

By: Hughes

S.B. No. 1933

A BILL TO BE ENTITLED

AN ACT

relating to trusts.

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

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

(a) In this section, "qualifying trust" means an express trust:

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

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

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

(C) use and occupy the residential property as the settlor's or beneficiary's principal residence at no cost, or rent free and without charge, except for [~~to the settlor or beneficiary, other than payment of~~] taxes and other costs and

1 expenses specified in the instrument or court order:

2 (i) for the life of the settlor or
3 beneficiary;

4 (ii) for the shorter of the life of the
5 settlor or beneficiary or a term of years specified in the
6 instrument or court order; or

7 (iii) until the date the trust is revoked or
8 terminated by an instrument or court order that describes the
9 property with sufficient certainty to identify the property and
10 that is recorded in the real property records of the county in which
11 the property is located [~~and that describes the property with~~
12 ~~sufficient certainty to identify the property~~]; and

13 (2) the trustee of which acquires the property in an
14 instrument of title or under a court order that:

15 (A) describes the property with sufficient
16 certainty to identify the property and the interest acquired; and

17 (B) is recorded in the real property records of
18 the county in which the property is located.

19 SECTION 2. Section [112.035](#), Property Code, is amended by
20 adding Subsections (f-1) and (f-2) to read as follows:

21 (f-1) A beneficiary of the trust or the estate of a
22 beneficiary of the trust may not be considered to be a settlor
23 merely because the beneficiary, in any capacity, held or exercised:

24 (1) a testamentary power, other than a testamentary
25 general power, to appoint property of the trust to or for the
26 benefit of a person other than the beneficiary, a creditor of the
27 beneficiary, the beneficiary's estate, or a creditor of the

1 beneficiary's estate; or

2 (2) a testamentary general power to appoint property
3 of the trust to or for the benefit of a person who is a taker in
4 default of the appointive assets.

5 (f-2) If a beneficiary of the trust exercised a testamentary
6 general power of appointment to appoint property of the trust to or
7 for the benefit of a person who is not a taker in default of the
8 appointive assets, the appointive assets are:

9 (1) subject to the claims of creditors of the
10 beneficiary, but only to the extent the beneficiary's owned
11 property is insufficient to meet the beneficiary's debts; and

12 (2) unless appointed to the beneficiary's estate, not
13 subject to:

14 (A) administration as a part of the beneficiary's
15 estate;

16 (B) recovery by the personal representative of
17 the beneficiary's estate, except as provided by Section 2207B,
18 Internal Revenue Code of 1986; or

19 (C) the payment of taxes or administration
20 expenses of the beneficiary's estate.

21 SECTION 3. Sections 112.0715(a) and (b), Property Code, are
22 amended to read as follows:

23 (a) A second trust may be created by a distribution of
24 principal under Section 112.072 or 112.073 to a trust that retains
25 the name used by the first trust. The second trust may retain,
26 subject to applicable federal law, the same tax identification
27 number of the first trust ~~[created under the same trust instrument~~

1 ~~as the first trust from which the principal is distributed or to a~~
2 ~~trust created under a different trust instrument].~~

3 (b) If a second trust is created by a distribution of
4 principal under Section 112.072 or 112.073 to a trust that retains
5 ~~[created under]~~ the name of ~~[same trust instrument as]~~ the first
6 trust ~~[from which the principal is distributed]~~, the property is
7 not required to be retitled.

8 SECTION 4. Section 115.014(b), Property Code, is amended to
9 read as follows:

10 (b) At any point in a proceeding a court may appoint an
11 attorney ad litem to represent any interest that the court
12 considers necessary, including an attorney ad litem to defend an
13 action under Section 114.083 for a beneficiary of the trust who is a
14 minor or who has been adjudged incompetent, if the court determines
15 that representation of the interest otherwise would be inadequate.

16 SECTION 5. Section 112.0715(c), Property Code, is repealed.

17 SECTION 6. Sections 112.0715(a) and (b), Property Code, as
18 amended by this Act, are intended by the legislature to be a
19 codification of the common law of this state in effect immediately
20 before the effective date of this Act.

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

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