

1-1 By: Rodríguez S.B. No. 617
1-2 (In the Senate - Filed January 25, 2017; February 13, 2017,
1-3 read first time and referred to Committee on State Affairs;
1-4 April 12, 2017, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 12, 2017,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Huffman	X		
1-10	Hughes	X		
1-11	Birdwell	X		
1-12	Creighton	X		
1-13	Estes	X		
1-14	Lucio	X		
1-15	Nelson	X		
1-16	Schwertner	X		
1-17	Zaffirini	X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 617 By: Hughes

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to trusts.
1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-23 SECTION 1. Section [111.0035\(b\)](#), Property Code, is amended
1-24 to read as follows:
1-25 (b) The terms of a trust prevail over any provision of this
1-26 subtitle, except that the terms of a trust may not limit:
1-27 (1) the requirements imposed under Section [112.031](#);
1-28 (2) the applicability of Section [114.007](#) to an
1-29 exculpation term of a trust;
1-30 (3) the periods of limitation for commencing a
1-31 judicial proceeding regarding a trust;
1-32 (4) a trustee's duty:
1-33 (A) with regard to an irrevocable trust, to
1-34 respond to a demand for accounting made under Section [113.151](#) if the
1-35 demand is from a beneficiary who, at the time of the demand:
1-36 (i) is entitled or permitted to receive
1-37 distributions from the trust; or
1-38 (ii) would receive a distribution from the
1-39 trust if the trust terminated at the time of the demand; and
1-40 (B) to act in good faith and in accordance with
1-41 the purposes of the trust;
1-42 (5) the power of a court, in the interest of justice,
1-43 to take action or exercise jurisdiction, including the power to:
1-44 (A) modify, reform, or terminate a trust or take
1-45 other action under Section [112.054](#);
1-46 (B) remove a trustee under Section [113.082](#);
1-47 (C) exercise jurisdiction under Section [115.001](#);
1-48 (D) require, dispense with, modify, or terminate
1-49 a trustee's bond; or
1-50 (E) adjust or deny a trustee's compensation if
1-51 the trustee commits a breach of trust; or
1-52 (6) the applicability of Section [112.038](#).
1-53 SECTION 2. Section [112.035\(e\)](#), Property Code, is amended to
1-54 read as follows:
1-55 (e) A beneficiary of the trust may not be considered a
1-56 settlor merely because of a lapse, waiver, or release of:
1-57 (1) a power described by Subsection (f); or
1-58 (2) the beneficiary's right to withdraw a part of the
1-59 trust property to the extent that the value of the property affected
1-60 by the lapse, waiver, or release in any calendar year does not

2-1 exceed the greater of [~~the amount specified in~~]:
 2-2 (A) the amount specified in Section 2041(b)(2) or
 2-3 2514(e), Internal Revenue Code of 1986; or
 2-4 (B) the amount specified in Section 2503(b),
 2-5 Internal Revenue Code of 1986, with respect to the contributions by
 2-6 each donor.

2-7 SECTION 3. Section 112.038, Property Code, is amended to
 2-8 read as follows:

2-9 Sec. 112.038. FORFEITURE CLAUSE. (a) A provision in a
 2-10 trust that would cause a forfeiture of or void an interest for
 2-11 bringing any court action, including contesting a trust, is
 2-12 enforceable unless in a court action determining whether the
 2-13 forfeiture clause should be enforced, the person who brought the
 2-14 action contrary to the forfeiture clause establishes by a
 2-15 preponderance of the evidence that:

- 2-16 (1) just cause existed for bringing the action; and
- 2-17 (2) the action was brought and maintained in good
- 2-18 faith.

2-19 (b) This section is not intended to and does not repeal any
 2-20 law, recognizing that forfeiture clauses generally will not be
 2-21 construed to prevent a beneficiary from seeking to compel a
 2-22 fiduciary to perform the fiduciary's duties, seeking redress
 2-23 against a fiduciary for a breach of the fiduciary's duties, or
 2-24 seeking a judicial construction of a will or trust.

2-25 SECTION 4. The heading to Section 112.054, Property Code,
 2-26 is amended to read as follows:

2-27 Sec. 112.054. JUDICIAL MODIFICATION, REFORMATION, OR
 2-28 TERMINATION OF TRUSTS.

2-29 SECTION 5. Section 112.054, Property Code, is amended by
 2-30 amending Subsections (a), (b), and (c) and adding Subsections
 2-31 (b-1), (e), and (f) to read as follows:

2-32 (a) On the petition of a trustee or a beneficiary, a court
 2-33 may order that the trustee be changed, that the terms of the trust
 2-34 be modified, that the trustee be directed or permitted to do acts
 2-35 that are not authorized or that are forbidden by the terms of the
 2-36 trust, that the trustee be prohibited from performing acts required
 2-37 by the terms of the trust, or that the trust be terminated in whole
 2-38 or in part, if:

- 2-39 (1) the purposes of the trust have been fulfilled or
- 2-40 have become illegal or impossible to fulfill;
- 2-41 (2) because of circumstances not known to or
- 2-42 anticipated by the settlor, the order will further the purposes of
- 2-43 the trust;
- 2-44 (3) modification of administrative, nondispositive
- 2-45 terms of the trust is necessary or appropriate to prevent waste or
- 2-46 ~~avoid~~ impairment of the trust's administration;
- 2-47 (4) the order is necessary or appropriate to achieve
- 2-48 the settlor's tax objectives or to qualify a distributee for
- 2-49 governmental benefits and is not contrary to the settlor's
- 2-50 intentions; or

- 2-51 (5) subject to Subsection (d):
- 2-52 (A) continuance of the trust is not necessary to
- 2-53 achieve any material purpose of the trust; or
- 2-54 (B) the order is not inconsistent with a material
- 2-55 purpose of the trust.

2-56 (b) The court shall exercise its discretion to order a
 2-57 modification or termination under Subsection (a) or reformation
 2-58 under Subsection (b-1) in the manner that conforms as nearly as
 2-59 possible to the probable intention of the settlor. The court shall
 2-60 consider spendthrift provisions as a factor in making its decision
 2-61 whether to modify, ~~or~~ terminate, or reform, but the court is not
 2-62 precluded from exercising its discretion to modify, ~~or~~ terminate,
 2-63 or reform solely because the trust is a spendthrift trust.

2-64 (b-1) On the petition of a trustee or a beneficiary, a court
 2-65 may order that the terms of the trust be reformed if:

- 2-66 (1) reformation of administrative, nondispositive
- 2-67 terms of the trust is necessary or appropriate to prevent waste or
- 2-68 impairment of the trust's administration;
- 2-69 (2) reformation is necessary or appropriate to achieve

3-1 the settlor's tax objectives or to qualify a distributee for
 3-2 governmental benefits and is not contrary to the settlor's
 3-3 intentions; or

3-4 (3) reformation is necessary to correct a scrivener's
 3-5 error in the governing document, even if unambiguous, to conform
 3-6 the terms to the settlor's intent.

3-7 (c) The court may direct that an order described by
 3-8 Subsection (a)(4) or (b-1) has retroactive effect.

3-9 (e) An order described by Subsection (b-1)(3) may be issued
 3-10 only if the settlor's intent is established by clear and convincing
 3-11 evidence.

3-12 (f) Subsection (b-1) is not intended to state the exclusive
 3-13 basis for reformation of trusts, and the bases for reformation of
 3-14 trusts in equity or common law are not affected by this section.

3-15 SECTION 6. Section 112.058(a)(2), Property Code, is amended
 3-16 to read as follows:

3-17 (2) "Community trust" means a community trust as
 3-18 described by 26 C.F.R. Section 1.170A-9 (2008) [~~1.170A-9(e)(11)~~
 3-19 ~~(1999)~~], including subsequent amendments.

3-20 SECTION 7. Sections 112.071(5), (6), and (7), Property
 3-21 Code, are amended to read as follows:

3-22 (5) "Full discretion" means a a [~~the~~] power to
 3-23 distribute principal to or for the benefit of one or more of the
 3-24 beneficiaries of a trust that is not a trust with limited discretion
 3-25 [~~limited or modified by the terms of the trust in any way, including~~
 3-26 ~~by restrictions that limit distributions to purposes such as the~~
 3-27 ~~best interests, welfare, or happiness of the beneficiaries].~~

3-28 (6) "Limited discretion" means:

3-29 (A) a power to distribute principal according to
 3-30 mandatory distribution provisions under which the trustee has no
 3-31 discretion; or

3-32 (B) a [~~limited or modified~~] power to distribute
 3-33 principal to or for the benefit of one or more beneficiaries of a
 3-34 trust that is limited by an ascertainable standard, including the
 3-35 health, education, support, or maintenance of the beneficiary.

3-36 (7) "Presumptive remainder beneficiary," with respect
 3-37 to a particular date, means a beneficiary of a trust on that date
 3-38 who, in the absence of notice to the trustee of the exercise of the
 3-39 power of appointment and assuming that any other powers of
 3-40 appointment under the trust are not exercised, would be eligible to
 3-41 receive a distribution from the trust if:

3-42 (A) the trust terminated on that date; or

3-43 (B) the interests of all current beneficiaries
 3-44 [~~currently eligible to receive income or principal from the trust]~~
 3-45 ended on that date without causing the trust to terminate.

3-46 SECTION 8. Section 112.072(a), Property Code, is amended to
 3-47 read as follows:

3-48 (a) An authorized trustee who has the full discretion to
 3-49 distribute the principal of a trust may distribute all or part of
 3-50 the principal of that trust in favor of a trustee of a second trust
 3-51 for the benefit of one, [or] more than one, or all of the current
 3-52 beneficiaries of the first trust [~~who are eligible to receive~~
 3-53 ~~income or principal from the trust]~~ and for the benefit of one, [or]
 3-54 more than one, or all of the successor or presumptive remainder
 3-55 beneficiaries of the first trust [~~who are eligible to receive~~
 3-56 ~~income or principal from the trust].~~

3-57 SECTION 9. Section 112.074, Property Code, is amended by
 3-58 amending Subsection (c) and adding Subsections (e-1) and (e-2) to
 3-59 read as follows:

3-60 (c) Except as provided by Subsection (e-1), in [~~In~~] addition
 3-61 to the notice required under Subsection (a), the authorized trustee
 3-62 shall give written notice of the trustee's decision to the attorney
 3-63 general if:

3-64 (1) a charity is entitled to notice;

3-65 (2) a charity entitled to notice is no longer in
 3-66 existence;

3-67 (3) the trustee has the authority to distribute trust
 3-68 assets to one or more charities that are not named in the trust
 3-69 instrument; or

4-1 (4) the trustee has the authority to make
 4-2 distributions for a charitable purpose described in the trust
 4-3 instrument, but no charity is named as a beneficiary for that
 4-4 purpose.

4-5 (e-1) The trustee is not required to give notice to the
 4-6 attorney general under Subsection (c) if the attorney general
 4-7 waives that requirement in writing.

4-8 (e-2) For purposes of Subsection (e)(3), a beneficiary is
 4-9 considered to have waived the requirement that notice be given
 4-10 under this section if a person to whom notice is required to be
 4-11 given with respect to that beneficiary under Subsection (d) waives
 4-12 the requirement that notice be given under this section.

4-13 SECTION 10. Section 112.078, Property Code, is amended by
 4-14 adding Subsection (f) to read as follows:

4-15 (f) This section does not limit a beneficiary's right to
 4-16 bring an action against a trustee for a breach of trust.

4-17 SECTION 11. Section 112.085, Property Code, is amended to
 4-18 read as follows:

4-19 Sec. 112.085. EXCEPTIONS TO POWER OF DISTRIBUTION. An
 4-20 authorized trustee may not exercise a power to distribute principal
 4-21 of a trust under Section 112.072 or 112.073 to:

4-22 (1) reduce, limit, or modify a beneficiary's current,
 4-23 vested right to:

4-24 principal; (A) receive a mandatory distribution of income or
 4-25

4-26 interest; (B) receive a mandatory annuity or unitrust
 4-27

4-28 trust; or (C) withdraw a percentage of the value of the
 4-29

4-30 trust; (D) withdraw a specified dollar amount from the
 4-31

4-32 (2) ~~materially impair the rights of any beneficiary~~
 4-33 ~~of the trust;~~

4-34 ~~[(3)]~~ materially limit a trustee's fiduciary duty:

4-35 (A) under the terms of the trust; or

4-36 (B) in a manner that would be prohibited ~~[as~~
 4-37 ~~described]~~ by Section 111.0035;

4-38 (3) ~~[(4)]~~ decrease or indemnify against a trustee's
 4-39 liability;

4-40 (4) add a provision exonerating ~~[or exonerate]~~ a
 4-41 trustee from liability for failure to exercise reasonable care,
 4-42 diligence, and prudence;

4-43 (5) eliminate a provision granting another person the
 4-44 right to remove or replace the authorized trustee exercising the
 4-45 distribution power under Section 112.072 or 112.073; or

4-46 (6) reduce, limit, or modify in the second trust a
 4-47 perpetuities provision included in the first trust, unless
 4-48 expressly permitted by the terms of the first trust.

4-49 SECTION 12. Section 113.018, Property Code, is amended to
 4-50 read as follows:

4-51 Sec. 113.018. EMPLOYMENT AND APPOINTMENT OF AGENTS. (a) A
 4-52 trustee may employ attorneys, accountants, agents, including
 4-53 investment agents, and brokers reasonably necessary in the
 4-54 administration of the trust estate.

4-55 (b) Without limiting the trustee's discretion under
 4-56 Subsection (a), a trustee may grant an agent powers with respect to
 4-57 property of the trust to act for the trustee in any lawful manner
 4-58 for purposes of real property transactions.

4-59 (c) A trustee acting under Subsection (b) may delegate any
 4-60 or all of the duties and powers to:

4-61 (1) execute and deliver any legal instruments relating
 4-62 to the sale and conveyance of the property, including affidavits,
 4-63 notices, disclosures, waivers, or designations or general or
 4-64 special warranty deeds binding the trustee with vendor's liens
 4-65 retained or disclaimed, as applicable, or transferred to a
 4-66 third-party lender;

4-67 (2) accept notes, deeds of trust, or other legal
 4-68 instruments;

4-69 (3) approve closing statements authorizing deductions

5-1 from the sale price;
5-2 (4) receive trustee's net sales proceeds by check
5-3 payable to the trustee;
5-4 (5) indemnify and hold harmless any third party who
5-5 accepts and acts under a power of attorney with respect to the sale;
5-6 (6) take any action, including signing any document,
5-7 necessary or appropriate to sell the property and accomplish the
5-8 delegated powers;
5-9 (7) contract to purchase the property for any price on
5-10 any terms;
5-11 (8) execute, deliver, or accept any legal instruments
5-12 relating to the purchase of the property or to any financing of the
5-13 purchase, including deeds, notes, deeds of trust, guaranties, or
5-14 closing statements;
5-15 (9) approve closing statements authorizing payment of
5-16 prorations and expenses;
5-17 (10) pay the trustee's net purchase price from funds
5-18 provided by the trustee;
5-19 (11) indemnify and hold harmless any third party who
5-20 accepts and acts under a power of attorney with respect to the
5-21 purchase; or
5-22 (12) take any action, including signing any document,
5-23 necessary or appropriate to purchase the property and accomplish
5-24 the delegated powers.
5-25 (d) A trustee who delegates a power under Subsection (b) is
5-26 liable to the beneficiaries or to the trust for an action of the
5-27 agent to whom the power was delegated.
5-28 (e) A delegation by the trustee under Subsection (b) must be
5-29 documented in a written instrument acknowledged by the trustee
5-30 before an officer authorized under the law of this state or another
5-31 state to take acknowledgments to deeds of conveyance and administer
5-32 oaths. A signature on a delegation by a trustee for purposes of
5-33 this subsection is presumed to be genuine if the trustee
5-34 acknowledges the signature in accordance with Chapter 121, Civil
5-35 Practice and Remedies Code.
5-36 (f) A delegation to an agent under Subsection (b) terminates
5-37 six months from the date of the acknowledgment of the written
5-38 delegation unless terminated earlier by:
5-39 (1) the death or incapacity of the trustee;
5-40 (2) the resignation or removal of the trustee; or
5-41 (3) a date specified in the written delegation.
5-42 (g) A person who in good faith accepts a delegation under
5-43 Subsection (b) without actual knowledge that the delegation is
5-44 void, invalid, or terminated, that the purported agent's authority
5-45 is void, invalid, or terminated, or that the agent is exceeding or
5-46 improperly exercising the agent's authority may rely on the
5-47 delegation as if:
5-48 (1) the delegation were genuine, valid, and still in
5-49 effect;
5-50 (2) the agent's authority were genuine, valid, and
5-51 still in effect; and
5-52 (3) the agent had not exceeded and had properly
5-53 exercised the authority.
5-54 (h) A trustee may delegate powers under Subsection (b) if
5-55 the governing instrument does not affirmatively permit the trustee
5-56 to hire agents or expressly prohibit the trustee from hiring
5-57 agents.
5-58 SECTION 13. Sections 115.002(b-1) and (b-2), Property Code,
5-59 are amended to read as follows:
5-60 (b-1) If there are multiple [~~noncorporate~~] trustees none of
5-61 whom is a corporate trustee and the trustees maintain a principal
5-62 office in this state, an action shall be brought in the county in
5-63 which:
5-64 (1) the situs of administration of the trust is
5-65 maintained or has been maintained at any time during the four-year
5-66 period preceding the date the action is filed; or
5-67 (2) the trustees maintain the principal office.
5-68 (b-2) If there are multiple [~~noncorporate~~] trustees none of
5-69 whom is a corporate trustee and the trustees do not maintain a

6-1 principal office in this state, an action shall be brought in the
6-2 county in which:

6-3 (1) the situs of administration of the trust is
6-4 maintained or has been maintained at any time during the four-year
6-5 period preceding the date the action is filed; or

6-6 (2) any trustee resides or has resided at any time
6-7 during the four-year period preceding the date the action is filed.

6-8 SECTION 14. Section 163.011, Property Code, is amended to
6-9 read as follows:

6-10 Sec. 163.011. APPLICABILITY OF OTHER PARTS OF CODE.
6-11 Chapters 116 and 117 do [~~Sub~~title B, Title 9 (the Texas Trust Code),
6-12 ~~does~~] not apply to any institutional fund subject to this chapter.

6-13 SECTION 15. Section 181.083, Property Code, is amended by
6-14 adding Subsections (c) and (d) to read as follows:

6-15 (c) To the extent specified in an instrument in which a
6-16 donee exercises a power, any estate or interest in real or personal
6-17 property created through the exercise of the power by the donee is
6-18 considered to have been created at the time of the exercise of the
6-19 donee's power and not at the time of the creation of the donee's
6-20 power, provided that in the instrument the donee:

6-21 (1) specifically refers to Section 181.083(c),
6-22 Property Code;

6-23 (2) specifically asserts an intention to exercise a
6-24 power of appointment by creating another power of appointment
6-25 described by Section 2041(a)(3) or 2514(d), Internal Revenue Code
6-26 of 1986; or

6-27 (3) specifically asserts an intention to postpone the
6-28 vesting of any estate or interest in the property that is subject to
6-29 the power, or suspend the absolute ownership or power of alienation
6-30 of that property, for a period ascertainable without regard to the
6-31 date of the creation of the donee's power.

6-32 (d) Subsection (c) applies regardless of whether the
6-33 donee's power may be exercised in favor of the donee, the donee's
6-34 creditors, the donee's estate, or the creditors of the donee's
6-35 estate.

6-36 SECTION 16. Section 240.002, Property Code, is amended by
6-37 amending Subdivision (1) and adding Subdivision (1-a) to read as
6-38 follows:

6-39 (1) "Charity" means a charitable entity or a
6-40 charitable trust, as those terms are defined by Section 123.001.

6-41 (1-a) "Current beneficiary" and "presumptive remainder
6-42 beneficiary" have the meanings assigned by Section 112.071.

6-43 SECTION 17. Section 240.0081, Property Code, is amended by
6-44 amending Subsection (c) and adding Subsections (e-1) and (e-2) to
6-45 read as follows:

6-46 (c) Except as provided by Subsection (e-1), in [~~In~~] addition
6-47 to the notice required under Subsection (a), the trustee shall give
6-48 written notice of the trustee's disclaimer to the attorney general
6-49 if:

6-50 (1) a charity is entitled to notice;
6-51 (2) a charity entitled to notice is no longer in
6-52 existence;

6-53 (3) the trustee has the authority to distribute trust
6-54 assets to one or more charities that are not named in the trust
6-55 instrument; or

6-56 (4) the trustee has the authority to make
6-57 distributions for a charitable purpose described in the trust
6-58 instrument, but no charity is named as a beneficiary for that
6-59 purpose.

6-60 (e-1) The trustee is not required to give notice to the
6-61 attorney general under Subsection (c) if the attorney general
6-62 waives that requirement in writing.

6-63 (e-2) For purposes of Subsection (e)(3), a beneficiary is
6-64 considered to have waived the requirement that notice be given
6-65 under this section if a person to whom notice is required to be
6-66 given with respect to that beneficiary under Subsection (d) waives
6-67 the requirement that notice be given under this section.

6-68 SECTION 18. (a) Except as otherwise expressly provided by
6-69 a trust, a will creating a trust, or this section, the changes in

7-1 law made by this Act apply to a trust existing on or created on or
7-2 after September 1, 2017.

7-3 (b) For a trust existing on September 1, 2017, that was
7-4 created before that date, the changes in law made by this Act apply
7-5 only to an act or omission relating to the trust that occurs on or
7-6 after September 1, 2017.

7-7 SECTION 19. This Act takes effect September 1, 2017.

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