

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1060

Short Title: Division of Trusts.

(Public)

Sponsors: Senators Hagan; and Kinnaird.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE TRUSTEES WITH ADDITIONAL AUTHORITY TO SEVER
2 TRUSTS INTO SEPARATE TRUSTS CONSISTENT WITH THE BEST
3 INTERESTS OF THE TRUST BENEFICIARIES.
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5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 32-27(25a) reads as rewritten:

7 "(25a) Divide One Trust into Several Trusts and Make Distributions From
8 Those Trusts. –

9 a. To divide the funds and properties constituting any trusts into
10 two or more identical separate trusts that represent two or more
11 fractional shares of the funds and properties being divided, or to
12 hold any addition or contribution to an existing trust as a
13 separate, identical trust, and to make distributions of income and
14 principal by a method other than pro rata from the separate trusts
15 so created as the fiduciary determines to be in the best interests
16 of the trust beneficiaries. In any case where ~~a single trust has been~~
17 ~~divided by the fiduciary into two separate trusts,~~ two separate,
18 identical trusts are created pursuant to this sub-subdivision, one
19 of which is fully exempt from the federal generation-skipping
20 transfer tax and one of which is fully subject to that tax, the

1 fiduciary may thereafter, to the extent possible consistent with
2 the terms of the governing instrument, determine the value of any
3 mandatory or discretionary distributions to trust beneficiaries on
4 the basis of the combined value of both trusts, but may satisfy
5 such distributions from the separate trusts in a manner designed
6 to minimize the current and potential generation-skipping
7 transfer tax.

8 b. To divide the funds and properties constituting any trusts into
9 two or more separate, nonidentical trusts if (i) the new trusts so
10 created are not inconsistent with the terms of the governing
11 instrument; and (ii) the terms of the new trusts provide in the
12 aggregate for the same succession of interests and beneficiaries
13 as are provided in the original trust.

14 c. To fund the new trusts created pursuant to the authority granted
15 under this subsection either (i) by pro rata allocation of the assets
16 of the original trust; (ii) based upon the fair market value of the
17 assets at the date of funding; or (iii) in a manner fairly reflecting
18 the net appreciation or depreciation of the trust assets measured
19 from the valuation date to the date of funding."

20 Section 2. G.S. 36A-136(24) reads as rewritten:

21 "(24) To divide one trust into several trusts and make distributions from those
22 trusts:

23 a. To divide the funds and properties constituting any trust into two
24 or more identical separate trusts that represent two or more
25 fractional shares of the funds and properties being divided, or to
26 hold any addition or contribution to an existing trust as a
27 separate, identical trust, and to make distributions of income and
28 principal by a method other than pro rata from the separate trusts
29 so created as the fiduciary determines to be in the best interests
30 of the trust beneficiaries. In any case where ~~a single trust has been~~
31 ~~divided by the fiduciary into two separate trusts,~~ two separate,
32 identical trusts are created pursuant to this sub-subdivision, one
33 of which is fully exempt from the federal generation-skipping
34 transfer tax and one of which is fully subject to that tax, the
35 fiduciary may thereafter, to the extent possible consistent with
36 the terms of the governing instrument, determine the value of any
37 mandatory or discretionary distributions to trust beneficiaries on
38 the basis of the combined value of both trusts, but may satisfy
39 such distributions by a method other than pro rata from the
40 separate trusts in a manner designed to minimize the current and
41 potential generation-skipping transfer tax.

42 b. To divide the funds and properties constituting any trusts treated
43 for purposes of the federal generation-skipping transfer tax as

1 separate trusts into two or more separate trusts to reflect that tax
2 treatment, provided that (i) the separate trusts so created are not
3 inconsistent with the terms of the governing instrument and that
4 (ii) the severance is carried out in a manner permitted under the
5 regulations promulgated under section 2654 of the Internal
6 Revenue Code of 1986, as amended.

7 c. To divide the funds and properties constituting any testamentary
8 trusts and any trusts included in the gross estate of the grantor of
9 the trust for federal tax purposes into two or more separate trusts,
10 provided that (i) the terms of the new trusts provide in the
11 aggregate for the same succession of interests and beneficiaries
12 as are provided in the original trust and that (ii) the severance is
13 carried out in a manner permitted under the regulations
14 promulgated under section 2654 of the Internal Revenue Code of
15 1986, as amended.

16 d. To fund the new trusts created pursuant to the authority granted
17 under this subsection either (i) by pro rata allocation of the assets
18 of the original trust; (ii) based upon the fair market value of the
19 assets at the date of funding; or (iii) in a manner fairly reflecting
20 the net appreciation or depreciation of the trust assets measured
21 from the valuation date to the date of funding. In the case of a
22 pecuniary amount set aside as a separate trust, the provisions of
23 G.S. 37-21.1 shall apply."

24 Section 3. This act is effective when it becomes law.