

1-1 By: Parker S.B. No. 1649  
 1-2 (In the Senate - Filed March 6, 2023; March 16, 2023, read  
 1-3 first time and referred to Committee on State Affairs;  
 1-4 March 30, 2023, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 11, Nays 0; March 30, 2023,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18	X			
1-19	X			

1-20 COMMITTEE SUBSTITUTE FOR S.B. No. 1649 By: Hughes

1-21 A BILL TO BE ENTITLED  
 1-22 AN ACT

1-23 relating to trusts.  
 1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
 1-25 SECTION 1. Section 41.0021(a), Property Code, is amended to  
 1-26 read as follows:  
 1-27 (a) In this section, "qualifying trust" means an express  
 1-28 trust:  
 1-29 (1) in which the instrument or court order creating  
 1-30 the express trust, an instrument transferring property to the  
 1-31 trust, or any other agreement that is binding on the trustee  
 1-32 provides that a settlor or beneficiary of the trust has the right  
 1-33 to:  
 1-34 (A) revoke the trust without the consent of  
 1-35 another person other than a spouse who is also a settlor of the  
 1-36 trust;  
 1-37 (B) exercise an inter vivos general power of  
 1-38 appointment over the property that qualifies for the homestead  
 1-39 exemption, either alone or when aggregated with property subject to  
 1-40 an inter vivos general power of appointment held by a spouse who is  
 1-41 also a settlor of the trust; or  
 1-42 (C) use and occupy the residential property as  
 1-43 the settlor's or beneficiary's principal residence at no cost, or  
 1-44 rent free and without charge, except for [to the settlor or  
 1-45 beneficiary, other than payment of] taxes and other costs and  
 1-46 expenses specified in the instrument or court order:  
 1-47 (i) for the life of the settlor or  
 1-48 beneficiary;  
 1-49 (ii) for the shorter of the life of the  
 1-50 settlor or beneficiary or a term of years specified in the  
 1-51 instrument or court order; or  
 1-52 (iii) until the date the trust is revoked or  
 1-53 terminated by an instrument or court order that describes the  
 1-54 property with sufficient certainty to identify the property and  
 1-55 that is recorded in the real property records of the county in which  
 1-56 the property is located [and that describes the property with  
 1-57 sufficient certainty to identify the property]; and  
 1-58 (2) the trustee of which acquires the property in an  
 1-59 instrument of title or under a court order that:  
 1-60 (A) describes the property with sufficient

2-1 certainty to identify the property and the interest acquired; and  
2-2 (B) is recorded in the real property records of  
2-3 the county in which the property is located.

2-4 SECTION 2. Section 112.035, Property Code, is amended by  
2-5 adding Subsections (f-1), (f-2), and (f-3) to read as follows:

2-6 (f-1) A beneficiary of the trust or the estate of a  
2-7 beneficiary of the trust may not be considered to be a settlor  
2-8 merely because the beneficiary, in any capacity:

2-9 (1) held or exercised a testamentary power of  
2-10 appointment other than a general power of appointment;

2-11 (2) held a testamentary general power of appointment;  
2-12 or

2-13 (3) exercised a testamentary general power of  
2-14 appointment in favor of or for the benefit of the takers in default  
2-15 of the appointive assets.

2-16 (f-2) If a beneficiary of the trust exercised a testamentary  
2-17 general power of appointment in favor of or for the benefit of any  
2-18 appointee other than the takers in default of the appointive  
2-19 assets, the appointive assets are:

2-20 (1) subject to the claims of creditors of the  
2-21 beneficiary, but only to the extent the beneficiary's own property  
2-22 is insufficient to meet the beneficiary's debts; and

2-23 (2) unless appointed to the beneficiary's estate, not  
2-24 subject to:

2-25 (A) administration as a part of the beneficiary's  
2-26 estate;

2-27 (B) recovery by the personal representative of  
2-28 the beneficiary's estate, except as provided by Section 2207B,  
2-29 Internal Revenue Code of 1986; or

2-30 (C) the payment of taxes or administration  
2-31 expenses of the beneficiary's estate.

2-32 (f-3) For the purposes of Subsections (f-1) and (f-2),  
2-33 "general power of appointment" has the meaning assigned by Section  
2-34 2041(b)(1), Internal Revenue Code of 1986.

2-35 SECTION 3. Sections 112.036(b) and (c), Property Code, are  
2-36 amended to read as follows:

2-37 (b) For purposes of this section, the effective date [of a  
2-38 trust] is the date the governing instrument creating an interest in  
2-39 the trust becomes irrevocable with respect to that interest. If an  
2-40 interest in one trust is distributed to another trust with a  
2-41 different effective date, the effective date of that interest in  
2-42 the second trust becomes the earlier of the effective dates of the  
2-43 two trusts.

2-44 (c) An interest in a trust must vest, if at all:

2-45 (1) [not later than 300 years after the effective date  
2-46 of the trust,] if the effective date [of the trust] is on or after  
2-47 September 1, 2021, not later than the later of:

2-48 (A) 300 years after the effective date; or

2-49 (B) 21 years after some life in being at the time  
2-50 of the effective date, plus a period of gestation; or

2-51 (2) if the effective date is before September 1, 2021,  
2-52 except as provided by Subsection (d), not later than 21 years after  
2-53 some life in being at the time of the effective date [creation of  
2-54 the interest], plus a period of gestation[, if the effective date of  
2-55 the trust is before September 1, 2021].

2-56 SECTION 4. Sections 112.0715(a) and (b), Property Code, are  
2-57 amended to read as follows:

2-58 (a) A second trust may be created by a distribution of  
2-59 principal under Section 112.072 or 112.073 to a second trust that  
2-60 retains the name used by the first trust. The second trust may  
2-61 retain, subject to applicable federal law, the tax identification  
2-62 number of the first trust [created under the same trust instrument  
2-63 as the first trust from which the principal is distributed or to a  
2-64 trust created under a different trust instrument].

2-65 (b) If a second trust is created by a distribution of  
2-66 principal under Section 112.072 or 112.073 to a trust that retains  
2-67 [created under] the name of [same trust instrument as] the first  
2-68 trust [from which the principal is distributed], the property is  
2-69 not required to be retitled.

3-1 SECTION 5. Section 115.014(b), Property Code, is amended to  
3-2 read as follows:

3-3 (b) At any point in a proceeding a court may appoint an  
3-4 attorney ad litem to represent any interest that the court  
3-5 considers necessary, including an attorney ad litem to defend an  
3-6 action under Section 114.083 for a beneficiary of the trust who is a  
3-7 minor or who has been adjudged incompetent, if the court determines  
3-8 that representation of the interest otherwise would be inadequate.

3-9 SECTION 6. Section 112.0715(c), Property Code, is repealed.

3-10 SECTION 7. Sections 112.0715(a) and (b), Property Code, as  
3-11 amended by this Act, are intended by the legislature to be a  
3-12 codification of the common law of this state in effect immediately  
3-13 before the effective date of this Act.

3-14 SECTION 8. Except as otherwise provided by this Act, the  
3-15 changes in law made by this Act apply to a trust created before, on,  
3-16 or after the effective date of this Act.

3-17 SECTION 9. This Act takes effect immediately if it receives  
3-18 a vote of two-thirds of all the members elected to each house, as  
3-19 provided by Section 39, Article III, Texas Constitution. If this  
3-20 Act does not receive the vote necessary for immediate effect, this  
3-21 Act takes effect September 1, 2023.

3-22

\* \* \* \* \*