

BILL ANALYSIS

Senate Research Center
87R16934 MWC-F

H.B. 2179
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Real Estate, Probate, and Trust Law (REPTL) section of the State Bar of Texas has identified several areas of potential confusion in the standards and procedures established in state law regarding trusts, as well as dissonance in the law on qualification as a homestead. H.B. 2179 seeks to enact changes suggested by REPTL aimed at updating and clarifying state law and addressing that dissonance.

H.B. 2179 amends current law relating to trusts.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 41.0021(a), Property Code, to redefine "qualifying trust" for Section 41.0021 (Homestead in Qualifying Trust).

SECTION 2. Amends Section 112.035, Property Code, by adding Subsections (f-1), (f-2), and (f-3), as follows:

(f-1) Prohibits a beneficiary of the trust or the estate of a beneficiary of the trust from being considered to be a settlor merely because the beneficiary, in any capacity:

- (1) held or exercised a testamentary power of appointment other than a general power of appointment;
- (2) held a testamentary general power of appointment; or
- (3) exercised a testamentary general power of appointment in favor of or for the benefit of the takers in default of the appointive assets.

(f-2) Provides that if a beneficiary of the trust exercised a testamentary general power of appointment in favor of or for the benefit of any appointee other than the takers in default of the appointive assets, the appointive assets are:

- (1) subject to the claims of creditors of the beneficiary, but only to the extent the beneficiary's owned property is insufficient to meet the beneficiary's debts; and
- (2) unless appointed to the beneficiary's estate, not subject to:
 - (A) administration as a part of the beneficiary's estate;
 - (B) recovery by the personal representative of the beneficiary's estate, except as provided by Section 2207B, Internal Revenue Code of 1986; or

(C) the payment of taxes or administration expenses of the beneficiary's estate.

(f-3) Defines "general power of appointment" for the purposes of Subsections (f-1) and (f-2).

SECTION 3. Amends Sections 112.0715(a) and (b), Property Code, as follows:

(a) Authorizes a second trust to be created by a distribution of principal under Section 112.072 (Distribution to Second Trust: Trustee with Full Discretion) or 112.073 (Distribution to Second Trust: Trustee with Limited Discretion) to a trust that retains the name used by the first trust. Authorizes the second trust to retain, subject to applicable federal law, the same tax identification number of the first trust. Deletes existing text authorizing a second trust to be created by a distribution of principal under Section 112.072 or 112.073 to a trust created under the same trust instrument as the first trust from which the principal is distributed or to a trust created under a different trust instrument.

(b) Provides that if a second trust is created by a distribution of principal under Section 112.072 or 112.073 to a trust that retains the name of the first trust, rather than to a trust created under the same trust instrument as the first trust from which the principal is distributed, the property is not required to be retitled.

SECTION 4. Amends Section 115.014(b), Property Code, as follows:

(b) Authorizes a court at any point in a proceeding to appoint an attorney ad litem to represent any interest that the court considers necessary, including an attorney ad litem to defend an action under Section 114.083 (Rights and Liabilities for Committing Torts) for a beneficiary of the trust who is a minor or who has been adjudged incompetent, if the court determines that representation of the interest otherwise would be inadequate.

SECTION 5. Repealer: Section 112.0715(c) (relating to providing that the legislature intends Section 112.0715 (Creation of Second Trust) to be a codification of the common law of this state in effect immediately before September 1, 2019), Property Code.

SECTION 6. Provides that Sections 112.0715(a) and (b), Property Code, as amended by this Act, are intended by the legislature to be a codification of the common law of this state in effect immediately before the effective date of this Act.

SECTION 7. Provides that the changes in law made by this Act apply to a trust created before, on, or after the effective date of this Act.

SECTION 8. Effective date: upon passage or September 1, 2021.