

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1060

Judiciary II Committee Substitute Adopted 4/26/99

Third Edition Engrossed 4/28/99

Short Title: Division of Trusts.

(Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED
AN ACT TO PROVIDE TRUSTEES WITH ADDITIONAL AUTHORITY TO SEVER
TRUSTS INTO SEPARATE TRUSTS CONSISTENT WITH THE BEST
INTERESTS OF THE TRUST BENEFICIARIES.

The General Assembly of North Carolina enacts:

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

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

- a. To divide the funds and properties constituting any trusts into two or more identical separate trusts that represent two or more fractional shares of the funds and properties being divided, or to hold any addition or contribution to an existing trust as a separate, identical trust, and to make distributions of income and principal by a method other than pro rata from the separate trusts so created as the fiduciary determines to be in the best interests of the trust beneficiaries. In any case where ~~a single trust has been divided by the fiduciary into two separate trusts,~~ two separate, identical trusts are created pursuant to this sub-subdivision, one

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

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

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

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

23 "(24) To divide one trust into several trusts and make distributions from those
24 trusts in the following manner:

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

1 b. To divide the funds and properties constituting any trusts into
2 two or more separate, nonidentical trusts if (i) the new trusts so
3 created are not inconsistent with the terms of the governing
4 instrument, and (ii) the terms of the new trusts provide in the
5 aggregate for the same succession of interests and beneficiaries
6 as are provided in the original trust.

7 Funding of the new trusts created pursuant to the authority granted
8 under this subdivision must either (i) be carried out by pro rata
9 allocation of the assets of the original trust; (ii) be based upon the fair
10 market value of the assets at the date of division; or (iii) be carried out
11 in a manner fairly reflecting the net appreciation or depreciation of the
12 trust assets measured from the valuation date to the date of division."

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