

1-1 By: Moody (Senate Sponsor - Hughes) H.B. No. 2179
1-2 (In the Senate - Received from the House May 17, 2021;
1-3 May 17, 2021, read first time and referred to Committee on State
1-4 Affairs; May 21, 2021, reported favorably by the following vote:
1-5 Yeas 9, Nays 0; May 21, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	<u>Hughes</u>	X		
1-9	<u>Birdwell</u>	X		
1-10	<u>Campbell</u>	X		
1-11	<u>Hall</u>	X		
1-12	<u>Lucio</u>	X		
1-13	<u>Nelson</u>	X		
1-14	<u>Powell</u>	X		
1-15	<u>Schwertner</u>	X		
1-16	<u>Zaffirini</u>	X		

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to trusts.

1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-21 SECTION 1. Section 41.0021(a), Property Code, is amended to
1-22 read as follows:

1-23 (a) In this section, "qualifying trust" means an express
1-24 trust:

1-25 (1) in which the instrument or court order creating
1-26 the express trust, an instrument transferring property to the
1-27 trust, or any other agreement that is binding on the trustee
1-28 provides that a settlor or beneficiary of the trust has the right
1-29 to:

1-30 (A) revoke the trust without the consent of
1-31 another person other than a spouse who is also a settlor of the
1-32 trust;

1-33 (B) exercise an inter vivos general power of
1-34 appointment over the property that qualifies for the homestead
1-35 exemption, either alone or when aggregated with property subject to
1-36 an inter vivos general power of appointment held by a spouse who is
1-37 also a settlor of the trust; or

1-38 (C) use and occupy the residential property as
1-39 the settlor's or beneficiary's principal residence at no cost, or
1-40 rent free and without charge, except for [~~to the settlor or~~
1-41 ~~beneficiary, other than payment of~~] taxes and other costs and
1-42 expenses specified in the instrument or court order:

1-43 (i) for the life of the settlor or
1-44 beneficiary;

1-45 (ii) for the shorter of the life of the
1-46 settlor or beneficiary or a term of years specified in the
1-47 instrument or court order; or

1-48 (iii) until the date the trust is revoked or
1-49 terminated by an instrument or court order that describes the
1-50 property with sufficient certainty to identify the property and
1-51 that is recorded in the real property records of the county in which
1-52 the property is located [~~and that describes the property with~~
1-53 ~~sufficient certainty to identify the property~~]; and

1-54 (2) the trustee of which acquires the property in an
1-55 instrument of title or under a court order that:

1-56 (A) describes the property with sufficient
1-57 certainty to identify the property and the interest acquired; and

1-58 (B) is recorded in the real property records of
1-59 the county in which the property is located.

1-60 SECTION 2. Section 112.035, Property Code, is amended by
1-61 adding Subsections (f-1), (f-2), and (f-3) to read as follows:

2-1 (f-1) A beneficiary of the trust or the estate of a
2-2 beneficiary of the trust may not be considered to be a settlor
2-3 merely because the beneficiary, in any capacity:

2-4 (1) held or exercised a testamentary power of
2-5 appointment other than a general power of appointment;

2-6 (2) held a testamentary general power of appointment;
2-7 or

2-8 (3) exercised a testamentary general power of
2-9 appointment in favor of or for the benefit of the takers in default
2-10 of the appointive assets.

2-11 (f-2) If a beneficiary of the trust exercised a testamentary
2-12 general power of appointment in favor of or for the benefit of any
2-13 appointee other than the takers in default of the appointive
2-14 assets, the appointive assets are:

2-15 (1) subject to the claims of creditors of the
2-16 beneficiary, but only to the extent the beneficiary's owned
2-17 property is insufficient to meet the beneficiary's debts; and

2-18 (2) unless appointed to the beneficiary's estate, not
2-19 subject to:

2-20 (A) administration as a part of the beneficiary's
2-21 estate;

2-22 (B) recovery by the personal representative of
2-23 the beneficiary's estate, except as provided by Section 2207B,
2-24 Internal Revenue Code of 1986; or

2-25 (C) the payment of taxes or administration
2-26 expenses of the beneficiary's estate.

2-27 (f-3) For the purposes of Subsections (f-1) and (f-2),
2-28 "general power of appointment" has the meaning assigned by Section
2-29 2041(b)(1), Internal Revenue Code of 1986.

2-30 SECTION 3. Sections 112.0715(a) and (b), Property Code, are
2-31 amended to read as follows:

2-32 (a) A second trust may be created by a distribution of
2-33 principal under Section 112.072 or 112.073 to a trust that retains
2-34 the name used by the first trust. The second trust may retain,
2-35 subject to applicable federal law, the same tax identification
2-36 number of the first trust ~~[created under the same trust instrument~~
2-37 ~~as the first trust from which the principal is distributed or to a~~
2-38 ~~trust created under a different trust instrument].~~

2-39 (b) If a second trust is created by a distribution of
2-40 principal under Section 112.072 or 112.073 to a trust that retains
2-41 ~~[created under]~~ the name of ~~[same trust instrument as]~~ the first
2-42 ~~trust [from which the principal is distributed],~~ the property is
2-43 not required to be retitled.

2-44 SECTION 4. Section 115.014(b), Property Code, is amended to
2-45 read as follows:

2-46 (b) At any point in a proceeding a court may appoint an
2-47 attorney ad litem to represent any interest that the court
2-48 considers necessary, including an attorney ad litem to defend an
2-49 action under Section 114.083 for a beneficiary of the trust who is a
2-50 minor or who has been adjudged incompetent, if the court determines
2-51 that representation of the interest otherwise would be inadequate.

2-52 SECTION 5. Section 112.0715(c), Property Code, is repealed.

2-53 SECTION 6. Sections 112.0715(a) and (b), Property Code, as
2-54 amended by this Act, are intended by the legislature to be a
2-55 codification of the common law of this state in effect immediately
2-56 before the effective date of this Act.

2-57 SECTION 7. The changes in law made by this Act apply to a
2-58 trust created before, on, or after the effective date of this Act.

2-59 SECTION 8. This Act takes effect immediately if it receives
2-60 a vote of two-thirds of all the members elected to each house, as
2-61 provided by Section 39, Article III, Texas Constitution. If this
2-62 Act does not receive the vote necessary for immediate effect, this
2-63 Act takes effect September 1, 2021.

2-64 * * * * *