

## **BILL ANALYSIS**

C.S.H.B. 2913  
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Judiciary & Civil Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties, such as the Real Estate, Probate, and Trust Law Section of the State Bar of Texas, have noted several issues in Property Code and Tax Code provisions relating to trusts that need to be more fully addressed and clarified. C.S.H.B. 2913 seeks to address those issues.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2913 amends the Property Code to clarify that the definition of "property," for purposes of the Texas Trust Code, includes property held in any digital or electronic medium. The bill establishes that a settlor, or a person who creates a trust or contributes property to a trustee of a trust, is not considered a beneficiary of a trust solely because the settlor's interest in the trust was created by the exercise of a power of appointment by a third party. The bill establishes that for the purposes of statutory provisions governing spendthrift trusts, property contributed to certain irrevocable inter vivos marital trusts, irrevocable inter vivos trusts for the settlor's spouse, or irrevocable trusts for the benefit of a person is not considered to have been contributed by the settlor. The bill prohibits a person who would otherwise be treated as a settlor or a deemed settlor of such trusts from being treated as a settlor. The bill establishes that for such purposes, a person is a beneficiary whether named a beneficiary under the initial trust instrument or through the exercise of a limited or general power of appointment by that person's spouse or another person.

C.S.H.B. 2913 authorizes an authorized trustee who has the full discretion to distribute the principal of a trust to distribute all or part of that trust's principal in favor of a trustee of a second trust for the benefit of one or more current beneficiaries of the first trust who are eligible to receive income or principal from the trust and for the benefit of one or more successor or presumptive remainder beneficiaries of the first trust who are eligible to receive income or principal from the trust. The bill authorizes the authorized trustee, in connection with the exercise of such a power of distribution, to grant a power of appointment, including a currently exercisable power of appointment, in the second trust to one or more of the first trust's current beneficiaries who, at the time the power of appointment is granted, is eligible to receive the principal outright under the terms of the first trust. The bill authorizes the class of permissible appointees in whose favor the beneficiary may appoint under that power to be broader or different than the current, successor, and presumptive remainder beneficiaries of the first trust. The bill authorizes the beneficiaries of the second trust, if the beneficiaries of the first trust are described as a class of persons, to include one or more persons who become members of that class after the distribution to the second trust. The bill requires the authorized trustee to exercise such a distribution power in good faith, in accordance with the terms and purposes of the trust, and in the interests of the beneficiaries.

C.S.H.B. 2913 authorizes an authorized trustee who has limited discretion to distribute the principal of a trust to distribute all or part of the principal of that trust in favor of a trustee of a second trust in the manner described by the bill's provisions. The bill requires the current beneficiaries of the second trust to be the same as the current beneficiaries of the first trust and requires the successor and presumptive remainder beneficiaries of the second trust to be the same as the successor and presumptive remainder beneficiaries of the first trust. The bill requires the second trust to include the same language authorizing the trustee to distribute the income or principal of the trust that was included in the first trust. The bill requires the beneficiaries of the second trust, if the beneficiaries of the first trust are described as a class of persons, to include all persons who become members of that class after the distribution to the second trust. The bill requires the second trust, if the first trust grants a power of appointment to a beneficiary of the trust, to grant the power of appointment to the beneficiary in the second trust and requires the class of permissible appointees under that power to be the same as the class of permissible appointees under the power granted by the first trust. The bill requires the authorized trustee to exercise such a distribution power in good faith, in accordance with the terms and purposes of the trust, and in the interests of the beneficiaries.

C.S.H.B. 2913 authorizes an authorized trustee to exercise a power of distribution to a second trust without the consent of the settlor or beneficiaries of the first trust and without court approval if the trustee provides to all of the current beneficiaries and presumptive remainder beneficiaries written notice of the trustee's decision to exercise the power. The bill establishes that, for the purpose of determining who is a current beneficiary or presumptive remainder beneficiary entitled to the notice, a beneficiary is determined as of the date the notice is sent. The bill specifies that a beneficiary includes a person entitled to receive property under the terms of the first trust. The bill requires an authorized trustee to also give written notice of the trustee's decision to the attorney general if a charity is entitled to notice, if a charity so entitled no longer exists, or if the trustee is authorized to distribute trust assets to one or more charities or for charitable purposes but no such charities are named in the trust instruments or as beneficiaries for that purpose. The bill requires an authorized trustee, if a beneficiary has a court-appointed guardian or conservator, to give the required notice to that guardian or conservator or, if the beneficiary is a minor for whom no guardian or conservator has been appointed, to a parent of the minor. The bill specifies that a trustee is not required to provide notice to a beneficiary who is known to the trustee and cannot be located by the trustee after reasonable diligence, who is not known to the trustee, who waives the requirement of the notice, or who is a descendent of a beneficiary to whom the trustee has given notice if the beneficiary and the beneficiary's ancestor have similar interests in the trust and no apparent conflict of interest exists between them. The bill sets out the required content of the notice.

C.S.H.B. 2913 requires a distribution to a second trust by an authorized trustee to be made by a written instrument that is signed and acknowledged by the authorized trustee and filed with the records of the first and second trusts. The bill establishes that a reference to the governing instrument or terms of the governing instrument of a trust includes the terms of a second trust to which that trust's principal was distributed.

C.S.H.B. 2913 establishes that the settlor of a first trust is considered to be the settlor of a second trust and provides that if a settlor of a first trust is not also the settlor of a second trust into which principal of that first trust is distributed, the settlor of the first trust is considered the settlor of the portion of the second trust distributed to the second trust from that first trust.

C.S.H.B. 2913 authorizes an authorized trustee to petition a court to order a distribution of trust principal into a second trust. The bill authorizes an authorized trustee or beneficiary to petition a court to approve, modify, or deny the exercise of the trustee's power to make a distribution of trust principal to a second trust if the trustee receives a written objection to the distribution from a beneficiary before the proposed effective date of the distribution specified in the notice provided to the beneficiary. The bill prohibits an authorized trustee from making a distribution to a second trust without petitioning a court to approve or modify the exercise of the trustee's power

to make such a distribution if the trustee receives a written objection to the distribution from the attorney general not later than the 30th day after the date notice of the distribution was received by the attorney general. The bill provides that the trustee has the burden of proving that the proposed distribution furthers the purposes of the trust, is in accordance with the terms of the trust, and is in the interests of the beneficiaries, and authorizes the trustee to present the trustee's reasons for supporting or opposing a proposed distribution in the judicial proceeding.

C.S.H.B. 2913 establishes that, if an authorized trustee has full discretion to distribute the principal of a trust and another trustee has limited discretion to distribute principal under the trust instrument, the authorized trustee with full discretion is authorized to exercise the power to distribute the trust's principal into a second trust.

C.S.H.B. 2913 establishes that, to the extent the authorized trustee does not provide otherwise, the distribution of all of the principal of a first trust to a second trust includes subsequently discovered assets otherwise belonging to the first trust and principal paid to or acquired by the first trust after the distribution of the first trust's principal to the second trust. The bill also establishes that, to the extent the authorized trustee does not provide otherwise, the distribution of part of the principal of a first trust to a second trust does not include subsequently discovered assets belonging to the first trust or principal paid to or acquired by the first trust after the distribution of principal from the first trust to the second trust, and those assets or that principal remain the assets or principal of the first trust.

C.S.H.B. 2913 prohibits the bill's provisions relating to the distribution of trust principal in a second trust from being construed to limit the power of an authorized trustee to distribute property in further trust under the terms of the governing instrument of a trust, other law, or a court order. The bill authorizes an authorized trustee to exercise the power to distribute principal to a second trust regardless of whether there is a current need to distribute principal under the terms of the first trust.

C.S.H.B. 2913 establishes that the bill's provisions relating to the distribution of trust principal in a second trust do not create or imply a duty for an authorized trustee to exercise a power to distribute principal and prohibits the inference of impropriety as a result of the trustee not exercising such a power of distribution. The bill establishes that an authorized trustee does not have a duty to inform beneficiaries about the availability of such authority or a duty to review the trust to determine whether any action should be taken under the bill's provisions relating to second trusts.

C.S.H.B. 2913 prohibits an authorized trustee from exercising a power to distribute principal of a trust to a second trust otherwise provided under the bill's provisions if the distribution is expressly prohibited by the terms of the governing instrument of the trust. The bill establishes that a general prohibition of the amendment or revocation of a trust or a provision that constitutes a spendthrift clause does not preclude the exercise of a power to distribute principal of a trust into a second trust.

C.S.H.B. 2913 prohibits an authorized trustee from exercising a power to distribute the principal of a trust into a second trust to reduce, limit, or modify specified current, vested rights of a beneficiary; to materially impair the rights of any beneficiary of the trust; to materially limit a trustee's fiduciary duty under the trust or as described by specified statutory provisions; to decrease or indemnify against a trustee's liability or exonerate a trustee from liability for failure to exercise reasonable care, diligence, and prudence; to eliminate a provision granting another person the right to remove or replace the authorized trustee exercising such power; or to reduce, limit, or modify in the second trust a perpetuities provision included in the first trust, unless expressly permitted by the terms of the first trust.

C.S.H.B. 2913 prohibits the authorized trustee from distributing the principal of a trust in a second trust in a manner that would prevent a contribution to that trust from qualifying for or that

would reduce the exclusion, deduction, or other federal tax benefit that was originally claimed for that contribution, including certain specified exclusions, deductions, and benefits. The bill authorizes an authorized trustee to distribute the principal of a first trust to a second trust regardless of whether the settlor is treated as the owner of either or both trusts under federal law. The bill prohibits an authorized trustee, if S corporation stock is held in trust, from distributing all or part of that stock to a second trust that is not a permitted shareholder under federal law. The bill prohibits an authorized trustee, if an interest in property that is subject to the minimum distribution rules of the Internal Revenue Code of 1986 is held in trust, from distributing the trust's interest in the property to a second trust if the distribution would shorten the minimum distribution period applicable to the property.

C.S.H.B. 2913 prohibits an authorized trustee from exercising a power to distribute trust principal in a second trust solely to change trust provisions regarding the determination of the compensation of any trustee unless a court, on application of the trustee, directs otherwise, but authorizes an authorized trustee to bring the trustee's compensation into conformance with reasonable limits authorized by state law in connection with the exercise of a power to distribute trust principal in a second trust for another valid and reasonable purpose. The bill authorizes the compensation payable to an authorized trustee of the first trust to continue to be paid to the trustee of the second trust during the term of the second trust and to be determined in the same manner as the compensation would have been determined in the first trust. The bill prohibits an authorized trustee from receiving a commission or other compensation for the distribution of a particular asset from a first trust to a second trust.

C.S.H.B. 2913 makes a statutory provision relating to the exercise of power by a person, other than a settlor, who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit applicable to a person who is a beneficiary and a trustee affiliate of a trust and a person who is a beneficiary and discretionary power holder of a trust.

C.S.H.B. 2913 establishes the option for an action concerning a trust that has multiple noncorporate trustees to be brought in a Texas county in which the trustees maintain a principal office or, if the trustees do not maintain a principal office in Texas, in the county in which any trustee resides or has resided at any time during the four-year period preceding the date the action is filed as an alternative to bringing the action in the county in which the situs of administration of the trust is maintained at any time during the four-year period preceding the date the action is filed. The bill clarifies that an action concerning a trust that has one or more corporate trustees may be brought in the county in which any corporate trustee maintains its principal office in Texas.

C.S.H.B. 2913 amends the Tax Code, for the purposes of the residence homestead tax exemption, to redefine "residence homestead," with respect to property owned through a beneficial interest in a qualifying trust, to include property occupied as a principal residence by a beneficiary of the trust who qualifies for the exemption. The bill redefines "trustor" to mean a person who transfers an interest in real or personal property to a qualifying trust, whether during the person's lifetime or at death, or the person's spouse, rather than a person who transfers an interest in residential property to a qualifying trust, whether by deed or by will, or the person's spouse. The bill redefines "qualifying trust" to include trusts in which an instrument transferring property to the trust or any other agreement that is binding on the trustee provides that the trustor of the trust or a beneficiary of the trust has the right to use and occupy as the trustor's or beneficiary's principal residence rent free, subject to certain conditions. The bill removes the condition that a qualifying trust providing such a right to a beneficiary be created by court order and removes the condition that the instrument of title under which a qualifying trust acquires property be executed by the trustor or the personal representative of the trustor if the trust is not created by court order.

C.S.H.B. 2913 imposes the motor vehicle gift tax on a person who receives a motor vehicle from

a trust subject to the Texas Trust Code that was or is revocable or jointly revocable by the following: by a decedent or by a decedent and the decedent's spouse; by the person receiving the motor vehicle or by the recipient and the recipient's spouse; or by the transferor of the motor vehicle or by the transferor and the transferor's spouse.

### **EFFECTIVE DATE**

September 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2913 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

SECTION 1. Section 111.004(12), Property Code, is amended.

SECTION 2. Section 112.035, Property Code, is amended.

SECTION 3. Chapter 112, Property Code, is amended by adding Subchapter D to read as follows:

#### SUBCHAPTER D. DISTRIBUTION OF TRUST PRINCIPAL IN FURTHER TRUST

Sec. 112.071. DEFINITIONS. In this subchapter:

(1) "Authorized trustee" means a person, other than the settlor, who has authority under the terms of a first trust to distribute the principal of the trust to or for the benefit of one or more current beneficiaries.

(2) "Current beneficiary," with respect to a particular date, means a person who is receiving or is eligible to receive a distribution of income or principal from a trust on that date.

(3) "First trust" means an existing irrevocable inter vivos or testamentary trust all or part of the principal of which is distributed in further trust under Section 112.072 or 112.073.

(4) "Full discretion" means the power to distribute principal to or for the benefit of one or more of the beneficiaries of a trust that is not limited or modified by the terms of the trust in any way, including by restrictions that limit distributions to

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Same as introduced version.

SECTION 3. Chapter 112, Property Code, is amended by adding Subchapter D to read as follows:

#### SUBCHAPTER D. DISTRIBUTION OF TRUST PRINCIPAL IN FURTHER TRUST

Sec. 112.071. DEFINITIONS. In this subchapter:

(1) "Authorized trustee" means a person, other than the settlor, who has authority under the terms of a first trust to distribute the principal of the trust to or for the benefit of one or more current beneficiaries.

(2) "Charity" means a charitable entity or a charitable trust, as those terms are defined by Section 123.001.

(3) "Current beneficiary," with respect to a particular date, means a person who is receiving or is eligible to receive a distribution of income or principal from a trust on that date.

(4) "First trust" means an existing irrevocable inter vivos or testamentary trust all or part of the principal of which is distributed in further trust under Section 112.072 or 112.073.

(5) "Full discretion" means the power to distribute principal to or for the benefit of one or more of the beneficiaries of a trust that is not limited or modified by the terms of the trust in any way, including by restrictions that limit distributions to

purposes such as the best interests, welfare, or happiness of the beneficiaries.

(5) "Limited discretion" means a limited or modified power to distribute principal to or for the benefit of one or more beneficiaries of a trust.

(6) "Presumptive remainder beneficiary," with respect to a particular date, means a beneficiary of a trust on that date who, assuming any powers of appointment under the trust are not exercised, would be eligible to receive a distribution from the trust if:

(A) the trust terminated on that date; or  
(B) the interests of all beneficiaries currently eligible to receive income or principal from the trust ended on that date without causing the trust to terminate.

(7) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates and includes income of the trust that, at the time of the exercise of a power of distribution under Section 112.072 or 112.073, is not currently required to be distributed.

(8) "Second trust" means any irrevocable trust to which principal is distributed under Section 112.072 or 112.073.

(9) "Successor beneficiary" means a beneficiary other than a current or presumptive remainder beneficiary. The term does not include a potential appointee under a power of appointment held by a beneficiary.

Sec. 112.072. DISTRIBUTION TO SECOND TRUST: TRUSTEE WITH FULL DISCRETION. (a) An authorized trustee who has the full discretion to distribute the principal of a trust may distribute all or part of the principal of that trust in favor of a trustee of a second trust for the benefit of one or more current beneficiaries of the first trust and for the benefit of one or more successor or presumptive remainder beneficiaries of the first trust.

(b) The authorized trustee may, in connection with the exercise of a power of distribution under this section, grant a power

purposes such as the best interests, welfare, or happiness of the beneficiaries.

(6) "Limited discretion" means a limited or modified power to distribute principal to or for the benefit of one or more beneficiaries of a trust.

(7) "Presumptive remainder beneficiary," with respect to a particular date, means a beneficiary of a trust on that date who, in the absence of notice to the trustee of the exercise of the power of appointment and assuming that any other powers of appointment under the trust are not exercised, would be eligible to receive a distribution from the trust if:

(A) the trust terminated on that date; or  
(B) the interests of all beneficiaries currently eligible to receive income or principal from the trust ended on that date without causing the trust to terminate.

(8) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates and includes income of the trust that, at the time of the exercise of a power of distribution under Section 112.072 or 112.073, is not currently required to be distributed.

(9) "Second trust" means any irrevocable trust to which principal is distributed under Section 112.072 or 112.073.

(10) "Successor beneficiary" means a beneficiary other than a current or presumptive remainder beneficiary. The term does not include a potential appointee under a power of appointment held by a beneficiary.

Sec. 112.072. DISTRIBUTION TO SECOND TRUST: TRUSTEE WITH FULL DISCRETION. (a) An authorized trustee who has the full discretion to distribute the principal of a trust may distribute all or part of the principal of that trust in favor of a trustee of a second trust for the benefit of one or more current beneficiaries of the first trust who are eligible to receive income or principal from the trust and for the benefit of one or more successor or presumptive remainder beneficiaries of the first trust who are eligible to receive income or principal from the trust.

(b) The authorized trustee may, in connection with the exercise of a power of distribution under this section, grant a power

of appointment, including a currently exercisable power of appointment, in the second trust to one or more of the current beneficiaries of the first trust who, at the time the power of appointment is granted, is eligible to receive the principal outright under the terms of the first trust.

(c) If the authorized trustee grants a power of appointment to a beneficiary under Subsection (b), the class of permissible appointees the beneficiary may appoint under that power may be broader or different than the current, successor, and presumptive remainder beneficiaries of the first trust.

(d) If the beneficiaries of the first trust are described as a class of persons, the beneficiaries of the second trust may include one or more persons who become **includable in** that class after the distribution to the second trust.

Sec. 112.073. DISTRIBUTION TO SECOND TRUST: TRUSTEE WITH LIMITED DISCRETION. (a) An authorized trustee who has limited discretion to distribute the principal of a trust may distribute all or part of the principal of that trust in favor of a trustee of a second trust as provided by this section.

(b) The current beneficiaries of the second trust must be the same as the current beneficiaries of the first trust, and the successor and remainder beneficiaries of the second trust must be the same as the successor and remainder beneficiaries of the first trust.

(c) The second trust must include the same language authorizing the trustee to distribute the income or principal of the trust that was included in the first trust.

(d) If the beneficiaries of the first trust are described as a class of persons, the beneficiaries of the second trust must include all persons who become **includable in** that class after the distribution to the second trust.

(e) If the first trust grants a power of appointment to a beneficiary of the trust, the second trust must grant the power of

of appointment, including a currently exercisable power of appointment, in the second trust to one or more of the current beneficiaries of the first trust who, at the time the power of appointment is granted, is eligible to receive the principal outright under the terms of the first trust.

(c) If the authorized trustee grants a power of appointment to a beneficiary under Subsection (b), the class of permissible appointees **in whose favor** the beneficiary may appoint under that power may be broader or different than the current, successor, and presumptive remainder beneficiaries of the first trust.

(d) If the beneficiaries of the first trust are described as a class of persons, the beneficiaries of the second trust may include one or more persons who become **members of** that class after the distribution to the second trust.

(e) The authorized trustee shall exercise a power to distribute under this section in good faith, in accordance with the terms and purposes of the trust, and in the interests of the beneficiaries.

Sec. 112.073. DISTRIBUTION TO SECOND TRUST: TRUSTEE WITH LIMITED DISCRETION. (a) An authorized trustee who has limited discretion to distribute the principal of a trust may distribute all or part of the principal of that trust in favor of a trustee of a second trust as provided by this section.

(b) The current beneficiaries of the second trust must be the same as the current beneficiaries of the first trust, and the successor and **presumptive** remainder beneficiaries of the second trust must be the same as the successor and **presumptive** remainder beneficiaries of the first trust.

(c) The second trust must include the same language authorizing the trustee to distribute the income or principal of the trust that was included in the first trust.

(d) If the beneficiaries of the first trust are described as a class of persons, the beneficiaries of the second trust must include all persons who become **members of** that class after the distribution to the second trust.

(e) If the first trust grants a power of appointment to a beneficiary of the trust, the second trust must grant the power of

appointment to the beneficiary in the second trust, and the class of permissible appointees under that power must be the same as the class of permissible appointees under the power granted by the first trust.

(f) The exercise of a power of distribution under this section is subject to Section 113.029.

Sec. 112.074. NOTICE REQUIRED. (a) An authorized trustee may exercise a power of distribution under Section 112.072 or 112.073 without the consent of the settlor or beneficiaries of the first trust and without court approval if:

(1) there are one or more current beneficiaries who are not legally incapacitated;

(2) there are one or more presumptive remainder beneficiaries who are not legally incapacitated; and

(3) the authorized trustee provides to all of the current beneficiaries and presumptive remainder beneficiaries who are not legally incapacitated written notice of the trustee's decision to exercise the power, specifying the manner in which the trustee intends to exercise the power and the proposed effective date of the distribution.

(b) For the purpose of determining who is entitled to the notice, a beneficiary is determined as of the date the notice is sent with the assumption that any existing power of appointment has not been exercised.

(c) A trustee is not required to provide a copy of the notice to a beneficiary who:

(1) is known to the trustee and cannot be located by the trustee after reasonable diligence; or

(2) is not known to the trustee.

appointment to the beneficiary in the second trust, and the class of permissible appointees under that power must be the same as the class of permissible appointees under the power granted by the first trust.

(f) The authorized trustee shall exercise a power of distribution under this section in good faith, in accordance with the terms and purposes of the trust, and in the interests of the beneficiaries.

Sec. 112.074. NOTICE REQUIRED. (a) An authorized trustee may exercise a power of distribution under Section 112.072 or 112.073 without the consent of the settlor or beneficiaries of the first trust and without court approval if

the trustee provides to all of the current beneficiaries and presumptive remainder beneficiaries written notice of the trustee's decision to exercise the power.

(b) For the purpose of determining who is a current beneficiary or presumptive remainder beneficiary entitled to the notice, a beneficiary is determined as of the date the notice is sent. A beneficiary includes a person entitled to receive property under the terms of the first trust.

(d) If the beneficiary has a court-appointed guardian or conservator, the notice required to be given by this section must be given to that guardian or conservator. If the beneficiary is a minor for whom no guardian or conservator has been appointed, the notice required to be given by this section must be given to a parent of the minor.

(e) The authorized trustee is not required to provide the notice to a beneficiary who:

(1) is known to the trustee and cannot be located by the trustee after reasonable diligence;

(2) is not known to the trustee;



(d) If a charity is a current beneficiary or presumptive remainder beneficiary of the trust, the authorized trustee shall also give written notice of the trustee's decision to the attorney general.

(3) waives the requirement of the notice under this section; or  
(4) is a descendant of a beneficiary to whom the trustee has given notice if the beneficiary and the beneficiary's ancestor have similar interests in the trust and no apparent conflict of interest exists between them.

(c) In addition to the notice required under Subsection (a), the authorized trustee shall give written notice of the trustee's decision to the attorney general if:

(1) a charity is entitled to notice;  
(2) a charity entitled to notice is no longer in existence;  
(3) the trustee has the authority to distribute trust assets to one or more charities that are not named in the trust instrument; or  
(4) the trustee has the authority to make distributions for a charitable purpose described in the trust instrument, but no charity is named as a beneficiary for that purpose.

(f) The notice required under Subsection (a) must:

(1) include a statement that:  
(A) the authorized trustee intends to exercise the power of distribution;  
(B) the beneficiary has the right to object to the exercise of the power; and  
(C) the beneficiary may petition a court to approve, modify, or deny the exercise of the trustee's power to make a distribution under this subchapter;  
(2) describe the manner in which the trustee intends to exercise the power;  
(3) specify the date the trustee proposes to distribute the first trust to the second trust;  
(4) include the name and mailing address of the trustee;  
(5) include copies of the agreements of the first trust and the proposed second trust;  
(6) be given not later than the 30th day before the proposed date of distribution to the second trust; and  
(7) be sent by registered or certified mail, return receipt requested, or delivered in person, unless the notice is waived in writing by the person to whom notice is required to be given.

Sec. 112.075. WRITTEN INSTRUMENT REQUIRED.

Sec. 112.075. Substantially the same as introduced version, but makes a technical

Sec. 112.076. REFERENCE TO TRUST TERMS.

Sec. 112.077. SETTLOR OF SECOND TRUST.

Sec. 112.078. COURT-ORDERED DISTRIBUTION. (a) The trustee may petition a court to order a distribution under this subchapter if the power to make a distribution under this subchapter is unavailable for any reason.

(b) If the trustee receives a written objection to a distribution under this subchapter from a beneficiary before the proposed effective date of the distribution specified in the notice provided to the beneficiary under Section 112.074, the trustee or the beneficiary may petition a court to approve, modify, or deny the exercise of the trustee's power to make a distribution under this subchapter.

The trustee has the burden of proving that the proposed exercise of the power furthers the purposes of the trust.

(c) In a judicial proceeding under this section, the trustee may present the trustee's reasons for supporting or opposing a proposed distribution, including whether the trustee believes the distribution would enable the trustee to better carry out the purposes of the trust.

(d) A trustee's actions under this subchapter may not be considered improper or inconsistent with the trustee's duty of impartiality unless the court finds, based on all the evidence, that the trustee acted in bad faith.

Sec. 112.079. TERM OF SECOND TRUST. A second trust may have a term that is

correction.

Sec. 112.076. REFERENCE TO TRUST TERMS.

Sec. 112.077. SETTLOR OF SECOND TRUST.

Sec. 112.078. COURT-ORDERED DISTRIBUTION. (a) An authorized trustee may petition a court to order a distribution under this subchapter.

(b) If the authorized trustee receives a written objection to a distribution under this subchapter from a beneficiary before the proposed effective date of the distribution specified in the notice provided to the beneficiary under Section 112.074, the trustee or the beneficiary may petition a court to approve, modify, or deny the exercise of the trustee's power to make a distribution under this subchapter.

(e) The authorized trustee has the burden of proving that the proposed distribution furthers the purposes of the trust, is in accordance with the terms of the trust, and is in the interests of the beneficiaries.

(c) If the authorized trustee receives a written objection to the distribution from the attorney general not later than the 30th day after the date the notice required by Section 112.074 was received by the attorney general, the trustee may not make a distribution under Section 112.072 or 112.073 without petitioning a court to approve or modify the exercise of the trustee's power to make a distribution under this subchapter.

(d) In a judicial proceeding under this section, the authorized trustee may present the trustee's reasons for supporting or opposing a proposed distribution, including whether the trustee believes the distribution would enable the trustee to better carry out the purposes of the trust.

No equivalent provision

longer than the term of a first trust whose principal was distributed to the trust, including a term that is measured by the lifetime of a current beneficiary.

Sec. 112.080. DIVIDED DISCRETION.

Sec. 112.081. LATER DISCOVERED ASSETS.

Sec. 112.082. OTHER AUTHORITY TO DISTRIBUTE IN FURTHER TRUST NOT LIMITED.

Sec. 112.083. NEED FOR DISTRIBUTION NOT REQUIRED.

Sec. 112.084. DUTIES NOT CREATED.

Sec. 112.085. CERTAIN DISTRIBUTIONS PROHIBITED.

Sec. 112.086. EXCEPTIONS TO POWER OF DISTRIBUTION. An authorized trustee may not exercise a power to distribute principal of a trust under Section 112.072 or 112.073 to:

(1) reduce, limit, or modify a beneficiary's current, vested right to:

(A) receive a mandatory distribution of income or principal;

(B) receive a mandatory annuity or unitrust interest;

(C) withdraw a percentage of the value of the trust; or

(D) withdraw a specified dollar amount from the trust;

(2) decrease or indemnify against a trustee's liability or exonerate a trustee from liability for failure to exercise reasonable care, diligence, and prudence;

(3) eliminate a provision granting another person the right to remove or replace the authorized trustee exercising the distribution power under Section 112.072 or 112.073; or

(4) reduce, limit, or modify in the second trust a perpetuities provision included in the first trust, unless expressly permitted by the terms of the first trust.

Sec. 112.079. DIVIDED DISCRETION.

Sec. 112.080. LATER DISCOVERED ASSETS.

Sec. 112.081. Substantially the same as introduced version, but makes a technical correction.

Sec. 112.082. NEED FOR DISTRIBUTION NOT REQUIRED.

Sec. 112.083. Substantially the same as introduced version, but makes a technical correction.

Sec. 112.084. CERTAIN DISTRIBUTIONS PROHIBITED.

Sec. 112.085. EXCEPTIONS TO POWER OF DISTRIBUTION. An authorized trustee may not exercise a power to distribute principal of a trust under Section 112.072 or 112.073 to:

(1) reduce, limit, or modify a beneficiary's current, vested right to:

(A) receive a mandatory distribution of income or principal;

(B) receive a mandatory annuity or unitrust interest;

(C) withdraw a percentage of the value of the trust; or

(D) withdraw a specified dollar amount from the trust;

(2) materially impair the rights of any beneficiary of the trust;

(3) materially limit a trustee's fiduciary duty under the trust or as described by Section 111.0035;

(4) decrease or indemnify against a trustee's liability or exonerate a trustee from liability for failure to exercise reasonable care, diligence, and prudence;

(5) eliminate a provision granting another person the right to remove or replace the authorized trustee exercising the distribution power under Section 112.072 or 112.073; or

(6) reduce, limit, or modify in the second trust a perpetuities provision included in the

Sec. 112.087. TAX-RELATED

LIMITATIONS. (a) The authorized trustee may not distribute the principal of a trust under Section 112.072 or 112.073 in a manner that would prevent a contribution to that trust from qualifying for or reducing the exclusion, deduction, or other federal tax benefit that was originally claimed for that contribution, including:

(1) the annual exclusion under Section 2503(b), Internal Revenue Code of 1986;

(2) a marital deduction under Section 2056(a) or 2523(a), Internal Revenue Code of 1986;

(3) the charitable deduction under Section 170(a), 642(c), 2055(a), or 2522(a), Internal Revenue Code of 1986;

(4) direct skip treatment under Section 2642(c), Internal Revenue Code of 1986; or

(5) any other tax benefit for income, gift, estate, or generation-skipping transfer tax purposes under the Internal Revenue Code of 1986.

(b) Notwithstanding Subsection (a), an authorized trustee may distribute the principal of a first trust to a second trust regardless of whether the settlor of the first trust is treated as the owner of the second trust under Sections 671-679, Internal Revenue Code of 1986.

(c) If a trust owns Subchapter S Corporation stock, an authorized trustee may not distribute all or part of that stock under Section 112.072 or 112.073 to a second trust that is not a permitted shareholder under Section 1361(c)(2), Internal Revenue Code of 1986.

(d) If a trust owns an interest in property that is subject to the minimum distribution rules of Section 401(a)(9), Internal Revenue Code of 1986, an authorized trustee may not distribute the trust's interest in the property to a second trust under Section 112.072 or 112.073 if the distribution would shorten the minimum distribution period applicable to the property.

Sec. 112.088. COMPENSATION OF TRUSTEE.

Sec. 112.089. LIABILITY OF TRUSTEE FOR ACTS OR OMISSIONS. (a) A trustee who reasonably and in good faith takes or omits to take any action under this

first trust, unless expressly permitted by the terms of the first trust.

Sec. 112.086. TAX-RELATED

LIMITATIONS. (a) The authorized trustee may not distribute the principal of a trust under Section 112.072 or 112.073 in a manner that would prevent a contribution to that trust from qualifying for or that would reduce the exclusion, deduction, or other federal tax benefit that was originally claimed for that contribution, including:

(1) the annual exclusion under Section 2503(b), Internal Revenue Code of 1986;

(2) a marital deduction under Section 2056(a) or 2523(a), Internal Revenue Code of 1986;

(3) the charitable deduction under Section 170(a), 642(c), 2055(a), or 2522(a), Internal Revenue Code of 1986;

(4) direct skip treatment under Section 2642(c), Internal Revenue Code of 1986; or

(5) any other tax benefit for income, gift, estate, or generation-skipping transfer tax purposes under the Internal Revenue Code of 1986.

(b) Notwithstanding Subsection (a), an authorized trustee may distribute the principal of a first trust to a second trust regardless of whether the settlor is treated as the owner of either or both trusts under Sections 671-679, Internal Revenue Code of 1986.

(c) If S corporation stock is held in trust, an authorized trustee may not distribute all or part of that stock under Section 112.072 or 112.073 to a second trust that is not a permitted shareholder under Section 1361(c)(2), Internal Revenue Code of 1986.

(d) If an interest in property that is subject to the minimum distribution rules of Section 401(a)(9), Internal Revenue Code of 1986, is held in trust, an authorized trustee may not distribute the trust's interest in the property to a second trust under Section 112.072 or 112.073 if the distribution would shorten the minimum distribution period applicable to the property.

Sec. 112.087. Substantially the same as introduced version, but makes technical corrections.

**No equivalent provision**

subchapter is not liable for the act or omission to any person interested in the trust. An act or omission by a trustee under this subchapter is rebuttably presumed to have been taken or omitted reasonably and in good faith.

(b) If a person interested in the trust opposes an act or omission of a trustee under this subchapter, the person's exclusive remedy is to obtain a court order directing the trustee to act as the court determines necessary or beneficial for the proper functioning of the trust, including to modify or reverse a previous action of the trustee.

(c) A person interested in a trust must bring a suit claiming that an act or omission by a trustee under this subchapter was an abuse of discretion not later than two years after the date the trustee provided the person or the person's representative with a written notice or report that sufficiently discloses facts fundamental to the claim so that the person knew or reasonably should have known of the claim.

(d) If a person otherwise entitled to bring an action that is subject to the limitations period provided by Subsection (c) is, at the time the notice or report was provided, under a legal disability and does not at that time have a personal representative appointed by a court as the guardian of the person's estate, the time during which the person is under that disability and unrepresented is not included in the limitations period.

SECTION 4. Section 113.029, Property Code, is amended.

No equivalent provision.

subchapter is not liable for the act or omission to any person interested in the trust. An act or omission by a trustee under this subchapter is rebuttably presumed to have been taken or omitted reasonably and in good faith.

(b) If a person interested in the trust opposes an act or omission of a trustee under this subchapter, the person's exclusive remedy is to obtain a court order directing the trustee to act as the court determines necessary or beneficial for the proper functioning of the trust, including to modify or reverse a previous action of the trustee.

(c) A person interested in a trust must bring a suit claiming that an act or omission by a trustee under this subchapter was an abuse of discretion not later than two years after the date the trustee provided the person or the person's representative with a written notice or report that sufficiently discloses facts fundamental to the claim so that the person knew or reasonably should have known of the claim.

(d) If a person otherwise entitled to bring an action that is subject to the limitations period provided by Subsection (c) is, at the time the notice or report was provided, under a legal disability and does not at that time have a personal representative appointed by a court as the guardian of the person's estate, the time during which the person is under that disability and unrepresented is not included in the limitations period.

SECTION 4. Same as introduced version.

SECTION 5. Section 115.002, Property Code, is amended by adding Subsections (b-1) and (b-2) and amending Subsections (c), (c-1), and (f) to read as follows:

(b-1) If there are multiple noncorporate trustees and the trustees maintain a principal office in this state, an action shall be brought in the county in which:

(1) the situs of administration of the trust is maintained or has been maintained at any time during the four-year period preceding the date the action is filed; or

(2) the trustees maintain the principal office.

(b-2) If there are multiple noncorporate trustees and the trustees do not maintain a principal office in this state, an action shall

be brought in the county in which:

(1) the situs of administration of the trust is maintained or has been maintained at any time during the four-year period preceding the date the action is filed; or

(2) any trustee resides or has resided at any time during the four-year period preceding the date the action is filed.

(c) If there are one or more corporate trustees [~~multiple trustees or a corporate trustee~~], an action shall be brought in the county in which:

(1) the situs of administration of the trust is maintained or has been maintained at any time during the four-year period preceding the date the action is filed; or

(2) any [~~provided that an action against a corporate trustee as defendant may be brought in the county in which the~~] corporate trustee maintains its principal office in this state.

(c-1) Notwithstanding Subsections (b), (b-1), (b-2), 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), (b-1), (b-2), or (c); or

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

(f) For the purposes of this section:

(1) "Corporate trustee" means an entity organized as a financial institution or a corporation with the authority to act in a fiduciary capacity.

(2) "Principal office" means:

(A) if there are one or more corporate trustees, an office of a corporate trustee in this state where the decision makers for the corporate trustee within this state conduct the daily affairs of the corporate trustee; or

(B) if there are multiple trustees, none of which is a corporate trustee, an office in this state that is not maintained within the personal residence of any trustee, and in which one or more trustees conducts the daily affairs of the trustees.

(2-a) The mere presence of an agent or representative of a [~~the corporate~~] trustee does not establish a principal office as defined by Subdivision (2). The principal office of a [~~the~~] corporate trustee or the

SECTION 5. Section 11.13(j), Tax Code, is amended.

SECTION 6. Section 152.025(a), Tax Code, is amended to read as follows:

(a) A tax is imposed on the recipient of a gift of a motor vehicle. This section applies only if the person receiving the motor vehicle:

(1) receives the vehicle from:

(A) the person's:

(i) spouse;

(ii) parent or stepparent;

(iii) grandparent or grandchild;

(iv) child or stepchild;

(v) sibling; or

(vi) guardian; [øø]

(B) a decedent's estate;

(C) a trust that was revocable by a decedent or that was jointly revocable by a decedent and the decedent's spouse; or

(D) a trust that is revocable by the person receiving the motor vehicle or that is jointly revocable by the recipient and the recipient's spouse;

(2) is a trust that is revocable by the transferor of the motor vehicle or that is jointly revocable by the transferor and the transferor's spouse; or

(3) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization under Section 501(c)(3) of that code, and the vehicle will be used for the purposes of the organization.

principal office maintained by multiple noncorporate trustees may also be but is not necessarily the same as the situs of administration of the trust.

(3) "Situs of administration" means the location in this state where the trustee maintains the office that is primarily responsible for dealing with the settlor and beneficiaries of the trust. The situs of administration may also be but is not necessarily the same as the principal office of a corporate trustee or the principal office maintained by multiple noncorporate trustees.

SECTION 6. Same as introduced version.

SECTION 7. Section 152.025(a), Tax Code, is amended to read as follows:

(a) A tax is imposed on the recipient of a gift of a motor vehicle. This section applies only if the person receiving the motor vehicle:

(1) receives the vehicle from:

(A) the person's:

(i) spouse;

(ii) parent or stepparent;

(iii) grandparent or grandchild;

(iv) child or stepchild;

(v) sibling; or

(vi) guardian; [øø]

(B) a decedent's estate;

(C) a trust subject to the Texas Trust Code (Subtitle B, Title 9, Property Code) that was revocable by a decedent or that was jointly revocable by a decedent and the decedent's spouse; or

(D) a trust subject to the Texas Trust Code that is revocable by the person receiving the motor vehicle or that is jointly revocable by the recipient and the recipient's spouse;

(2) is a trust subject to the Texas Trust Code that is revocable by the transferor of the motor vehicle or that is jointly revocable by the transferor and the transferor's spouse; or

(3) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization under Section 501(c)(3) of that code, and the vehicle will be used for the purposes of the organization.

No equivalent provision.

SECTION 7. (a) Except as otherwise expressly provided by a trust, a will creating a trust, or this section, the changes in law made by this Act apply to a trust existing or created on or after September 1, 2013.

(b) For a trust existing on September 1, 2013, that was created before that date, the changes in law made by this Act apply only to an act or omission relating to the trust that occurs on or after September 1, 2013.

SECTION 8. This Act takes effect September 1, 2013.

SECTION 8. The legislature intends Subchapter D, Chapter 112, Property Code, as added by this Act, to be a codification of the common law of this state in effect before the effective date of this Act.

SECTION 9. (a) Except as otherwise expressly provided by a trust, a will creating a trust, or this section, the changes in law made by this Act apply to a trust existing or created on or after September 1, 2013.

(b) For a trust existing on September 1, 2013, that was created before that date, the changes in law made by this Act apply only to an act or omission relating to the trust that occurs on or after September 1, 2013.

(c) Section 115.002, Property Code, as amended by this Act, applies only to a court action commenced on or after the effective date of this Act. An action commenced before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

SECTION 10. Same as introduced version.