

AN ACT

relating to trusts.

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

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

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

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.

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. Subsection (d), Section 115.001, Property Code,  
15 is amended to 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. Subsection (b), Section 115.011, Property Code,  
13 is amended to 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. Subsections (d) and (e), Section 116.005,

1 Property Code, are 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. Subsections (c) and (d), Section 116.205,  
19 Property Code, are 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.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1197 passed the Senate on May 3, 2011, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1197 passed the House on May 19, 2011, by the following vote: Yeas 148, Nays 0, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor