

HOUSE SUMMARY OF SENATE AMENDMENTS

HB 439

2015 Regular Session

Nancy Landry

TRUSTS: Provides for revisions to the Trust Code

Synopsis of Senate Amendments

1. Adds provisions relative to the trustee's delegation in a power of attorney of a ministerial duty.

Digest of Bill as Finally Passed by Senate

Present law (R.S. 9:1783) provides for those who may serve as a trustee of a trust.

Proposed law provides that a nonprofit corporation or trust for educational, charitable, or religious purposes that is designated as income or principal beneficiary may serve as trustee of a trust for mixed private and charitable purposes.

Present law (R.S. 9:1821) provides that a testamentary trust is created at the moment of the settlor's death without need for the trustee's acceptance of the trust.

Proposed law clarifies that a testamentary trust is created at the moment of the settlor's death.

Present law (R.S. 9:1822) provides that an inter vivos trust is created upon execution of the trust instrument without need for the trustee's acceptance.

Proposed law clarifies that an inter vivos trust is created upon execution of the trust instrument.

Present law (R.S. 9:1891) provides that a testator can create a trust in favor of a class consisting of some or all of his children, grandchildren, great-grandchildren, nieces, nephews, grandnieces, grandnephews, and great-grandnieces and great-grandnephews, or any combination thereof, although some members of the class are not yet in being at the time of the creation of the trust so long as at least one member of the class is then in being.

Proposed law adds that a testator can create an inter vivos or testamentary trust in favor of a class consisting of some or all of the children, grandchildren, great-grandchildren, nieces, nephews, grandnieces, grandnephews, and great-grandnieces and great-grandnephews of the settlor or of the settlor's current, former, or predeceased spouse. If the class includes such members who are not also related to the settlor, the interests of those members shall be determined as if they were related to the settlor in the same manner as they are related to the settlor's current, former, or predeceased spouse, unless the trust instrument provides otherwise. Unless the trust instrument provides otherwise, the interests of the class members shall be determined that if the class consists solely of descendants of the same degree, the interests of the members of the class shall be determined by roots before the application of R.S. 9:1894. For all other cases, the interests of the members of the class shall be determined by heads.

Present law (R.S. 9:1894) provides that if a person dies before the creation of the trust in which he would have been a member of a class if he had not died, his descendants shall be considered members of the class by representation unless the instrument otherwise provides.

Proposed law provides that in all cases where representation is permitted, the division is made by roots. If one root has produced several branches, the subdivision is also made by roots in each branch, and the members of the same branch take by heads.

Present law (R.S. 9:1904) provides the general rule that if the members of one class of the settlor's children or grandchildren are designated beneficiaries of income and members of a different class of his children or grandchildren are designated as beneficiaries of principal, the class of beneficiaries of income shall be governed by R.S. 9:1899 through 1901 and the class of beneficiaries of principal shall be governed by R.S. 9:1902 and 1903.

Proposed law clarifies that if members of one class are designated beneficiaries of income and members of a different class are designated as beneficiaries of principal, the class of beneficiaries of income are governed by R.S. 9:1899 through 1901 and the class of beneficiaries of principal are governed by R.S. 9:1902 and 1903.

Present law (R.S. 9:1905) provides that if members of the same class of the settlor's children or grandchildren are designated beneficiaries of both income and principal, interests in income before the class closes shall be governed by R.S. 9:1899 through 1901.

Proposed law clarifies that if members of the same class are designated beneficiaries of both income and principal, interests in income before the class closes shall be governed by R.S. 9:1899 through 1901.

Present law (R.S. 9:1953) provides for the assignment of interest in trust and termination of trust for mixed private and charitable purposes.

Proposed law provides that unless the trust instrument provides otherwise or specifically contains a special needs provision, a private beneficiary of a trust for mixed private and charitable purposes may at any time assign to a charitable principal beneficiary of the trust a fraction or all of the private beneficiary's interest in the trust. An interest in a spendthrift trust may be assigned only gratuitously. Also, if the trust instrument provides for the termination of the trust at the end of the specified term of the private interests, the trust may be terminated early by the charitable principal beneficiary as to the portion of the trust that no longer has a private beneficiary.

Present law (R.S. 9:2026) provides that the proper court may order the termination or modification of a trust, in whole or in part, if the continuance of the trust unchanged would defeat or substantially impair the purposes of the trust. It also provides that if a trustee has determined that the market value of a trust is less than \$100,000 and that, in relation to the costs of administration of the trust, the continuance of the trust unchanged would defeat or substantially impair the purposes of the trust. In such a case, the court may provide for the distribution of the trust property, including principal and undistributed income, to the beneficiaries in a manner which conforms as nearly as possible to the intention of the settlor, and the court shall make appropriate provisions for the appointment of a tutor in the case of a minor beneficiary. In the event of the termination or modification of a trust under the provisions of this Paragraph, the trustee shall not be subject to liability for such termination or modification.

Proposed law retains present law, in part, and provides that after obtaining the consent of all beneficiaries or their legal representatives, a trustee may terminate a trust if the market value of the trust is less than \$100,000, and that a natural tutor, without need for a formal tutorship proceeding and concurrence of an undertutor, can consent to the termination of a trust on behalf of a minor. In the event of the termination or modification of a trust, the trustee shall not be subject to liability for such termination or modification.

Present law (R.S. 9:2031) provides that a trust instrument may authorize a person other than the settlor to modify the provisions of the trust instrument in order to add or remove beneficiaries, or modify their rights, if all of the affected beneficiaries are descendants of the person given the power to modify.

Proposed law provides that a trust instrument can authorize a person who is in being on the date of the creation of the trust to modify the provisions of the trust instrument to add or

remove beneficiaries, or modify their rights if all of the affected beneficiaries are descendants of the person given the power to modify. A beneficiary added can be a person who is not in being when the trust is created, provided the individual is in being at the time the power to add is exercised.

Proposed law (R.S. 9:2047) provides that a divorce of the settlor revokes every provision that may be revoked or modified by the settlor in an inter vivos trust designating or appointing the settlor's former spouse unless expressly provided otherwise in the trust instrument or in a judgment or a property settlement agreement. A trustee with no actual knowledge of the divorce, judgment, or property settlement agreement is not liable for actions taken in good faith regarding the settlor's former spouse.

Present law (R.S. 9:2087) provides for a trustee's delegation of his duties. Further provides that the recitation by the trustee in a power of attorney that he has approved the specific terms of the transaction shall be sufficient to demonstrate the delegation of the performance of a ministerial duty.

Proposed law provides that a trustee may, by power of attorney, delegate the performance of acts that he could not reasonably be required to perform personally and the performance of ministerial duties. A power of attorney granted by a trustee authorizing a mandatary to alienate, acquire, lease, or encumber specifically described property at a specified price is permitted. Proposed law further provides that a trustee's recitation in a power of attorney that he has approved the specific terms of a transaction sufficiently demonstrates that the trustee has delegated the performance of a ministerial duty.

Present law (R.S. 9:2096) provides that if there are two or more trustees, each shall participate in the administration of the trust and use reasonable care to prevent a co-trustee from committing a breach of trust and shall compel him to redress a breach of trust.

Proposed law clarifies that if there are two or more trustees with the same powers, each shall participate in the administration of the trust and use reasonable care to prevent a co-trustee from committing a breach of trust and shall compel him to redress a breach of trust.

Proposed law (R.S. 9:2114.1) provides that a trust instrument may confer different powers upon different trustees and each trustee acts independently with respect to those powers conferred upon him. For those powers he does not have, the trustee shall have no duties or liabilities as to the actions or inactions of the other trustees.

Present law (R.S. 9:2158) provides that a trustee may make an adjustment between principal and income when the interest of one or more beneficiaries is defined by reference to the "income" of a trust, and the trustee determines, after taking into account the allocations for the year, that the adjustment is necessary in order for the trustee to satisfy his duty to be fair and reasonable to all the beneficiaries, taking into account the purposes of the trust.

Proposed law provides that when income is distributed during the year, the income can be determined based on the adjustment to be made for the year. The adjustment to be made can be determined in a way that causes the total amount distributed to the income beneficiary during the year to be equal to a percentage of the value of the trust property at the end of the prior year or at the end of an average of up to three prior years.

Proposed law (R.S. 9:2263) provides for the creation of a trust for the care of an animal.

(Amends R.S. 9:1783(B), 1821, 1822, 1891, 1894, 1904, 1905, 1953, 2026, 2028, 2031, 2087(B), 2096, and 2158; Adds R.S. 9:2047, 2114.1, and 2263)