

By: Thompson of Harris

H.B. No. 2913

A BILL TO BE ENTITLED

AN ACT

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relating to trusts.

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

SECTION 1. Section 111.004(12), Property Code, is amended to read as follows:

(12) "Property" means any type of property, whether real, tangible or intangible, legal, or equitable, including property held in any digital or electronic medium. The term also includes choses in action, claims, and contract rights, including a contractual right to receive death benefits as designated beneficiary under a policy of insurance, contract, employees' trust, retirement account, or other arrangement.

SECTION 2. Section 112.035, Property Code, is amended by amending Subsection (d) and adding Subsections (g) and (h) to read as follows:

(d) If the settlor is also a beneficiary of the trust, a provision restraining the voluntary or involuntary transfer of the settlor's beneficial interest does not prevent the settlor's creditors from satisfying claims from the settlor's interest in the trust estate. A settlor is not considered a beneficiary of a trust solely because:

(1) a trustee who is not the settlor is authorized under the trust instrument to pay or reimburse the settlor for, or pay directly to the taxing authorities, any tax on trust income or

1 principal that is payable by the settlor under the law imposing the
2 tax; or

3 (2) the settlor's interest in the trust was created by
4 the exercise of a power of appointment by a third party.

5 (g) For the purposes of this section, property contributed
6 to the following trusts is not considered to have been contributed
7 by the settlor, and a person who would otherwise be treated as a
8 settlor or a deemed settlor of the following trusts may not be
9 treated as a settlor:

10 (1) an irrevocable inter vivos marital trust if:

11 (A) the settlor is a beneficiary of the trust
12 after the death of the settlor's spouse; and

13 (B) the trust is treated as:

14 (i) qualified terminable interest property
15 under Section 2523(f), Internal Revenue Code of 1986; or

16 (ii) a general power of appointment trust
17 under Section 2523(e), Internal Revenue Code of 1986;

18 (2) an irrevocable inter vivos trust for the settlor's
19 spouse if the settlor is a beneficiary of the trust after the death
20 of the settlor's spouse; or

21 (3) an irrevocable trust for the benefit of a person:

22 (A) if the settlor is the person's spouse,
23 regardless of whether or when the person was the settlor of an
24 irrevocable trust for the benefit of that spouse; or

25 (B) to the extent that the property of the trust
26 was subject to a general power of appointment in another person.

27 (h) For the purposes of Subsection (g), a person is a

1 beneficiary whether named a beneficiary:

2 (1) under the initial trust instrument; or

3 (2) through the exercise of a limited or general power

4 of appointment by:

5 (A) that person's spouse; or

6 (B) another person.

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

9 SUBCHAPTER D. DISTRIBUTION OF TRUST PRINCIPAL IN FURTHER TRUST

10 Sec. 112.071. DEFINITIONS. In this subchapter:

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

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

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

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

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

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

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

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

12 (A) the trust terminated on that date; or

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

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

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

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

27 Sec. 112.072. DISTRIBUTION TO SECOND TRUST: TRUSTEE WITH

1 FULL DISCRETION. (a) An authorized trustee who has the full
2 discretion to distribute the principal of a trust may distribute
3 all or part of the principal of that trust in favor of a trustee of a
4 second trust for the benefit of one or more current beneficiaries of
5 the first trust who are eligible to receive income or principal from
6 the trust and for the benefit of one or more successor or
7 presumptive remainder beneficiaries of the first trust who are
8 eligible to receive income or principal from the trust.

9 (b) The authorized trustee may, in connection with the
10 exercise of a power of distribution under this section, grant a
11 power of appointment, including a currently exercisable power of
12 appointment, in the second trust to one or more of the current
13 beneficiaries of the first trust who, at the time the power of
14 appointment is granted, is eligible to receive the principal
15 outright under the terms of the first trust.

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

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

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

1 beneficiaries.

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

7 (b) The current beneficiaries of the second trust must be
8 the same as the current beneficiaries of the first trust, and the
9 successor and presumptive remainder beneficiaries of the second
10 trust must be the same as the successor and presumptive remainder
11 beneficiaries of the first trust.

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

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

19 (e) If the first trust grants a power of appointment to a
20 beneficiary of the trust, the second trust must grant the power of
21 appointment to the beneficiary in the second trust, and the class of
22 permissible appointees under that power must be the same as the
23 class of permissible appointees under the power granted by the
24 first trust.

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

1 beneficiaries.

2 Sec. 112.074. NOTICE REQUIRED. (a) An authorized trustee
3 may exercise a power of distribution under Section 112.072 or
4 112.073 without the consent of the settlor or beneficiaries of the
5 first trust and without court approval if the trustee provides to
6 all of the current beneficiaries and presumptive remainder
7 beneficiaries written notice of the trustee's decision to exercise
8 the power.

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

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

17 (1) a charity is entitled to notice;

18 (2) a charity entitled to notice is no longer in
19 existence;

20 (3) the trustee has the authority to distribute trust
21 assets to one or more charities that are not named in the trust
22 instrument; or

23 (4) the trustee has the authority to make
24 distributions for a charitable purpose described in the trust
25 instrument, but no charity is named as a beneficiary for that
26 purpose.

27 (d) If the beneficiary has a court-appointed guardian or

1 conservator, the notice required to be given by this section must be
2 given to that guardian or conservator. If the beneficiary is a
3 minor for whom no guardian or conservator has been appointed, the
4 notice required to be given by this section must be given to a
5 parent of the minor.

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

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

10 (2) is not known to the trustee;

11 (3) waives the requirement of the notice under this
12 section; or

13 (4) is a descendant of a beneficiary to whom the
14 trustee has given notice if the beneficiary and the beneficiary's
15 ancestor have similar interests in the trust and no apparent
16 conflict of interest exists between them.

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

18 (1) include a statement that:

19 (A) the authorized trustee intends to exercise
20 the power of distribution;

21 (B) the beneficiary has the right to object to
22 the exercise of the power; and

23 (C) the beneficiary may petition a court to
24 approve, modify, or deny the exercise of the trustee's power to make
25 a distribution under this subchapter;

26 (2) describe the manner in which the trustee intends
27 to exercise the power;

1 (3) specify the date the trustee proposes to
2 distribute the first trust to the second trust;

3 (4) include the name and mailing address of the
4 trustee;

5 (5) include copies of the agreements of the first
6 trust and the proposed second trust;

7 (6) be given not later than the 30th day before the
8 proposed date of distribution to the second trust; and

9 (7) be sent by registered or certified mail, return
10 receipt requested, or delivered in person, unless the notice is
11 waived in writing by the person to whom notice is required to be
12 given.

13 Sec. 112.075. WRITTEN INSTRUMENT REQUIRED. A distribution
14 under Section 112.072 or 112.073 must be made by a written
15 instrument that is signed and acknowledged by the authorized
16 trustee and filed with the records of the first trust and the second
17 trust.

18 Sec. 112.076. REFERENCE TO TRUST TERMS. A reference to the
19 governing instrument or terms of the governing instrument of a
20 trust includes the terms of a second trust to which that trust's
21 principal was distributed under this subchapter.

22 Sec. 112.077. SETTLOR OF SECOND TRUST. (a) Except as
23 provided by Subsection (b), the settlor of a first trust is
24 considered to be the settlor of a second trust established under
25 this subchapter.

26 (b) If a settlor of a first trust is not also the settlor of
27 a second trust into which principal of that first trust is

1 distributed, the settlor of the first trust is considered the
2 settlor of the portion of the second trust distributed to the second
3 trust from that first trust under this subchapter.

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

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

14 (c) If the authorized trustee receives a written objection
15 to the distribution from the attorney general not later than the
16 30th day after the date the notice required by Section 112.074 was
17 received by the attorney general, the trustee may not make a
18 distribution under Section 112.072 or 112.073 without petitioning a
19 court to approve or modify the exercise of the trustee's power to
20 make a distribution under this subchapter.

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

26 (e) The authorized trustee has the burden of proving that
27 the proposed distribution furthers the purposes of the trust, is in

1 accordance with the terms of the trust, and is in the interests of
2 the beneficiaries.

3 Sec. 112.079. DIVIDED DISCRETION. If an authorized trustee
4 has full discretion to distribute the principal of a trust and
5 another trustee has limited discretion to distribute principal
6 under the trust instrument, the authorized trustee having full
7 discretion may exercise the power to distribute the trust's
8 principal under Section 112.072.

9 Sec. 112.080. LATER DISCOVERED ASSETS. To the extent the
10 authorized trustee does not provide otherwise:

11 (1) the distribution of all of the principal of a first
12 trust to a second trust includes subsequently discovered assets
13 otherwise belonging to the first trust and principal paid to or
14 acquired by the first trust after the distribution of the first
15 trust's principal to the second trust; and

16 (2) the distribution of part of the principal of a
17 first trust to a second trust does not include subsequently
18 discovered assets belonging to the first trust or principal paid to
19 or acquired by the first trust after the distribution of principal
20 from the first trust to the second trust, and those assets or that
21 principal remain the assets or principal of the first trust.

22 Sec. 112.081. OTHER AUTHORITY TO DISTRIBUTE IN FURTHER
23 TRUST NOT LIMITED. This subchapter may not be construed to limit
24 the power of an authorized trustee to distribute property in
25 further trust under the terms of the governing instrument of a
26 trust, other law, or a court order.

27 Sec. 112.082. NEED FOR DISTRIBUTION NOT REQUIRED. An

1 authorized trustee may exercise the power to distribute principal
2 to a second trust under Section 112.072 or 112.073 regardless of
3 whether there is a current need to distribute principal under the
4 terms of the first trust.

5 Sec. 112.083. DUTIES NOT CREATED. (a) This subchapter does
6 not create or imply a duty for an authorized trustee to exercise a
7 power to distribute principal, and impropriety may not be inferred
8 as a result of the trustee not exercising a power conferred by
9 Section 112.072 or 112.073.

10 (b) An authorized trustee does not have a duty to inform
11 beneficiaries about the availability of the authority provided by
12 this subchapter or a duty to review the trust to determine whether
13 any action should be taken under this subchapter.

14 Sec. 112.084. CERTAIN DISTRIBUTIONS PROHIBITED. (a)
15 Except as provided by Subsection (b), an authorized trustee may not
16 exercise a power to distribute principal of a trust otherwise
17 provided by Section 112.072 or 112.073 if the distribution is
18 expressly prohibited by the terms of the governing instrument of
19 the trust.

20 (b) A general prohibition of the amendment or revocation of
21 a trust or a provision that constitutes a spendthrift clause does
22 not preclude the exercise of a power to distribute principal of a
23 trust under Section 112.072 or 112.073.

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

27 (1) reduce, limit, or modify a beneficiary's current,

1 vested right to:

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

4 (B) receive a mandatory annuity or unitrust
5 interest;

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

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

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

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

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

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

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

23 Sec. 112.086. TAX-RELATED LIMITATIONS. (a) The authorized
24 trustee may not distribute the principal of a trust under Section
25 112.072 or 112.073 in a manner that would prevent a contribution to
26 that trust from qualifying for or that would reduce the exclusion,
27 deduction, or other federal tax benefit that was originally claimed

1 for that contribution, including:

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

4 (2) a marital deduction under Section 2056(a) or
5 2523(a), Internal Revenue Code of 1986;

6 (3) the charitable deduction under Section 170(a),
7 642(c), 2055(a), or 2522(a), Internal Revenue Code of 1986;

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

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

13 (b) Notwithstanding Subsection (a), an authorized trustee
14 may distribute the principal of a first trust to a second trust
15 regardless of whether the settlor is treated as the owner of either
16 or both trusts under Sections 671-679, Internal Revenue Code of
17 1986.

18 (c) If S corporation stock is held in trust, an authorized
19 trustee may not distribute all or part of that stock under Section
20 112.072 or 112.073 to a second trust that is not a permitted
21 shareholder under Section 1361(c)(2), Internal Revenue Code of
22 1986.

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

1 the minimum distribution period applicable to the property.

2 Sec. 112.087. COMPENSATION OF TRUSTEE. (a) Except as
3 provided by Subsection (b) and unless a court, on application of the
4 authorized trustee, directs otherwise, the trustee may not exercise
5 a power under Section 112.072 or 112.073 solely to change trust
6 provisions regarding the determination of the compensation of any
7 trustee.

8 (b) An authorized trustee, in connection with the exercise
9 of a power under Section 112.072 or 112.073 for another valid and
10 reasonable purpose, may bring the trustee's compensation into
11 conformance with reasonable limits authorized by state law.

12 (c) The compensation payable to an authorized trustee of the
13 first trust may continue to be paid to the trustee of the second
14 trust during the term of the second trust and may be determined in
15 the same manner as the compensation would have been determined in
16 the first trust.

17 (d) An authorized trustee may not receive a commission or
18 other compensation for the distribution of a particular asset from
19 a first trust to a second trust under Section 112.072 or 112.073.

20 SECTION 4. Section 113.029, Property Code, is amended by
21 amending Subsection (b) and adding Subsection (e) to read as
22 follows:

23 (b) Subject to Subsection (d), and unless the terms of the
24 trust expressly indicate that a requirement provided by this
25 subsection does not apply:

26 (1) a person, other than a settlor, who is a
27 beneficiary and trustee, trustee affiliate, or discretionary power

1 holder of a trust that confers on the trustee a power to make
2 discretionary distributions to or for the trustee's, the trustee
3 affiliate's, or the discretionary power holder's personal benefit
4 may exercise the power only in accordance with an ascertainable
5 standard relating to the trustee's, the trustee affiliate's, or the
6 discretionary power holder's individual health, education,
7 support, or maintenance within the meaning of Section 2041(b)(1)(A)
8 or 2514(c)(1), Internal Revenue Code of 1986; and

9 (2) a trustee may not exercise a power to make
10 discretionary distributions to satisfy a legal obligation of
11 support that the trustee personally owes another person.

12 (e) In this section, "discretionary power holder" means a
13 person who has the sole power or power shared with another person to
14 make discretionary decisions on behalf of a trustee with respect to
15 distributions from a trust.

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

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

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

25 (2) the trustees maintain the principal office.

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

1 shall be brought in the county in which:

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

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

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

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

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

16 (c-1) Notwithstanding Subsections (b), (b-1), (b-2), and
17 (c), if the settlor is deceased and an administration of the
18 settlor's estate is pending in this state, an action involving the
19 interpretation and administration of an inter vivos trust created
20 by the settlor or a testamentary trust created by the settlor's will
21 may be brought:

22 (1) in a county in which venue is proper under
23 Subsection (b), (b-1), (b-2), or (c); or

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

26 (f) For the purposes of this section:

27 (1) "Corporate trustee" means an entity organized as a

1 financial institution or a corporation with the authority to act in
2 a fiduciary capacity.

3 (2) "Principal office" means:

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

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

13 (2-a) The mere presence of an agent or representative
14 of a [the corporate] trustee does not establish a principal office
15 as defined by Subdivision (2). The principal office of a [the]
16 corporate trustee or the principal office maintained by multiple
17 noncorporate trustees may also be but is not necessarily the same as
18 the situs of administration of the trust.

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

26 SECTION 6. Section 11.13(j), Tax Code, is amended to read as
27 follows:

1 (j) For purposes of this section:

2 (1) "Residence homestead" means a structure
3 (including a mobile home) or a separately secured and occupied
4 portion of a structure (together with the land, not to exceed 20
5 acres, and improvements used in the residential occupancy of the
6 structure, if the structure and the land and improvements have
7 identical ownership) that:

8 (A) is owned by one or more individuals, either
9 directly or through a beneficial interest in a qualifying trust;

10 (B) is designed or adapted for human residence;

11 (C) is used as a residence; and

12 (D) is occupied as the individual's [~~his~~]
13 principal residence by an owner or, for property owned through a
14 beneficial interest in a qualifying trust, by a trustor or
15 beneficiary of the trust who qualifies for the exemption.

16 (2) "Trustor" means a person who transfers an interest
17 in real or personal [~~residential~~] property to a qualifying trust,
18 whether during the person's lifetime or at death [~~by deed or by~~
19 ~~will~~], or the person's spouse.

20 (3) "Qualifying trust" means a trust:

21 (A) in which the agreement, will, or court order
22 creating the trust, an instrument transferring property to the
23 trust, or any other agreement that is binding on the trustee
24 provides that the trustor of the trust or a [~~the~~] beneficiary of the
25 trust [~~if created by court order~~] has the right to use and occupy as
26 the trustor's or beneficiary's principal residence residential
27 property rent free and without charge except for taxes and other

1 costs and expenses specified in the instrument or court order:

2 (i) for life;

3 (ii) for the lesser of life or a term of
4 years; or

5 (iii) until the date the trust is revoked or
6 terminated by an instrument or court order that describes the
7 property with sufficient certainty to identify it and is recorded
8 in the real property records of the county in which the property is
9 located; and

10 (B) that acquires the property in an instrument
11 of title or under a court order that:

12 (i) describes the property with sufficient
13 certainty to identify it and the interest acquired; and

14 (ii) is recorded in the real property
15 records of the county in which the property is located[~~and~~

16 [~~(iii) in the case of a trust that is not~~
17 ~~created by court order, is executed by the trustor or the personal~~
18 ~~representative of the trustor].~~

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

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

24 (1) receives the vehicle from:

25 (A) the person's:

26 (i) spouse;

27 (ii) parent or stepparent;

1 (iii) grandparent or grandchild;

2 (iv) child or stepchild;

3 (v) sibling; or

4 (vi) guardian; [~~or~~]

5 (B) a decedent's estate;

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

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

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

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

20 SECTION 8. The legislature intends Subchapter D, Chapter
21 112, Property Code, as added by this Act, to be a codification of
22 the common law of this state in effect before the effective date of
23 this Act.

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

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

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

10 SECTION 10. This Act takes effect September 1, 2013.