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By: **Senator Baker**

Introduced and read first time: February 2, 2001

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Uniform Principal and Income Act - Adjustments Between Principal and**  
3 **Income**

4 FOR the purpose of authorizing a trustee to make adjustments between principal and  
5 income under certain circumstances; requiring a trustee to give notice to certain  
6 beneficiaries of certain proposed decisions regarding the power to adjust  
7 between principal and income; providing for judicial review of a proposed  
8 decision; clarifying the right of a trustee to adjust between income and principal  
9 because of taxes with respect to certain liquidating distributions from certain  
10 entities; making certain conforming changes; and generally relating to  
11 allocations between principal and income of estates and trusts.

12 BY repealing and reenacting, with amendments,  
13 Article - Estates and Trusts  
14 Section 15-502, 15-515, 15-520, and 15-528  
15 Annotated Code of Maryland  
16 (1991 Replacement Volume and 2000 Supplement)

17 BY adding to  
18 Article - Estates and Trusts  
19 Section 15-502.1 and 15-502.2  
20 Annotated Code of Maryland  
21 (1991 Replacement Volume and 2000 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
23 MARYLAND, That the Laws of Maryland read as follows:

24 **Article - Estates and Trusts**

25 15-502.

26 (a) In allocating receipts and disbursements to or between principal and  
27 income, and with respect to any matter within the scope of Parts II and III of this  
28 subtitle, a fiduciary:

1 (1) Shall administer a trust or estate in accordance with the terms of the  
2 trust or the will, even if there is a different provision in this subtitle;

3 (2) May administer a trust or estate by the exercise of a discretionary  
4 power of administration given to the fiduciary by the terms of the trust or the will,  
5 even if the exercise of the power produces a result different from a result required or  
6 permitted by this subtitle;

7 (3) Shall administer a trust or estate in accordance with this subtitle if  
8 the terms of the trust or the will do not contain a different provision or do not give the  
9 fiduciary a discretionary power of administration; and

10 (4) Shall add a receipt or charge a disbursement to principal to the  
11 extent that the terms of the trust and this subtitle do not provide a rule for allocating  
12 the receipt or disbursement to or between principal and income.

13 (b) In exercising THE POWER TO ADJUST UNDER § 15-502.1(A) OF THIS  
14 SUBTITLE OR a discretionary power of administration regarding a matter within the  
15 scope of this subtitle, whether granted by the terms of a trust, a will, or this subtitle,  
16 a fiduciary shall administer a trust or estate impartially, based on what is fair and  
17 reasonable to all of the beneficiaries, except to the extent that the terms of the trust  
18 or the will clearly manifest an intention that the fiduciary shall or may favor one or  
19 more of the beneficiaries. A determination in accordance with this subtitle is  
20 presumed to be fair and reasonable to all of the beneficiaries.

21 15-502.1.

22 (A) A TRUSTEE MAY ADJUST BETWEEN PRINCIPAL AND INCOME TO THE  
23 EXTENT THE TRUSTEE CONSIDERS NECESSARY IF:

24 (1) THE TRUSTEE INVESTS AND MANAGES THE TRUST ASSETS IN THE  
25 MANNER SET FORTH IN § 15-114 OF THIS TITLE;

26 (2) THE TERMS OF THE TRUST DESCRIBE THE AMOUNT THAT MAY OR  
27 MUST BE DISTRIBUTED TO A BENEFICIARY BY REFERRING TO THE TRUST'S INCOME;

28 (3) THE TRUSTEE RECEIVES A WRITTEN REQUEST FROM A BENEFICIARY  
29 TO EXERCISE THE POWER CONFERRED BY THIS SUBSECTION TO MAKE AN  
30 ADJUSTMENT; AND

31 (4) THE TRUSTEE DETERMINES, AFTER APPLYING THE RULES IN §  
32 15-502(A) OF THIS SUBTITLE, THAT THE TRUSTEE IS UNABLE TO COMPLY WITH §  
33 15-502(B) OF THIS SUBTITLE.

34 (B) IN DECIDING WHETHER AND TO WHAT EXTENT TO EXERCISE THE POWER  
35 CONFERRED BY SUBSECTION (A) OF THIS SECTION, A TRUSTEE MAY CONSIDER THE  
36 FOLLOWING FACTORS:

37 (1) THE NATURE, PURPOSE, AND EXPECTED DURATION OF THE TRUST;

1           (2)     THE INTENT OF THE SETTLOR;

2           (3)     THE IDENTITY AND CIRCUMSTANCES OF THE BENEFICIARIES;

3           (4)     THE NEEDS FOR LIQUIDITY, REGULARITY OF INCOME, AND  
4 PRESERVATION AND APPRECIATION OF CAPITAL;

5           (5)     THE ASSETS HELD IN THE TRUST AND:

6                   (I)     THE EXTENT TO WHICH THEY CONSIST OF FINANCIAL ASSETS,  
7 INTERESTS IN CLOSELY HELD ENTERPRISES, TANGIBLE AND INTANGIBLE PERSONAL  
8 PROPERTY, OR REAL PROPERTY;

9                   (II)    THE EXTENT TO WHICH AN ASSET IS USED BY A BENEFICIARY;  
10 AND

11                   (III)   WHETHER AN ASSET WAS ACQUIRED BY THE TRUSTEE OR  
12 RECEIVED FROM THE SETTLOR;

13           (6)     THE NET AMOUNT ALLOCATED TO INCOME UNDER OTHER  
14 PROVISIONS OF THIS SUBTITLE AND THE INCREASE OR DECREASE IN THE VALUE OF  
15 THE PRINCIPAL ASSETS, WHICH THE TRUSTEE MAY ESTIMATE AS TO ASSETS FOR  
16 WHICH MARKET VALUES ARE NOT READILY AVAILABLE;

17           (7)     WHETHER AND TO WHAT EXTENT THE TERMS OF THE TRUST GIVE  
18 THE TRUSTEE THE POWER TO INVADE PRINCIPAL OR ACCUMULATE INCOME OR  
19 PROHIBIT THE TRUSTEE FROM INVADING PRINCIPAL OR ACCUMULATING INCOME,  
20 AND THE EXTENT TO WHICH THE TRUSTEE HAS EXERCISED A POWER FROM TIME TO  
21 TIME TO INVADE PRINCIPAL OR ACCUMULATE INCOME;

22           (8)     THE ACTUAL AND ANTICIPATED EFFECT OF ECONOMIC CONDITIONS  
23 ON PRINCIPAL AND INCOME AND THE EFFECTS OF INFLATION AND DEFLATION; AND

24           (9)     THE ANTICIPATED TAX CONSEQUENCES OF AN ADJUSTMENT.

25    (C)     A TRUSTEE MAY NOT MAKE AN ADJUSTMENT:

26                   (1)     THAT DIMINISHES THE INCOME INTEREST IN A TRUST THAT  
27 REQUIRES ALL OF THE INCOME TO BE PAID AT LEAST ANNUALLY TO A SPOUSE AND  
28 FOR WHICH AN ESTATE TAX OR GIFT TAX MARITAL DEDUCTION WOULD BE  
29 ALLOWED, WHOLLY OR PARTLY, IF THE TRUSTEE DID NOT HAVE THE POWER TO  
30 MAKE THE ADJUSTMENT;

31                   (2)     THAT REDUCES THE ACTUARIAL VALUE OF THE INCOME INTEREST  
32 IN A TRUST TO WHICH A PERSON TRANSFERS PROPERTY WITH THE INTENT TO  
33 QUALIFY FOR A GIFT TAX EXCLUSION;

34                   (3)     THAT CHANGES THE AMOUNT PAYABLE TO A BENEFICIARY AS A  
35 FIXED ANNUITY OR A FIXED FRACTION OF THE VALUE OF THE TRUST ASSETS;

1 (4) FROM ANY AMOUNT THAT IS PERMANENTLY SET ASIDE FOR  
2 CHARITABLE PURPOSES UNDER A WILL OR THE TERMS OF A TRUST UNLESS BOTH  
3 INCOME AND PRINCIPAL ARE SO SET ASIDE;

4 (5) IF POSSESSING OR EXERCISING THE POWER TO MAKE AN  
5 ADJUSTMENT CAUSES AN INDIVIDUAL TO BE TREATED AS THE OWNER OF ALL OR  
6 PART OF THE TRUST FOR INCOME TAX PURPOSES, AND THE INDIVIDUAL WOULD NOT  
7 BE TREATED AS THE OWNER IF THE TRUSTEE DID NOT POSSESS THE POWER TO  
8 MAKE AN ADJUSTMENT;

9 (6) IF POSSESSING OR EXERCISING THE POWER TO MAKE AN  
10 ADJUSTMENT CAUSES ALL OR PART OF THE TRUST ASSETS TO BE INCLUDED FOR  
11 ESTATE TAX PURPOSES IN THE ESTATE OF AN INDIVIDUAL WHO HAS THE POWER TO  
12 REMOVE A TRUSTEE OR APPOINT A TRUSTEE, OR BOTH, AND THE ASSETS WOULD  
13 NOT BE INCLUDED IN THE ESTATE OF THE INDIVIDUAL IF THE TRUSTEE DID NOT  
14 POSSESS THE POWER TO MAKE AN ADJUSTMENT;

15 (7) IF THE TRUSTEE IS A BENEFICIARY OF THE TRUST;

16 (8) IF THE TRUSTEE IS NOT A BENEFICIARY, BUT THE ADJUSTMENT  
17 WOULD BENEFIT THE TRUSTEE DIRECTLY OR INDIRECTLY; OR

18 (9) IF POSSESSING OR EXERCISING THE POWER TO MAKE THE  
19 ADJUSTMENT CAUSES A CHANGE IN THE INCLUSION RATIO OF THE TRUST OR  
20 OTHERWISE CAUSES THE TRUST TO BE POTENTIALLY SUBJECT TO  
21 GENERATION-SKIPPING TRANSFER TAX.

22 (D) IF SUBSECTION (C)(5), (6), (7), OR (8) OF THIS SECTION APPLIES TO A  
23 TRUSTEE AND THERE IS MORE THAN ONE TRUSTEE, A COTRUSTEE TO WHOM THE  
24 PROVISION DOES NOT APPLY MAY MAKE THE ADJUSTMENT UNLESS THE EXERCISE  
25 OF THE POWER BY THE REMAINING TRUSTEE OR TRUSTEES IS NOT PERMITTED BY  
26 THE TERMS OF THE TRUST.

27 (E) (1) A TRUSTEE MAY RELEASE THE ENTIRE POWER CONFERRED BY  
28 SUBSECTION (A) OF THIS SECTION OR MAY RELEASE ONLY THE POWER TO ADJUST  
29 FROM PRINCIPAL TO INCOME IF THE TRUSTEE IS UNCERTAIN ABOUT WHETHER  
30 POSSESSING OR EXERCISING THE POWER WILL CAUSE A RESULT DESCRIBED IN  
31 SUBSECTION (C)(1), (2), (3), (4), (5), (6), (8), OR (9) OF THIS SECTION OR IF THE TRUSTEE  
32 DETERMINES THAT POSSESSING OR EXERCISING THE POWER WILL OR MAY DEPRIVE  
33 THE TRUST OF A TAX BENEFIT OR IMPOSE A TAX BURDEN NOT DESCRIBED IN  
34 SUBSECTION (C) OF THIS SECTION.

35 (2) THE RELEASE AUTHORIZED UNDER PARAGRAPH (1) OF THIS  
36 SUBSECTION MAY BE PERMANENT OR FOR A SPECIFIED PERIOD, INCLUDING A  
37 PERIOD MEASURED BY THE LIFE OF AN INDIVIDUAL.

38 (F) THE TERMS OF A TRUST THAT LIMIT THE POWER OF A TRUSTEE TO MAKE  
39 AN ADJUSTMENT BETWEEN PRINCIPAL AND INCOME DO NOT AFFECT THE  
40 APPLICATION OF THIS SECTION UNLESS IT IS CLEAR FROM THE TERMS OF THE

1 TRUST THAT THE TERMS ARE INTENDED TO DENY THE TRUSTEE THE POWER OF  
2 ADJUSTMENT CONFERRED BY SUBSECTION (A) OF THIS SECTION.

3 15-502.2.

4 (A) (1) IN THIS SECTION, "QUALIFIED BENEFICIARY" MEANS A PERSON  
5 WHO, ON THE DATE THAT NOTICE IS GIVEN BY THE TRUSTEE IN ACCORDANCE WITH  
6 SUBSECTION (B) OF THIS SECTION:

7 (I) IS A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF THE  
8 INCOME OR PRINCIPAL OF THE TRUST ESTATE;

9 (II) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF  
10 THE INCOME OR PRINCIPAL OF THE TRUST ESTATE IF THE INTERESTS OF THE  
11 DISTRIBUTEES DESCRIBED IN ITEM (I) OF THIS PARAGRAPH TERMINATED ON THE  
12 DATE THAT NOTICE IS GIVEN BY THE TRUSTEE; OR

13 (III) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF  
14 THE INCOME OR PRINCIPAL OF THE TRUST ESTATE IF THE TRUST WERE TO  
15 TERMINATE ON THE DATE THAT NOTICE IS GIVEN BY THE TRUSTEE.

16 (2) "QUALIFIED BENEFICIARY" INCLUDES:

17 (I) IF THE BENEFICIARY IS A MINOR, THE BENEFICIARY'S  
18 NATURAL OR LEGAL GUARDIAN; AND

19 (II) IF THE BENEFICIARY IS A DISABLED PERSON, AS DEFINED IN §  
20 13-101 OF THIS ARTICLE, ANY PERSON ACTING ON BEHALF OF THE BENEFICIARY  
21 UNDER A GUARDIANSHIP, CONSERVATORSHIP, OR COMMITTEE.

22 (B) A TRUSTEE SHALL GIVE NOTICE OF A PROPOSED DECISION REGARDING  
23 THE EXERCISE OR NONEXERCISE OF THE DISCRETIONARY POWER CONFERRED  
24 UNDER § 15-502.1(A) OF THIS SUBTITLE TO ADJUST BETWEEN PRINCIPAL AND  
25 INCOME.

26 (C) THE TRUSTEE SHALL MAIL THE NOTICE REQUIRED UNDER SUBSECTION  
27 (B) OF THIS SECTION TO ALL QUALIFIED BENEFICIARIES, EXCEPT THAT NOTICE OF  
28 THE PROPOSED DECISION NEED NOT BE GIVEN TO ANY QUALIFIED BENEFICIARY  
29 WHO CONSENTS IN WRITING TO THE PROPOSED DECISION AT ANY TIME BEFORE OR  
30 AFTER THE PROPOSED DECISION IS TAKEN.

31 (D) THE NOTICE OF PROPOSED DECISION SHALL STATE THAT IT IS GIVEN IN  
32 ACCORDANCE WITH THIS SECTION AND SHALL STATE THE FOLLOWING:

33 (1) THE NAME AND MAILING ADDRESS OF THE TRUSTEE, TOGETHER  
34 WITH THE NAME AND TELEPHONE NUMBER OF A PERSON WHO MAY BE CONTACTED  
35 FOR ADDITIONAL INFORMATION;

36 (2) A DESCRIPTION OF THE DECISION PROPOSED TO BE TAKEN;

1           (3)     THE TIME WITHIN WHICH WRITTEN OBJECTIONS TO THE PROPOSED  
2 DECISION MAY BE MADE TO THE TRUSTEE, WHICH SHALL BE AT LEAST 30 DAYS  
3 AFTER THE MAILING OF THE NOTICE OF PROPOSED DECISION; AND

4           (4)     THE DATE ON OR AFTER WHICH THE PROPOSED DECISION MAY BE  
5 TAKEN OR IS EFFECTIVE, WHICH SHALL BE AFTER THE END OF THE TIME WITHIN  
6 WHICH OBJECTIONS TO THE PROPOSED DECISION MAY BE MADE TO THE TRUSTEE.

7     (E)     ANY QUALIFIED BENEFICIARY WHO OBJECTS IN WRITING TO THE  
8 PROPOSED DECISION MAY FILE, WITHIN 60 DAYS AFTER THE TRUSTEE RECEIVES  
9 THE QUALIFIED BENEFICIARY'S WRITTEN OBJECTION, A COMPLAINT TO REVIEW THE  
10 PROPOSED DECISION IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE  
11 TRUSTEE RESIDES IN THIS STATE, IF THE TRUSTEE IS AN INDIVIDUAL, OR IN WHICH  
12 THE PRINCIPAL PLACE OF BUSINESS OF THE TRUSTEE IS LOCATED IN THIS STATE.

13     (F)     (1)     IN A PROCEEDING UNDER SUBSECTION (E) OF THIS SECTION, A  
14 QUALIFIED BENEFICIARY OBJECTING TO THE PROPOSED DECISION HAS THE  
15 BURDEN OF PROVING THAT THE TRUSTEE'S PROPOSED DECISION SHOULD NOT BE  
16 TAKEN.

17           (2)     THE SOLE REMEDY IN THE PROCEEDING IS TO DIRECT, DENY, OR  
18 REVISE AN ADJUSTMENT BETWEEN PRINCIPAL AND INCOME.

19           (3)     NOTICE OF THE PROCEEDING SHALL BE GIVEN TO THE TRUSTEE  
20 AND TO ALL QUALIFIED BENEFICIARIES TO WHOM NOTICE OF THE PROPOSED  
21 DECISION WAS ORIGINALLY SENT.

22     (G)     (1)     A TRUSTEE IS NOT LIABLE TO ANY QUALIFIED BENEFICIARY FOR A  
23 DECISION REGARDING THE EXERCISE OR NONEXERCISE OF THE DISCRETIONARY  
24 POWER CONFERRED UNDER § 15-502.1(A) OF THIS SUBTITLE TO ADJUST BETWEEN  
25 PRINCIPAL AND INCOME IF THE QUALIFIED BENEFICIARY DOES NOT OBJECT BY  
26 FILING A COMPLAINT TO REVIEW THE PROPOSED DECISION AND THE OTHER  
27 REQUIREMENTS OF THIS SECTION ARE SATISFIED.

28           (2)     IF NO QUALIFIED BENEFICIARY OBJECTS WITHIN THE APPLICABLE  
29 PERIOD, THE TRUSTEE IS NOT LIABLE TO ANY PERSON HAVING A PRESENT OR  
30 FUTURE INTEREST IN THE TRUST, VESTED OR CONTINGENT, INCLUDING ANY  
31 UNBORN OR UNASCERTAINED BENEFICIARY.

32 15-515.

33     If a trustee determines that an allocation between principal and income  
34 required by § 15-516, § 15-517, § 15-518, § 15-519, or § 15-522 of this subtitle is  
35 insubstantial, the trustee may allocate the entire amount to principal UNLESS ONE  
36 OF THE CIRCUMSTANCES DESCRIBED IN § 15-502.1(C) OF THIS SUBTITLE APPLIES TO  
37 THE ALLOCATION. THIS POWER MAY BE EXERCISED BY A COTRUSTEE IN THE  
38 CIRCUMSTANCES DESCRIBED IN § 15-502.1(D) OF THIS SUBTITLE, AND MAY BE  
39 RELEASED FOR THE REASONS AND IN THE MANNER DESCRIBED IN § 15-502.1(E) OF  
40 THIS SUBTITLE. An allocation is presumed to be insubstantial if:

1 (1) The amount of the allocation would increase or decrease net income  
2 in an accounting period, as determined before the allocation, by less than 10 percent;  
3 or

4 (2) The value of the asset producing the receipt for which the allocation  
5 would be made is less than 10 percent of the total value of the trust's assets at the  
6 beginning of the accounting period.

7 15-520.

8 (a) If a marital deduction is allowed for all or part of a trust whose assets  
9 consist substantially of property that does not provide the spouse with sufficient  
10 income from or use of the trust assets, AND IF THE AMOUNTS THAT THE TRUSTEE  
11 TRANSFERS FROM PRINCIPAL TO INCOME UNDER § 15-502.1(A) OF THIS SUBTITLE  
12 AND DISTRIBUTES TO THE SPOUSE FROM PRINCIPAL PURSUANT TO THE TERMS OF  
13 THE TRUST ARE INSUFFICIENT TO PROVIDE THE SPOUSE WITH THE BENEFICIAL  
14 ENJOYMENT REQUIRED TO OBTAIN THE MARITAL DEDUCTION, the spouse may  
15 require the trustee to make property productive of income, [or] convert property  
16 within a reasonable time, OR EXERCISE THE POWER CONFERRED BY § 15-502.1(A) OF  
17 THIS SUBTITLE. The trustee may decide which action or combination of actions to  
18 take.

19 (b) In cases not governed by subsection (a) of this section, proceeds from the  
20 sale or other disposition of an asset are principal without regard to the amount of  
21 income the asset produces during any accounting period.

22 15-528.

23 (a) A fiduciary may make adjustments between principal and income to offset  
24 the shifting of economic interests or tax benefits between income beneficiaries and  
25 remainder beneficiaries which arise from:

26 (1) Elections and decisions, other than those described in subsection (b)  
27 of this section, that the fiduciary makes from time to time regarding tax matters;

28 (2) An income tax or any other tax that is imposed upon the fiduciary or  
29 a beneficiary as a result of a transaction involving or a distribution from the estate or  
30 trust; or

31 (3) The ownership by an estate or trust of an interest in an entity whose  
32 taxable income, whether or not distributed, is includable in the taxable income of the  
33 estate, trust, or a beneficiary, EXCEPT THAT A TRUSTEE SHALL MAKE AN  
34 ADJUSTMENT FROM PRINCIPAL TO INCOME TO COMPENSATE AN INCOME  
35 BENEFICIARY FOR TAXES PAID OR PAYABLE BY THE INCOME BENEFICIARY IN  
36 RESPECT OF THE TAXABLE INCOME OF AN ENTITY THAT IS TAXABLE TO THE INCOME  
37 BENEFICIARY BUT THAT IS DISTRIBUTED TO THE TRUSTEE AND ALLOCATED TO  
38 PRINCIPAL.

39 (b) If the amount of an estate tax marital deduction or charitable contribution  
40 deduction is reduced because a fiduciary deducts an amount paid from principal for

1 income tax purposes instead of deducting it for estate tax purposes, and as a result  
2 estate taxes paid from principal are increased and income taxes paid by an estate,  
3 trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits  
4 from the decrease in income tax shall reimburse the principal from which the  
5 increase in estate tax is paid. The total reimbursement must equal the increase in the  
6 estate tax to the extent that the principal used to pay the increase would have  
7 qualified for a marital deduction or charitable contribution deduction but for the  
8 payment. The proportionate share of the reimbursement for each estate, trust, or  
9 beneficiary whose income taxes are reduced must be the same as its proportionate  
10 share of the total decrease in income tax. An estate or trust shall reimburse principal  
11 from income.

12       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 October 1, 2001.