

By: Allison

H.B. No. 2333

A BILL TO BE ENTITLED

AN ACT

relating to noncharitable trusts without an ascertainable beneficiary.

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

SECTION 1. Chapter 112, Property Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. NONCHARITABLE TRUST WITHOUT ASCERTAINABLE

BENEFICIARY

Sec. 112.121. VALIDITY OF TRUST; APPLICABILITY. (a) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary.

(b) This subchapter does not apply to a trust created under Section 112.037.

Sec. 112.122. ENFORCEMENT OF TRUST. (a) A trust created under this subchapter must be enforced by one or more persons appointed in the terms of the trust to serve as a trust enforcer.

(b) A trust enforcer shall enforce the purpose and terms of the trust. The trust enforcer is not a beneficiary of the trust, but has the rights of a beneficiary provided under this title and the common law of this state, or as otherwise provided by the terms of the trust.

(c) A trust enforcer shall exercise any authority granted under the terms of the trust or the provisions of this section as a fiduciary owing a duty to the trust and is entitled to reasonable

1 compensation for serving as trust enforcer.

2 (d) A trust enforcer may consent to, waive, object to, or
3 petition an appropriate court concerning any matter regarding the
4 purpose or administration of the trust.

5 (e) Except as otherwise provided by Section 112.124 or
6 112.125 or the terms of the trust, if more than one person is acting
7 as a trust enforcer, any action in that capacity must be decided by
8 the majority vote of the persons acting as trust enforcers. If
9 there are an even number of trust enforcers and a majority vote
10 cannot be established, the decision of the trustee controls.

11 (f) The terms of the trust may provide for the succession of
12 a trust enforcer or a process of appointing any successor trust
13 enforcer.

14 (g) If no person is serving as a trust enforcer for a trust
15 created under this subchapter, a court properly exercising
16 jurisdiction shall appoint one or more persons to serve as the trust
17 enforcer.

18 Sec. 112.123. APPLICATION OR DISTRIBUTION OF TRUST
19 PROPERTY. (a) Property of a trust created under this subchapter
20 may be applied only to the intended purpose of the trust, except to
21 the extent that a court finds that the value of the trust property
22 exceeds the amount required for the intended purpose of the trust.

23 (b) Except as provided by the terms of the trust, property
24 found by a court not to be required for the trust's intended purpose
25 shall be distributed:

26 (1) as provided by the terms of the trust; or

27 (2) if the trust does not provide for the distribution

of such property, to the settlor if then living or to the settlor's successors in interest.

Sec. 112.124. COMMERCIAL LEGACY TRUST. (a) In this section, "commercial legacy trust" means a trust subject to this section. A commercial legacy trust is not a business trust for purposes of Section 111.003.

(b) Subject to this section, a trust may be created under this subchapter for a commercial purpose, including seeking economic and noneconomic benefits.

(c) A commercial legacy trust that holds an ownership interest in a corporation, partnership, limited partnership, cooperative, limited liability company, limited liability partnership, or other business entity created to conduct business under the laws of this state must hold a controlling interest in that business entity.

(d) A commercial legacy trust may have a business committee governed by Section 112.125. Each member of the business committee shall exercise authority as a fiduciary of the commercial legacy trust. A trustee of a commercial legacy trust must act in accordance with a direction from the business committee unless the action is manifestly contrary to the terms of the trust or the trustee knows that the action would constitute a breach of fiduciary duty that the business committee, the trust enforcer, or the trustee owes to the trust.

(e) A trustee of a commercial legacy trust is liable only for wilful misconduct and is not liable for reliance on documents provided by the business committee or the trust enforcer.

1 (f) Unless the terms of a commercial legacy trust provide
2 otherwise, the trust enforcer and the business committee, acting
3 together, may modify or terminate a commercial legacy trust by
4 unanimous agreement of all members of the business committee and
5 all trust enforcers.

6 (g) On termination of a commercial legacy trust, the trustee
7 shall distribute all remaining trust property:

8 (1) as the terms of the trust provide; or

9 (2) if the terms of the trust do not provide for
10 complete distribution of the property, as a court determines to be
11 consistent with the purposes for which the trust was created.

12 (h) A person serving as trustee of a commercial legacy trust
13 may not serve as a trust enforcer or a member of a business
14 committee of that trust. A person serving as a trust enforcer of a
15 commercial legacy trust may not serve as a member of the business
16 committee of that trust.

17 Sec. 112.125. BUSINESS COMMITTEE FOR COMMERCIAL LEGACY
18 TRUST; REQUIRED REPORT. (a) In this section, "business committee"
19 means the business committee established under Section 112.124(d)
20 for a commercial legacy trust subject to Section 112.124.

21 (b) The terms of a commercial legacy trust subject to
22 Section 112.124 may appoint the initial members of the business
23 committee and may provide for the succession of a business
24 committee member or a process of appointing a successor business
25 committee member.

26 (c) A business committee must have a minimum of three
27 members. If a vacancy on a business committee results in fewer than

three members on the committee, the vacancy must be filled in the following order of priority:

(1) by a person designated in the terms of the commercial legacy trust or selected through a process provided by the terms of the trust;

(2) by a person appointed by the unanimous agreement of the trust enforcers; or

(3) by a person appointed by a court properly exercising jurisdiction.

(d) Except as provided by Subsection (e)(3) or (e)(4), Section 112.124(f), or the terms of the commercial legacy trust, any action taken by a business committee must be decided by the majority vote of business committee members. If there are an even number of business committee members and a majority vote cannot be established, the decision of the trustee controls.

(e) Unless the terms of the commercial legacy trust provide otherwise, in carrying out the purposes of the trust and after reasonable written notice has been provided to the trust enforcer, a business committee may:

(1) remove a trustee with or without cause;

(2) appoint one or more successor trustees or cotrustees;

(3) remove a trust enforcer with or without cause by the unanimous vote of all members of the business committee and all trustees;

(4) remove a member of the business committee by the unanimous vote of all other members of the business committee;

1 (5) direct distributions from the trust; and

2 (6) with the consent of the trust enforcer and subject
3 to the trust enforcer's revocation of consent at any time on
4 reasonable notice, exercise any right or power belonging to the
5 trustee, including the right to vote stock owned by the trust.

6 (f) Unless the commercial legacy trust agreement provides
7 otherwise, a member of a business committee may resign:

8 (1) not earlier than the 30th day after providing
9 written notice to all trustees, all trust enforcers, and all
10 members of the business committee; or

11 (2) at any time with the approval of a court properly
12 exercising jurisdiction.

13 (g) A member of a business committee may be removed by the
14 unanimous vote of all trustees and trust enforcers.

15 (h) Unless the terms of the commercial legacy trust provide
16 otherwise, a business committee shall provide a report to the
17 trustee and the trust enforcer at least annually. The report must
18 show receipts, disbursements, and a detailed list of the assets and
19 liabilities of the commercial legacy trust. A business committee
20 shall keep the trustee and the trust enforcer reasonably informed
21 about the administration of the commercial legacy trust, company
22 matters, and any other material facts necessary for the trustee to
23 comply with the trustee's duties and for the trust enforcer to
24 protect the purpose of the trust. A report properly prepared under
25 this subsection and provided to the trust enforcer meets the
26 trustee's duty to provide an accounting under Section [113.151](#).

27 (i) If a business committee fails to provide a report in

1 compliance with Subsection (h), the trustee or trust enforcer may
2 demand in writing that the business committee deliver to the trust
3 enforcer and trustee a written statement of accounts covering all
4 transactions since the last report prepared under Subsection (h)
5 was provided. If the business committee does not deliver the
6 statement on or before the 90th day after the date the business
7 committee receives the written demand or after a longer period
8 ordered by a court, the trustee or trust enforcer may file suit to
9 compel the business committee to deliver the statement to the trust
10 enforcer and trustee. If a trustee or trust enforcer is successful
11 in the suit to compel a statement under this subsection, the court
12 may in its discretion award all or part of the court costs and all of
13 the prevailing party's reasonable and necessary attorney's fees and
14 costs against the members of the business committee in their
15 individual capacities.

16 SECTION 2. Subchapter F, Chapter 112, Property Code, as
17 added by this Act, applies only to a trust created on or after the
18 effective date of this Act.

19 SECTION 3. This Act takes effect immediately if it receives
20 a vote of two-thirds of all the members elected to each house, as
21 provided by Section 39, Article III, Texas Constitution. If this
22 Act does not receive the vote necessary for immediate effect, this
23 Act takes effect September 1, 2023.