

By: Hartnett

H.B. No. 1835

A BILL TO BE ENTITLED

AN ACT

relating to trusts.

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

SECTION 1. Section 112.010(c-2)(2), Property Code, is amended to read as follows:

(2) delivering the memorandum to the trustee or, if there is not a trustee, to the transferor of the interest or his legal representative not later than the date that is nine months after the later of:

(A) the day on which the transfer creating the interest in the beneficiary is made;

(B) the day on which the beneficiary attains age 21; ~~[or]~~

(C) in the case of a future interest, the date of the event that causes the taker of the interest to be finally ascertained and the interest to be indefeasibly vested~~[or]~~; or

(D) in the case of an interest in a trust created by reason of the death of a decedent dying before December 17, 2010, but after December 31, 2009, and to which Texas Probate Code Section 37A does not apply, then December 17, 2010.

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

Sec. 112.038. FORFEITURE CLAUSE. A provision in a trust that would cause a forfeiture of or void an interest for bringing

any court action, including contesting a trust, is unenforceable if:

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

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

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

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

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

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

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

(1) a statutory probate court;

(2) a court that creates a trust under Section 867, Texas Probate Code;

(3) a court that creates a trust under Section

142.005;

(4) a justice court under Chapter 27, Government Code;
[or]

(5) a small claims court under Chapter 28, Government
Code; or

(6) a county court at law.

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

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

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

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

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

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

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

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

1 ~~trust~~];

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

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

6 SECTION 7. Sections 116.005(d) and (e), Property Code, are
7 amended to read as follows:

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

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

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

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

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

3 (2) from principal to the extent that ~~[+~~
4 ~~(A)]~~ receipts from the entity are allocated only
5 to principal; ~~[and~~

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

9 (3) proportionately from principal and income to the
10 extent that receipts from the entity are allocated to both income
11 and principal; and

12 (4) from principal to the extent that the tax exceeds
13 the total receipts from the entity.

14 ~~(d) [For purposes of this section, receipts allocated to~~
15 ~~principal or income must be reduced by the amount distributed to a~~
16 ~~beneficiary from principal or income for which the trust receives a~~
17 ~~deduction in calculating the tax.]~~ After applying subsections (a)
18 through (c), the trustee shall adjust income or principal receipts
19 to the extent that the trust's taxes are reduced because the trust
20 receives a deduction for payments made to a beneficiary.

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

24 (1) a trust existing or created on or after September
25 1, 2011;

26 (2) the estate of a decedent who dies before September
27 1, 2011, if the probate or administration of the estate is pending

1 as of September 1, 2011; and

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

4 (b) For a trust existing on September 1, 2011, that was
5 created before that date, the changes in law made by this Act apply
6 only to an act or omission relating to the trust that occurs on or
7 after September 1, 2011.

8 (c) Sections 112.038, 115.002, and 115.011, Property Code,
9 as amended by this Act, apply to a court action commenced on or
10 after September 1, 2011. An action commenced before September 1,
11 2011, is governed by the law applicable to the action immediately
12 before the effective date of this Act, and that law is continued in
13 effect for that purpose.

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

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