

By: Rodríguez

S.B. No. 631

A BILL TO BE ENTITLED

# 1 AN ACT

## 2 relating to trusts.

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

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

8 (1) the requirements imposed under Section 112.031;

11 (3) the periods of limitation for commencing a  
12 judicial proceeding regarding a trust:

13 (4) a trustee's duty:

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

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

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

21 (B) to act in good faith and in accordance with  
22 the purposes of the trust.

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

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

3 (B) remove a trustee under Section 113.082;

4 (C) exercise jurisdiction under Section 115.001;

5 (D) require, dispense with, modify, or terminate  
6 a trustee's bond; [or]

7 (E) adjust, [or] deny, or order disgorgement of a

8 trustee's compensation if the trustee commits a breach of trust; or  
9 (F) make an award of costs and attorney's fees

10 under Section 114(6)(a); or

11 (6) the applicability of Section 112.038.

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

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

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

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

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

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

7           Sec. 112.105. LIABILITY OF FORMER SPOUSE OR FORMER SPOUSE'S  
8 RELATIVE FOR CERTAIN PAYMENTS, BENEFITS, OR PROPERTY. A divorced  
9 individual's former spouse or any relative of the former spouse who  
10 is not a relative of the divorced individual who, not for value,  
11 receives a payment, benefit, or property to which the former spouse  
12 or the relative of the former spouse who is not a relative of the  
13 divorced individual is not entitled as a result of Sections  
14 112.102(a) and (b):

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

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

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

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

27           (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:

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

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

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

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

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

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

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

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

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

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

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

21 (B) the beneficiary's death; or

22 (C) a court order terminating the subaccount;  
23 and

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

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

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

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

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

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

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

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

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

22                Sec. 143.007. JURISDICTION EXCLUSIVE. Notwithstanding any  
23 other law, the court that orders the establishment of a subaccount  
24 for a beneficiary has exclusive jurisdiction of a subsequent  
25 proceeding or action that relates to both the beneficiary and the  
26 subaccount, and the proceeding or action may be brought only in that  
27 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.