

1-1 By: Rodriguez S.B. No. 1197  
1-2 (In the Senate - Filed March 4, 2011; March 16, 2011, read  
1-3 first time and referred to Committee on Jurisprudence;  
1-4 April 27, 2011, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 5, Nays 0; April 27, 2011,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1197 By: Rodriguez

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

1-10 relating to trusts.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 112.010, Property Code, is amended by  
1-13 adding Subsection (c-3) to read as follows:

1-14 (c-3) Notwithstanding the deadline prescribed by Subsection  
1-15 (c-2)(2) for delivering the memorandum required by that subsection,  
1-16 in the case of an interest in a trust created by reason of the death  
1-17 of a decedent who died after December 31, 2009, and before December  
1-18 17, 2010, and to which Section 37A, Probate Code, does not apply, a  
1-19 memorandum delivered under Subsection (c-2)(2) is also effective to  
1-20 disclaim an interest in the trust if delivered not later than the  
1-21 date that is nine months after December 17, 2010. This subsection  
1-22 expires September 1, 2013.

1-23 SECTION 2. Section 112.038, Property Code, is amended to  
1-24 read as follows:

1-25 Sec. 112.038. FORFEITURE CLAUSE. A provision in a trust  
1-26 that would cause a forfeiture of or void an interest for bringing  
1-27 any court action, including contesting a trust, is unenforceable  
1-28 if:

1-29 (1) just [~~probable~~] cause existed [~~exists~~] for  
1-30 bringing the action; and

1-31 (2) the action was brought and maintained in good  
1-32 faith.

1-33 SECTION 3. Section 112.057, Property Code, is amended by  
1-34 adding Subsections (e) and (f) to read as follows:

1-35 (e) A beneficiary to whom written notice is required to be  
1-36 given under this section may waive the notice requirement in a  
1-37 writing delivered to the trustee. If all beneficiaries to whom  
1-38 notice would otherwise be required to be given under this section  
1-39 wave the notice requirement, notice is not required.

1-40 (f) Notice required under this section shall be given to a  
1-41 guardian of the estate, guardian ad litem, or parent of a minor or  
1-42 incapacitated beneficiary. A guardian of the estate, guardian ad  
1-43 litem, or parent of a minor or incapacitated beneficiary may waive  
1-44 the notice requirement in accordance with this section on behalf of  
1-45 the minor or incapacitated beneficiary.

1-46 SECTION 4. Subsection (d), Section 115.001, Property Code,  
1-47 is amended to read as follows:

1-48 (d) The jurisdiction of the district court is exclusive  
1-49 except for jurisdiction conferred by law on:

1-50 (1) a statutory probate court;

1-51 (2) a court that creates a trust under Section 867,  
1-52 Texas Probate Code;

1-53 (3) a court that creates a trust under Section  
1-54 142.005;

1-55 (4) a justice court under Chapter 27, Government Code;  
1-56 [~~or~~]

1-57 (5) a small claims court under Chapter 28, Government  
1-58 Code; or

1-59 (6) a county court at law.

1-60 SECTION 5. Section 115.002, Property Code, is amended by  
1-61 adding Subsection (c-1) to read as follows:

1-62 (c-1) Notwithstanding Subsections (b) and (c), if the  
1-63 settlor is deceased and an administration of the settlor's estate

2-1 is pending in this state, an action involving the interpretation  
2-2 and administration of an inter vivos trust created by the settlor or  
2-3 a testamentary trust created by the settlor's will may be brought:

2-4 (1) in a county in which venue is proper under  
2-5 Subsection (b) or (c); or

2-6 (2) in the county in which the administration of the  
2-7 settlor's estate is pending.

2-8 SECTION 6. Subsection (b), Section 115.011, Property Code,  
2-9 is amended to read as follows:

2-10 (b) Contingent beneficiaries designated as a class are not  
2-11 necessary parties to an action under Section 115.001. The only  
2-12 necessary parties to such an action are:

2-13 (1) a beneficiary of the trust on whose act or  
2-14 obligation the action is predicated;

2-15 (2) a beneficiary of the trust designated by name,  
2-16 other than a beneficiary whose interest has been distributed,  
2-17 extinguished, terminated, or paid [~~in the instrument creating the~~  
2-18 ~~trust~~];

2-19 (3) a person who is actually receiving distributions  
2-20 from the trust estate at the time the action is filed; and

2-21 (4) the trustee, if a trustee is serving at the time  
2-22 the action is filed.

2-23 SECTION 7. Subsections (d) and (e), Section 116.005,  
2-24 Property Code, are amended to read as follows:

2-25 (d) If Subsection (c)(4), (5) [~~(c)(5)~~], (6), or (7) [~~or~~  
2-26 ~~(8)~~] applies to a trustee and there is more than one trustee, a  
2-27 cotrustee to whom the provision does not apply may make the  
2-28 adjustment unless the exercise of the power by the remaining  
2-29 trustee or trustees is not permitted by the terms of the trust.

2-30 (e) A trustee may release the entire power conferred by  
2-31 Subsection (a) or may release only the power to adjust from income  
2-32 to principal or the power to adjust from principal to income if the  
2-33 trustee is uncertain about whether possessing or exercising the  
2-34 power will cause a result described in Subsections (c)(1)-(5)  
2-35 [~~Subsection (c)(1)-(6)~~] or Subsection (c)(7) [~~(c)(8)~~] or if the  
2-36 trustee determines that possessing or exercising the power will or  
2-37 may deprive the trust of a tax benefit or impose a tax burden not  
2-38 described in Subsection (c). The release may be permanent or for a  
2-39 specified period, including a period measured by the life of an  
2-40 individual.

2-41 SECTION 8. Subsections (c) and (d), Section 116.205,  
2-42 Property Code, are amended to read as follows:

2-43 (c) A tax required to be paid by a trustee on the trust's  
2-44 share of an entity's taxable income must be paid [~~proportionately~~]:

2-45 (1) from income to the extent that receipts from the  
2-46 entity are allocated only to income; [~~and~~]

2-47 (2) from principal to the extent that [~~+~~  
2-48 [~~(A)~~] receipts from the entity are allocated only  
2-49 to principal;

2-50 (3) proportionately from principal and income to the  
2-51 extent that receipts from the entity are allocated to both  
2-52 principal and income; and

2-53 (4) from principal to the extent that the tax exceeds  
2-54 the total receipts from the entity [~~and~~

2-55 [~~(B) the trust's share of the entity's taxable~~  
2-56 ~~income exceeds the total receipts described in Subdivisions (1) and~~  
2-57 ~~(2)(A)] .~~

2-58 (d) After applying the other provisions of this section, the  
2-59 trustee shall adjust income or principal receipts to the extent  
2-60 that the trust's taxes are reduced because the trust receives a  
2-61 deduction for payments made to a beneficiary [~~For purposes of this~~  
2-62 ~~section, receipts allocated to principal or income must be reduced~~  
2-63 ~~by the amount distributed to a beneficiary from principal or income~~  
2-64 ~~for which the trust receives a deduction in calculating the tax].~~

2-65 SECTION 9. (a) Except as otherwise expressly provided by  
2-66 the will, the trust, or this Act, the changes in law made by this Act  
2-67 apply to:

2-68 (1) a trust existing or created on or after September  
2-69 1, 2011;

3-1 (2) the estate of a decedent who dies before September  
3-2 1, 2011, if the probate or administration of the estate is pending  
3-3 as of September 1, 2011; and

3-4 (3) the estate of a decedent who dies on or after  
3-5 September 1, 2011.

3-6 (b) For a trust existing on September 1, 2011, that was  
3-7 created before that date, the changes in law made by this Act apply  
3-8 only to an act or omission relating to the trust that occurs on or  
3-9 after September 1, 2011.

3-10 (c) Sections 112.038, 115.002, and 115.011, Property Code,  
3-11 as amended by this Act, apply to a court action commenced on or  
3-12 after September 1, 2011. An action commenced before September 1,  
3-13 2011, is governed by the law applicable to the action immediately  
3-14 before the effective date of this Act, and that law is continued in  
3-15 effect for that purpose.

3-16 (d) The amendment by this Act of Section 115.001, Property  
3-17 Code, is intended to clarify rather than change existing law.

3-18 SECTION 10. This Act takes effect September 1, 2011.

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