

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 1176\*  
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PROPOSED HOUSE COMMITTEE SUBSTITUTE S1176-PCS65087-RB-91

Short Title: Construction of Wills and Trusts.

(Public)

Sponsors:

Referred to:

May 18, 2010

1 A BILL TO BE ENTITLED  
2 AN ACT TO CONSTRUE CERTAIN FORMULA CLAUSES THAT REFER TO FEDERAL  
3 ESTATE AND GENERATION-SKIPPING TRANSFER TAX LAWS.  
4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 7 of Chapter 31 of the General Statutes is amended by adding  
6 a new section to read:

7 **"§ 31-46.1. Construction of certain formula clauses applicable to estates of decedents**  
8 **dying in calendar year 2010.**

9 (a) Purpose. – The federal estate tax and generation-skipping transfer tax expired  
10 January 1, 2010, for one year. To carry out the intent of decedents in the construction of wills  
11 and trusts and to promote judicial economy in the administration of trusts and estates, this  
12 section construes certain formula clauses that reference federal estate and generation-skipping  
13 transfer tax laws and that are used in wills or codicils of decedents who die in or before  
14 calendar year 2010.

15 (b) Applicability. – This section applies to the following:

16 (1) To a will or codicil executed by a decedent before December 31, 2009, that  
17 contains a formula provision described in subsection (c) of this section if the  
18 decedent dies after December 31, 2009, and before the earlier of January 1,  
19 2011, and the effective date of the reinstatement of the federal estate tax and  
20 generation-skipping transfer tax, unless the will or codicil clearly manifests  
21 an intent that a rule contrary to the rule of construction described in  
22 subsection (c) of this section applies.

23 (2) To the terms of a will or codicil executed by a decedent who dies before  
24 December 31, 2009, providing for a disposition of property that contains a  
25 formula provision described in subsection (c) of this section and occurs as a  
26 result of the death of another individual who dies after December 31, 2009,  
27 and before the earlier of January 1, 2011, and the effective date of the  
28 reinstatement of the federal estate tax and generation-skipping transfer tax,  
29 unless the terms of the will or codicil clearly manifests an intent that a rule  
30 contrary to the rule of construction described in subsection (c) of this section  
31 applies.

32 (c) Construction. – A will or codicil subject to this section is considered to refer to the  
33 federal estate and generation-skipping transfer tax laws as they applied with respect to estates



1 of decedents dying on December 31, 2009, if the will or codicil contains a formula that meets  
2 one or more of the following conditions:

3 (1) The formula refers to any of the following: 'applicable credit amount,'  
4 'applicable exclusion amount,' 'applicable exemption amount,' 'applicable  
5 fraction,' 'estate tax exemption,' 'generation-skipping transfer tax exemption,'  
6 'GST exemption,' 'inclusion ratio,' 'marital deduction,' 'maximum marital  
7 deduction,' 'unified credit,' or 'unlimited marital deduction.'

8 (2) The formula measures a share of an estate or trust based on the amount that  
9 can pass free of federal estate taxes or the amount that can pass free of  
10 federal generation-skipping transfer taxes.

11 (3) The formula is otherwise based on a provision of federal estate tax or federal  
12 generation-skipping transfer tax law similar to the provisions in subdivision  
13 (1) or (2) of this subsection.

14 (d) Judicial Determination. – The personal representative or an affected beneficiary  
15 under a will or testamentary trust may bring an action in the superior court division of the  
16 General Court of Justice under Article 26 of Chapter 1 of the General Statutes, and the trustee  
17 of a trust created under the will or an affected beneficiary under the trust may bring a  
18 proceeding as permitted under Article 2 of Chapter 36C of the General Statutes to determine  
19 whether the decedent intended that the references under subsection (c) of this section be  
20 construed with respect to the federal law as it existed after December 31, 2009. The action must  
21 be commenced within 12 months following the death of the decedent."

22 **SECTION 2.** Article 1 of Chapter 36C of the General Statutes is amended by  
23 adding a new section to read:

24 **"§ 36C-1-113. Construction of certain formula clauses applicable to estates of decedents**  
25 **dying in calendar year 2010.**

26 (a) Purpose. – The federal estate tax and generation-skipping transfer tax expired  
27 January 1, 2010, for one year. To carry out the intent of decedents in the construction of wills  
28 and trusts and to promote judicial economy in the administration of trusts and estates, this  
29 section construes certain formula clauses that reference federal estate and generation-skipping  
30 transfer tax laws and that are used in trust instruments or amendments to trust instruments  
31 created by settlors who die in or before calendar year 2010.

32 (b) Applicability. – This section applies to the following:

33 (1) To a trust instrument or an amendment to a trust instrument executed by a  
34 settlor before December 31, 2009, that contains a formula provision  
35 described in subsection (c) of this section if the settlor dies after December  
36 31, 2009, and before the earlier of January 1, 2011, and the effective date of  
37 the reinstatement of the federal estate tax and generation-skipping transfer  
38 tax, unless the instrument or amendment clearly manifests an intent that a  
39 rule contrary to the rule of construction described in subsection (c) of this  
40 section applies.

41 (2) To the terms of a trust instrument or an amendment to a trust instrument  
42 executed by a settlor who dies before December 31, 2009, providing for a  
43 disposition of property that contains a formula provision described in  
44 subsection (c) of this section and occurs as a result of the death of another  
45 individual who dies after December 31, 2009, and before the earlier of  
46 January 1, 2011, and the effective date of the reinstatement of the federal  
47 estate tax and generation-skipping transfer tax, unless the terms of the  
48 instrument or amendment clearly manifests an intent that a rule contrary to  
49 the rule of construction described in subsection (c) of this section applies.

50 (c) Construction. – A trust instrument or an amendment to a trust instrument subject to  
51 this section is considered to refer to the federal estate and generation-skipping transfer tax laws

1 as they applied with respect to estates of decedents dying on December 31, 2009, if the trust  
2 instrument or the amendment to the trust instrument contains a formula that meets one or more  
3 of the following conditions:

4 (1) The formula refers to any of the following: 'applicable credit amount,'  
5 'applicable exclusion amount,' 'applicable exemption amount,' 'applicable  
6 fraction,' 'estate tax exemption,' 'generation-skipping transfer tax exemption,'  
7 'GST exemption,' 'inclusion ratio,' 'marital deduction,' 'maximum marital  
8 deduction,' 'unified credit,' or 'unlimited marital deduction.'

9 (2) The formula measures a share of a trust based on the amount that can pass  
10 free of federal estate taxes or the amount that can pass free of federal  
11 generation-skipping transfer taxes.

12 (3) The formula is otherwise based on a provision of federal estate tax or federal  
13 generation-skipping transfer tax law similar to the provisions in subdivision  
14 (1) or (2) of this subsection.

15 (d) Judicial Determination. – The trustee of the trust or an affected beneficiary under  
16 the trust may commence a proceeding to determine whether the settlor intended that the  
17 references under subsection (c) of this section be construed with respect to the federal law as it  
18 existed after December 31, 2009. The proceeding must be commenced within 12 months  
19 following the death of the settlor."

20 **SECTION 3.** G.S. 36C-2-203(f) reads as rewritten:

21 "(f) Without otherwise limiting the jurisdiction of the superior court division of the  
22 General Court of Justice, proceedings concerning the internal affairs of trusts shall not include,  
23 and, therefore, the clerk of superior court shall not have jurisdiction under subsection (a) of this  
24 section of any of the following:

25 (1) Actions to reform, terminate, or modify a trust as provided by  
26 G.S. 36C-4-410 through ~~G.S. 36C-4-416;~~ G.S. 36C-4-416.

27 (2) Actions by or against creditors or debtors of a ~~trust;~~ trust.

28 (3) Actions involving claims for monetary damages, including claims for breach  
29 of fiduciary duty, fraud, and ~~negligence;~~ negligence.

30 (4) Actions to enforce a charitable trust under ~~G.S. 36C-4-405.1;~~  
31 G.S. 36C-4-405.1.

32 (5) Actions to amend or reform a charitable trust under ~~G.S. 36C-4A-1;~~ and  
33 G.S. 36C-4A-1.

34 (6) Actions involving the exercise of the trustee's special power to appoint to a  
35 second trust pursuant to G.S. 36C-8-816.1.

36 (7) Actions to construe a formula contained in a trust subject to  
37 G.S. 36C-1-113."

38 **SECTION 4.** This act is effective when it becomes law.