

By: Rodríguez
(Wray)

S.B. No. 387

Substitute the following for S.B. No. 387:

By: Schofield

C.S.S.B. No. 387

A BILL TO BE ENTITLED

AN ACT

relating to trusts and certain other forms of asset protection.

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

SECTION 1. Sections 42.0021(a) and (b), Property Code, are amended to read as follows:

(a) In addition to the exemption prescribed by Section 42.001, a person's right to the assets held in or to receive payments, whether vested or not, under any stock bonus, pension, annuity, deferred compensation, profit-sharing, or similar plan, including a retirement plan for self-employed individuals, or a simplified employee pension plan, an individual retirement account or individual retirement annuity, including an inherited individual retirement account or individual retirement annuity, Roth IRA, or inherited Roth IRA, or a health savings account, and under any annuity or similar contract purchased with assets distributed from that type of plan or account, is exempt from attachment, execution, and seizure for the satisfaction of debts to the extent the plan, contract, annuity, or account is exempt from federal income tax, or to the extent federal income tax on the person's interest is deferred until actual payment of benefits to the person under Section 223, 401(a), 403(a), 403(b), 408(a), 408A, 457(b), or 501(a), Internal Revenue Code of 1986, including a government plan or church plan described by Section 414(d) or (e), Internal Revenue Code of 1986. For purposes of this subsection, the

1 interest of a person in a plan, annuity, account, or contract
2 acquired by reason of the death of another person, whether as an
3 owner, participant, beneficiary, survivor, coannuitant, heir, or
4 legatee, is exempt to the same extent that the interest of the
5 person from whom the plan, annuity, account, or contract was
6 acquired was exempt on the date of the person's death. If this
7 subsection is held invalid or preempted by federal law in whole or
8 in part or in certain circumstances, the subsection remains in
9 effect in all other respects to the maximum extent permitted by law.

10 (b) Contributions to an individual retirement account,
11 individual retirement annuity, or Roth IRA that are "excess
12 contributions" within the meaning of Section 4973 [~~exceed the~~
13 ~~amounts permitted under the applicable provisions~~] of the Internal
14 Revenue Code of 1986, and any accrued earnings on such excess
15 contributions, are not exempt under this section unless otherwise
16 exempt by law. Amounts qualifying as nontaxable transfers or
17 rollover contributions under Section 402(a)(5), 403(a)(4),
18 403(b)(8), or 408(d)(3) of the Internal Revenue Code of 1986 before
19 January 1, 1993, are treated as exempt amounts under Subsection
20 (a). Amounts treated as [~~qualified~~] rollover contributions under
21 Section 402A(c)(3), 402A(c)(4), or 408A, Internal Revenue Code of
22 1986, are treated as exempt amounts under Subsection (a). In
23 addition, amounts qualifying as nontaxable rollover contributions
24 under Section 402(c), 402(e)(6), 402(f), 403(a)(4), 403(a)(5),
25 403(b)(8), 403(b)(10), 408(d)(3), 408(d)(6), 408(d)(9), or 408A of
26 the Internal Revenue Code of 1986 on or after January 1, 1993, are
27 treated as exempt amounts under Subsection (a). Amounts qualifying

1 as nontaxable rollover contributions under Section 223(f)(5) of the
2 Internal Revenue Code of 1986 on or after January 1, 2004, are
3 treated as exempt amounts under Subsection (a).

4 SECTION 2. Section 111.0035(b), Property Code, is amended
5 to read as follows:

6 (b) The terms of a trust prevail over any provision of this
7 subtitle, except that the terms of a trust may not limit:

8 (1) the requirements imposed under Section 112.031;

9 (2) the applicability of Section 114.007 to an
10 exculpation term of a trust;

11 (3) the periods of limitation for commencing a
12 judicial proceeding regarding a trust;

13 (4) a trustee's duty:

14 (A) with regard to an irrevocable trust, to
15 respond to a demand for accounting made under Section 113.151 if the
16 demand is from a beneficiary who, at the time of the demand:

17 (i) is entitled or permitted to receive
18 distributions from the trust; or

19 (ii) would receive a distribution from the
20 trust if the trust terminated at the time of the demand; and

21 (B) to act in good faith and in accordance with
22 the purposes of the trust, except as otherwise provided by
23 Subchapter E, Chapter 114, with regard to a directing party and an
24 excluded fiduciary;

25 (5) a directing party's duty to act in good faith and
26 in accordance with the purposes of the trust;

27 (6) the power of a court, in the interest of justice,

1 to take action or exercise jurisdiction, including the power to:

2 (A) modify or terminate a trust or take other
3 action under Section 112.054;

4 (B) remove a trustee under Section 113.082;

5 (C) exercise jurisdiction under Section 115.001;

6 (D) require, dispense with, modify, or terminate
7 a trustee's bond; or

8 (E) adjust or deny a trustee's compensation if
9 the trustee commits a breach of trust; or

10 (7) [~~6~~] the applicability of Section 112.038.

11 SECTION 3. Section 111.004(7), Property Code, is amended to
12 read as follows:

13 (7) "Interested person" means a trustee, beneficiary,
14 or directing party or any other person having an interest in or a
15 claim against the trust or any person who is affected by the
16 administration of the trust. Whether a person, excluding a
17 trustee, directing party, or named beneficiary, is an interested
18 person may vary from time to time and must be determined according
19 to the particular purposes of and matter involved in any
20 proceeding.

21 SECTION 4. Section 112.035(e), Property Code, is amended to
22 read as follows:

23 (e) A beneficiary of the trust may not be considered a
24 settlor merely because of a lapse, waiver, or release of:

25 (1) a power described by Subsection (f); or

26 (2) the beneficiary's right to withdraw a part of the
27 trust property to the extent that the value of the property affected

1 by the lapse, waiver, or release in any calendar year does not
2 exceed the greater of [~~the amount specified in~~]:

3 (A) the amount specified in Section 2041(b)(2) or
4 2514(e), Internal Revenue Code of 1986; or

5 (B) the amount specified in Section 2503(b),
6 Internal Revenue Code of 1986, with respect to the contributions by
7 each donor.

8 SECTION 5. Section 112.038, Property Code, is amended to
9 read as follows:

10 Sec. 112.038. FORFEITURE CLAUSE. (a) A provision in a
11 trust that would cause a forfeiture of or void an interest for
12 bringing any court action, including contesting a trust, is
13 enforceable unless in a court action determining whether the
14 forfeiture clause should be enforced, the person who brought the
15 action contrary to the forfeiture clause establishes by a
16 preponderance of the evidence that:

17 (1) just cause existed for bringing the action; and

18 (2) the action was brought and maintained in good
19 faith.

20 (b) This section is not intended to and does not repeal any
21 law, recognizing that forfeiture clauses generally will not be
22 construed to prevent a beneficiary from seeking to compel a
23 fiduciary to perform the fiduciary's duties, seeking redress
24 against a fiduciary for a breach of the fiduciary's duties, or
25 seeking a judicial construction of a will or trust.

26 SECTION 6. Sections 112.054(a) and (c), Property Code, are
27 amended to read as follows:

1 (a) On the petition of a trustee or a beneficiary, a court
2 may order that the trustee be changed, that the terms of the trust
3 be modified, that the trustee be directed or permitted to do acts
4 that are not authorized or that are forbidden by the terms of the
5 trust, that the trustee be prohibited from performing acts required
6 by the terms of the trust, or that the trust be terminated in whole
7 or in part, if:

8 (1) the purposes of the trust have been fulfilled or
9 have become illegal or impossible to fulfill;

10 (2) because of circumstances not known to or
11 anticipated by the settlor, the order will further the purposes of
12 the trust;

13 (3) modification of administrative, nondispositive
14 terms of the trust is necessary or appropriate to prevent waste or
15 avoid impairment of the trust's administration;

16 (4) the order is necessary or appropriate to achieve
17 the settlor's tax objectives and is not contrary to the settlor's
18 intentions; [~~or~~]

19 (5) subject to Subsection (d):

20 (A) continuance of the trust is not necessary to
21 achieve any material purpose of the trust; or

22 (B) the order is not inconsistent with a material
23 purpose of the trust; or

24 (6) the order is necessary to correct a scrivener's
25 error in the governing document, even if unambiguous, to conform
26 the terms to the settlor's intention if the settlor's intent with
27 respect to the error being corrected is proved by clear and

1 convincing evidence.

2 (c) The court may direct that an order described by
3 Subsection (a)(4) or (6) has retroactive effect.

4 SECTION 7. Sections 112.071(5), (6), and (7), Property
5 Code, are amended to read as follows:

6 (5) "Full discretion" means a [~~the~~] power to
7 distribute principal to or for the benefit of one or more of the
8 beneficiaries of a trust that is not a trust with limited discretion
9 [~~limited or modified by the terms of the trust in any way, including~~
10 ~~by restrictions that limit distributions to purposes such as the~~
11 ~~best interests, welfare, or happiness of the beneficiaries~~].

12 (6) "Limited discretion" means a [~~limited or modified~~]
13 power to distribute principal to or for the benefit of one or more
14 beneficiaries of a trust that is limited by an ascertainable
15 standard, including the health, education, support, or maintenance
16 of the beneficiary.

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

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

24 (B) the interests of all current beneficiaries
25 [~~currently eligible to receive income or principal from the trust~~]
26 ended on that date without causing the trust to terminate.

27 SECTION 8. Section 112.072(a), Property Code, is amended to

1 read as follows:

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

11 SECTION 9. Section [112.078](#), Property Code, is amended by
12 adding Subsection (f) to read as follows:

13 (f) This section does not limit a beneficiary's right to
14 bring an action against a trustee for a breach of trust.

15 SECTION 10. Section [112.085](#), Property Code, is amended to
16 read as follows:

17 Sec. 112.085. EXCEPTIONS TO POWER OF DISTRIBUTION. An
18 authorized trustee may not exercise a power to distribute principal
19 of a trust under Section [112.072](#) or [112.073](#) to:

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

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

24 (B) receive a mandatory annuity or unitrust
25 interest;

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

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

3 (2) ~~[materially impair the rights of any beneficiary~~
4 ~~of the trust,~~

5 [~~3~~] materially limit a trustee's fiduciary duty:

6 (A) under the terms of the trust; or

7 (B) in a manner that would be prohibited [~~as~~
8 ~~described~~] by Section 111.0035, except as provided by Subchapter E,
9 Chapter 114;

10 (3) [~~4~~] decrease or indemnify against a trustee's
11 liability, except as provided by Subchapter E, Chapter 114;

12 (4) add a provision exonerating [~~or exonerate~~] a
13 trustee from liability for failure to exercise reasonable care,
14 diligence, and prudence;

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

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

21 (7) distribute principal from a trust that is held
22 solely for charitable purposes and has as beneficiaries only
23 charitable entities.

24 SECTION 11. Section 113.018, Property Code, is amended to
25 read as follows:

26 Sec. 113.018. EMPLOYMENT AND APPOINTMENT OF AGENTS. (a) A
27 trustee may employ attorneys, accountants, agents, including

1 investment agents, and brokers reasonably necessary in the
2 administration of the trust estate.

3 (b) Without limiting the trustee's discretion under
4 Subsection (a), a trustee may grant an agent powers with respect to
5 property of the trust to act for the trustee in any lawful manner
6 for purposes of real property transactions.

7 (c) A trustee acting under Subsection (b) may delegate any
8 or all of the duties and powers to:

9 (1) execute and deliver any legal instruments relating
10 to the sale and conveyance of the property, including affidavits,
11 notices, disclosures, waivers, or designations or general or
12 special warranty deeds binding the trustee with vendor's liens
13 retained or disclaimed, as applicable, or transferred to a
14 third-party lender;

15 (2) accept notes, deeds of trust, or other legal
16 instruments;

17 (3) approve closing statements authorizing deductions
18 from the sale price;

19 (4) receive trustee's net sales proceeds by check
20 payable to the trustee;

21 (5) indemnify and hold harmless any third party who
22 accepts and acts under a power of attorney with respect to the sale;

23 (6) take any action, including signing any document,
24 necessary or appropriate to sell the property and accomplish the
25 delegated powers;

26 (7) contract to purchase the property for any price on
27 any terms;

1 (8) execute, deliver, or accept any legal instruments
2 relating to the purchase of the property or to any financing of the
3 purchase, including deeds, notes, deeds of trust, guaranties, or
4 closing statements;

5 (9) approve closing statements authorizing payment of
6 prorations and expenses;

7 (10) pay the trustee's net purchase price from funds
8 provided by the trustee;

9 (11) indemnify and hold harmless any third party who
10 accepts and acts under a power of attorney with respect to the
11 purchase; or

12 (12) take any action, including signing any document,
13 necessary or appropriate to purchase the property and accomplish
14 the delegated powers.

15 (d) A trustee who delegates a power under Subsection (b) is
16 liable to the beneficiaries or to the trust for an action of the
17 agent to whom the power was delegated.

18 (e) A delegation by the trustee under Subsection (b) must be
19 documented in a written instrument acknowledged by the trustee
20 before an officer authorized under the law of this state or another
21 state to take acknowledgments to deeds of conveyance and administer
22 oaths. A signature on a delegation by a trustee for purposes of
23 this subsection is presumed to be genuine if the trustee
24 acknowledges the signature in accordance with Chapter 121, Civil
25 Practice and Remedies Code.

26 (f) A delegation to an agent under Subsection (b) terminates
27 six months from the date of the acknowledgment of the written

1 delegation unless terminated earlier by:

2 (1) the death or incapacity of the trustee;

3 (2) the resignation or removal of the trustee; or

4 (3) a date specified in the written delegation.

5 (g) A person that in good faith accepts a delegation under
6 Subsection (b) without actual knowledge that the delegation is
7 void, invalid, or terminated, that the purported agent's authority
8 is void, invalid, or terminated, or that the agent is exceeding or
9 improperly exercising the agent's authority may rely on the
10 delegation as if:

11 (1) the delegation were genuine, valid, and still in
12 effect;

13 (2) the agent's authority were genuine, valid, and
14 still in effect; and

15 (3) the agent had not exceeded and had properly
16 exercised the authority.

17 (h) A trustee may delegate powers under Subsection (b) if
18 the governing instrument does not affirmatively permit the trustee
19 to hire agents or expressly prohibit the trustee from hiring
20 agents.

21 SECTION 12. Chapter 114, Property Code, is amended by
22 adding Subchapter E to read as follows:

23 SUBCHAPTER E. DIRECTED TRUSTS

24 Sec. 114.101. DEFINITIONS. In this subchapter:

25 (1) "Directing party" means any investment trust
26 advisor, distribution trust advisor, or trust protector as provided
27 by this subchapter. The term does not include:

1 (A) any person who merely holds:

2 (i) a general or limited power of
3 appointment over the trust assets; or

4 (ii) if the person is a grantor or
5 beneficiary of the trust, a power to:

6 (a) prohibit the trustee from taking
7 any action with respect to the trust; or

8 (b) remove, appoint, or remove and
9 appoint a trustee, investment trust advisor, distribution trust
10 advisor, or trust protector or another directing party, including a
11 power to designate a plan of succession for future holders of one of
12 those positions;

13 (B) a trustee or cotrustee even if the trustee or
14 cotrustee has the exclusive authority over decisions similar to an
15 investment trust advisor, distribution trust advisor, or trust
16 protector in comparison to another trustee or cotrustee who is
17 relieved of that authority; or

18 (C) any person who merely holds a power over the
19 trust assets exercisable in a nonfiduciary capacity without the
20 approval or consent of any person in a fiduciary capacity, such as a
21 power to control the beneficial enjoyment of the trust assets in
22 accordance with Section 674 of the Internal Revenue Code of 1986 or
23 administrative powers in accordance with Section 675 of the
24 Internal Revenue Code of 1986.

25 (2) "Distribution trust advisor" means any one or more
26 persons given authority by the governing instrument to direct,
27 consent to, veto, or otherwise exercise all or any portion of the

1 distribution powers and discretions of the trust, including the
2 authority to make a discretionary distribution of income or
3 principal.

4 (3) "Excluded fiduciary" means any fiduciary directed
5 by the governing instrument to act in accordance with the exercise
6 of specified powers by a directing party, to the extent provided by
7 Section 114.106.

8 (4) "Fiduciary" means any person expressly given one
9 or more fiduciary duties by the governing instrument, including a
10 trustee.

11 (5) "Governing instrument" refers to the instrument
12 stating the terms of a trust, including any court order
13 establishing, construing, or modifying the terms of the trust in
14 accordance with applicable law.

15 (6) "Independent fiduciary" means any fiduciary who is
16 not a grantor of a trust, a beneficiary of a trust, a spouse of a
17 grantor or a beneficiary of a trust, or a person related or
18 subordinate to any of those persons within the meaning of Section
19 672(c) of the Internal Revenue Code of 1986.

20 (7) "Investment trust advisor" means any one or more
21 persons given authority by the governing instrument to direct,
22 consent to, veto, or otherwise exercise all or any portion of the
23 investment powers of the trust.

24 (8) "Power" means:

25 (A) the authority to take or withhold an action
26 or decision, including an expressly specified power;

27 (B) the implied power necessary to exercise a

1 specified power; or

2 (C) the authority inherent in a general grant of
3 discretion.

4 (9) "Trust protector" means any one or more persons
5 given any one or more powers in accordance with Section 114.105,
6 whether or not designated with the title of trust protector by the
7 governing instrument.

8 Sec. 114.102. APPLICABILITY OF SUBCHAPTER. (a) This
9 subchapter applies to all trusts created on or after September 1,
10 2015, except to the extent the governing instrument expressly
11 prohibits the application of this subchapter by specific reference
12 to this subchapter.

13 (b) Except as provided by Subsection (a), on and after
14 September 1, 2015, this subchapter applies to a trust existing on or
15 created on or after that date that:

16 (1) appoints or provides for a directing party,
17 including a party granted power or authority effectively comparable
18 in substance to that of a directing party as provided by this
19 subchapter;

20 (2) is modified in accordance with applicable law or
21 the terms of the governing instrument to appoint or provide for a
22 directing party; or

23 (3) is modified in accordance with a court order to
24 appoint or provide for a directing party, including a party granted
25 power or authority effectively comparable in substance to that of a
26 directing party as provided by this subchapter, whether or not the
27 court order specifies that this subchapter governs the

1 responsibilities, actions, and liabilities of persons designated
2 as a directing party or excluded fiduciary.

3 Sec. 114.103. INVESTMENT TRUST ADVISOR. (a) An investment
4 trust advisor may be designated in the governing instrument of a
5 trust. The governing instrument may use the title "investment
6 trust advisor" or any similar name or description demonstrating the
7 intent to provide for the position and function of an investment
8 trust advisor as defined by Section 114.101.

9 (b) The powers of an investment trust advisor:

10 (1) may be exercised or not exercised in the
11 discretion of the investment trust advisor; and

12 (2) except as provided by this subchapter, are binding
13 on all other persons, including each beneficiary, fiduciary, and
14 excluded fiduciary and any other party having an interest in the
15 trust.

16 (c) Unless otherwise provided by the governing instrument,
17 an investment trust advisor's powers include the authority to:

18 (1) direct the trustee with respect to:

19 (A) the retention, purchase, transfer,
20 assignment, sale, or encumbrance of trust property; and

21 (B) the investment and reinvestment of principal
22 and income of the trust;

23 (2) direct the trustee with respect to all management,
24 control, and voting powers related directly or indirectly to trust
25 assets, including voting proxies for securities held in trust;

26 (3) select and employ one or more advisors, managers,
27 consultants, counselors, or other agents in accordance with Section

1 113.018; and

2 (4) determine the frequency and methodology for
3 valuing any asset for which there is no readily available market
4 value.

5 Sec. 114.104. DISTRIBUTION TRUST ADVISOR. (a) A
6 distribution trust advisor may be designated in the governing
7 instrument of a trust. The governing instrument may use the title
8 "distribution trust advisor" or any similar name or description
9 demonstrating the intent to provide for the position and function
10 of a distribution trust advisor as defined by Section 114.101.

11 (b) The powers of a distribution trust advisor:

12 (1) may be exercised or not exercised in the
13 discretion of the distribution trust advisor; and

14 (2) except as otherwise provided by this subchapter,
15 are binding on all other persons, including each beneficiary,
16 fiduciary, and excluded fiduciary and any other party having an
17 interest in the trust.

18 (c) Unless otherwise provided in the governing instrument,
19 a distribution trust advisor's powers include the authority to
20 direct the trustee with regard to all decisions relating directly
21 or indirectly to discretionary distributions to or for one or more
22 beneficiaries.

23 Sec. 114.105. TRUST PROTECTOR. (a) A trust protector may
24 be designated in the governing instrument of a trust. The governing
25 instrument may use the title "trust protector" or any similar name
26 or description demonstrating the intent to provide for the position
27 and function of a trust protector as defined by Section 114.101.

1 (b) The powers of a trust protector:

2 (1) may be exercised or not exercised in the
3 discretion of the trust protector; and

4 (2) except as otherwise provided by this subchapter,
5 are binding on all other persons, including each beneficiary,
6 investment trust advisor, distribution trust advisor, fiduciary,
7 and excluded fiduciary and any other party having an interest in the
8 trust.

9 (c) The terms of the governing instrument shall determine
10 the powers of the trust protector, and there are no default powers.
11 The powers granted to a trust protector by the governing instrument
12 may include the authority to:

13 (1) modify or amend the governing instrument to
14 achieve favorable tax status or respond to changes in the Internal
15 Revenue Code of 1986 or other federal law, state law, or rulings or
16 regulations under federal or state law;

17 (2) increase, decrease, or modify the interests of any
18 beneficiary or beneficiaries of the trust;

19 (3) modify or amend the terms of any power of
20 appointment granted by the trust, so long as the modification or
21 amendment does not grant a beneficial interest to any individual,
22 class of individuals, or other party not specifically provided for
23 under the governing instrument;

24 (4) remove, appoint, or remove and appoint a trustee,
25 investment trust advisor, or distribution trust advisor or another
26 directing party, including the authority to designate a plan of
27 succession for future holders of one of those positions;

1 (5) terminate the trust, including the authority to
2 determine how the trustee shall distribute the trust property to be
3 consistent with the purposes of the trust;

4 (6) change the situs of the trust, the governing law of
5 the trust, or both;

6 (7) appoint one or more successor trust protectors,
7 including the authority to designate a plan of succession for
8 future trust protectors;

9 (8) interpret terms of the governing instrument at the
10 request of the trustee;

11 (9) advise the trustee on matters concerning a
12 beneficiary; or

13 (10) amend or modify the governing instrument to:

14 (A) take advantage of laws governing restraints
15 on alienation or distribution of trust property; or

16 (B) improve the administration of the trust.

17 (d) Except as otherwise provided by the governing
18 instrument, a trust protector has no duty to monitor any
19 fiduciary's conduct.

20 (e) If a charity is a beneficiary of the trust, a trust
21 protector must give notice to the attorney general not later than
22 the 60th day before the date the trust protector takes an action
23 authorized by Subsection (c)(2), (3), (4), (5), or (6).

24 Sec. 114.106. EXCLUDED FIDUCIARY. (a) If a fiduciary is
25 directed by the governing instrument to act in accordance with the
26 exercise of specified powers by a directing party, those specified
27 powers are considered granted not to the fiduciary but to the

1 directing party, and the fiduciary is considered excluded from
2 exercising those specified powers.

3 (b) If a governing instrument provides that a fiduciary, as
4 to one or more specified matters, is to act, omit action, or make
5 decisions only with the consent of a directing party, then the
6 fiduciary is considered an excluded fiduciary only with respect to
7 those matters.

8 Sec. 114.107. DUTY AND LIABILITY OF DIRECTING PARTY.

9 (a) Within the limits of the directing party's authority, a
10 directing party:

11 (1) is a fiduciary of the trust;

12 (2) except as provided by the governing instrument,
13 has all the powers and protections granted to trustees under this
14 subtitle; and

15 (3) is subject to the same fiduciary duties and
16 standards applicable to a trustee of a trust, unless the governing
17 instrument provides otherwise.

18 (b) The governing instrument may not limit the duties of the
19 directing party or relieve a directing party of any duties or
20 standards that could not be limited as to a trustee or of which a
21 trustee could not be relieved, including the duties and standards
22 set forth in Sections [111.0035](#) and [114.007](#).

23 Sec. 114.108. DUTY AND LIABILITY OF EXCLUDED FIDUCIARY.

24 (a) An excluded fiduciary shall act in accordance with the
25 governing instrument and comply with the directing party's exercise
26 of the powers granted to the directing party by the governing
27 instrument.

1 (b) Notwithstanding Section 111.0035, if the terms of a
2 trust provide that an excluded fiduciary is to follow the direction
3 of a directing party or act only with a directing party's consent or
4 direction:

5 (1) if the excluded fiduciary complies with the
6 direction of a directing party, the excluded fiduciary is not
7 liable for any loss resulting directly or indirectly from any act
8 taken or not taken by the excluded fiduciary pursuant to the
9 directing party's direction; or

10 (2) if the directing party fails to direct, consent,
11 or act after having been requested to do so by the excluded
12 fiduciary, the excluded fiduciary is not liable for any loss
13 resulting directly or indirectly from any act taken or not taken by
14 the excluded fiduciary as a result of the directing party's failure
15 to direct, consent, or act.

16 (c) Subsection (b) does not apply if:

17 (1) the direction is contrary to an express
18 prohibition or mandate in the governing instrument, which shall be
19 evaluated exclusively on the terms of the governing instrument and
20 without reference to any judicial or legal standard;

21 (2) the excluded fiduciary acts in a manner that
22 constitutes wilful misconduct; or

23 (3) the excluded fiduciary has actual knowledge that
24 the direction would constitute fraud as applied to the fiduciary
25 duties of the directing party.

26 (d) Unless otherwise provided by the governing instrument,
27 an excluded fiduciary does not have any duty to:

1 (1) monitor the directing party's conduct;

2 (2) provide the directing party with advice or consult
3 with the directing party;

4 (3) inform or warn any directing party or any
5 beneficiary or third party that the excluded fiduciary disagrees
6 with any of the directing party's actions or directions;

7 (4) do anything to prevent the directing party from
8 giving any direction or taking any action; or

9 (5) compel the directing party to redress the
10 directing party's action or direction.

11 (e) Absent clear evidence to the contrary, the actions of an
12 excluded fiduciary pertaining to matters within the limits of
13 authority of the directing party, including confirming that the
14 directing party's directions have been carried out and recording
15 and reporting actions taken pursuant to the directing party's
16 direction, shall be presumed to be administrative actions taken by
17 the excluded fiduciary and may not be considered an undertaking by
18 the excluded fiduciary to monitor the directing party's actions or
19 participate in actions within the limits of the directing party's
20 authority.

21 (f) An excluded fiduciary may, but is not required to,
22 obtain and rely on an opinion of counsel on any matter relevant to
23 this subchapter.

24 Sec. 114.109. JURISDICTION. By accepting an appointment to
25 serve as a directing party of a trust that is subject to the laws of
26 this state, the directing party submits to the jurisdiction of the
27 courts of this state even if investment advisory agreements or

1 other related agreements provide otherwise, and the directing party
2 may be made a party to any action or proceeding in which issues
3 relate to a decision or action of the directing party.

4 Sec. 114.110. TAX SAVINGS PROVISIONS. Notwithstanding the
5 other provisions of this subchapter, and except as otherwise
6 provided by the governing instrument, none of the default powers
7 granted to a directing party authorize:

8 (1) a grantor of a trust to direct distributions;

9 (2) any directing party who is a beneficiary, or a
10 directing party who is not an independent fiduciary and who was
11 appointed by a beneficiary, to direct distributions other than in
12 accordance with the limits of Section 113.029;

13 (3) any directing party to have any incidents of
14 ownership over a life insurance policy insuring the life of the
15 directing party or the directing party's spouse; or

16 (4) any directing party to hold any power that would
17 cause the inclusion of assets of the trust in the directing party's
18 estate that would not otherwise be included.

19 SECTION 13. Sections 115.002(b-1) and (b-2), Property Code,
20 are amended to read as follows:

21 (b-1) If there are multiple [~~noncorporate~~] trustees none of
22 whom is a corporate trustee and the trustees maintain a principal
23 office in this state, an action shall be brought in the county in
24 which:

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

1 (2) the trustees maintain the principal office.

2 (b-2) If there are multiple [~~noncorporate~~] trustees none of
3 whom is a corporate trustee and the trustees do not maintain a
4 principal office in this state, an action shall be brought in the
5 county in which:

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

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

11 SECTION 14. Section 181.083, Property Code, is amended by
12 adding Subsections (c) and (d) to read as follows:

13 (c) To the extent specified in an instrument in which a
14 donee exercises a power, any estate or interest in real or personal
15 property created through the exercise of the power by the donee is
16 considered to have been created at the time of the exercise of the
17 donee's power and not at the time of the creation of the donee's
18 power, provided that in the instrument the donee:

19 (1) specifically refers to Section 181.083(c),
20 Property Code;

21 (2) specifically asserts an intention to exercise a
22 power of appointment by creating another power of appointment
23 described in Section 2041(a)(3) or Section 2514(d), Internal
24 Revenue Code of 1986; or

25 (3) specifically asserts an intention to postpone the
26 vesting of any estate or interest in the property that is subject to
27 the power, or suspend the absolute ownership or power of alienation

1 of that property, for a period ascertainable without regard to the
2 date of the creation of the donee's power.

3 (d) Subsection (c) applies regardless of whether the
4 donee's power may be exercised in favor of the donee, the donee's
5 creditors, the donee's estate, or the creditors of the donee's
6 estate.

7 SECTION 15. (a) Except as otherwise expressly provided by
8 a trust, a will creating a trust, or this section, the changes in
9 law made by this Act apply to a trust existing or created on or after
10 September 1, 2015.

11 (b) For a trust existing on September 1, 2015, 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, 2015.

15 SECTION 16. Sections [114.003](#)(b) and (c), Property Code, are
16 repealed.

17 SECTION 17. This Act takes effect September 1, 2015.