4 given under this section may waive the notice requirement in a
5 writing delivered to the trustee. If all beneficiaries to whom
6 notice would otherwise be required to be given under this section
7 waive the notice requirement, notice is not required.

8 (f) Notice required under this section shall be given to a
9 guardian of the estate, guardian ad litem, or parent of a minor or
10 incapacitated beneficiary. A guardian of the estate, guardian ad
11 litem, or parent of a minor or incapacitated beneficiary may waive
12 the notice requirement in accordance with this section on behalf of
13 the minor or incapacitated beneficiary.

14 SECTION 4. Section 115.001(d), Property Code, is amended to
15 read as follows:

16 (d) The jurisdiction of the district court is exclusive
17 except for jurisdiction conferred by law on:

- 18 (1) a statutory probate court;
- 19 (2) a court that creates a trust under Section 867,
20 Texas Probate Code;
- 21 (3) a court that creates a trust under Section
22 142.005;
- 23 (4) a justice court under Chapter 27, Government Code;
- 24 [~~or~~]
- 25 (5) a small claims court under Chapter 28, Government
26 Code; or
- 27 (6) a county court at law.

1 SECTION 5. Section 115.002, Property Code, is amended by
2 adding Subsection (c-1) to read as follows:

3 (c-1) Notwithstanding Subsections (b) and (c), if the
4 settlor is deceased and an administration of the settlor's estate
5 is pending in this state, an action involving the interpretation
6 and administration of an inter vivos trust created by the settlor or
7 a testamentary trust created by the settlor's will may be brought:

8 (1) in a county in which venue is proper under
9 Subsection (b) or (c); or

10 (2) in the county in which the administration of the
11 settlor's estate is pending.

12 SECTION 6. Section 115.011(b), Property Code, is amended to
13 read as follows:

14 (b) Contingent beneficiaries designated as a class are not
15 necessary parties to an action under Section 115.001. The only
16 necessary parties to such an action are:

17 (1) a beneficiary of the trust on whose act or
18 obligation the action is predicated;

19 (2) a beneficiary of the trust designated by name,
20 other than a beneficiary whose interest has been distributed,
21 extinguished, terminated, or paid [~~in the instrument creating the~~
22 ~~trust~~];

23 (3) a person who is actually receiving distributions
24 from the trust estate at the time the action is filed; and

25 (4) the trustee, if a trustee is serving at the time
26 the action is filed.

27 SECTION 7. Sections 116.005(d) and (e), Property Code, are

1 amended to read as follows:

2 (d) If Subsection (c)(4), (5) [~~(c)(5)~~], (6), or (7) [~~, or~~
3 ~~(8)~~] applies to a trustee and there is more than one trustee, a
4 cotrustee to whom the provision does not apply may make the
5 adjustment unless the exercise of the power by the remaining
6 trustee or trustees is not permitted by the terms of the trust.

7 (e) A trustee may release the entire power conferred by
8 Subsection (a) or may release only the power to adjust from income
9 to principal or the power to adjust from principal to income if the
10 trustee is uncertain about whether possessing or exercising the
11 power will cause a result described in Subsections (c)(1)-(5)
12 [~~Subsection (c)(1)-(6)~~] or Subsection (c)(7) [~~(c)(8)~~] or if the
13 trustee determines that possessing or exercising the power will or
14 may deprive the trust of a tax benefit or impose a tax burden not
15 described in Subsection (c). The release may be permanent or for a
16 specified period, including a period measured by the life of an
17 individual.

18 SECTION 8. Sections 116.205(c) and (d), Property Code, are
19 amended to read as follows:

20 (c) A tax required to be paid by a trustee on the trust's
21 share of an entity's taxable income must be paid [~~proportionately~~]:

22 (1) from income to the extent that receipts from the
23 entity are allocated only to income; [~~and~~]

24 (2) from principal to the extent that [~~+~~
25 [~~(A)~~] receipts from the entity are allocated only
26 to principal;

27 (3) proportionately from principal and income to the

1 extent that receipts from the entity are allocated to both
2 principal and income; and

3 (4) from principal to the extent that the tax exceeds
4 the total receipts from the entity [~~and~~

5 [~~(B) the trust's share of the entity's taxable~~
6 ~~income exceeds the total receipts described in Subdivisions (1) and~~
7 ~~(2)(A)].~~

8 (d) After applying the other provisions of this section, the
9 trustee shall adjust income or principal receipts to the extent
10 that the trust's taxes are reduced because the trust receives a
11 deduction for payments made to a beneficiary. [~~For purposes of this~~
12 ~~section, receipts allocated to principal or income must be reduced~~
13 ~~by the amount distributed to a beneficiary from principal or income~~
14 ~~for which the trust receives a deduction in calculating the tax.]~~

15 SECTION 9. (a) Except as otherwise expressly provided by
16 the will, the trust, or this Act, the changes in law made by this Act
17 apply to:

18 (1) a trust existing or created on or after September
19 1, 2011;

20 (2) the estate of a decedent who dies before September
21 1, 2011, if the probate or administration of the estate is pending
22 as of September 1, 2011; and

23 (3) the estate of a decedent who dies on or after
24 September 1, 2011.

25 (b) For a trust existing on September 1, 2011, that was
26 created before that date, the changes in law made by this Act apply
27 only to an act or omission relating to the trust that occurs on or

1 after September 1, 2011.

2 (c) Sections 112.038, 115.002, and 115.011, Property Code,
3 as amended by this Act, apply to a court action commenced on or
4 after September 1, 2011. An action commenced before September 1,
5 2011, is governed by the law applicable to the action immediately
6 before the effective date of this Act, and that law is continued in
7 effect for that purpose.

8 (d) The amendment by this Act of Section 115.001, Property
9 Code, is intended to clarify rather than change existing law.

10 SECTION 10. This Act takes effect September 1, 2011.