

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1060  
Judiciary II Committee Substitute Adopted 4/26/99

Short Title: Division of Trusts.

(Public)

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Sponsors:

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Referred to:

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April 15, 1999

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

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

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

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

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

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

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

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

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