

By: Rodriguez

S.B. No. 648

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

(1) an irrevocable inter vivos marital trust if:

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

(B) the trust is treated as:

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

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

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

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

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

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

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

beneficiary whether named a beneficiary:

(1) under the initial trust instrument; or

(2) through the exercise of a limited or general power
of appointment by:

(A) that person's spouse; or

(B) another person.

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

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

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

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

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

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

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

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

24 Sec. 112.072. DISTRIBUTION TO SECOND TRUST: TRUSTEE WITH
25 FULL DISCRETION. (a) An authorized trustee who has the full
26 discretion to distribute the principal of a trust may distribute
27 all or part of the principal of that trust in favor of a trustee of a

1 second trust for the benefit of one or more current beneficiaries of
2 the first trust and for the benefit of one or more successor or
3 presumptive remainder beneficiaries of the first trust.

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

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

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

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

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

1 the same as the successor and remainder beneficiaries of the first
2 trust.

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

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

10 (e) If the first trust grants a power of appointment to a
11 beneficiary of the trust, the second trust must grant the power of
12 appointment to the beneficiary in the second trust, and the class of
13 permissible appointees under that power must be the same as the
14 class of permissible appointees under the power granted by the
15 first trust.

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

18 Sec. 112.074. NOTICE REQUIRED. (a) An authorized trustee
19 may exercise a power of distribution under Section 112.072 or
20 112.073 without the consent of the settlor or beneficiaries of the
21 first trust and without court approval if:

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

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

26 (3) the authorized trustee provides to all of the
27 current beneficiaries and presumptive remainder beneficiaries who

1 are not legally incapacitated written notice of the trustee's
2 decision to exercise the power, specifying the manner in which the
3 trustee intends to exercise the power and the proposed effective
4 date of the distribution.

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

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

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

13 (2) is not known to the trustee.

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

18 Sec. 112.075. WRITTEN INSTRUMENT REQUIRED. A distribution
19 under Section 112.072 or 112.073 must be made by a written
20 instrument that is signed and acknowledged by the trustee and filed
21 with the records of the first trust and the second trust.

22 Sec. 112.076. REFERENCE TO TRUST TERMS. A reference to the
23 governing instrument or terms of the governing instrument of a
24 trust includes the terms of a second trust to which that trust's
25 principal was distributed under this subchapter.

26 Sec. 112.077. SETTLOR OF SECOND TRUST. (a) Except as
27 provided by Subsection (b), the settlor of a first trust is

considered to be the settlor of a second trust established under this subchapter.

(b) 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 under this subchapter.

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,

1 that the trustee acted in bad faith.

2 Sec. 112.079. TERM OF SECOND TRUST. A second trust may have
3 a term that is longer than the term of a first trust whose principal
4 was distributed to the trust, including a term that is measured by
5 the lifetime of a current beneficiary.

6 Sec. 112.080. DIVIDED DISCRETION. If an authorized trustee
7 has full discretion to distribute the principal of a trust and
8 another trustee has limited discretion to distribute principal
9 under the trust instrument, the authorized trustee having full
10 discretion may exercise the power to distribute the trust's
11 principal under Section 112.072.

12 Sec. 112.081. LATER DISCOVERED ASSETS. To the extent the
13 authorized trustee does not provide otherwise:

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

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

25 Sec. 112.082. OTHER AUTHORITY TO DISTRIBUTE IN FURTHER
26 TRUST NOT LIMITED. This subchapter may not be construed to limit
27 the power of a trustee to distribute property in further trust under

1 the terms of the governing instrument of a trust, other law, or a
2 court order.

3 Sec. 112.083. NEED FOR DISTRIBUTION NOT REQUIRED. An
4 authorized trustee may exercise the power to distribute principal
5 to a second trust under Section 112.072 or 112.073 regardless of
6 whether there is a current need to distribute principal under the
7 terms of the first trust.

8 Sec. 112.084. DUTIES NOT CREATED. (a) This subchapter does
9 not create or imply a duty for an authorized trustee to exercise a
10 power to distribute principal, and impropriety may not be inferred
11 as a result of the trustee not exercising a power conferred by
12 Section 112.072 or 112.073.

13 (b) A trustee does not have a duty to inform beneficiaries
14 about the availability of the authority provided by this subchapter
15 or a duty to review the trust to determine whether any action should
16 be taken under this subchapter.

17 Sec. 112.085. CERTAIN DISTRIBUTIONS PROHIBITED. (a)
18 Except as provided by Subsection (b), an authorized trustee may not
19 exercise a power to distribute principal of a trust otherwise
20 provided by Section 112.072 or 112.073 if the distribution is
21 expressly prohibited by the terms of the governing instrument of
22 the trust.

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

27 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. 112.087. 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 (1) the annual exclusion under Section 2503(b),
2 Internal Revenue Code of 1986;

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

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

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

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

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

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

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

1 Sec. 112.088. COMPENSATION OF TRUSTEE. (a) Except as
2 provided by Subsection (b) and unless a court, on application of the
3 trustee, directs otherwise, an authorized trustee may not exercise
4 a power under Section 112.072 or 112.073 solely to change trust
5 provisions regarding the determination of the compensation of any
6 trustee.

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

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

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

19 Sec. 112.089. LIABILITY OF TRUSTEE FOR ACTS OR OMISSIONS.

20 (a) A trustee who reasonably and in good faith takes or omits to
21 take any action under this subchapter is not liable for the act or
22 omission to any person interested in the trust. An act or omission
23 by a trustee under this subchapter is rebuttably presumed to have
24 been taken or omitted reasonably and in good faith.

25 (b) If a person interested in the trust opposes an act or
26 omission of a trustee under this subchapter, the person's exclusive
27 remedy is to obtain a court order directing the trustee to act as

1 the court determines necessary or beneficial for the proper
2 functioning of the trust, including to modify or reverse a previous
3 action of the trustee.

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

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

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

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

24 (1) a person, other than a settlor, who is a
25 beneficiary and trustee, trustee affiliate, or discretionary power
26 holder of a trust that confers on the trustee a power to make
27 discretionary distributions to or for the trustee's, the trustee

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

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

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

14 SECTION 5. Section 11.13(j), Tax Code, is amended to read as
15 follows:

16 (j) For purposes of this section:

17 (1) "Residence homestead" means a structure
18 (including a mobile home) or a separately secured and occupied
19 portion of a structure (together with the land, not to exceed 20
20 acres, and improvements used in the residential occupancy of the
21 structure, if the structure and the land and improvements have
22 identical ownership) that:

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

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

26 (C) is used as a residence; and

27 (D) is occupied as the individual's [~~his~~]

principal residence by an owner or, for property owned through a beneficial interest in a qualifying trust, by a trustor or beneficiary of the trust who qualifies for the exemption.

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

(3) "Qualifying trust" means a trust:

(A) in which the agreement, will, or court order creating the trust, 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 ~~[the]~~ beneficiary of the trust ~~[if created by court order]~~ has the right to use and occupy as the trustor's or beneficiary's principal residence residential property rent free and without charge except for taxes and other costs and expenses specified in the instrument or court order:

(i) for life;

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

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

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

(i) describes the property with sufficient

certainty to identify it and the interest acquired; and

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

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

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; ~~or~~

(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

1 the motor vehicle or that is jointly revocable by the transferor and
2 the transferor's spouse; or

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

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

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

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