

By: Wray

H.B. No. 1354

Substitute the following for H.B. No. 1354:

By: Smithee

C.S.H.B. No. 1354

A BILL TO BE ENTITLED

AN ACT

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relating to trusts.

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

SECTION 1. Section 111.0035(b), Property Code, is amended to read as follows:

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

(1) the requirements imposed under Section 112.031;

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

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

(4) a trustee's duty:

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

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

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

(B) to act in good faith and in accordance with the purposes of the trust;

(5) the power of a court, in the interest of justice, to take action or exercise jurisdiction, including the power to:

- 1 (A) modify, reform, or terminate a trust or take
2 other action under Section 112.054;
- 3 (B) remove a trustee under Section 113.082;
- 4 (C) exercise jurisdiction under Section 115.001;
- 5 (D) require, dispense with, modify, or terminate
6 a trustee's bond; or
- 7 (E) adjust or deny a trustee's compensation if
8 the trustee commits a breach of trust; or
- 9 (6) the applicability of Section 112.038.

10 SECTION 2. Section 112.035(e), Property Code, is amended to
11 read as follows:

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

- 14 (1) a power described by Subsection (f); or
- 15 (2) the beneficiary's right to withdraw a part of the
16 trust property to the extent that the value of the property affected
17 by the lapse, waiver, or release in any calendar year does not
18 exceed the greater of [~~the amount specified in~~]:

19 (A) the amount specified in Section 2041(b)(2) or
20 2514(e), Internal Revenue Code of 1986; or

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

24 SECTION 3. Section 112.038, Property Code, is amended to
25 read as follows:

26 Sec. 112.038. FORFEITURE CLAUSE. (a) A provision in a
27 trust that would cause a forfeiture of or void an interest for

1 bringing any court action, including contesting a trust, is
2 enforceable unless in a court action determining whether the
3 forfeiture clause should be enforced, the person who brought the
4 action contrary to the forfeiture clause establishes by a
5 preponderance of the evidence that:

- 6 (1) just cause existed for bringing the action; and
7 (2) the action was brought and maintained in good
8 faith.

9 (b) This section is not intended to and does not repeal any
10 law, recognizing that forfeiture clauses generally will not be
11 construed to prevent a beneficiary from seeking to compel a
12 fiduciary to perform the fiduciary's duties, seeking redress
13 against a fiduciary for a breach of the fiduciary's duties, or
14 seeking a judicial construction of a will or trust.

15 SECTION 4. The heading to Section 112.054, Property Code,
16 is amended to read as follows:

17 Sec. 112.054. JUDICIAL MODIFICATION, REFORMATION, OR
18 TERMINATION OF TRUSTS.

19 SECTION 5. Section 112.054, Property Code, is amended by
20 amending Subsections (a), (b), and (c) and adding Subsections
21 (b-1), (e), and (f) to read as follows:

22 (a) On the petition of a trustee or a beneficiary, a court
23 may order that the trustee be changed, that the terms of the trust
24 be modified, that the trustee be directed or permitted to do acts
25 that are not authorized or that are forbidden by the terms of the
26 trust, that the trustee be prohibited from performing acts required
27 by the terms of the trust, or that the trust be terminated in whole

1 or in part, if:

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

4 (2) because of circumstances not known to or
5 anticipated by the settlor, the order will further the purposes of
6 the trust;

7 (3) modification of administrative, nondispositive
8 terms of the trust is necessary or appropriate to prevent waste or
9 ~~avoid~~ impairment of the trust's administration;

10 (4) the order is necessary or appropriate to achieve
11 the settlor's tax objectives or to qualify a distributee for
12 governmental benefits and is not contrary to the settlor's
13 intentions; or

14 (5) subject to Subsection (d):

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

17 (B) the order is not inconsistent with a material
18 purpose of the trust.

19 (b) The court shall exercise its discretion to order a
20 modification or termination under Subsection (a) or reformation
21 under Subsection (b-1) in the manner that conforms as nearly as
22 possible to the probable intention of the settlor. The court shall
23 consider spendthrift provisions as a factor in making its decision
24 whether to modify, ~~or~~ terminate, or reform, but the court is not
25 precluded from exercising its discretion to modify, ~~or~~ terminate,
26 or reform solely because the trust is a spendthrift trust.

27 (b-1) On the petition of a trustee or a beneficiary, a court

1 may order that the terms of the trust be reformed if:

2 (1) reformation of administrative, nondispositive
3 terms of the trust is necessary or appropriate to prevent waste or
4 impairment of the trust's administration;

5 (2) reformation is necessary or appropriate to achieve
6 the settlor's tax objectives or to qualify a distributee for
7 governmental benefits and is not contrary to the settlor's
8 intentions; or

9 (3) reformation is necessary to correct a scrivener's
10 error in the governing document, even if unambiguous, to conform
11 the terms to the settlor's intent.

12 (c) The court may direct that an order described by
13 Subsection (a)(4) or (b-1) has retroactive effect.

14 (e) An order described by Subsection (b-1)(3) may be issued
15 only if the settlor's intent is established by clear and convincing
16 evidence.

17 (f) Subsection (b-1) is not intended to state the exclusive
18 basis for reformation of trusts, and the bases for reformation of
19 trusts in equity or common law are not affected by this section.

20 SECTION 6. Section [112.058](#)(a)(2), Property Code, is amended
21 to read as follows:

22 (2) "Community trust" means a community trust as
23 described by 26 C.F.R. Section [1.170A-9](#) (2008) [~~1.170A-9(e)(11)~~
24 ~~(1999)~~], including subsequent amendments.

25 SECTION 7. Sections [112.071](#)(5), (6), and (7), Property
26 Code, are amended to read as follows:

27 (5) "Full discretion" means a [~~the~~] power to

1 distribute principal to or for the benefit of one or more of the
2 beneficiaries of a trust that is not a trust with limited discretion
3 [~~limited or modified by the terms of the trust in any way, including~~
4 ~~by restrictions that limit distributions to purposes such as the~~
5 ~~best interests, welfare, or happiness of the beneficiaries~~].

6 (6) "Limited discretion" means:

7 (A) a power to distribute principal according to
8 mandatory distribution provisions under which the trustee has no
9 discretion; or

10 (B) a [~~limited or modified~~] power to distribute
11 principal to or for the benefit of one or more beneficiaries of a
12 trust that is limited by an ascertainable standard, including the
13 health, education, support, or maintenance of the beneficiary.

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

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

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

24 SECTION 8. Section 112.072(a), Property Code, is amended to
25 read as follows:

26 (a) An authorized trustee who has the full discretion to
27 distribute the principal of a trust may distribute all or part of

1 the principal of that trust in favor of a trustee of a second trust
2 for the benefit of one, ~~[or]~~ more than one, or all of the current
3 beneficiaries of the first trust ~~[who are eligible to receive~~
4 ~~income or principal from the trust]~~ and for the benefit of one, ~~[or]~~
5 more than one, or all of the successor or presumptive remainder
6 beneficiaries of the first trust ~~[who are eligible to receive~~
7 ~~income or principal from the trust]~~.

8 SECTION 9. Section [112.074](#), Property Code, is amended by
9 amending Subsection (c) and adding Subsections (e-1) and (e-2) to
10 read as follows:

11 (c) Except as provided by Subsection (e-1), in ~~[In]~~ addition
12 to the notice required under Subsection (a), the authorized trustee
13 shall give written notice of the trustee's decision to the attorney
14 general if:

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

25 (e-1) The trustee is not required to give notice to the
26 attorney general under Subsection (c) if the attorney general
27 waives that requirement in writing.

1 (e-2) For purposes of Subsection (e)(3), a beneficiary is
2 considered to have waived the requirement that notice be given
3 under this section if a person to whom notice is required to be
4 given with respect to that beneficiary under Subsection (d) waives
5 the requirement that notice be given under this section.

6 SECTION 10. Section 112.078, Property Code, is amended by
7 adding Subsection (f) to read as follows:

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

10 SECTION 11. Section 112.085, Property Code, is amended to
11 read as follows:

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

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

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

19 (B) receive a mandatory annuity or unitrust
20 interest;

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

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

25 (2) ~~[materially impair the rights of any beneficiary~~
26 ~~of the trust,~~

27 [~~3~~] materially limit a trustee's fiduciary duty:

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

2 (B) in a manner that would be prohibited [~~as~~
3 ~~described~~] by Section 111.0035;

4 (3) [~~(4)~~] decrease or indemnify against a trustee's
5 liability;

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

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

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

15 SECTION 12. Section 113.018, Property Code, is amended to
16 read as follows:

17 Sec. 113.018. EMPLOYMENT AND APPOINTMENT OF AGENTS. (a) A
18 trustee may employ attorneys, accountants, agents, including
19 investment agents, and brokers reasonably necessary in the
20 administration of the trust estate.

21 **(b) Without limiting the trustee's discretion under**
22 **Subsection (a), a trustee may grant an agent powers with respect to**
23 **property of the trust to act for the trustee in any lawful manner**
24 **for purposes of real property transactions.**

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

27 **(1) execute and deliver any legal instruments relating**

1 to the sale and conveyance of the property, including affidavits,
2 notices, disclosures, waivers, or designations or general or
3 special warranty deeds binding the trustee with vendor's liens
4 retained or disclaimed, as applicable, or transferred to a
5 third-party lender;

6 (2) accept notes, deeds of trust, or other legal
7 instruments;

8 (3) approve closing statements authorizing deductions
9 from the sale price;

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

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

14 (6) take any action, including signing any document,
15 necessary or appropriate to sell the property and accomplish the
16 delegated powers;

17 (7) contract to purchase the property for any price on
18 any terms;

19 (8) execute, deliver, or accept any legal instruments
20 relating to the purchase of the property or to any financing of the
21 purchase, including deeds, notes, deeds of trust, guaranties, or
22 closing statements;

23 (9) approve closing statements authorizing payment of
24 prorations and expenses;

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

27 (11) indemnify and hold harmless any third party who

1 accepts and acts under a power of attorney with respect to the
2 purchase; or

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

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

9 (e) A delegation by the trustee under Subsection (b) must be
10 documented in a written instrument acknowledged by the trustee
11 before an officer authorized under the law of this state or another
12 state to take acknowledgments to deeds of conveyance and administer
13 oaths. A signature on a delegation by a trustee for purposes of
14 this subsection is presumed to be genuine if the trustee
15 acknowledges the signature in accordance with Chapter 121, Civil
16 Practice and Remedies Code.

17 (f) A delegation to an agent under Subsection (b) terminates
18 six months from the date of the acknowledgment of the written
19 delegation unless terminated earlier by:

- 20 (1) the death or incapacity of the trustee;
21 (2) the resignation or removal of the trustee; or
22 (3) a date specified in the written delegation.

23 (g) A person who in good faith accepts a delegation under
24 Subsection (b) without actual knowledge that the delegation is
25 void, invalid, or terminated, that the purported agent's authority
26 is void, invalid, or terminated, or that the agent is exceeding or
27 improperly exercising the agent's authority may rely on the

1 delegation as if:

2 (1) the delegation were genuine, valid, and still in
3 effect;

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

6 (3) the agent had not exceeded and had properly
7 exercised the authority.

8 (h) A trustee may delegate powers under Subsection (b) if
9 the governing instrument does not affirmatively permit the trustee
10 to hire agents or expressly prohibit the trustee from hiring
11 agents.

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

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

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

21 (2) the trustees maintain the principal office.

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

26 (1) the situs of administration of the trust is
27 maintained or has been maintained at any time during the four-year

1 period preceding the date the action is filed; or

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

4 SECTION 14. Section 163.011, Property Code, is amended to
5 read as follows:

6 Sec. 163.011. APPLICABILITY OF OTHER PARTS OF CODE.
7 Chapters 116 and 117 do [~~Subtitle B, Title 9 (the Texas Trust Code),~~
8 ~~does~~] not apply to any institutional fund subject to this chapter.

9 SECTION 15. Section 181.083, Property Code, is amended by
10 adding Subsections (c) and (d) to read as follows:

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

17 (1) specifically refers to Section 181.083(c),
18 Property Code;

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

23 (3) specifically asserts an intention to postpone the
24 vesting of any estate or interest in the property that is subject to
25 the power, or suspend the absolute ownership or power of alienation
26 of that property, for a period ascertainable without regard to the
27 date of the creation of the donee's power.

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

5 SECTION 16. Section 240.002, Property Code, is amended by
6 amending Subdivision (1) and adding Subdivision (1-a) to read as
7 follows:

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

10 (1-a) "Current beneficiary" and "presumptive remainder
11 beneficiary" have the meanings assigned by Section 112.071.

12 SECTION 17. Section 240.0081, Property Code, is amended by
13 amending Subsection (c) and adding Subsections (e-1) and (e-2) to
14 read as follows:

15 (c) Except as provided by Subsection (e-1), in [~~In~~] addition
16 to the notice required under Subsection (a), the trustee shall give
17 written notice of the trustee's disclaimer to the attorney general
18 if:

19 (1) a charity is entitled to notice;

20 (2) a charity entitled to notice is no longer in
21 existence;

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

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

1 purpose.

2 (e-1) The trustee is not required to give notice to the
3 attorney general under Subsection (c) if the attorney general
4 waives that requirement in writing.

5 (e-2) For purposes of Subsection (e)(3), a beneficiary is
6 considered to have waived the requirement that notice be given
7 under this section if a person to whom notice is required to be
8 given with respect to that beneficiary under Subsection (d) waives
9 the requirement that notice be given under this section.

10 SECTION 18. (a) Except as otherwise expressly provided by a
11 trust, a will creating a trust, or this section, the changes in law
12 made by this Act apply to a trust existing on or created on or after
13 September 1, 2017.

14 (b) For a trust existing on September 1, 2017, that was
15 created before that date, the changes in law made by this Act apply
16 only to an act or omission relating to the trust that occurs on or
17 after September 1, 2017.

18 SECTION 19. This Act takes effect September 1, 2017.