

By: _____.

_____ B. No. _____

A BILL TO BE ENTITLED

1

AN ACT

2

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

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SECTION 1. Section 41.0021, Property Code, is amended to

4

read as follows:

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SEC. 41.0021. HOMESTEAD IN QUALIFYING TRUST. (a) In this

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section, "qualifying trust" means an express trust:

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(1) in which the instrument or court order creating

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the express trust, an instrument transferring property to the

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trust, or any other agreement that is binding on the trustee

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provides that a settlor or beneficiary of the trust has the

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right to:

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(A) revoke the trust without the consent of

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another person other than a spouse who is also a settlor of

14

the trust;

15

(B) exercise an inter vivos general power of

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appointment over the property that qualifies for the

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homestead exemption, either alone or when aggregated with

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property subject to an inter vivos general power of

19

appointment held by a spouse who is also a settlor of the

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trust; or

1 (C) use and occupy the residential property as
2 the settlor's or beneficiary's principal residence [~~at no~~
3 ~~cost to the settlor or beneficiary, other than payment of~~
4 rent free and without charge except for taxes and other costs
5 and expenses specified in the instrument or court order:

6 (i) for the life of the settlor or
7 beneficiary;

8 (ii) for the shorter of the life of the
9 settlor or beneficiary or a term of years specified in the
10 instrument or court order; or

11 (iii) until the date the trust is revoked
12 or terminated by an instrument or court order that describes
13 the property with sufficient certainty to identify it and is
14 recorded in the real property records of the county in which
15 the property is located [~~and that describes the property with~~
16 ~~sufficient certainty to identify the property~~]; and

17 (2) the trustee of which acquires the property in
18 an instrument of title or under a court order that:

19 (A) describes the property with sufficient
20 certainty to identify the property and the interest acquired;
21 and

22 (B) is recorded in the real property records
23 of the county in which the property is located.

1 (b) Property that a settlor or beneficiary occupies and
2 uses in a manner described by this subchapter and in which
3 the settlor or beneficiary owns a beneficial interest through
4 a qualifying trust is considered the homestead of the settlor
5 or beneficiary under Section 50, Article XVI, Texas
6 Constitution, and Section 41.001.

7 (c) A married person who transfers property to the
8 trustee of a qualifying trust must comply with the
9 requirements relating to the joinder of the person's spouse
10 as provided by Chapter 5, Family Code.

11 (d) A trustee may sell, convey, or encumber property
12 transferred as described by Subsection (c) without the
13 joinder of either spouse unless expressly prohibited by the
14 instrument or court order creating the trust.

15 (e) This section does not affect the rights of a
16 surviving spouse or surviving children under Section 52,
17 Article XVI, Texas Constitution, or Chapter 353, Estates
18 Code.

19 SECTION 2. Section 112.035, Trust Code, is amended to
20 read as follows:

21 Sec. 112.035. SPENDTHRIFT TRUSTS. (a) A settlor may
22 provide in the terms of the trust that the interest of a
23 beneficiary in the income or in the principal or in both may
24 not be voluntarily or involuntarily transferred before

1 payment or delivery of the interest to the beneficiary by the
2 trustee.

3 (b) A declaration in a trust instrument that the interest
4 of a beneficiary shall be held subject to a "spendthrift
5 trust" is sufficient to restrain voluntary or involuntary
6 alienation of the interest by a beneficiary to the maximum
7 extent permitted by this subtitle.

8 (c) A trust containing terms authorized under Subsection
9 (a) or (b) of this section may be referred to as a spendthrift
10 trust.

11 (d) If the settlor is also a beneficiary of the trust,
12 a provision restraining the voluntary or involuntary transfer
13 of the settlor's beneficial interest does not prevent the
14 settlor's creditors from satisfying claims from the settlor's
15 interest in the trust estate. A settlor is not considered a
16 beneficiary of a trust solely because:

17 (1) a trustee who is not the settlor is authorized
18 under the trust instrument to pay or reimburse the settlor
19 for, or pay directly to the taxing authorities, any tax on
20 trust income or principal that is payable by the settlor under
21 the law imposing the tax; or

22 (2) the settlor's interest in the trust was created
23 by the exercise of a power of appointment by a third party.

1 (e) A beneficiary of the trust may not be considered a
2 settlor merely because of a lapse, waiver, or release of:

3 (1) a power described by Subsection (f); or

4 (2) the beneficiary's right to withdraw a part of
5 the trust property to the extent that the value of the
6 property affected by the lapse, waiver, or release in any
7 calendar year does not exceed the greater of:

8 (A) the amount specified in Section 2041(b)(2)
9 or 2514(e), Internal Revenue Code of 1986; or

10 (B) the amount specified in Section 2503(b),
11 Internal Revenue Code of 1986, with respect to the
12 contributions by each donor.

13 (f) A beneficiary of the trust may not be considered to
14 be a settlor, to have made a voluntary or involuntary transfer
15 of the beneficiary's interest in the trust, or to have the
16 power to make a voluntary or involuntary transfer of the
17 beneficiary's interest in the trust, merely because the
18 beneficiary, in any capacity, holds or exercises:

19 (1) a presently exercisable power to:

20 (A) consume, invade, appropriate, or
21 distribute property to or for the benefit of the beneficiary,
22 if the power is:

1 (i) exercisable only on consent of
2 another person holding an interest adverse to the
3 beneficiary's interest; or

4 (ii) limited by an ascertainable
5 standard, including health, education, support, or
6 maintenance of the beneficiary; or

7 (B) appoint any property of the trust to or
8 for the benefit of a person other than the beneficiary, a
9 creditor of the beneficiary, the beneficiary's estate, or a
10 creditor of the beneficiary's estate;

11 (2) a testamentary power of appointment; or

12 (3) a presently exercisable right described by
13 Subsection (e) (2).

14 (g) Neither the beneficiary of the trust nor the estate
15 of a beneficiary of the trust may be considered to be a
16 settlor merely because the beneficiary, in any capacity, held
17 or exercised:

18 (1) a testamentary power to appoint property of the
19 trust to or for the benefit of a person other than the
20 beneficiary, a creditor of the beneficiary, the beneficiary's
21 estate, or a creditor of the beneficiary's estate; or

22 (2) a testamentary power to appoint property of the
23 trust to or for the benefit of a creditor of the beneficiary,
24 the beneficiary's estate, or a creditor of the beneficiary's

1 estate, as long as the beneficiary did not exercise such
2 testamentary general power to or in favor of any donee other
3 than the same person that would take the appointive assets if
4 the power had not been exercised.

5 Except as provided in Subsection (g)(2), appointive assets
6 covered by a validly exercised testamentary general power of
7 appointment can be subjected to the claims of creditors of
8 the beneficiary only to the extent the beneficiary's owned
9 property is insufficient to meet the beneficiary's debts, but
10 unless validly appointed to the estate of the beneficiary,
11 the appointed assets (i) are neither subject to
12 administration as a part of the beneficiary's estate nor
13 subject to recovery by the personal representative of the
14 beneficiary's estate except as otherwise provided
15 in Section 2207B, Internal Revenue Code of 1986, and (ii) are
16 not subject to the payment of taxes or administration expenses
17 of the beneficiary's estate.

18 (h) For the purposes of this section, property
19 contributed to the following trusts is not considered to have
20 been contributed by the settlor, and a person who would
21 otherwise be treated as a settlor or a deemed settlor of the
22 following trusts may not be treated as a settlor:

23 (1) an irrevocable inter vivos marital trust if:

1 (A) the settlor is a beneficiary of the trust
2 after the death of the settlor's spouse; and

3 (B) the trust is treated as:

4 (i) qualified terminable interest
5 property under Section 2523(f), Internal Revenue Code of
6 1986; or

7 (ii) a general power of appointment trust
8 under Section 2523(e), Internal Revenue Code of 1986;

9 (2) an irrevocable inter vivos trust for the
10 settlor's spouse if the settlor is a beneficiary of the trust
11 after the death of the settlor's spouse; or

12 (3) an irrevocable trust for the benefit of a
13 person:

14 (A) if the settlor is the person's spouse,
15 regardless of whether or when the person was the settlor of
16 an irrevocable trust for the benefit of that spouse; or

17 (B) to the extent that the property of the
18 trust was subject to a general power of appointment in another
19 person.

20 (i) For the purposes of Subsection (h),
21 a person is a beneficiary whether named a beneficiary:

22 (1) under the initial trust instrument; or

23 (2) through the exercise of a limited or general
24 power of appointment by:

1 (A) that person's spouse; or

2 (B) another person.

3 SECTION 3. Section 112.0715, Trust Code, is amended to
4 read as follows:

5 Sec. 112.0715. CREATION OF SECOND TRUST. (a) A second
6 trust may be created by a distribution of principal under
7 Section 112.072 or 112.073 to a second trust [~~created under~~
8 that retains the [~~same trust instrument as~~] name used by the
9 first trust [~~from which~~] and, the [~~principal is distributed~~
10 ~~or~~] second trust may retain, subject to [a] applicable federal
11 law, the tax identification number of the first trust [~~created~~
12 ~~under a different trust instrument~~].

13 (b) If a second trust is created by a distribution of
14 principal under Section 112.072 or 112.073 to a second trust
15 [~~created under~~] that retains the [~~same trust instrument as~~]
16 name of the first trust [~~from which the principal is~~
17 ~~distributed~~], the property is not required to be retitled.

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

21 SECTION 4. Section 115.014, Trust Code, is amended to
22 read as follows:

23 SEC. 115.014 GUARDIAN OR ATTORNEY AD LITEM. (a) At any
24 point in a proceeding a court may appoint a guardian ad litem

1 to represent the interest of a minor, an incapacitated,
2 unborn, or unascertained person, or person whose identity or
3 address is unknown, if the court determines that
4 representation of the interest otherwise would be inadequate.
5 If there is not a conflict of interests, a guardian ad litem
6 may be appointed to represent several persons or interests.

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

14 (c) A guardian ad litem may consider general benefit
15 accruing to the living members of a person's family.

16 (d) A guardian ad litem is entitled to reasonable
17 compensation for services in the amount set by the court to
18 be taxed as costs in the proceeding.

19 (e) An attorney ad litem is entitled to reasonable
20 compensation for services in the amount set by the court in
21 the manner provided by Section 114.064.

22 SECTION 5. This Act takes effect September 1, 2021. The
23 legislature intends Section 3 to be a codification of the

1 common law of this state in effect immediately before
2 September 1, 2019.