

1-1 By: Thompson of Harris (Senate Sponsor - Rodriguez) H.B. No. 2913  
1-2 (In the Senate - Received from the House May 6, 2013;  
1-3 May 7, 2013, read first time and referred to Committee on  
1-4 Jurisprudence; May 20, 2013, reported favorably by the following  
1-5 vote: Yeas 4, Nays 0; May 20, 2013, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10			X	
1-11	X			
1-12	X			
1-13			X	
1-14			X	

1-15 A BILL TO BE ENTITLED  
1-16 AN ACT

1-17 relating to trusts.

1-18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-19 SECTION 1. Section 111.004(12), Property Code, is amended  
1-20 to read as follows:

1-21 (12) "Property" means any type of property, whether  
1-22 real, tangible or intangible, legal, or equitable, including  
1-23 property held in any digital or electronic medium. The term also  
1-24 includes choses in action, claims, and contract rights, including a  
1-25 contractual right to receive death benefits as designated  
1-26 beneficiary under a policy of insurance, contract, employees'  
1-27 trust, retirement account, or other arrangement.

1-28 SECTION 2. Section 112.035, Property Code, is amended by  
1-29 amending Subsection (d) and adding Subsections (g) and (h) to read  
1-30 as follows:

1-31 (d) If the settlor is also a beneficiary of the trust, a  
1-32 provision restraining the voluntary or involuntary transfer of the  
1-33 settlor's beneficial interest does not prevent the settlor's  
1-34 creditors from satisfying claims from the settlor's interest in the  
1-35 trust estate. A settlor is not considered a beneficiary of a trust  
1-36 solely because:

1-37 (1) a trustee who is not the settlor is authorized  
1-38 under the trust instrument to pay or reimburse the settlor for, or  
1-39 pay directly to the taxing authorities, any tax on trust income or  
1-40 principal that is payable by the settlor under the law imposing the  
1-41 tax; or

1-42 (2) the settlor's interest in the trust was created by  
1-43 the exercise of a power of appointment by a third party.

1-44 (g) For the purposes of this section, property contributed  
1-45 to the following trusts is not considered to have been contributed  
1-46 by the settlor, and a person who would otherwise be treated as a  
1-47 settlor or a deemed settlor of the following trusts may not be  
1-48 treated as a settlor:

1-49 (1) an irrevocable inter vivos marital trust if:

1-50 (A) the settlor is a beneficiary of the trust  
1-51 after the death of the settlor's spouse; and

1-52 (B) the trust is treated as:

1-53 (i) qualified terminable interest property  
1-54 under Section 2523(f), Internal Revenue Code of 1986; or

1-55 (ii) a general power of appointment trust  
1-56 under Section 2523(e), Internal Revenue Code of 1986;

1-57 (2) an irrevocable inter vivos trust for the settlor's  
1-58 spouse if the settlor is a beneficiary of the trust after the death  
1-59 of the settlor's spouse; or

1-60 (3) an irrevocable trust for the benefit of a person:

1-61 (A) if the settlor is the person's spouse,

2-1 regardless of whether or when the person was the settlor of an  
 2-2 irrevocable trust for the benefit of that spouse; or  
 2-3 (B) to the extent that the property of the trust  
 2-4 was subject to a general power of appointment in another person.

2-5 (h) For the purposes of Subsection (g), a person is a  
 2-6 beneficiary whether named a beneficiary:

2-7 (1) under the initial trust instrument; or  
 2-8 (2) through the exercise of a limited or general power  
 2-9 of appointment by:

2-10 (A) that person's spouse; or

2-11 (B) another person.

2-12 SECTION 3. Chapter 112, Property Code, is amended by adding  
 2-13 Subchapter D to read as follows:

2-14 SUBCHAPTER D. DISTRIBUTION OF TRUST PRINCIPAL IN FURTHER TRUST

2-15 Sec. 112.071. DEFINITIONS. In this subchapter:

2-16 (1) "Authorized trustee" means a person, other than  
 2-17 the settlor, who has authority under the terms of a first trust to  
 2-18 distribute the principal of the trust to or for the benefit of one  
 2-19 or more current beneficiaries.

2-20 (2) "Charity" means a charitable entity or a  
 2-21 charitable trust, as those terms are defined by Section 123.001.

2-22 (3) "Current beneficiary," with respect to a  
 2-23 particular date, means a person who is receiving or is eligible to  
 2-24 receive a distribution of income or principal from a trust on that  
 2-25 date.

2-26 (4) "First trust" means an existing irrevocable inter  
 2-27 vivos or testamentary trust all or part of the principal of which is  
 2-28 distributed in further trust under Section 112.072 or 112.073.

2-29 (5) "Full discretion" means the power to distribute  
 2-30 principal to or for the benefit of one or more of the beneficiaries  
 2-31 of a trust that is not limited or modified by the terms of the trust  
 2-32 in any way, including by restrictions that limit distributions to  
 2-33 purposes such as the best interests, welfare, or happiness of the  
 2-34 beneficiaries.

2-35 (6) "Limited discretion" means a limited or modified  
 2-36 power to distribute principal to or for the benefit of one or more  
 2-37 beneficiaries of a trust.

2-38 (7) "Presumptive remainder beneficiary," with respect  
 2-39 to a particular date, means a beneficiary of a trust on that date  
 2-40 who, in the absence of notice to the trustee of the exercise of the  
 2-41 power of appointment and assuming that any other powers of  
 2-42 appointment under the trust are not exercised, would be eligible to  
 2-43 receive a distribution from the trust if:

2-44 (A) the trust terminated on that date; or

2-45 (B) the interests of all beneficiaries currently  
 2-46 eligible to receive income or principal from the trust ended on that  
 2-47 date without causing the trust to terminate.

2-48 (8) "Principal" means property held in trust for  
 2-49 distribution to a remainder beneficiary when the trust terminates  
 2-50 and includes income of the trust that, at the time of the exercise  
 2-51 of a power of distribution under Section 112.072 or 112.073, is not  
 2-52 currently required to be distributed.

2-53 (9) "Second trust" means any irrevocable trust to  
 2-54 which principal is distributed under Section 112.072 or 112.073.

2-55 (10) "Successor beneficiary" means a beneficiary  
 2-56 other than a current or presumptive remainder beneficiary. The  
 2-57 term does not include a potential appointee under a power of  
 2-58 appointment held by a beneficiary.

2-59 Sec. 112.072. DISTRIBUTION TO SECOND TRUST: TRUSTEE WITH  
 2-60 FULL DISCRETION. (a) An authorized trustee who has the full  
 2-61 discretion to distribute the principal of a trust may distribute  
 2-62 all or part of the principal of that trust in favor of a trustee of a  
 2-63 second trust for the benefit of one or more current beneficiaries of  
 2-64 the first trust who are eligible to receive income or principal from  
 2-65 the trust and for the benefit of one or more successor or  
 2-66 presumptive remainder beneficiaries of the first trust who are  
 2-67 eligible to receive income or principal from the trust.

2-68 (b) The authorized trustee may, in connection with the  
 2-69 exercise of a power of distribution under this section, grant a

3-1 power of appointment, including a currently exercisable power of  
 3-2 appointment, in the second trust to one or more of the current  
 3-3 beneficiaries of the first trust who, at the time the power of  
 3-4 appointment is granted, is eligible to receive the principal  
 3-5 outright under the terms of the first trust.

3-6 (c) If the authorized trustee grants a power of appointment  
 3-7 to a beneficiary under Subsection (b), the class of permissible  
 3-8 appointees in whose favor the beneficiary may appoint under that  
 3-9 power may be broader or different than the current, successor, and  
 3-10 presumptive remainder beneficiaries of the first trust.

3-11 (d) If the beneficiaries of the first trust are described as  
 3-12 a class of persons, the beneficiaries of the second trust may  
 3-13 include one or more persons who become members of that class after  
 3-14 the distribution to the second trust.

3-15 (e) The authorized trustee shall exercise a power to  
 3-16 distribute under this section in good faith, in accordance with the  
 3-17 terms and purposes of the trust, and in the interests of the  
 3-18 beneficiaries.

3-19 Sec. 112.073. DISTRIBUTION TO SECOND TRUST: TRUSTEE WITH  
 3-20 LIMITED DISCRETION. (a) An authorized trustee who has limited  
 3-21 discretion to distribute the principal of a trust may distribute  
 3-22 all or part of the principal of that trust in favor of a trustee of a  
 3-23 second trust as provided by this section.

3-24 (b) The current beneficiaries of the second trust must be  
 3-25 the same as the current beneficiaries of the first trust, and the  
 3-26 successor and presumptive remainder beneficiaries of the second  
 3-27 trust must be the same as the successor and presumptive remainder  
 3-28 beneficiaries of the first trust.

3-29 (c) The second trust must include the same language  
 3-30 authorizing the trustee to distribute the income or principal of  
 3-31 the trust that was included in the first trust.

3-32 (d) If the beneficiaries of the first trust are described as  
 3-33 a class of persons, the beneficiaries of the second trust must  
 3-34 include all persons who become members of that class after the  
 3-35 distribution to the second trust.

3-36 (e) If the first trust grants a power of appointment to a  
 3-37 beneficiary of the trust, the second trust must grant the power of  
 3-38 appointment to the beneficiary in the second trust, and the class of  
 3-39 permissible appointees under that power must be the same as the  
 3-40 class of permissible appointees under the power granted by the  
 3-41 first trust.

3-42 (f) The authorized trustee shall exercise a power of  
 3-43 distribution under this section in good faith, in accordance with  
 3-44 the terms and purposes of the trust, and in the interests of the  
 3-45 beneficiaries.

3-46 Sec. 112.074. NOTICE REQUIRED. (a) An authorized trustee  
 3-47 may exercise a power of distribution under Section 112.072 or  
 3-48 112.073 without the consent of the settlor or beneficiaries of the  
 3-49 first trust and without court approval if the trustee provides to  
 3-50 all of the current beneficiaries and presumptive remainder  
 3-51 beneficiaries written notice of the trustee's decision to exercise  
 3-52 the power.

3-53 (b) For the purpose of determining who is a current  
 3-54 beneficiary or presumptive remainder beneficiary entitled to the  
 3-55 notice, a beneficiary is determined as of the date the notice is  
 3-56 sent. A beneficiary includes a person entitled to receive property  
 3-57 under the terms of the first trust.

3-58 (c) In addition to the notice required under Subsection (a),  
 3-59 the authorized trustee shall give written notice of the trustee's  
 3-60 decision to the attorney general if:

3-61 (1) a charity is entitled to notice;  
 3-62 (2) a charity entitled to notice is no longer in  
 3-63 existence;  
 3-64 (3) the trustee has the authority to distribute trust  
 3-65 assets to one or more charities that are not named in the trust  
 3-66 instrument; or

3-67 (4) the trustee has the authority to make  
 3-68 distributions for a charitable purpose described in the trust  
 3-69 instrument, but no charity is named as a beneficiary for that

4-1 purpose.

4-2 (d) If the beneficiary has a court-appointed guardian or  
 4-3 conservator, the notice required to be given by this section must be  
 4-4 given to that guardian or conservator. If the beneficiary is a  
 4-5 minor for whom no guardian or conservator has been appointed, the  
 4-6 notice required to be given by this section must be given to a  
 4-7 parent of the minor.

4-8 (e) The authorized trustee is not required to provide the  
 4-9 notice to a beneficiary who:

4-10 (1) is known to the trustee and cannot be located by  
 4-11 the trustee after reasonable diligence;

4-12 (2) is not known to the trustee;

4-13 (3) waives the requirement of the notice under this  
 4-14 section; or

4-15 (4) is a descendant of a beneficiary to whom the  
 4-16 trustee has given notice if the beneficiary and the beneficiary's  
 4-17 ancestor have similar interests in the trust and no apparent  
 4-18 conflict of interest exists between them.

4-19 (f) The notice required under Subsection (a) must:

4-20 (1) include a statement that:

4-21 (A) the authorized trustee intends to exercise  
 4-22 the power of distribution;

4-23 (B) the beneficiary has the right to object to  
 4-24 the exercise of the power; and

4-25 (C) the beneficiary may petition a court to  
 4-26 approve, modify, or deny the exercise of the trustee's power to make  
 4-27 a distribution under this subchapter;

4-28 (2) describe the manner in which the trustee intends  
 4-29 to exercise the power;

4-30 (3) specify the date the trustee proposes to  
 4-31 distribute the first trust to the second trust;

4-32 (4) include the name and mailing address of the  
 4-33 trustee;

4-34 (5) include copies of the agreements of the first  
 4-35 trust and the proposed second trust;

4-36 (6) be given not later than the 30th day before the  
 4-37 proposed date of distribution to the second trust; and

4-38 (7) be sent by registered or certified mail, return  
 4-39 receipt requested, or delivered in person, unless the notice is  
 4-40 waived in writing by the person to whom notice is required to be  
 4-41 given.

4-42 Sec. 112.075. WRITTEN INSTRUMENT REQUIRED. A distribution  
 4-43 under Section 112.072 or 112.073 must be made by a written  
 4-44 instrument that is signed and acknowledged by the authorized  
 4-45 trustee and filed with the records of the first trust and the second  
 4-46 trust.

4-47 Sec. 112.076. REFERENCE TO TRUST TERMS. A reference to the  
 4-48 governing instrument or terms of the governing instrument of a  
 4-49 trust includes the terms of a second trust to which that trust's  
 4-50 principal was distributed under this subchapter.

4-51 Sec. 112.077. SETTLOR OF SECOND TRUST. (a) Except as  
 4-52 provided by Subsection (b), the settlor of a first trust is  
 4-53 considered to be the settlor of a second trust established under  
 4-54 this subchapter.

4-55 (b) If a settlor of a first trust is not also the settlor of  
 4-56 a second trust into which principal of that first trust is  
 4-57 distributed, the settlor of the first trust is considered the  
 4-58 settlor of the portion of the second trust distributed to the second  
 4-59 trust from that first trust under this subchapter.

4-60 Sec. 112.078. COURT-ORDERED DISTRIBUTION. (a) An  
 4-61 authorized trustee may petition a court to order a distribution  
 4-62 under this subchapter.

4-63 (b) If the authorized trustee receives a written objection  
 4-64 to a distribution under this subchapter from a beneficiary before  
 4-65 the proposed effective date of the distribution specified in the  
 4-66 notice provided to the beneficiary under Section 112.074, the  
 4-67 trustee or the beneficiary may petition a court to approve, modify,  
 4-68 or deny the exercise of the trustee's power to make a distribution  
 4-69 under this subchapter.

5-1           (c) If the authorized trustee receives a written objection  
 5-2 to the distribution from the attorney general not later than the  
 5-3 30th day after the date the notice required by Section 112.074 was  
 5-4 received by the attorney general, the trustee may not make a  
 5-5 distribution under Section 112.072 or 112.073 without petitioning a  
 5-6 court to approve or modify the exercise of the trustee's power to  
 5-7 make a distribution under this subchapter.

5-8           (d) In a judicial proceeding under this section, the  
 5-9 authorized trustee may present the trustee's reasons for supporting  
 5-10 or opposing a proposed distribution, including whether the trustee  
 5-11 believes the distribution would enable the trustee to better carry  
 5-12 out the purposes of the trust.

5-13           (e) The authorized trustee has the burden of proving that  
 5-14 the proposed distribution furthers the purposes of the trust, is in  
 5-15 accordance with the terms of the trust, and is in the interests of  
 5-16 the beneficiaries.

5-17           Sec. 112.079. DIVIDED DISCRETION. If an authorized trustee  
 5-18 has full discretion to distribute the principal of a trust and  
 5-19 another trustee has limited discretion to distribute principal  
 5-20 under the trust instrument, the authorized trustee having full  
 5-21 discretion may exercise the power to distribute the trust's  
 5-22 principal under Section 112.072.

5-23           Sec. 112.080. LATER DISCOVERED ASSETS. To the extent the  
 5-24 authorized trustee does not provide otherwise:

5-25           (1) the distribution of all of the principal of a first  
 5-26 trust to a second trust includes subsequently discovered assets  
 5-27 otherwise belonging to the first trust and principal paid to or  
 5-28 acquired by the first trust after the distribution of the first  
 5-29 trust's principal to the second trust; and

5-30           (2) the distribution of part of the principal of a  
 5-31 first trust to a second trust does not include subsequently  
 5-32 discovered assets belonging to the first trust or principal paid to  
 5-33 or acquired by the first trust after the distribution of principal  
 5-34 from the first trust to the second trust, and those assets or that  
 5-35 principal remain the assets or principal of the first trust.

5-36           Sec. 112.081. OTHER AUTHORITY TO DISTRIBUTE IN FURTHER  
 5-37 TRUST NOT LIMITED. This subchapter may not be construed to limit  
 5-38 the power of an authorized trustee to distribute property in  
 5-39 further trust under the terms of the governing instrument of a  
 5-40 trust, other law, or a court order.

5-41           Sec. 112.082. NEED FOR DISTRIBUTION NOT REQUIRED. An  
 5-42 authorized trustee may exercise the power to distribute principal  
 5-43 to a second trust under Section 112.072 or 112.073 regardless of  
 5-44 whether there is a current need to distribute principal under the  
 5-45 terms of the first trust.

5-46           Sec. 112.083. DUTIES NOT CREATED. (a) This subchapter does  
 5-47 not create or imply a duty for an authorized trustee to exercise a  
 5-48 power to distribute principal, and impropriety may not be inferred  
 5-49 as a result of the trustee not exercising a power conferred by  
 5-50 Section 112.072 or 112.073.

5-51           (b) An authorized trustee does not have a duty to inform  
 5-52 beneficiaries about the availability of the authority provided by  
 5-53 this subchapter or a duty to review the trust to determine whether  
 5-54 any action should be taken under this subchapter.

5-55           Sec. 112.084. CERTAIN DISTRIBUTIONS PROHIBITED. (a)  
 5-56 Except as provided by Subsection (b), an authorized trustee may not  
 5-57 exercise a power to distribute principal of a trust otherwise  
 5-58 provided by Section 112.072 or 112.073 if the distribution is  
 5-59 expressly prohibited by the terms of the governing instrument of  
 5-60 the trust.

5-61           (b) A general prohibition of the amendment or revocation of  
 5-62 a trust or a provision that constitutes a spendthrift clause does  
 5-63 not preclude the exercise of a power to distribute principal of a  
 5-64 trust under Section 112.072 or 112.073.

5-65           Sec. 112.085. EXCEPTIONS TO POWER OF DISTRIBUTION. An  
 5-66 authorized trustee may not exercise a power to distribute principal  
 5-67 of a trust under Section 112.072 or 112.073 to:

5-68           (1) reduce, limit, or modify a beneficiary's current,  
 5-69 vested right to:

6-1 (A) receive a mandatory distribution of income or  
6-2 principal;  
6-3 (B) receive a mandatory annuity or unitrust  
6-4 interest;  
6-5 (C) withdraw a percentage of the value of the  
6-6 trust; or  
6-7 (D) withdraw a specified dollar amount from the  
6-8 trust;  
6-9 (2) materially impair the rights of any beneficiary of  
6-10 the trust;  
6-11 (3) materially limit a trustee's fiduciary duty under  
6-12 the trust or as described by Section 111.0035;  
6-13 (4) decrease or indemnify against a trustee's  
6-14 liability or exonerate a trustee from liability for failure to  
6-15 exercise reasonable care, diligence, and prudence;  
6-16 (5) eliminate a provision granting another person the  
6-17 right to remove or replace the authorized trustee exercising the  
6-18 distribution power under Section 112.072 or 112.073; or  
6-19 (6) reduce, limit, or modify in the second trust a  
6-20 perpetuities provision included in the first trust, unless  
6-21 expressly permitted by the terms of the first trust.  
6-22 Sec. 112.086. TAX-RELATED LIMITATIONS. (a) The authorized  
6-23 trustee may not distribute the principal of a trust under Section  
6-24 112.072 or 112.073 in a manner that would prevent a contribution to  
6-25 that trust from qualifying for or that would reduce the exclusion,  
6-26 deduction, or other federal tax benefit that was originally claimed  
6-27 for that contribution, including:  
6-28 (1) the annual exclusion under Section 2503(b),  
6-29 Internal Revenue Code of 1986;  
6-30 (2) a marital deduction under Section 2056(a) or  
6-31 2523(a), Internal Revenue Code of 1986;  
6-32 (3) the charitable deduction under Section 170(a),  
6-33 642(c), 2055(a), or 2522(a), Internal Revenue Code of 1986;  
6-34 (4) direct skip treatment under Section 2642(c),  
6-35 Internal Revenue Code of 1986; or  
6-36 (5) any other tax benefit for income, gift, estate, or  
6-37 generation-skipping transfer tax purposes under the Internal  
6-38 Revenue Code of 1986.  
6-39 (b) Notwithstanding Subsection (a), an authorized trustee  
6-40 may distribute the principal of a first trust to a second trust  
6-41 regardless of whether the settlor is treated as the owner of either  
6-42 or both trusts under Sections 671-679, Internal Revenue Code of  
6-43 1986.  
6-44 (c) If S corporation stock is held in trust, an authorized  
6-45 trustee may not distribute all or part of that stock under Section  
6-46 112.072 or 112.073 to a second trust that is not a permitted  
6-47 shareholder under Section 1361(c)(2), Internal Revenue Code of  
6-48 1986.  
6-49 (d) If an interest in property that is subject to the  
6-50 minimum distribution rules of Section 401(a)(9), Internal Revenue  
6-51 Code of 1986, is held in trust, an authorized trustee may not  
6-52 distribute the trust's interest in the property to a second trust  
6-53 under Section 112.072 or 112.073 if the distribution would shorten  
6-54 the minimum distribution period applicable to the property.  
6-55 Sec. 112.087. COMPENSATION OF TRUSTEE. (a) Except as  
6-56 provided by Subsection (b) and unless a court, on application of the  
6-57 authorized trustee, directs otherwise, the trustee may not exercise  
6-58 a power under Section 112.072 or 112.073 solely to change trust  
6-59 provisions regarding the determination of the compensation of any  
6-60 trustee.  
6-61 (b) An authorized trustee, in connection with the exercise  
6-62 of a power under Section 112.072 or 112.073 for another valid and  
6-63 reasonable purpose, may bring the trustee's compensation into  
6-64 conformance with reasonable limits authorized by state law.  
6-65 (c) The compensation payable to an authorized trustee of the  
6-66 first trust may continue to be paid to the trustee of the second  
6-67 trust during the term of the second trust and may be determined in  
6-68 the same manner as the compensation would have been determined in  
6-69 the first trust.

7-1 (d) An authorized trustee may not receive a commission or  
 7-2 other compensation for the distribution of a particular asset from  
 7-3 a first trust to a second trust under Section 112.072 or 112.073.

7-4 SECTION 4. Section 113.029, Property Code, is amended by  
 7-5 amending Subsection (b) and adding Subsection (e) to read as  
 7-6 follows:

7-7 (b) Subject to Subsection (d), and unless the terms of the  
 7-8 trust expressly indicate that a requirement provided by this  
 7-9 subsection does not apply:

7-10 (1) a person, other than a settlor, who is a  
 7-11 beneficiary and trustee, trustee affiliate, or discretionary power  
 7-12 holder of a trust that confers on the trustee a power to make  
 7-13 discretionary distributions to or for the trustee's, the trustee  
 7-14 affiliate's, or the discretionary power holder's personal benefit  
 7-15 may exercise the power only in accordance with an ascertainable  
 7-16 standard relating to the trustee's, the trustee affiliate's, or the  
 7-17 discretionary power holder's individual health, education,  
 7-18 support, or maintenance within the meaning of Section 2041(b)(1)(A)  
 7-19 or 2514(c)(1), Internal Revenue Code of 1986; and

7-20 (2) a trustee may not exercise a power to make  
 7-21 discretionary distributions to satisfy a legal obligation of  
 7-22 support that the trustee personally owes another person.

7-23 (e) In this section, "discretionary power holder" means a  
 7-24 person who has the sole power or power shared with another person to  
 7-25 make discretionary decisions on behalf of a trustee with respect to  
 7-26 distributions from a trust.

7-27 SECTION 5. Section 115.002, Property Code, is amended by  
 7-28 adding Subsections (b-1) and (b-2) and amending Subsections (c),  
 7-29 (c-1), and (f) to read as follows:

7-30 (b-1) If there are multiple noncorporate trustees and the  
 7-31 trustees maintain a principal office in this state, an action shall  
 7-32 be brought in the county in which:

7-33 (1) the situs of administration of the trust is  
 7-34 maintained or has been maintained at any time during the four-year  
 7-35 period preceding the date the action is filed; or

7-36 (2) the trustees maintain the principal office.

7-37 (b-2) If there are multiple noncorporate trustees and the  
 7-38 trustees do not maintain a principal office in this state, an action  
 7-39 shall be brought in the county in which:

7-40 (1) the situs of administration of the trust is  
 7-41 maintained or has been maintained at any time during the four-year  
 7-42 period preceding the date the action is filed; or

7-43 (2) any trustee resides or has resided at any time  
 7-44 during the four-year period preceding the date the action is filed.

7-45 (c) If there are one or more corporate trustees ~~[multiple~~  
 7-46 ~~trustees or a corporate trustee]~~, an action shall be brought in the  
 7-47 county in which:

7-48 (1) the situs of administration of the trust is  
 7-49 maintained or has been maintained at any time during the four-year  
 7-50 period preceding the date the action is filed; or

7-51 (2) any ~~[, provided that an action against a corporate~~  
 7-52 ~~trustee as defendant may be brought in the county in which the]~~  
 7-53 corporate trustee maintains its principal office in this state.

7-54 (c-1) Notwithstanding Subsections (b), (b-1), (b-2), and  
 7-55 (c), if the settlor is deceased and an administration of the  
 7-56 settlor's estate is pending in this state, an action involving the  
 7-57 interpretation and administration of an inter vivos trust created  
 7-58 by the settlor or a testamentary trust created by the settlor's will  
 7-59 may be brought:

7-60 (1) in a county in which venue is proper under  
 7-61 Subsection (b), (b-1), (b-2), or (c); or

7-62 (2) in the county in which the administration of the  
 7-63 settlor's estate is pending.

7-64 (f) For the purposes of this section:

7-65 (1) "Corporate trustee" means an entity organized as a  
 7-66 financial institution or a corporation with the authority to act in  
 7-67 a fiduciary capacity.

7-68 (2) "Principal office" means:

7-69 (A) if there are one or more corporate trustees,

8-1 an office of a corporate trustee in this state where the decision  
8-2 makers for the corporate trustee within this state conduct the  
8-3 daily affairs of the corporate trustee; or

8-4 (B) if there are multiple trustees, none of which  
8-5 is a corporate trustee, an office in this state that is not  
8-6 maintained within the personal residence of any trustee, and in  
8-7 which one or more trustees conducts the daily affairs of the  
8-8 trustees.

8-9 (2-a) The mere presence of an agent or representative  
8-10 of a ~~[the corporate]~~ trustee does not establish a principal office  
8-11 as defined by Subdivision (2). The principal office of a ~~[the]~~  
8-12 corporate trustee or the principal office maintained by multiple  
8-13 noncorporate trustees may also be but is not necessarily the same as  
8-14 the situs of administration of the trust.

8-15 (3) "Situs of administration" means the location in  
8-16 this state where the trustee maintains the office that is primarily  
8-17 responsible for dealing with the settlor and beneficiaries of the  
8-18 trust. The situs of administration may also be but is not  
8-19 necessarily the same as the principal office of a corporate trustee  
8-20 or the principal office maintained by multiple noncorporate  
8-21 trustees.

8-22 SECTION 6. Section 11.13(j), Tax Code, is amended to read as  
8-23 follows:

8-24 (j) For purposes of this section:

8-25 (1) "Residence homestead" means a structure  
8-26 (including a mobile home) or a separately secured and occupied  
8-27 portion of a structure (together with the land, not to exceed 20  
8-28 acres, and improvements used in the residential occupancy of the  
8-29 structure, if the structure and the land and improvements have  
8-30 identical ownership) that:

8-31 (A) is owned by one or more individuals, either  
8-32 directly or through a beneficial interest in a qualifying trust;

8-33 (B) is designed or adapted for human residence;

8-34 (C) is used as a residence; and

8-35 (D) is occupied as the individual's [his]  
8-36 principal residence by an owner or, for property owned through a  
8-37 beneficial interest in a qualifying trust, by a trustor or  
8-38 beneficiary of the trust who qualifies for the exemption.

8-39 (2) "Trustor" means a person who transfers an interest  
8-40 in real or personal [residential] property to a qualifying trust,  
8-41 whether during the person's lifetime or at death [by deed or by  
8-42 will], or the person's spouse.

8-43 (3) "Qualifying trust" means a trust:

8-44 (A) in which the agreement, will, or court order  
8-45 creating the trust, an instrument transferring property to the  
8-46 trust, or any other agreement that is binding on the trustee  
8-47 provides that the trustor of the trust or a [the] beneficiary of the  
8-48 trust [if created by court order] has the right to use and occupy as  
8-49 the trustor's or beneficiary's principal residence residential  
8-50 property rent free and without charge except for taxes and other  
8-51 costs and expenses specified in the instrument or court order:

8-52 (i) for life;

8-53 (ii) for the lesser of life or a term of  
8-54 years; or

8-55 (iii) until the date the trust is revoked or  
8-56 terminated by an instrument or court order that describes the  
8-57 property with sufficient certainty to identify it and is recorded  
8-58 in the real property records of the county in which the property is  
8-59 located; and

8-60 (B) that acquires the property in an instrument  
8-61 of title or under a court order that:

8-62 (i) describes the property with sufficient  
8-63 certainty to identify it and the interest acquired; and

8-64 (ii) is recorded in the real property  
8-65 records of the county in which the property is located[, and

8-66 ~~[(iii) in the case of a trust that is not~~  
8-67 ~~created by court order, is executed by the trustor or the personal~~  
8-68 ~~representative of the trustor].~~

8-69 SECTION 7. Section 152.025(a), Tax Code, is amended to read



9-1 as follows:

9-2 (a) A tax is imposed on the recipient of a gift of a motor  
 9-3 vehicle. This section applies only if the person receiving the  
 9-4 motor vehicle:

9-5 (1) receives the vehicle from:

9-6 (A) the person's:

9-7 (i) spouse;

9-8 (ii) parent or stepparent;

9-9 (iii) grandparent or grandchild;

9-10 (iv) child or stepchild;

9-11 (v) sibling; or

9-12 (vi) guardian; [~~or~~]

9-13 (B) a decedent's estate;

9-14 (C) a trust subject to the Texas Trust Code  
 9-15 (Subtitle B, Title 9, Property Code) that was revocable by a  
 9-16 decedent or that was jointly revocable by a decedent and the  
 9-17 decedent's spouse; or

9-18 (D) a trust subject to the Texas Trust Code that  
 9-19 is revocable by the person receiving the motor vehicle or that is  
 9-20 jointly revocable by the recipient and the recipient's spouse;

9-21 (2) is a trust subject to the Texas Trust Code that is  
 9-22 revocable by the transferor of the motor vehicle or that is jointly  
 9-23 revocable by the transferor and the transferor's spouse; or

9-24 (3) is exempt from federal income taxation under  
 9-25 Section 501(a), Internal Revenue Code of 1986, by being listed as an  
 9-26 exempt organization under Section 501(c)(3) of that code, and the  
 9-27 vehicle will be used for the purposes of the organization.

9-28 SECTION 8. The legislature intends Subchapter D, Chapter  
 9-29 112, Property Code, as added by this Act, to be a codification of  
 9-30 the common law of this state in effect before the effective date of  
 9-31 this Act.

9-32 SECTION 9. (a) Except as otherwise expressly provided by a  
 9-33 trust, a will creating a trust, or this section, the changes in law  
 9-34 made by this Act apply to a trust existing or created on or after  
 9-35 September 1, 2013.

9-36 (b) For a trust existing on September 1, 2013, that was  
 9-37 created before that date, the changes in law made by this Act apply  
 9-38 only to an act or omission relating to the trust that occurs on or  
 9-39 after September 1, 2013.

9-40 (c) Section 115.002, Property Code, as amended by this Act,  
 9-41 applies only to a court action commenced on or after the effective  
 9-42 date of this Act. An action commenced before the effective date of  
 9-43 this Act is governed by the law in effect immediately before that  
 9-44 date, and the former law is continued in effect for that purpose.

9-45 SECTION 10. This Act takes effect September 1, 2013.

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