

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

H

2

HOUSE BILL 620\*  
Senate Judiciary II Committee Substitute Adopted 6/8/10

Short Title: Will/Unif. Principal and Income Act Changes.

(Public)

Sponsors:

Referred to:

March 17, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE CHANGES TO THE STATUTES CONCERNING BEQUESTS OR  
3 DEVISES IN A WILL TO THE ATTORNEY WHO DRAFTED THE WILL, AND TO  
4 MAKE REVISIONS TO THE UNIFORM PRINCIPAL AND INCOME ACT.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 31-4.1 is repealed.

7 SECTION 2. G.S. 31-4.2 is repealed.

8 SECTION 3. G.S. 37A-4-409 reads as rewritten:

9 "§ 37A-4-409. **Deferred compensation, annuities, and similar payments.**

10 (a) In this section, ~~"payment"~~ section:

11 (1) "Payment" means a payment that a trustee may receive over a fixed number  
12 of years or during the life of one or more individuals because of services  
13 rendered or property transferred to the payer in exchange for future  
14 payments. The term includes a payment made in money or property from the  
15 payer's general assets or from a separate fund created by the payer, ~~including~~  
16 ~~a private or commercial annuity, an individual retirement account, and a~~  
17 ~~pension, profit sharing, stock bonus, or stock ownership plan.~~ payer. For  
18 purposes of subsections (d), (d1), (d2), and (d3) of this section, the term also  
19 includes any payment from any separate fund, regardless of the reason for  
20 the payment.

21 (2) "Separate fund" includes a private or commercial annuity, an individual  
22 retirement account, and a pension, profit sharing, stock-bonus, or  
23 stock-ownership plan.

24 (b) To the extent that a payment is characterized as ~~interest or a dividend~~ interest, a  
25 dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate ~~it~~ the  
26 payment to income. The trustee shall allocate to principal the balance of the payment and any  
27 other payment received in the same accounting period that is not characterized as interest, a  
28 dividend, or an equivalent payment.

29 (c) If no part of a payment is characterized as interest, a dividend, or an equivalent  
30 payment, and all or part of the payment is required to be made, a trustee shall allocate to  
31 income ten percent (10%) of the part that is required to be made during the accounting period  
32 and the balance to principal. If no part of a payment is required to be made or the payment  
33 received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire  
34 payment to principal. For purposes of this subsection, a payment is not "required to be made" to  
35 the extent that it is made because the trustee exercises a right of withdrawal.

36 (d) ~~If, to obtain an estate tax marital deduction for a trust, a trustee shall allocate more~~  
37 ~~of a payment to income than provided for by this section, the trustee shall allocate to income~~



1 ~~the additional amount necessary to obtain the marital deduction. Except as otherwise provided~~  
2 ~~in subsection (d1) of this section, subsections (d2) and (d3) of this section apply, and~~  
3 ~~subsections (b) and (c) of this section do not apply in determining the allocation of a payment~~  
4 ~~from a separate fund to:~~

- 5 (1) ~~A trust to which an election to qualify for a marital deduction under section~~  
6 ~~2056(b)(7) of the Internal Revenue Code has been made, or~~  
7 (2) ~~A trust that qualifies for the marital deduction under section 2056(b)(5) of~~  
8 ~~the Internal Revenue Code.~~

9 (d1) ~~Subsections (d), (d2), and (d3) of this section do not apply if and to the extent that~~  
10 ~~the series of payments would, without the application of subsection (d) of this section, qualify~~  
11 ~~for the marital deduction under section 2056(b)(7)(C) of the Internal Revenue Code.~~

12 (d2) ~~A trustee shall determine the internal income of each separate fund for the~~  
13 ~~accounting period as if the separate fund were a trust subject to this section. Upon request of~~  
14 ~~the surviving spouse, the trustee shall demand that the person administering the separate fund~~  
15 ~~distribute the internal income to the trust. The trustee shall allocate a payment from the separate~~  
16 ~~fund to income to the extent of the internal income of the separate fund and distribute that~~  
17 ~~amount to the surviving spouse. The trustee shall allocate the balance of the payment to~~  
18 ~~principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to~~  
19 ~~the extent that the internal income of the separate fund exceeds payments made from the~~  
20 ~~separate fund to the trust during the accounting period.~~

21 (d3) ~~If a trustee cannot determine the internal income of a separate fund but can~~  
22 ~~determine the value of the separate fund, the internal income of the separate fund is deemed to~~  
23 ~~equal four percent (4%) of the fund's value, according to the most recent statement of value~~  
24 ~~preceding the beginning of the accounting period. If the trustee can determine neither the~~  
25 ~~internal income of the separate fund nor the fund's value, the internal income of the fund is~~  
26 ~~deemed to equal the product of the interest rate and the present value of the expected future~~  
27 ~~payments, as determined under section 7520 of the Internal Revenue Code for the month~~  
28 ~~preceding the accounting period for which the computation is made.~~

- 29 (e) ~~This section does not apply to payments to which G.S. 37A-4-410 applies."~~

30 **SECTION 4.** G.S. 37A-5-505 reads as rewritten:

31 "**§ 37A-5-505. Income taxes.**

32 (a) ~~A tax required to be paid by a trustee based on receipts allocated to income shall be~~  
33 ~~paid from income.~~

34 (b) ~~A tax required to be paid by a trustee based on receipts allocated to principal shall~~  
35 ~~be paid from principal, even if the tax is called an income tax by the taxing authority.~~

36 (c) ~~A tax required to be paid by a trustee on the trust's share of an entity's taxable~~  
37 ~~income shall be ~~paid proportionately:~~ paid:~~

- 38 (1) ~~From income to the extent that receipts from the entity are only allocated to~~  
39 ~~income; ~~and~~~~

- 40 (2) ~~From principal to the extent ~~that:~~~~

41 a. ~~Receipts-receipts~~ from the entity are only allocated to principal; ~~and~~

42 b. ~~The trust's share of the entity's taxable income exceeds the total~~  
43 ~~receipts described in subdivision (1) and sub-subdivision (2)a. of this~~  
44 ~~subsection-principal;~~

- 45 (3) ~~Proportionately from principal and income to the extent that receipts from~~  
46 ~~the entity are allocated to both income and principal; and~~

- 47 (4) ~~From principal to the extent that the tax exceeds the total receipts from the~~  
48 ~~entity.~~

49 (d) ~~For purposes of this section, receipts allocated to principal or income shall be~~  
50 ~~reduced by the amount distributed to a beneficiary from principal or income for which the trust~~  
51 ~~receives a deduction in calculating the tax. After applying subsections (a) through (c) of this~~

1 section, the trustee shall adjust income or principal receipts to the extent that the trust's taxes  
2 are reduced because the trust receives a deduction for payments made to a beneficiary."

3       **SECTION 5.** Sections 1, 2, and 5 of this act become effective July 1, 2010. The  
4 failure of an attorney to comply with either the affidavit requirement under G.S. 31-4.1 or the  
5 drafting disclosure requirement of G.S. 31-4.2 does not invalidate a will or a codicil. The  
6 remainder of this act becomes effective January 1, 2011.