

1-1 By: Wray, Raymond (Senate Sponsor - Rodríguez) H.B. No. 2245
1-2 (In the Senate - Received from the House May 2, 2019;
1-3 May 3, 2019, read first time and referred to Committee on State
1-4 Affairs; May 14, 2019, reported favorably by the following vote:
1-5 Yeas 9, Nays 0; May 14, 2019, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	Huffman	X		
1-9	Hughes	X		
1-10	Birdwell	X		
1-11	Creighton	X		
1-12	Fallon	X		
1-13	Hall	X		
1-14	Lucio	X		
1-15	Nelson	X		
1-16	Zaffirini	X		

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to trusts.

1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-21 SECTION 1. Section [111.0035\(b\)](#), Property Code, is amended
1-22 to read as follows:

1-23 (b) The terms of a trust prevail over any provision of this
1-24 subtitle, except that the terms of a trust may not limit:

1-25 (1) the requirements imposed under Section [112.031](#);

1-26 (2) the applicability of Section [114.007](#) to an
1-27 exculpation term of a trust;

1-28 (3) the periods of limitation for commencing a
1-29 judicial proceeding regarding a trust;

1-30 (4) a trustee's duty:

1-31 (A) with regard to an irrevocable trust, to
1-32 respond to a demand for accounting made under Section [113.151](#) if the
1-33 demand is from a beneficiary who, at the time of the demand:

1-34 (i) is entitled or permitted to receive
1-35 distributions from the trust; or

1-36 (ii) would receive a distribution from the
1-37 trust if the trust terminated at the time of the demand; and

1-38 (B) to act in good faith and in accordance with
1-39 the purposes of the trust;

1-40 (5) the power of a court, in the interest of justice,
1-41 to take action or exercise jurisdiction, including the power to:

1-42 (A) modify, reform, or terminate a trust or take
1-43 other action under Section [112.054](#);

1-44 (B) remove a trustee under Section [113.082](#);

1-45 (C) exercise jurisdiction under Section [115.001](#);

1-46 (D) require, dispense with, modify, or terminate
1-47 a trustee's bond; ~~or~~

1-48 (E) adjust, ~~or~~ deny, or order disgorgement of a

1-49 trustee's compensation if the trustee commits a breach of trust; or

1-50 (F) make an award of costs and attorney's fees

1-51 under Section [114.064](#); or

1-52 (6) the applicability of Section [112.038](#).

1-53 SECTION 2. Subchapter B, Chapter [112](#), Property Code, is
1-54 amended by adding Section [112.0335](#) to read as follows:

1-55 Sec. [112.0335](#). CONSTRUCTION OF CERTAIN TRUSTS. (a) Unless
1-56 the terms of the trust provide otherwise, if a trust is created and
1-57 amendable or revocable by the settlor, or by the settlor and the
1-58 settlor's spouse, Chapter [255](#), Estates Code, applies at the
1-59 settlor's death to the construction and interpretation of at-death
1-60 transfers as if the settlor of the trust is the testator, the
1-61 beneficiaries of the at-death transfer are devisees, and the

2-1 at-death transfers are devises.

2-2 (b) Section 355.109, Estates Code, applies to the abatement
 2-3 of at-death transfers.

2-4 (c) For purposes of this section, "at-death transfer" means
 2-5 a transfer pursuant to the terms of a trust described by Subsection
 2-6 (a) that is intended to take effect or become irrevocable by reason
 2-7 of the settlor's death.

2-8 (d) For purposes of the Estates Code provisions specified by
 2-9 this section:

2-10 (1) an at-death transfer of specifically identifiable
 2-11 trust property is a specific bequest, devise, or legacy;

2-12 (2) an at-death transfer from the general assets of
 2-13 the trust that does not transfer specifically identifiable property
 2-14 is a general bequest, devise, or legacy; and

2-15 (3) an at-death transfer of trust property that
 2-16 remains after all specific and general transfers have been
 2-17 satisfied is the residuary estate.

2-18 SECTION 3. Section 112.054(c), Property Code, is amended to
 2-19 read as follows:

2-20 (c) The court may direct that an order described by
 2-21 Subsection (a)(4) [~~or (b-1)~~] has retroactive effect. The
 2-22 reformation of a trust under an order described by Subsection (b-1)
 2-23 is effective as of the creation of the trust.

2-24 SECTION 4. Subchapter D, Chapter 112, Property Code, is
 2-25 amended by adding Section 112.0715 to read as follows:

2-26 Sec. 112.0715. CREATION OF SECOND TRUST. (a) A second
 2-27 trust may be created by a distribution of principal under Section
 2-28 112.072 or 112.073 to a trust created under the same trust
 2-29 instrument as the first trust from which the principal is
 2-30 distributed or to a trust created under a different trust
 2-31 instrument.

2-32 (b) If a second trust is created by a distribution of
 2-33 principal under Section 112.072 or 112.073 to a trust created under
 2-34 the same trust instrument as the first trust from which the
 2-35 principal is distributed, the property is not required to be
 2-36 retitled.

2-37 (c) The legislature intends this section to be a
 2-38 codification of the common law of this state in effect immediately
 2-39 before September 1, 2019.

2-40 SECTION 5. Chapter 112, Property Code, is amended by adding
 2-41 Subchapter E to read as follows:

2-42 SUBCHAPTER E. EFFECT OF DISSOLUTION OF MARRIAGE ON CERTAIN
 2-43 TRANSFERS IN TRUST

2-44 Sec. 112.101. DEFINITIONS. In this subchapter:

2-45 (1) "Disposition or appointment of property" includes
 2-46 a transfer of property to or a provision of another benefit to a
 2-47 beneficiary under a trust instrument.

2-48 (2) "Divorced individual" means an individual whose
 2-49 marriage has been dissolved by divorce, annulment, or a declaration
 2-50 that the marriage is void.

2-51 (3) "Relative" means an individual who is related to
 2-52 another individual by consanguinity or affinity, as determined
 2-53 under Sections 573.022 and 573.024, Government Code, respectively.

2-54 (4) "Revocable," with respect to a disposition,
 2-55 appointment, provision, or nomination, means a disposition to,
 2-56 appointment of, provision in favor of, or nomination of an
 2-57 individual's spouse or any relative of the individual's spouse who
 2-58 is not a relative of the individual that is contained in a trust
 2-59 instrument executed by the individual before the dissolution of the
 2-60 individual's marriage to the spouse and that the individual was
 2-61 solely empowered by law or by the trust instrument to revoke
 2-62 regardless of whether the individual had the capacity to exercise
 2-63 the power at that time.

2-64 Sec. 112.102. REVOCATION OF CERTAIN NONTESTAMENTARY
 2-65 TRANSFERS; TREATMENT OF FORMER SPOUSE OR FORMER SPOUSE'S RELATIVE
 2-66 AS BENEFICIARY UNDER CERTAIN POLICIES OR PLANS. (a) The
 2-67 dissolution of the marriage revokes a provision in a trust
 2-68 instrument that was executed by a divorced individual as settlor
 2-69 before the divorced individual's marriage was dissolved and that:

3-1 (1) is a revocable disposition or appointment of
 3-2 property made to the divorced individual's former spouse or any
 3-3 relative of the former spouse who is not a relative of the divorced
 3-4 individual;

3-5 (2) revocably confers a general or special power of
 3-6 appointment on the divorced individual's former spouse or any
 3-7 relative of the former spouse who is not a relative of the divorced
 3-8 individual; or

3-9 (3) revocably nominates the divorced individual's
 3-10 former spouse or any relative of the former spouse who is not a
 3-11 relative of the divorced individual to serve:

3-12 (A) as a personal representative, trustee,
 3-13 conservator, agent, or guardian; or

3-14 (B) in another fiduciary or representative
 3-15 capacity.

3-16 (b) Subsection (a) does not apply if one of the following
 3-17 provides otherwise:

3-18 (1) a court order;

3-19 (2) the express terms of a trust instrument executed
 3-20 by the divorced individual before the individual's marriage was
 3-21 dissolved; or

3-22 (3) an express provision of a contract relating to the
 3-23 division of the marital estate entered into between the divorced
 3-24 individual and the individual's former spouse before, during, or
 3-25 after the marriage.

3-26 (c) Sections 9.301 and 9.302, Family Code, govern the
 3-27 designation of a former spouse as a beneficiary of certain life
 3-28 insurance policies or as a beneficiary under certain retirement
 3-29 benefit plans or other financial plans.

3-30 Sec. 112.103. EFFECT OF REVOCATION. (a) An interest
 3-31 granted in a provision of a trust instrument that is revoked under
 3-32 Section 112.102(a)(1) or (2) passes as if the former spouse of the
 3-33 divorced individual who executed the trust instrument and each
 3-34 relative of the former spouse who is not a relative of the divorced
 3-35 individual disclaimed the interest granted in the provision.

3-36 (b) An interest granted in a provision of a trust instrument
 3-37 that is revoked under Section 112.102(a)(3) passes as if the former
 3-38 spouse and each relative of the former spouse who is not a relative
 3-39 of the divorced individual died immediately before the dissolution
 3-40 of the marriage.

3-41 Sec. 112.104. LIABILITY OF CERTAIN PURCHASERS OR RECIPIENTS
 3-42 OF CERTAIN PAYMENTS, BENEFITS, OR PROPERTY. A bona fide purchaser
 3-43 of property from a divorced individual's former spouse or any
 3-44 relative of the former spouse who is not a relative of the divorced
 3-45 individual or a person who receives from the former spouse or any
 3-46 relative of the former spouse who is not a relative of the divorced
 3-47 individual a payment, benefit, or property in partial or full
 3-48 satisfaction of an enforceable obligation:

3-49 (1) is not required by this subchapter to return the
 3-50 payment, benefit, or property; and

3-51 (2) is not liable under this subchapter for the amount
 3-52 of the payment or the value of the property or benefit.

3-53 Sec. 112.105. LIABILITY OF FORMER SPOUSE OR FORMER SPOUSE'S
 3-54 RELATIVE FOR CERTAIN PAYMENTS, BENEFITS, OR PROPERTY. A divorced
 3-55 individual's former spouse or any relative of the former spouse who
 3-56 is not a relative of the divorced individual who, not for value,
 3-57 receives a payment, benefit, or property to which the former spouse
 3-58 or the relative of the former spouse who is not a relative of the
 3-59 divorced individual is not entitled as a result of Sections
 3-60 112.102(a) and (b):

3-61 (1) shall return the payment, benefit, or property to
 3-62 the person who is entitled to the payment, benefit, or property
 3-63 under this subchapter; or

3-64 (2) is personally liable to the person described by
 3-65 Subdivision (1) for the amount of the payment or the value of the
 3-66 benefit or property received, as applicable.

3-67 Sec. 112.106. CERTAIN TRUSTS WITH DIVORCED INDIVIDUALS AS
 3-68 JOINT SETTLORS. (a) This section applies only to a trust created
 3-69 under a trust instrument that:

4-1 (1) was executed by two married individuals as
4-2 settlers whose marriage to each other is subsequently dissolved;
4-3 and

4-4 (2) includes a provision described by Section
4-5 112.102(a).

4-6 (b) On the death of one of the divorced individuals who is a
4-7 settlor of a trust to which this section applies, the trustee shall
4-8 divide the trust into two trusts, each of which shall be composed of
4-9 the property attributable to the contributions of only one of the
4-10 divorced individuals.

4-11 (c) An action authorized in a trust instrument described by
4-12 Subsection (a) that requires the actions of both divorced
4-13 individuals may be taken with respect to a trust established in
4-14 accordance with Subsection (b) from the surviving divorced
4-15 individual's contributions solely by that divorced individual.

4-16 (d) The provisions of this subchapter apply independently
4-17 to each trust established in accordance with Subsection (b) as if
4-18 the divorced individual from whose contributions the trust was
4-19 established had been the only settlor to execute the trust
4-20 instrument described by Subsection (a).

4-21 (e) This section does not apply if one of the following
4-22 provides otherwise:

4-23 (1) a court order;

4-24 (2) the express terms of a trust instrument executed
4-25 by the two divorced individuals before their marriage was
4-26 dissolved; or

4-27 (3) an express provision of a contract relating to the
4-28 division of the marital estate entered into between the two
4-29 divorced individuals before, during, or after their marriage.

4-30 SECTION 6. Section 142.005(b), Property Code, is amended to
4-31 read as follows:

4-32 (b) The decree shall provide for the creation of a trust for
4-33 the management of the funds for the benefit of the beneficiary and
4-34 for terms, conditions, and limitations of the trust, as determined
4-35 by the court, that are not in conflict with the following mandatory
4-36 provisions:

4-37 (1) The beneficiary shall be the sole beneficiary of
4-38 the trust.

4-39 (2) The trustee may disburse amounts of the trust's
4-40 principal, income, or both as the trustee in the trustee's sole
4-41 discretion determines to be reasonably necessary for the health,
4-42 education, support, or maintenance of the beneficiary. The trustee
4-43 may conclusively presume that medicine or treatments approved by a
4-44 licensed physician are appropriate for the health of the
4-45 beneficiary.

4-46 (3) The income of the trust not disbursed under
4-47 Subdivision (2) shall be added to the principal of the trust.

4-48 (4) If the beneficiary is a minor who is not considered
4-49 disabled for purposes of 42 U.S.C. Chapter 7, Subchapter XVI, the
4-50 trust shall terminate on the death of the beneficiary, on the
4-51 beneficiary's attaining an age stated in the trust, or on the 25th
4-52 birthday of the beneficiary, whichever occurs first.

4-53 (4-a) If the court finds that a minor beneficiary is
4-54 considered disabled for purposes of 42 U.S.C. Chapter 7, Subchapter
4-55 XVI, the trust shall terminate on the death of the beneficiary.

4-56 (4-b) If [~~, or if~~] the beneficiary is an incapacitated
4-57 person, the trust shall terminate on the death of the beneficiary or
4-58 when the beneficiary regains capacity.

4-59 (5) A trustee that is a financial institution shall
4-60 serve without bond.

4-61 (6) The trustee shall receive reasonable compensation
4-62 paid from trust's income, principal, or both on application to and
4-63 approval of the court.

4-64 (7) The first page of the trust instrument shall
4-65 contain the following notice:

4-66 NOTICE: THE BENEFICIARY AND CERTAIN PERSONS INTERESTED IN THE
4-67 WELFARE OF THE BENEFICIARY MAY HAVE REMEDIES UNDER SECTION 114.008
4-68 OR 142.005, PROPERTY CODE.

4-69 SECTION 7. Chapter 142, Property Code, is amended by adding

5-1 Section 142.010 to read as follows:

5-2 Sec. 142.010. TRANSFER OF TRUST PROPERTY TO A POOLED TRUST
 5-3 SUBACCOUNT. (a) In this section, "management trust" means a trust
 5-4 created for a beneficiary in accordance with Section 142.005.

5-5 (b) If the court with continuing jurisdiction over a
 5-6 management trust determines that it is in the best interests of the
 5-7 beneficiary for whom the management trust is created, the court may
 5-8 order the transfer of all property in the management trust to a
 5-9 pooled trust subaccount established in accordance with Chapter 143.

5-10 (c) For purposes of a proceeding to determine whether to
 5-11 transfer property from a management trust to a pooled trust
 5-12 subaccount, the court may, but is not required to, appoint an
 5-13 attorney ad litem or guardian ad litem to represent the interests of
 5-14 a management trust beneficiary who has a physical disability and is
 5-15 not an incapacitated person. The attorney ad litem or the guardian
 5-16 ad litem is entitled to a reasonable fee and reimbursement of
 5-17 expenses to be paid from the management trust property.

5-18 (d) The transfer of property from the management trust to
 5-19 the pooled trust subaccount shall be treated as a continuation of
 5-20 the management trust and may not be treated as the establishment of
 5-21 a new trust for purposes of 42 U.S.C. Section 1396p(d)(4)(A) or (C)
 5-22 or otherwise for purposes of the management trust beneficiary's
 5-23 eligibility for medical assistance under Chapter 32, Human
 5-24 Resources Code.

5-25 (e) The court may not allow termination of the management
 5-26 trust from which property is transferred under this section until
 5-27 all of the property in the management trust has been transferred to
 5-28 the pooled trust subaccount.

5-29 SECTION 8. Subtitle A, Title 10, Property Code, is amended
 5-30 by adding Chapter 143 to read as follows:

5-31 CHAPTER 143. POOLED TRUST SUBACCOUNTS

5-32 Sec. 143.001. DEFINITIONS. In this chapter:

5-33 (1) "Beneficiary" means a person for whose benefit a
 5-34 subaccount is established.

5-35 (2) "Incapacitated person" has the meaning assigned by
 5-36 Section 142.007.

5-37 (3) "Medical assistance" means benefits and services
 5-38 under the medical assistance program administered under Chapter 32,
 5-39 Human Resources Code.

5-40 (4) "Pooled trust" means a trust that meets the
 5-41 requirements of 42 U.S.C. Section 1396p(d)(4)(C) for purposes of
 5-42 exempting the trust from the applicability of 42 U.S.C. Section
 5-43 1396p(d) in determining the eligibility of a person who is disabled
 5-44 for medical assistance.

5-45 (5) "Subaccount" means an account in a pooled trust
 5-46 established under this chapter.

5-47 Sec. 143.002. APPLICATION TO ESTABLISH SUBACCOUNT. The
 5-48 following persons may apply to the court having jurisdiction under
 5-49 Section 142.005 for the establishment of a subaccount solely for
 5-50 the benefit of a proposed beneficiary who is a person for whom a
 5-51 management trust has been or could be established for the person's
 5-52 benefit under Section 142.005:

5-53 (1) the trustee of a management trust established
 5-54 under Section 142.005 for the benefit of the proposed beneficiary
 5-55 of the subaccount;

5-56 (2) the guardian of the person or estate, or both, of
 5-57 the proposed beneficiary of the subaccount;

5-58 (3) a person who has filed an application for the
 5-59 appointment of a guardian of the person or estate, or both, for the
 5-60 proposed beneficiary of the subaccount;

5-61 (4) an attorney ad litem or guardian ad litem
 5-62 appointed to represent the proposed beneficiary of the subaccount;
 5-63 or

5-64 (5) the proposed beneficiary, if the proposed
 5-65 beneficiary is not a minor or incapacitated person.

5-66 Sec. 143.003. APPOINTMENT OF ATTORNEY AD LITEM. (a) The
 5-67 court shall appoint an attorney ad litem for a person who is a minor
 5-68 or an incapacitated person and who is the subject of an application
 5-69 under Section 143.002.

6-1 (b) The attorney ad litem is entitled to a reasonable fee
 6-2 and reimbursement of expenses to be paid from the person's
 6-3 property.

6-4 Sec. 143.004. ESTABLISHMENT OF SUBACCOUNT. If the court
 6-5 finds that it is in the best interests of a person who is the subject
 6-6 of an application under Section 143.002, the court may order:

6-7 (1) the establishment of a subaccount of which the
 6-8 person is the beneficiary; and

6-9 (2) the transfer to the subaccount of any of the
 6-10 person's property on hand or accruing to the person.

6-11 Sec. 143.005. TERMS OF SUBACCOUNT. Unless the court orders
 6-12 otherwise, the terms governing the subaccount must provide that:

6-13 (1) the subaccount terminates on the earliest of the
 6-14 date of:

6-15 (A) the beneficiary's 18th birthday, if the
 6-16 beneficiary:

6-17 (i) is not found by the court to be
 6-18 considered disabled for purposes of 42 U.S.C. Chapter 7, Subchapter
 6-19 XVI; and

6-20 (ii) is a minor at the time the subaccount
 6-21 is established;

6-22 (B) the beneficiary's death; or
 6-23 (C) a court order terminating the subaccount;

6-24 and

6-25 (2) on termination, any property remaining in the
 6-26 beneficiary's subaccount after making any required payments to
 6-27 satisfy the amounts of medical assistance reimbursement claims for
 6-28 medical assistance provided to the beneficiary under this state's
 6-29 medical assistance program and other states' medical assistance
 6-30 programs shall be distributed to:

6-31 (A) the beneficiary, if on the date of
 6-32 termination the beneficiary is living and is not a minor or
 6-33 incapacitated person;

6-34 (B) the beneficiary's guardian of the estate, if
 6-35 on the date of termination the beneficiary is living and is a minor
 6-36 or incapacitated person; or

6-37 (C) the personal representative of the
 6-38 beneficiary's estate, if on the date of termination the beneficiary
 6-39 is deceased.

6-40 Sec. 143.006. FEES AND REPORTING. (a) The manager or
 6-41 trustee of a pooled trust may:

6-42 (1) assess fees against a subaccount of that pooled
 6-43 trust that is established under this chapter, in accordance with
 6-44 the manager's or trustee's standard fee structure; and

6-45 (2) pay fees assessed under Subdivision (1) from the
 6-46 subaccount.

6-47 (b) If required by the court, the manager or trustee of the
 6-48 pooled trust shall file a copy of the annual report of account with
 6-49 the court clerk.

6-50 Sec. 143.007. JURISDICTION EXCLUSIVE. Notwithstanding any
 6-51 other law, the court that orders the establishment of a subaccount
 6-52 for a beneficiary has exclusive jurisdiction of a subsequent
 6-53 proceeding or action that relates to both the beneficiary and the
 6-54 subaccount, and the proceeding or action may be brought only in that
 6-55 court.

6-56 SECTION 9. (a) Except as otherwise expressly provided by a
 6-57 trust, a will creating a trust, or this section, the changes in law
 6-58 made by this Act apply to a trust existing on or created on or after
 6-59 September 1, 2019.

6-60 (b) For a trust existing on September 1, 2019, that was
 6-61 created before that date, the changes in law made by this Act apply
 6-62 only to an act or omission relating to the trust that occurs on or
 6-63 after September 1, 2019.

6-64 (c) Section 112.0335, Property Code, as added by this Act,
 6-65 applies to a trust only if the settlor's death occurs on or after
 6-66 September 1, 2019.

6-67 (d) Subchapter E, Chapter 112, Property Code, as added by
 6-68 this Act, applies to a trust only with respect to a dissolution of
 6-69 marriage that occurs on or after September 1, 2019.

7-1 SECTION 10. This Act takes effect September 1, 2019.

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