

HOUSE No. 1381

By Mr. Dempsey of Haverhill, petition of Brian S. Dempsey relative to the administration of trusts. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT RELATING TO THE ADMINISTRATION OF TRUSTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 209 of the General Laws as appearing in the 2004 Offi-
2 cial Edition is hereby amended by inserting after Section 14B the
3 following new section:—

4 Section 14C. Generation-Skipping Transfer Tax: Division of
5 Trusts, Definitions.

6 (a) Whenever, by virtue of an allocation of a generation-skipping
7 transfer tax exemption (or exemptions, in the case of more than one
8 transferor), property held or to be held in a trust would otherwise be
9 partially exempted from the generation-skipping transfer tax, a
10 trustee is hereby authorized, without prior approval or leave of any
11 court, i) to divide the trust into separate trusts, whether or not equal,
12 and ii) to allocate property and the generation-skipping transfer tax
13 exemption among such separate trusts, in order to create trust that
14 are either wholly exempt from or wholly subject to the generation-
15 skipping transfer tax. The trust shall be severed on a fractional basis,
16 but the separate trusts need not be funded with a pro rata portion of
17 each asset held by the undivided trust. The trusts may be funded on a
18 non-pro rata basis provided funding is based on either the fair
19 market value of the assets on the date of funding or in a manner that
20 fairly reflects the net appreciation or depreciation in the value of the
21 assets measure from the date of death to the date of funding.

22 (b) Any trust or trusts created pursuant to this section shall be
23 treated as separate trusts to be held, administered and accounted for

24 separately, but they shall remain substantially identical in all respects
25 to the original trust.

26 (c) No liabilities shall be imposed on any trustee who in good
27 faith takes or fails to take any action authorized by this section.

28 (d) This section applies to any trust that is subject or may become
29 subject to the generation-skipping transfer tax.

30 (e) The following definitions shall apply to this section:—

31 (1) “Generation-Skipping Transfer Tax” means the tax imposed
32 under Chapter 13 of the Internal Revenue Code of 1986 (as amended
33 from time to time) or any successor provisions of future Internal
34 Revenue laws;

35 (2) “Trust” means any trust, with additions thereto, whenever and
36 however created, or any separate share of a trust, and without limita-
37 tion any arrangement, other than an estate, which, although not a
38 trust, has substantially the same effect as a trust (including by way of
39 illustration, but not limitation, life estates, remainders, estates for
40 years, and insurance and annuity contracts; and

41 (3) “Trustee” means an original, additional or successor trustee,
42 whether or not appointed by the court, and, in the case of an arrange-
43 ment which is not a trust but is treated as a trust for purposes of the
44 generation-skipping transfer tax, includes, without limitation, each
45 person in actual or constructive possession of the property subject to
46 such arrangement.