

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 775
House Committee Substitute Favorable 7/11/91

Short Title: Modify Law Concerning Trusts.

(Public)

Sponsors:

Referred to:

April 24, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE LAW REGARDING TRUSTS.
3 The General Assembly of North Carolina enacts:

4 Section 1. The purpose of this act is (i) to save the deduction of interests in
5 certain trusts for which a federal estate or gift tax marital deduction is claimed and
6 which may not otherwise qualify for the deduction and (ii) to permit investment of a
7 trust's assets in a mutual fund advised by a trustee of the trust.

8 Sec. 2. Chapter 36A of the General Statutes is amended by adding a new
9 Article to read:

10 **"ARTICLE 10.**

11 **"MARITAL DEDUCTION TRUSTS.**

12 **"§ 36A-116. Marital deduction trusts.**

13 (a) If a trust created under a will or trust agreement for the benefit of the spouse
14 of the testator or the grantor of the trust, other than a trust which provides that upon the
15 termination of the income interest that the entire remaining trust estate be paid to the
16 estate of the spouse, requires that all the income of the trust be paid not less frequently
17 than annually to the spouse and a federal estate or gift tax marital deduction is claimed
18 with respect to the trust, then, unless the will or trust agreement specifically provides
19 otherwise by reference to this section, any investment in or retention of unproductive
20 property as an asset of the trust is subject to the power of the spouse to require either
21 that the asset be made productive of income, or that it be converted to assets productive
22 of income, within a reasonable period of time.

1 (b) If, but for the absence of a direction in the will or trust agreement that accrued
2 income shall be paid to the estate of the spouse, a trust created under a will or trust
3 agreement for the benefit of the spouse of the testator or the grantor of the trust would
4 qualify for the federal estate tax marital deduction under section 2056(b)(7) of the
5 Internal Revenue Code or the federal gift tax marital deduction under section 2523(f) of
6 the Internal Revenue Code, then, unless the will or trust agreement specifically provides
7 otherwise by reference to this section, upon the termination of the income interest all
8 accrued or undistributed income of the trust at the death of spouse shall be paid to the
9 personal representative of the spouse's estate in accordance with the Principal and
10 Income Act of 1973, Article 2 of Chapter 37 of the General Statutes."

11 Sec. 3. Article 5 of Chapter 36A of the General Statutes is amended by
12 adding a new section to read:

13 **"§ 36A-66.2. Trustee may invest trust assets in a mutual fund from which trustee**
14 **receives compensation.**

15 (a) Unless the governing instrument provides otherwise, a trustee may invest
16 trust assets in an open-end or closed-end management-type investment company or an
17 open-end or closed-end management-type investment trust to which the trustee or an
18 affiliate of the trustee provides services in exchange for reasonable remuneration if the
19 following conditions have been met:

20 (1) The investment company or investment trust is registered under the
21 Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq.

22 (2) The trustee has disclosed in writing to all current income beneficiaries
23 of the trust whose assets are invested in the investment company or
24 investment trust the rate, formula, or other method under which the
25 trustee or the trustee's affiliate's remuneration for services provided to
26 the investment company or investment trust will be determined.

27 (b) For the purpose of this section, the term 'services' includes services as an
28 investment advisor, a custodian, a transfer agent, a registrar, a sponsor, a distributor, a
29 manager, or another provider of services."

30 Sec. 4. This act is effective upon ratification. Section 2 of this act applies to
31 irrevocable trusts in existence or created on or after the date of ratification.