

2015 Regular Session

HOUSE BILL NO. 439

BY REPRESENTATIVE NANCY LANDRY

(On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TRUSTS: Provides for revisions to the Trust Code

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AN ACT

To amend and reenact R.S. 9:1783(B), 1821, 1822, 1891, 1894, 1904, 1905, 1953, 2026, 2028, 2031, 2087(B), 2096, and 2158, and to enact R.S. 9:2047 and 2114.1 and Chapter 1-C of Code Title II of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:2263, relative to the Louisiana Trust Code; to provide for who may be trustee; to provide for when testamentary trusts are created; to provide for when inter vivos trusts are created; to provide for creation of classes; to provide for representation; to provide for general rules for classes of beneficiaries; to provide for interest in income for members of the same class; to provide for assignment of interest in trusts and termination of trusts for mixed private and charitable purposes; to provide for termination or modification to prevent impairment of trust purposes and termination of small trusts; to provide for concurrence of settlors in termination; to provide for delegation of the right to amend; to provide for delegating trustee performance; to provide for co-trustees; to provide for the power to adjust by a trustee; to provide for the revocation of inter vivos trusts upon divorce; to provide for the allocation of different powers to different trustees; to provide for trusts for the care of an animal; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. R.S. 9:1783(B), 1821, 1822, 1891, 1894, 1904, 1905, 1953, 2026, 2028,  
3 2031, 2087(B), 2096, and 2158 are hereby amended and reenacted, and R.S. 9:2047 and  
4 2114.1, and Chapter 1-C of Code Title II of Code Book III of Title 9 of the Louisiana  
5 Revised Statutes of 1950, comprised of R.S. 9:2263, are hereby enacted to read as follows:

6 §1783. Who may be trustee

7 \* \* \*

8 B. A nonprofit corporation or trust for educational, charitable, or religious  
9 purposes that is designated as income or principal beneficiary may serve as trustee  
10 of a trust for mixed private ~~or~~ and charitable purposes.

11 Comment - 2015

12 This revision clarifies the law. It provides that certain nonprofit corporations  
13 or trusts may in some circumstances serve as trustees of mixed trusts, defined as a  
14 trust for "private and charitable purposes." See R.S. 9:1951 (emphasis added). This  
15 provision does not purport to specify who may be a trustee of a charitable trust. See  
16 R.S. 9:2273.

17 \* \* \*

18 §1821. When testamentary trust created

19 A testamentary trust is created at the moment of the settlor's death, ~~without~~  
20 ~~awaiting the trustee's acceptance of the trust.~~

21 Comment - 2015

22 This revision clarifies the law. It makes clear that although a trustee's  
23 acceptance is ultimately necessary, a testamentary trust is effective before the trustee  
24 accepts, as his acceptance is retroactive to the date of the creation of the trust under  
25 R.S. 9:1823.

26 §1822. When inter vivos trust created

27 An inter vivos trust is created upon execution of the trust instrument, ~~without~~  
28 ~~regard to the trustee's acceptance.~~

29 Comment - 2015

30 This revision clarifies the law. It makes clear that although a trustee's  
31 acceptance is ultimately necessary, an *inter vivos* trust is effective before the trustee  
32 accepts, as his acceptance is retroactive to the date of the creation of the trust under  
33 R.S. 9:1823.

34 \* \* \*

1 §1891. Creation of class

2 A. Notwithstanding the provisions of R.S. 9:1803, R.S. 9:1831 through 1835,  
3 and R.S. 9:1841 through 1847, but subject to the restrictions stated in this Subpart,  
4 a person may create an inter vivos or testamentary trust in favor of a class consisting  
5 of some or all of ~~his~~ the children, grandchildren, great grandchildren, nieces,  
6 nephews, grandnieces, grandnephews, and great grandnieces and great grandnephews  
7 of the settlor or of the settlor's current, former, or predeceased spouse, or any  
8 combination thereof, although some members of the class are not yet in being at the  
9 time of the creation of the trust, provided at least one member of the class is then in  
10 being. Such a trust is called a class trust. If the trust instrument so provides, the  
11 interest of each beneficiary in the class shall be held in a separate trust after the class  
12 has closed.

13 B. ~~If before the application of R.S. 9:1894 the class consists only of~~  
14 ~~members of one generation, the interests of the members of the class shall be equal~~  
15 ~~by roots from their common ancestor, unless the trust instrument provides otherwise.~~  
16 ~~If before the application of R.S. 9:1894 the class consists of persons in more than one~~  
17 ~~generation, their interests shall be equal by heads, unless the trust instrument~~  
18 ~~provides otherwise~~ the class includes members related to the settlor's current, former,  
19 or predeceased spouse who are not also related to the settlor, the interests of those  
20 members shall be determined as if they were related to the settlor in the same manner  
21 as they are related to the settlor's current, former, or predeceased spouse, unless the  
22 trust instrument provides otherwise.

23 C. Unless the trust instrument provides otherwise, the interests of the class  
24 members shall be determined in the following manner:

25 (1) Before application of R.S. 9:1894, if the class consists solely of  
26 descendants of the same degree, the interests of the members of the class shall be  
27 determined by roots.

28 (2) In all other cases, the interests of the members of the class shall be  
29 determined by heads.

1 Comments - 2015

2 (a) This revision changes the law to allow for the beneficiaries of a class  
3 trust to consist not only of a defined group of the settlor's relations but also of some  
4 or all of the same relations of the settlor's current, former, or predeceased spouse.  
5 The expansion of the class of allowable beneficiaries is intended to take account of  
6 the modern trend of blended families and multiple marriages.

7 (b) In Subsection A of this revision, the phrase "any combination thereof"  
8 is retained to make clear that the members of the class may consist of certain  
9 members related to the settlor; certain members related to the current, former, or  
10 predeceased spouse of the settlor; or a combination of members related to the settlor  
11 and the settlor's current, former, or predeceased spouse.

12 (c) In light of the expansion of the potential members of a class trust to  
13 include certain members related to the current, former, or predeceased spouse of the  
14 settlor, the term "common ancestor" that existed in prior law has been eliminated.  
15 Under this revision, when the class consists solely of descendants of the same  
16 degree, such as a class of children or a class of grandchildren, the members of the  
17 class share by roots, irrespective of whether the members of the class are related to  
18 the settlor or the settlor's current, former, or predeceased spouse. When the class,  
19 however, includes other relatives as members, the division is made by heads.

20 (d) The power to modify a class trust under R.S. 9:2031 does not allow a  
21 person granted the power the authority to add relatives beyond those specified in  
22 Subsection A of this Section or beyond the scope of the class as defined by the trust  
23 instrument.

24 \* \* \*

25 §1894. Representation

26 If a person dies before the creation of the trust, who would have been a  
27 member of the class if he had not died, his descendants shall be considered members  
28 of the class by representation unless the instrument otherwise provides. In all cases  
29 in which representation is permitted, the division is made by roots. If one root has  
30 produced several branches, the subdivision is also made by roots in each branch, and  
31 the members of the same branch take by heads.

32 Comment - 2015

33 This revision clarifies the operation of law of representation in the context  
34 of a class trust. It reproduces the provisions of Civil Code Article 885.

35 \* \* \*

36 §1904. General rule

37 If the members of one class ~~of the settlor's children or grandchildren~~ are  
38 designated beneficiaries of income and members of a different class ~~of his children~~  
39 ~~or grandchildren~~ are designated as beneficiaries of principal, the class of

1 beneficiaries of income shall be governed by R.S. 9:1899 through 9:1901 and the  
2 class of beneficiaries of principal shall be governed by R.S. 9:1902 and 9:1903.

3 Comment - 2015

4 This revision updates this Section on the closing of a class to make it  
5 consistent with the general rules on class trusts. See R.S. 9:1891.

6 §1905. Interests in income

7 If members of the same class ~~of the settlor's children or grandchildren~~ are  
8 designated beneficiaries of both income and principal, interests in income before the  
9 class closes shall be governed by R.S. 9:1899 through 9:1901.

10 Comment - 2015

11 This revision updates this Section on the closing of a class to make it  
12 consistent with the general rules on class trusts. See R.S. 9:1891.

13 \* \* \*

14 §1953. Assignment of interest in trust and termination of trust for mixed private and  
15 charitable purposes

16 A. ~~A~~ Unless the trust instrument provides otherwise or specifically contains  
17 a special needs provision, a private beneficiary of a trust for mixed private and  
18 charitable purposes, ~~including a spendthrift trust,~~ may at any time ~~gratuitously~~ assign  
19 to a charitable principal beneficiary of the trust a fraction or all of ~~his~~ the private  
20 beneficiary's interest in the trust, ~~unless the trust instrument specifically contains a~~  
21 ~~special needs provision or provides otherwise.~~ An interest in a spendthrift trust may  
22 be assigned only gratuitously. An interest that is assignable only to a charitable  
23 principal beneficiary of the trust shall not be deemed to be subject to voluntary  
24 alienation for purposes of R.S. 9:2004.

25 B. If the trust instrument provides for the termination of the trust at the end  
26 of the specified term of the private interests, the trust may be terminated early by the  
27 charitable principal beneficiary as to the portion of the trust that, for any reason, no  
28 longer has a private beneficiary.

29 Comments - 2015

30 (a) This revision allows for practical planning opportunities and techniques,  
31 such as the exchange by a beneficiary of the beneficiary's interest in a charitable

1 remainder trust for an annuity, which may be mutually advantageous to both the  
2 charity and the beneficiary. At the same time, however, this Section ensures that a  
3 beneficiary of a spendthrift trust is not allowed to onerously transfer his interest and  
4 thereby defeat the settlor's intent in establishing the trust.

5 (b) Although the term "special needs provision" is not statutorily defined in  
6 the Louisiana Trust Code, it is intended to refer to those provisions in trusts designed  
7 to preserve the availability of means-tested governmental benefits for certain  
8 beneficiaries.

9 (c) For the process by which a trust is terminated, see R.S. 9:2051.

10 \* \* \*

11 ~~§2026. Change of circumstances~~ Termination or modification to prevent impairment  
12 of trust purposes; termination of small trust

13 A. The proper court may order the termination or modification of a trust, in  
14 whole or in part, if:

15 ~~(1) The~~ the continuance of the trust unchanged would defeat or substantially  
16 impair the purposes of the trust. In the event of termination of a trust under this  
17 Subsection, the proper court shall provide for the distribution of the trust property,  
18 including principal and undistributed income, to the beneficiaries in a manner that  
19 conforms as nearly as possible to the intention of the settlor.

20 ~~(2)B.~~ Except as otherwise provided by the terms of the trust, a trustee ~~has~~  
21 ~~determined that~~ may terminate a trust after obtaining the consent of all beneficiaries  
22 or their legal representatives if the market value of a trust is less than one hundred  
23 thousand dollars and that, in relation to the costs of administration of the trust, the  
24 continuance of the trust unchanged would defeat or substantially impair the purposes  
25 of the trust. In such a case, the court may provide for the distribution of the trust  
26 property, including principal and undistributed income, to the beneficiaries in a  
27 manner which conforms as nearly as possible to the intention of the settlor and the  
28 court shall make appropriate provisions for the appointment of a tutor in the case of  
29 a minor beneficiary. A natural tutor, without need for a formal tutorship proceeding  
30 and concurrence of an undertutor, may consent to the termination of a trust on behalf  
31 of a minor.

1 C. In the event of the termination or modification of a trust under ~~the~~  
2 ~~provisions of this Paragraph Section~~, the trustee shall not be subject to liability for  
3 such termination or modification.

4 Comments - 2015

5 (a) This revision changes the law in part. Prior law allowed for a court to  
6 terminate or modify a trust if continuance of the trust unchanged would defeat or  
7 substantially impair the purposes of the trust. This revision continues to allow for  
8 court-ordered termination or modification in cases in which continuance of the trust  
9 unaltered would defeat or substantially impair the purpose of the trust. When such  
10 modification or termination occurs, the court shall order distribution of the trust  
11 property to the beneficiaries in the way that would conform as closely as possible to  
12 the intent of the settlor.

13 (b) Prior law also allowed for court termination or modification of certain  
14 small trusts in circumstances where, because of the costs of administration of the  
15 trust in relation to its value, continuance of the trust unchanged would defeat or  
16 substantially impair the purposes of the trust. This revision now allows for  
17 termination by a trustee without approval of the court of small or uneconomical  
18 trusts, deemed to be those trusts worth less than one hundred thousand dollars.  
19 Unlike prior law, a finding that the cost of administration of the trust would defeat  
20 or substantially impair its purposes is no longer necessary. This revision does,  
21 however, require a trustee who terminates a trust to obtain in advance the consent of  
22 all the affected beneficiaries or their legal representatives. Legal representatives  
23 include, but are not limited to, mandataries, curators, and tutors. In an effort to  
24 simplify consent to termination, natural tutors may consent without the need for  
25 formal proceedings. See, e.g., C.C.P. Art. 3396.9.

26 (c) In all instances, when termination or modification occurs under this  
27 Section, the trustee is exonerated from liability for such termination or modification.

28 \* \* \*

29 §2028. Concurrence of settlors in termination

30 Except as otherwise provided by law or the trust instrument, ~~The the~~ consent  
31 of all settlors, trustees, and beneficiaries shall not be effective to terminate the trust  
32 or any disposition in trust; ~~unless the trust instrument provides otherwise~~.

33 Comment - 2015

34 This revision signals and highlights the change in R.S. 9:2026 by recognizing  
35 that in some limited instances the trustee is allowed, with the consent of the  
36 beneficiaries, to terminate a trust.

37 \* \* \*

38 §2031. Delegation of right to ~~amend~~ modify

39 A. A trust instrument may authorize a person ~~other than the settlor~~ who is in  
40 being on the date of the creation of the trust to modify the provisions of the trust

1 instrument in order to add or remove beneficiaries, or modify their rights, if all of the  
2 affected beneficiaries are descendants of the person given the power to modify. A  
3 beneficiary added pursuant to this Section may be a person who is not in being when  
4 the trust is created, provided the individual is in being at the time the power to add  
5 is exercised.

6 B. As to a class trust, a trust instrument may authorize a person who is in  
7 being on the date of the creation of the trust, or a person who is not yet in being but  
8 is a member of the class, to modify the provisions of the trust instrument in order to  
9 remove beneficiaries or modify their rights or add only those beneficiaries included  
10 within the scope of R.S. 9:1891, if all of the affected beneficiaries are descendants  
11 of the person given the power to modify.

12 Comments - 2015

13 (a) This revision clarifies the prior law by providing that in a non-class trust  
14 the power to add beneficiaries includes the ability to add those beneficiaries not in  
15 existence at the time of the creation of the trust, provided they exist at the time the  
16 power to add is exercised. This revision, however, does not allow for the creation  
17 of dynasty trusts as the person given the power to add beneficiaries must be in  
18 existence at the time of the creation of the trust. Because this Section allows for the  
19 addition of beneficiaries, it can have the effect of causing the maximum term for a  
20 trust to be extended. Cf. R.S. 9:1831 and 1833.

21 (b) As to a class trust, the power to modify a trust may include only the  
22 power to remove beneficiaries, modify their rights, or add those beneficiaries whose  
23 addition would not expand the class beyond those allowable members specified in  
24 R.S. 9:1891. For instance, the power to add within a class trust may be delegated to  
25 a grandchild who is authorized to add his children but not his grandchildren, as the  
26 addition of the former would not expand the class beyond those relatives specified  
27 in R.S. 9:1891 but the addition of the latter would impermissibly expand the group  
28 of class members to include the settlor's great, great grandchildren. In addition, the  
29 power to add within a class trust may include the power to reinstate beneficiaries  
30 who have previously been removed pursuant to an exercise of this power. The power  
31 to modify may be granted either to a person in being on the date of the creation of  
32 the trust or to a person not in being but who is a member of the class. For example,  
33 in a class trust for "children, grandchildren, and great-grandchildren," the power to  
34 remove beneficiaries may be granted to and exercised by an unborn grandchild,  
35 provided the beneficiaries removed and the beneficiaries benefitting from the  
36 removal are descendants of the person with the power to remove.

37 \* \* \*

38 §2047. Revocation of inter vivos trusts upon divorce

39 A. A divorce of the settlor revokes every provision that may be revoked or  
40 modified by the settlor in an inter vivos trust designating or appointing the settlor's



1 former spouse unless expressly provided otherwise in the trust instrument or in a  
2 judgment or a property settlement agreement.

3 B. A trustee with no actual knowledge of the divorce, judgment, or property  
4 settlement agreement is not liable for actions taken in good faith regarding the  
5 settlor's former spouse.

6 Comments - 2015

7 (a) This provision changes the law. It is consistent with C.C. Art. 1608(5)  
8 and based, in part, upon Unif. Prob. Code §2-804 and 760 Ill. Comp. Stat. Ann. 35/1.

9 (b) This provision operates to revoke automatically upon divorce all  
10 revocable provisions "designating or appointing the settlor's former spouse." This  
11 provision is deliberately broad so as to include not only beneficiary designations but  
12 also fiduciary appointments, limited powers of appointment, and other similar  
13 designations. This Section recognizes that in most instances a settlor would not want  
14 to maintain the designation or appointment of a former spouse. The trust instrument,  
15 a court judgment, or the parties in a property settlement agreement may provide to  
16 the contrary. Automatic revocation under this Section is applicable only to  
17 designations or appointments of a former spouse. It is not applicable to designations  
18 or appointments of relatives of the former spouse, whose status under the trust the  
19 settlor may wish to maintain. But see Unif. Prob. Code §2-804.

20 (c) This provision is not intended to conflict with trusts governed by federal  
21 law and must, in appropriate cases, yield when preempted. Under the Employee  
22 Retirement Income Security Act (ERISA), "any and all State laws insofar as they  
23 may now or hereafter relate to any employee benefit plan" are preempted by ERISA.  
24 29 U.S.C. §1144(a). See also Hillman v. Maretta, 133 S.Ct. 1943 (2013)  
25 (recognizing the preempted effect of the Federal Employees' Group Life Insurance  
26 Act of 1954 on a Virginia statute that not only revoked beneficiary status for former  
27 spouses in contracts for death benefits but also gave a cause of action against the  
28 former spouse to the party who would have received death benefits, had federal law  
29 not pre-empted).

30 (d) As a matter of law, a trustee is insulated from liability under this Section  
31 provided the trustee acts in good faith and does not know of the settlor's divorce or  
32 of a judgment or property settlement agreement requiring the trustee to maintain a  
33 designation or appointment of the settlor's former spouse.

34 (e) Remarriage of the settlor to the divorced spouse does not serve to revive  
35 the designations and appointments of the spouse. But see Unif. Prob. Code  
36 §2-804(e).

37 (f) Under this provision, designations or appointments of a former spouse are  
38 revoked upon the date of the divorce judgment.

39 \* \* \*

40 §2087. Delegating performance

41 \* \* \*

1           B.(1) A trustee may, by power of attorney, delegate the performance of  
2 ~~ministerial duties and~~ acts that he could not reasonably be required to perform  
3 personally and the performance of ministerial duties.

4           (2) A ~~written~~ power of attorney ~~in authentic form, executed~~ granted by a  
5 trustee authorizing a mandatary to ~~sell~~ alienate, acquire, lease, or encumber  
6 specifically described ~~immovable~~ property ~~at a~~ on specific ~~price~~ terms, shall be  
7 considered the delegation of the performance of a ministerial duty as provided by  
8 Paragraph (1) of this Subsection.

9   \*       \*       \*

10   Comments - 2015

11           (a) This revision clarifies the law. It establishes that the trustee's authority  
12 to delegate by mandate is not limited solely to "ministerial duties" but includes both  
13 "ministerial duties" and also other "acts that he could not reasonably be required to  
14 perform," which might include discretionary as well as ministerial duties. Prior to  
15 the 2010 amendment, Louisiana jurisprudence on this issue was clear. See, e.g., City  
16 of New Orleans v. Cheramie, 509 So. 2d 58 (La. Ct. App. 1st Cir. 1987) (allowing  
17 City of New Orleans, as trustee, to delegate to agents the ability to negotiate and  
18 lease land held in trust).

19           (b) This revision also makes clear that the acquisition, alienation, lease, or  
20 encumbrance of property may be an allowable delegation of a ministerial duty when  
21 the discretionary functions of the agent have been removed, such as when a trustee  
22 delegates the authority to an agent to consummate a transaction on specific terms.  
23 See, e.g., Peter Title, 1 La. Prac. Real Est. §6:44 (2d ed. 2013). When discretionary  
24 considerations are involved, a trustee should not delegate authority unless it is to  
25 perform an act that he could not reasonably be required to perform personally.

26           (c) The types of actions provided in Paragraph (B)(2) of this Section are an  
27 illustrative list of delegable acts and not intended to be exhaustive or comprehensive  
28 catalogue.

29   \*       \*       \*

30           §2096. Co-trustees

31           If ~~there are~~ two or more trustees have the same powers, each shall participate  
32 in the administration of the trust and use reasonable care to prevent a co-trustee from  
33 committing a breach of trust and shall compel him to redress a breach of trust.

34   Comment - 2015

35           Under this revision, multiple trustees have liabilities and duties with regard  
36 to the actions or inactions of their co-trustees, only if the trustees have been granted

1 the same powers. Trustees granted different powers have no such liabilities and  
2 duties with respect to each other and are governed by R.S. 9:2114.1.

3 \* \* \*

4 §2114.1. Allocation of different powers to different trustees

5 A trust instrument may confer different powers upon different trustees, in  
6 which case each trustee acts independently with respect to those powers conferred  
7 upon him. As to powers not conferred upon him, he shall have no duties or liabilities  
8 as to the actions or inactions of the other trustees.

9 Comment - 2015

10 This provision is new. It changes the law insofar as it allows a trust  
11 instrument to confer different powers upon each of multiple trustees. For instance,  
12 a trust instrument may grant one trustee the power to invest and another trustee the  
13 power to make distributions. In such a case, each trustee has fiduciary duties to the  
14 beneficiaries for matters within his control but no duties or liabilities with respect to  
15 the actions or inactions of the other trustees, unless the trust instrument provides  
16 otherwise. When the same powers are conferred upon multiple trustees, the  
17 provisions of R.S. 9:2096, 2113, and 2114 govern.

18 \* \* \*

19 §2158. Power to adjust

20 A. Subject to the limitations set forth in this Subpart, a A trustee may make  
21 an adjustment between principal and income when the interest of one or more  
22 beneficiaries is defined by reference to the "income" of a trust, and the trustee  
23 determines, after taking into account the allocations for the year under Subpart D of  
24 this Part, that the adjustment is necessary in order for the trustee to satisfy his duty  
25 to be fair and reasonable to all the beneficiaries, taking into account the purposes of  
26 the trust.

27 B. When income is distributed during the year, the income can be  
28 determined based on the adjustment to be made for the year. The adjustment to be  
29 made for the year can be determined in a way that causes the total amount distributed  
30 to the income beneficiary during the year to be equal to a percentage of the value of  
31 the trust property at the end of the prior year or at the end of an average of up to three  
32 prior years.

1           C. The authority to make an adjustment under this Section is subject to the  
2           limitations set forth hereafter in this Subpart.

3                                   Comment - 2015

4           This revision clarifies the law insofar as it establishes that an income-only  
5           trust may operate in a manner similar to a unitrust.

6                                   \*       \*       \*

7           CHAPTER 1-C. TRUST FOR THE CARE AND BENEFIT OF AN ANIMAL

8           §2263. Trust for the care of an animal

9           A. A trust may be created to provide for the care of one or more animals that  
10          are in being and ascertainable on the date of the creation of the trust.

11          B. The trust instrument may designate a caregiver for each animal. An  
12          animal's caregiver will have the custody of the animal and be responsible for its care.  
13          If no caregiver is designated or if the designated or appointed caregiver is unable or  
14          unwilling to serve, the trustee shall appoint or act as the caregiver.

15          C. The trust instrument may designate a person to enforce the provisions of  
16          the trust. If no person is designated or if the designated person is unable or unwilling  
17          to serve, the settlor or any of his successors or a caregiver may enforce the trust.

18          D. Trust property may be used only for the care of each animal and for  
19          reasonable compensation and expenses of the trustee and the caregiver.

20          E. If the proper court determines that the value of the trust substantially  
21          exceeds the amount required to care for each animal and for reasonable  
22          compensation and expenses of the trustee and the caregiver, the court may terminate  
23          the trust as to the excess portion.

24          F. The trust shall terminate upon the death of the last surviving animal  
25          provided for in the trust instrument.

26          G. The trust instrument may designate a person to receive the property upon  
27          partial or complete termination of the trust. In the absence of a designation, the trust  
28          property shall be distributed upon termination to the settlor, if living, or to the  
29          settlor's successors.

1           H. A trust instrument that provides for the care of one or more animals shall  
2           be liberally construed to sustain its effectiveness and to fulfill the intent of the settlor.

3           I. Unless otherwise required by the trust instrument or the proper court, a  
4           trustee is not required to post security or provide an accounting.

5           J. In all matters for which no provision is made in this Section, a trust for the  
6           care of an animal shall be governed by the provisions of the Louisiana Trust Code.

7                                       Comments - 2015

8                       (a) This Section is new. It is modeled, in part, on a similar provision in the  
9                       Uniform Trust Code, as well as language from the Uniform Probate Code and the  
10                      laws from a variety of other states. See, e.g., Unif. Trust Code §408; Unif. Prob.  
11                      Code §2-907; 12 Del. C. §3555; Cal. Prob. Code §15212; N.C. Stat. §36C-4-408;  
12                      Tex. Prop. Code Ann. §112.037; Fla. Stat. Ann. §736.0408.

13                     (b) This Section provides a simple and alternative way for an individual to  
14                     provide for the care of an animal. To that extent, this Section creates a unique  
15                     exception to a foundational principle of Louisiana law and allows an animal to serve  
16                     as the beneficiary of a trust, through a mechanism sometimes referred to as a  
17                     "statutory pet trust." It thus constitutes an exception to the ordinary requirement that  
18                     a beneficiary be a natural or juridical person. See, e.g., R.S. 9:1801. Individuals  
19                     may still provide for animals by using a traditional trust wherein a settlor can make  
20                     a gift of an animal to an individual who is designated as an income beneficiary in a  
21                     trust instrument. The trust instrument may then provide that the trustee will  
22                     distribute income to the beneficiary as is necessary, provided that the beneficiary  
23                     exercises care for the animal. Moreover, an individual may also provide for an  
24                     animal by making a donation to an individual with an accompanying charge that the  
25                     donee care for an animal.

26                     (c) Under this Section, only animals that are "in being" are allowable  
27                     beneficiaries of an animal trust. The general requirements of the Louisiana Trust  
28                     Code that the beneficiary be sufficiently designated and that the beneficiary be "in  
29                     being and ascertainable" on the date of the creation of the trust apply. See R.S.  
30                     9:1801 and 1803. An unborn animal is deemed to be "in being and ascertainable"  
31                     if it is born alive. See R.S. 9:1803.

32                     (d) This Section contemplates the existence of a tetrapartite, rather than  
33                     tripartite relationship, under which there exists a settlor, trustee, caregiver, and  
34                     beneficiary. Under this Section, the settlor maintains the traditional role and  
35                     function under the Louisiana Trust Code, R.S. 9:1761 through 1764. The animal  
36                     serves as the beneficiary. The trustee's role is to exercise his duties with respect to  
37                     the money or other trust property used for the care of the animal. The caregiver is  
38                     the party responsible for the care and custody of the animal.

39                     (e) Under a traditional trust, the beneficiary has the ability to enforce the  
40                     trust and compel the trustee to perform his duties. In the context of a trust for the  
41                     benefit of an animal, no human beneficiary exists. Consequently, this Section allows  
42                     for the appointment of an individual in the trust to enforce the trust and to ensure that  
43                     the trustee is appropriately discharging his duties. In the absence of the designation  
44                     of a person to enforce the trust or if the person designated is absent, deceased, or  
45                     refuses to serve, the trust provisions may be enforced by the caregiver or the settlor,  
46                     if living, or the settlor's successors.

1 (f) Under this Section, a court has authority to terminate the trust in part if  
2 the trust property "substantially exceeds" the amount required to care for each animal  
3 and for reasonable compensation and expenses of the trustee and the caregiver. This  
4 provision is modeled on Section 2-907(c)(6) of the Uniform Probate Code rather than  
5 Section 408(3) of the Uniform Trust Code. The standard of care that the animal had  
6 received prior to the creation of the trust should be considered by a court in  
7 ascertaining whether the trust property "substantially exceeds" what is necessary.

8 (g) A trust may be created for one or multiple animals. Under this Section,  
9 the trust terminates upon the death of the last surviving animal. Thus, this Section  
10 creates specific exception to the general provisions of the Louisiana Trust Code  
11 specifying a maximum term for a trust. See, e.g., R.S. 9:1831, 1832, and 1833.

12 (h) Upon partial or complete termination of a trust, the trust property is  
13 distributed to the person named in the trust, who may be a natural or juridical person  
14 or the trustee of another trust. If the trust does not provide for a recipient upon  
15 partial or complete termination, the trust property shall be distributed to the settlor,  
16 if living, or to the settlor's successors.

17 (i) As with the creation of any trust, no particular language need be used to  
18 create an animal trust, provided the intent to do so is clear. See R.S. 9:1753. Thus,  
19 a statement in a will as simple as, "I leave \$10,000 for the care of my dog" or "I  
20 leave \$10,000 to my dog" should be sufficient to establish an animal trust under this  
21 Section.

22 (j) Despite the stand-alone nature of this Section, resort to the background  
23 rules of the Louisiana Trust Code is necessary in some instances. Thus, the attempt  
24 to provide for every possible contingency under this Section has been avoided and,  
25 under the last provision of this Section, reference is made to the rules of the  
26 Louisiana Trust Code, mutatis mutandis, when relevant.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 439 Engrossed

2015 Regular Session

Nancy Landry

**Abstract:** This bill revises and augments the Louisiana Revised Statutes of 1950 relative to the Louisiana Trust Code, and authorizes the creation of trusts for pets.

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.

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.

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)