

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 1999-144
SENATE BILL 1060

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 subdivision, one of which is fully exempt from the federal generation-skipping transfer tax and one of which is fully subject to that tax, the fiduciary may thereafter, to the extent possible consistent with the terms of the governing instrument, determine the value of any mandatory or discretionary distributions to trust beneficiaries on the basis of the combined value of both trusts, but may satisfy such distributions from the separate trusts in a manner designed to minimize the current and potential generation-skipping transfer tax.
- b. To divide the funds and properties constituting any trusts into two or more separate, nonidentical trusts if (i) the new trusts so created are not inconsistent with the terms of the governing instrument; and (ii) the terms of the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original trust.
- c. To fund the new trusts created pursuant to the authority granted under this subdivision either (i) by pro rata allocation of the

assets of the original trust; (ii) based upon the fair market value of the assets at the date of division; or (iii) in a manner fairly reflecting the net appreciation or depreciation of the trust assets measured from the valuation date to the date of division."

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

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

- a. To divide the funds and properties constituting any trust 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 of which is fully exempt from the federal generation-skipping transfer tax and one of which is fully subject to that tax, the fiduciary may thereafter, to the extent possible consistent with the terms of the governing instrument, determine the value of any mandatory or discretionary distributions to trust beneficiaries on the basis of the combined value of both trusts, but may satisfy such distributions by a method other than pro rata from the separate trusts in a manner designed to minimize the current and potential generation-skipping transfer tax.
- b. To divide the funds and properties constituting any trusts into two or more separate, nonidentical trusts if (i) the new trusts so created are not inconsistent with the terms of the governing instrument, and (ii) the terms of the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original trust.

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

Section 3. This act becomes effective October 1, 1999.

In the General Assembly read three times and ratified this the 26th day of May, 1999.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 4:26 p.m. this 4th day of June, 1999