

By: Wray

H.B. No. 2245

A BILL TO BE ENTITLED

AN ACT

relating to trusts.

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

SECTION 1. Section 111.0035(b), Property Code, is amended to read as follows:

(b) The terms of a trust prevail over any provision of this subtitle, except that the terms of a trust may not limit:

(1) the requirements imposed under Section 112.031;

(2) the applicability of Section 114.007 to an exculpation term of a trust;

(3) the periods of limitation for commencing a judicial proceeding regarding a trust;

(4) a trustee's duty:

(A) with regard to an irrevocable trust, to respond to a demand for accounting made under Section 113.151 if the demand is from a beneficiary who, at the time of the demand:

(i) is entitled or permitted to receive distributions from the trust; or

(ii) would receive a distribution from the trust if the trust terminated at the time of the demand; and

(B) to act in good faith and in accordance with the purposes of the trust;

(5) the power of a court, in the interest of justice, to take action or exercise jurisdiction, including the power to:

(A) modify, reform, or terminate a trust or take other action under Section 112.054;

(B) remove a trustee under Section 113.082;

(C) exercise jurisdiction under Section 115.001;

(D) require, dispense with, modify, or terminate a trustee's bond; ~~or~~

(E) adjust, ~~or~~ deny, or order disgorgement of a trustee's compensation if the trustee commits a breach of trust; or

(F) make an award of costs and attorney's fees under Section 114.064; or

(6) the applicability of Section 112.038.

SECTION 2. Subchapter B, Chapter 112, Property Code, is amended by adding Section 112.0335 to read as follows:

Sec. 112.0335. CONSTRUCTION OF CERTAIN TRUSTS. (a) Unless the terms of the trust provide otherwise, if a trust is created and amendable or revocable by the settlor, or by the settlor and the settlor's spouse, Chapter 255, Estates Code, applies at the settlor's death to the construction and interpretation of at-death transfers as if the settlor of the trust is the testator, the beneficiaries of the at-death transfer are devisees, and the at-death transfers are devises.

(b) Section 355.109, Estates Code, applies to the abatement of at-death transfers.

(c) For purposes of this section, "at-death transfer" means a transfer pursuant to the terms of a trust described by Subsection (a) that is intended to take effect or become irrevocable by reason of the settlor's death.

1 (d) For purposes of the Estates Code provisions specified by
2 this section:

3 (1) an at-death transfer of specifically identifiable
4 trust property is a specific bequest, devise, or legacy;

5 (2) an at-death transfer from the general assets of
6 the trust that does not transfer specifically identifiable property
7 is a general bequest, devise, or legacy; and

8 (3) an at-death transfer of trust property that
9 remains after all specific and general transfers have been
10 satisfied is the residuary estate.

11 SECTION 3. Section 112.054(c), Property Code, is amended to
12 read as follows:

13 (c) The court may direct that an order described by
14 Subsection (a)(4) [~~or (b-1)~~] has retroactive effect. The
15 reformation of a trust under an order described by Subsection (b-1)
16 is effective as of the creation of the trust.

17 SECTION 4. Subchapter D, Chapter 112, Property Code, is
18 amended by adding Section 112.0715 to read as follows:

19 Sec. 112.0715. CREATION OF SECOND TRUST. (a) A second
20 trust may be created by a distribution of principal under Section
21 112.072 or 112.073 to a trust created under the same trust
22 instrument as the first trust from which the principal is
23 distributed or to a trust created under a different trust
24 instrument.

25 (b) If a second trust is created by a distribution of
26 principal under Section 112.072 or 112.073 to a trust created under
27 the same trust instrument as the first trust from which the

1 principal is distributed, the property is not required to be
2 retitled.

3 (c) The legislature intends this section to be a
4 codification of the common law of this state in effect immediately
5 before September 1, 2019.

6 SECTION 5. Chapter 112, Property Code, is amended by adding
7 Subchapter E to read as follows:

8 SUBCHAPTER E. EFFECT OF DISSOLUTION OF MARRIAGE ON CERTAIN
9 TRANSFERS IN TRUST

10 Sec. 112.101. DEFINITIONS. In this subchapter:

11 (1) "Disposition or appointment of property" includes
12 a transfer of property to or a provision of another benefit to a
13 beneficiary under a trust instrument.

14 (2) "Divorced individual" means an individual whose
15 marriage has been dissolved by divorce, annulment, or a declaration
16 that the marriage is void.

17 (3) "Relative" means an individual who is related to
18 another individual by consanguinity or affinity, as determined
19 under Sections 573.022 and 573.024, Government Code, respectively.

20 (4) "Revocable," with respect to a disposition,
21 appointment, provision, or nomination, means a disposition to,
22 appointment of, provision in favor of, or nomination of an
23 individual's spouse or any relative of the individual's spouse who
24 is not a relative of the individual that is contained in a trust
25 instrument executed by the individual before the dissolution of the
26 individual's marriage to the spouse and that the individual was
27 solely empowered by law or by the trust instrument to revoke

1 regardless of whether the individual had the capacity to exercise
2 the power at that time.

3 Sec. 112.102. REVOCATION OF CERTAIN NONTESTAMENTARY
4 TRANSFERS; TREATMENT OF FORMER SPOUSE OR FORMER SPOUSE'S RELATIVE
5 AS BENEFICIARY UNDER CERTAIN POLICIES OR PLANS. (a) The
6 dissolution of the marriage revokes a provision in a trust
7 instrument that was executed by a divorced individual as settlor
8 before the divorced individual's marriage was dissolved and that:

9 (1) is a revocable disposition or appointment of
10 property made to the divorced individual's former spouse or any
11 relative of the former spouse who is not a relative of the divorced
12 individual;

13 (2) revocably confers a general or special power of
14 appointment on the divorced individual's former spouse or any
15 relative of the former spouse who is not a relative of the divorced
16 individual; or

17 (3) revocably nominates the divorced individual's
18 former spouse or any relative of the former spouse who is not a
19 relative of the divorced individual to serve:

20 (A) as a personal representative, trustee,
21 conservator, agent, or guardian; or

22 (B) in another fiduciary or representative
23 capacity.

24 (b) Subsection (a) does not apply if one of the following
25 provides otherwise:

26 (1) a court order;

27 (2) the express terms of a trust instrument executed

1 by the divorced individual before the individual's marriage was
2 dissolved; or

3 (3) an express provision of a contract relating to the
4 division of the marital estate entered into between the divorced
5 individual and the individual's former spouse before, during, or
6 after the marriage.

7 (c) Sections 9.301 and 9.302, Family Code, govern the
8 designation of a former spouse as a beneficiary of certain life
9 insurance policies or as a beneficiary under certain retirement
10 benefit plans or other financial plans.

11 Sec. 112.103. EFFECT OF REVOCATION. (a) An interest
12 granted in a provision of a trust instrument that is revoked under
13 Section 112.102(a)(1) or (2) passes as if the former spouse of the
14 divorced individual who executed the trust instrument and each
15 relative of the former spouse who is not a relative of the divorced
16 individual disclaimed the interest granted in the provision.

17 (b) An interest granted in a provision of a trust instrument
18 that is revoked under Section 112.102(a)(3) passes as if the former
19 spouse and each relative of the former spouse who is not a relative
20 of the divorced individual died immediately before the dissolution
21 of the marriage.

22 Sec. 112.104. LIABILITY OF CERTAIN PURCHASERS OR RECIPIENTS
23 OF CERTAIN PAYMENTS, BENEFITS, OR PROPERTY. A bona fide purchaser
24 of property from a divorced individual's former spouse or any
25 relative of the former spouse who is not a relative of the divorced
26 individual or a person who receives from the former spouse or any
27 relative of the former spouse who is not a relative of the divorced

individual a payment, benefit, or property in partial or full satisfaction of an enforceable obligation:

(1) is not required by this subchapter to return the payment, benefit, or property; and

(2) is not liable under this subchapter for the amount of the payment or the value of the property or benefit.

Sec. 112.105. LIABILITY OF FORMER SPOUSE OR FORMER SPOUSE'S RELATIVE FOR CERTAIN PAYMENTS, BENEFITS, OR PROPERTY. A divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual who, not for value, receives a payment, benefit, or property to which the former spouse or the relative of the former spouse who is not a relative of the divorced individual is not entitled as a result of Sections 112.102(a) and (b):

(1) shall return the payment, benefit, or property to the person who is entitled to the payment, benefit, or property under this subchapter; or

(2) is personally liable to the person described by Subdivision (1) for the amount of the payment or the value of the benefit or property received, as applicable.

Sec. 112.106. CERTAIN TRUSTS WITH DIVORCED INDIVIDUALS AS JOINT SETTLORS. (a) This section applies only to a trust created under a trust instrument that:

(1) was executed by two married individuals as settlors whose marriage to each other is subsequently dissolved; and

(2) includes a provision described by Section

1 112.102(a).

2 (b) On the death of one of the divorced individuals who is a
3 settlor of a trust to which this section applies, the trustee shall
4 divide the trust into two trusts, each of which shall be composed of
5 the property attributable to the contributions of only one of the
6 divorced individuals.

7 (c) An action authorized in a trust instrument described by
8 Subsection (a) that requires the actions of both divorced
9 individuals may be taken with respect to a trust established in
10 accordance with Subsection (b) from the surviving divorced
11 individual's contributions solely by that divorced individual.

12 (d) The provisions of this subchapter apply independently
13 to each trust established in accordance with Subsection (b) as if
14 the divorced individual from whose contributions the trust was
15 established had been the only settlor to execute the trust
16 instrument described by Subsection (a).

17 (e) This section does not apply if one of the following
18 provides otherwise:

19 (1) a court order;

20 (2) the express terms of a trust instrument executed
21 by the two divorced individuals before their marriage was
22 dissolved; or

23 (3) an express provision of a contract relating to the
24 division of the marital estate entered into between the two
25 divorced individuals before, during, or after their marriage.

26 SECTION 6. Section [142.005\(b\)](#), Property Code, is amended to
27 read as follows:

1 (b) The decree shall provide for the creation of a trust for
2 the management of the funds for the benefit of the beneficiary and
3 for terms, conditions, and limitations of the trust, as determined
4 by the court, that are not in conflict with the following mandatory
5 provisions:

6 (1) The beneficiary shall be the sole beneficiary of
7 the trust.

8 (2) The trustee may disburse amounts of the trust's
9 principal, income, or both as the trustee in the trustee's sole
10 discretion determines to be reasonably necessary for the health,
11 education, support, or maintenance of the beneficiary. The trustee
12 may conclusively presume that medicine or treatments approved by a
13 licensed physician are appropriate for the health of the
14 beneficiary.

15 (3) The income of the trust not disbursed under
16 Subdivision (2) shall be added to the principal of the trust.

17 (4) If the beneficiary is a minor who is not considered
18 disabled for purposes of 42 U.S.C. Chapter 7, Subchapter XVI, the
19 trust shall terminate on the death of the beneficiary, on the
20 beneficiary's attaining an age stated in the trust, or on the 25th
21 birthday of the beneficiary, whichever occurs first.

22 (4-a) If the court finds that a minor beneficiary is
23 considered disabled for purposes of 42 U.S.C. Chapter 7, Subchapter
24 XVI, the trust shall terminate on the death of the beneficiary.

25 (4-b) If ~~[, or if]~~ the beneficiary is an incapacitated
26 person, the trust shall terminate on the death of the beneficiary or
27 when the beneficiary regains capacity.

1 (5) A trustee that is a financial institution shall
2 serve without bond.

3 (6) The trustee shall receive reasonable compensation
4 paid from trust's income, principal, or both on application to and
5 approval of the court.

6 (7) The first page of the trust instrument shall
7 contain the following notice:

8 NOTICE: THE BENEFICIARY AND CERTAIN PERSONS INTERESTED IN THE
9 WELFARE OF THE BENEFICIARY MAY HAVE REMEDIES UNDER SECTION 114.008
10 OR 142.005, PROPERTY CODE.

11 SECTION 7. Chapter 142, Property Code, is amended by adding
12 Section 142.010 to read as follows:

13 Sec. 142.010. TRANSFER OF TRUST PROPERTY TO A POOLED TRUST
14 SUBACCOUNT. (a) In this section, "management trust" means a trust
15 created for a beneficiary in accordance with Section 142.005.

16 (b) If the court with continuing jurisdiction over a
17 management trust determines that it is in the best interests of the
18 beneficiary for whom the management trust is created, the court may
19 order the transfer of all property in the management trust to a
20 pooled trust subaccount established in accordance with Chapter 143.

21 (c) For purposes of a proceeding to determine whether to
22 transfer property from a management trust to a pooled trust
23 subaccount, the court may, but is not required to, appoint an
24 attorney ad litem or guardian ad litem to represent the interests of
25 a management trust beneficiary who has a physical disability and is
26 not an incapacitated person. The attorney ad litem or the guardian
27 ad litem is entitled to a reasonable fee and reimbursement of

1 expenses to be paid from the management trust property.

2 (d) The transfer of property from the management trust to
3 the pooled trust subaccount shall be treated as a continuation of
4 the management trust and may not be treated as the establishment of
5 a new trust for purposes of 42 U.S.C. Section 1396p(d)(4)(A) or (C)
6 or otherwise for purposes of the management trust beneficiary's
7 eligibility for medical assistance under Chapter 32, Human
8 Resources Code.

9 (e) The court may not allow termination of the management
10 trust from which property is transferred under this section until
11 all of the property in the management trust has been transferred to
12 the pooled trust subaccount.

13 SECTION 8. Subtitle A, Title 10, Property Code, is amended
14 by adding Chapter 143 to read as follows:

15 CHAPTER 143. POOLED TRUST SUBACCOUNTS

16 Sec. 143.001. DEFINITIONS. In this chapter:

17 (1) "Beneficiary" means a person for whose benefit a
18 subaccount is established.

19 (2) "Incapacitated person" has the meaning assigned by
20 Section 142.007.

21 (3) "Medical assistance" means benefits and services
22 under the medical assistance program administered under Chapter 32,
23 Human Resources Code.

24 (4) "Pooled trust" means a trust that meets the
25 requirements of 42 U.S.C. Section 1396p(d)(4)(C) for purposes of
26 exempting the trust from the applicability of 42 U.S.C. Section
27 1396p(d) in determining the eligibility of a person who is disabled

1 for medical assistance.

2 (5) "Subaccount" means an account in a pooled trust
3 established under this chapter.

4 Sec. 143.002. APPLICATION TO ESTABLISH SUBACCOUNT. The
5 following persons may apply to the court having jurisdiction under
6 Section 142.005 for the establishment of a subaccount solely for
7 the benefit of a proposed beneficiary who is a person for whom a
8 management trust has been or could be established for the person's
9 benefit under Section 142.005:

10 (1) the trustee of a management trust established
11 under Section 142.005 for the benefit of the proposed beneficiary
12 of the subaccount;

13 (2) the guardian of the person or estate, or both, of
14 the proposed beneficiary of the subaccount;

15 (3) a person who has filed an application for the
16 appointment of a guardian of the person or estate, or both, for the
17 proposed beneficiary of the subaccount;

18 (4) an attorney ad litem or guardian ad litem
19 appointed to represent the proposed beneficiary of the subaccount;
20 or

21 (5) the proposed beneficiary, if the proposed
22 beneficiary is not a minor or incapacitated person.

23 Sec. 143.003. APPOINTMENT OF ATTORNEY AD LITEM. (a) The
24 court shall appoint an attorney ad litem for a person who is a minor
25 or an incapacitated person and who is the subject of an application
26 under Section 143.002.

27 (b) The attorney ad litem is entitled to a reasonable fee

and reimbursement of expenses to be paid from the person's property.

Sec. 143.004. ESTABLISHMENT OF SUBACCOUNT. If the court finds that it is in the best interests of a person who is the subject of an application under Section 143.002, the court may order:

(1) the establishment of a subaccount of which the person is the beneficiary; and

(2) the transfer to the subaccount of any of the person's property on hand or accruing to the person.

Sec. 143.005. TERMS OF SUBACCOUNT. Unless the court orders otherwise, the terms governing the subaccount must provide that:

(1) the subaccount terminates on the earliest of the date of:

(A) the beneficiary's 18th birthday, if the beneficiary:

(i) is not found by the court to be considered disabled for purposes of 42 U.S.C. Chapter 7, Subchapter XVI; and

(ii) is a minor at the time the subaccount is established;

(B) the beneficiary's death; or

(C) a court order terminating the subaccount;

and

(2) on termination, any property remaining in the beneficiary's subaccount after making any required payments to satisfy the amounts of medical assistance reimbursement claims for medical assistance provided to the beneficiary under this state's

medical assistance program and other states' medical assistance programs shall be distributed to:

(A) the beneficiary, if on the date of termination the beneficiary is living and is not a minor or incapacitated person;

(B) the beneficiary's guardian of the estate, if on the date of termination the beneficiary is living and is a minor or incapacitated person; or

(C) the personal representative of the beneficiary's estate, if on the date of termination the beneficiary is deceased.

Sec. 143.006. FEES AND REPORTING. (a) The manager or trustee of a pooled trust may:

(1) assess fees against a subaccount of that pooled trust that is established under this chapter, in accordance with the manager's or trustee's standard fee structure; and

(2) pay fees assessed under Subdivision (1) from the subaccount.

(b) If required by the court, the manager or trustee of the pooled trust shall file a copy of the annual report of account with the court clerk.

Sec. 143.007. JURISDICTION EXCLUSIVE. Notwithstanding any other law, the court that orders the establishment of a subaccount for a beneficiary has exclusive jurisdiction of a subsequent proceeding or action that relates to both the beneficiary and the subaccount, and the proceeding or action may be brought only in that court.

1 SECTION 9. (a) Except as otherwise expressly provided by a
2 trust, a will creating a trust, or this section, the changes in law
3 made by this Act apply to a trust existing on or created on or after
4 September 1, 2019.

5 (b) For a trust existing on September 1, 2019, that was
6 created before that date, the changes in law made by this Act apply
7 only to an act or omission relating to the trust that occurs on or
8 after September 1, 2019.

9 (c) Section 112.0335, Property Code, as added by this Act,
10 applies to a trust only if the settlor's death occurs on or after
11 September 1, 2019.

12 (d) Subchapter E, Chapter 112, Property Code, as added by
13 this Act, applies to a trust only with respect to a dissolution of
14 marriage that occurs on or after September 1, 2019.

15 SECTION 10. This Act takes effect September 1, 2019.