

SENATE BILL 662

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2001 Regular Session
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By: **Senator Baker**
Introduced and read first time: February 2, 2001
Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: February 28, 2001

CHAPTER _____

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:

1

Article - Estates and Trusts

2 15-502.

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

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

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

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

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

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

26 15-502.1.

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

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

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

33 (3) THE TRUSTEE RECEIVES A WRITTEN REQUEST FROM A BENEFICIARY
34 TO EXERCISE THE POWER CONFERRED BY THIS SUBSECTION TO MAKE AN
35 ADJUSTMENT; AND

1 (4) THE TRUSTEE DETERMINES, AFTER APPLYING THE RULES IN §
2 15-502(A) OF THIS SUBTITLE, THAT THE TRUSTEE IS UNABLE TO COMPLY WITH §
3 15-502(B) OF THIS SUBTITLE.

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

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

8 (2) THE INTENT OF THE SETTLOR;

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

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

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

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

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

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

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

24 (7) WHETHER AND TO WHAT EXTENT THE TERMS OF THE TRUST GIVE
25 THE TRUSTEE THE POWER TO INVADE PRINCIPAL OR ACCUMULATE INCOME OR
26 PROHIBIT THE TRUSTEE FROM INVADING PRINCIPAL OR ACCUMULATING INCOME,
27 AND THE EXTENT TO WHICH THE TRUSTEE HAS EXERCISED A POWER FROM TIME TO
28 TIME TO INVADE PRINCIPAL OR ACCUMULATE INCOME;

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

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

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

33 (1) THAT DIMINISHES THE INCOME INTEREST IN A TRUST THAT
34 REQUIRES ALL OF THE INCOME TO BE PAID AT LEAST ANNUALLY TO A SPOUSE AND
35 FOR WHICH AN ESTATE TAX OR GIFT TAX MARITAL DEDUCTION WOULD BE

1 ALLOWED, WHOLLY OR PARTLY, IF THE TRUSTEE DID NOT HAVE THE POWER TO
2 MAKE THE ADJUSTMENT;

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

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

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

11 (5) IF POSSESSING OR EXERCISING THE POWER TO MAKE AN
12 ADJUSTMENT CAUSES AN INDIVIDUAL TO BE TREATED AS THE OWNER OF ALL OR
13 PART OF THE TRUST FOR INCOME TAX PURPOSES, AND THE INDIVIDUAL WOULD NOT
14 BE TREATED AS THE OWNER IF THE TRUSTEE DID NOT POSSESS THE POWER TO
15 MAKE AN ADJUSTMENT;

16 (6) IF POSSESSING OR EXERCISING THE POWER TO MAKE AN
17 ADJUSTMENT CAUSES ALL OR PART OF THE TRUST ASSETS TO BE INCLUDED FOR
18 ESTATE TAX PURPOSES IN THE ESTATE OF AN INDIVIDUAL WHO HAS THE POWER TO
19 REMOVE A TRUSTEE OR APPOINT A TRUSTEE, OR BOTH, AND THE ASSETS WOULD
20 NOT BE INCLUDED IN THE ESTATE OF THE INDIVIDUAL IF THE TRUSTEE DID NOT
21 POSSESS THE POWER TO MAKE AN ADJUSTMENT;

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

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

25 (9) IF POSSESSING OR EXERCISING THE POWER TO MAKE THE
26 ADJUSTMENT CAUSES A CHANGE IN THE INCLUSION RATIO OF THE TRUST OR
27 OTHERWISE CAUSES THE TRUST TO BE POTENTIALLY SUBJECT TO
28 GENERATION-SKIPPING TRANSFER TAX.

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

34 (E) (1) A TRUSTEE MAY RELEASE THE ENTIRE POWER CONFERRED BY
35 SUBSECTION (A) OF THIS SECTION OR MAY RELEASE ONLY THE POWER TO ADJUST
36 FROM PRINCIPAL TO INCOME IF THE TRUSTEE IS UNCERTAIN ABOUT WHETHER
37 POSSESSING OR EXERCISING THE POWER WILL CAUSE A RESULT DESCRIBED IN
38 SUBSECTION (C)(1), (2), (3), (4), (5), (6), (8), OR (9) OF THIS SECTION OR IF THE TRUSTEE
39 DETERMINES THAT POSSESSING OR EXERCISING THE POWER WILL OR MAY DEPRIVE

1 THE TRUST OF A TAX BENEFIT OR IMPOSE A TAX BURDEN NOT DESCRIBED IN
2 SUBSECTION (C) OF THIS SECTION.

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

6 (F) THE TERMS OF A TRUST THAT LIMIT THE POWER OF A TRUSTEE TO MAKE
7 AN ADJUSTMENT BETWEEN PRINCIPAL AND INCOME DO NOT AFFECT THE
8 APPLICATION OF THIS SECTION UNLESS IT IS CLEAR FROM THE TERMS OF THE
9 TRUST THAT THE TERMS ARE INTENDED TO DENY THE TRUSTEE THE POWER OF
10 ADJUSTMENT CONFERRED BY SUBSECTION (A) OF THIS SECTION.

11 15-502.2.

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

15 (I) IS A DISTRIBUTEE OR PERMISSIBLE DISTRIBUTEE OF THE
16 INCOME OR PRINCIPAL OF THE TRUST ESTATE;

17 (II) WOULD BE A DISTRIBUTEE OR PERMISSIBLE DISTRIBUTEE OF
18 THE INCOME OR PRINCIPAL OF THE TRUST ESTATE IF THE INTERESTS OF THE
19 DISTRIBUTEES DESCRIBED IN ITEM (I) OF THIS PARAGRAPH TERMINATED ON THE
20 DATE THAT NOTICE IS GIVEN BY THE TRUSTEE; OR

21 (III) WOULD BE A DISTRIBUTEE OR PERMISSIBLE DISTRIBUTEE OF
22 THE INCOME OR PRINCIPAL OF THE TRUST ESTATE IF THE TRUST WERE TO
23 TERMINATE ON THE DATE THAT NOTICE IS GIVEN BY THE TRUSTEE.

24 (2) "QUALIFIED BENEFICIARY" INCLUDES:

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

27 (II) IF THE BENEFICIARY IS A DISABLED PERSON, AS DEFINED IN §
28 13-101 OF THIS ARTICLE, ANY PERSON ACTING ON BEHALF OF THE BENEFICIARY
29 UNDER A GUARDIANSHIP, CONSERVATORSHIP, OR COMMITTEE.

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

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

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

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

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

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

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

13 (E) ANY QUALIFIED BENEFICIARY WHO OBJECTS IN WRITING TO THE
14 PROPOSED DECISION MAY FILE, WITHIN 60 DAYS AFTER THE TRUSTEE RECEIVES
15 THE QUALIFIED BENEFICIARY'S WRITTEN OBJECTION, A ~~COMPLAINT~~ PETITION TO
16 REVIEW THE PROPOSED DECISION IN THE CIRCUIT COURT FOR THE COUNTY IN
17 WHICH THE TRUSTEE RESIDES IN THIS STATE, IF THE TRUSTEE IS AN INDIVIDUAL,
18 OR IN WHICH THE PRINCIPAL PLACE OF BUSINESS OF THE TRUSTEE IS LOCATED IN
19 THIS STATE.

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

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

26 (3) NOTICE OF THE PROCEEDING SHALL BE GIVEN TO THE TRUSTEE
27 AND TO ALL QUALIFIED BENEFICIARIES TO WHOM NOTICE OF THE PROPOSED
28 DECISION WAS ORIGINALLY SENT.

29 (G) (1) A TRUSTEE IS NOT LIABLE TO ANY QUALIFIED BENEFICIARY FOR A
30 DECISION REGARDING THE EXERCISE OR NONEXERCISE OF THE DISCRETIONARY
31 POWER CONFERRED UNDER § 15-502.1(A) OF THIS SUBTITLE TO ADJUST BETWEEN
32 PRINCIPAL AND INCOME IF THE QUALIFIED BENEFICIARY DOES NOT OBJECT BY
33 FILING A ~~COMPLAINT~~ PETITION TO REVIEW THE PROPOSED DECISION AND THE
34 OTHER REQUIREMENTS OF THIS SECTION ARE SATISFIED.

35 (2) IF NO QUALIFIED BENEFICIARY OBJECTS AND FILES A PETITION
36 WITHIN THE APPLICABLE PERIOD, THE TRUSTEE IS NOT LIABLE TO ANY PERSON
37 HAVING A PRESENT OR FUTURE INTEREST IN THE TRUST, VESTED OR CONTINGENT,
38 INCLUDING ANY UNBORN OR UNASCERTAINED BENEFICIARY.

1 15-515.

2 If a trustee determines that an allocation between principal and income
3 required by § 15-516, § 15-517, § 15-518, § 15-519, or § 15-522 of this subtitle is
4 insubstantial, the trustee may allocate the entire amount to principal UNLESS ONE
5 OF THE CIRCUMSTANCES DESCRIBED IN § 15-502.1(C) OF THIS SUBTITLE APPLIES TO
6 THE ALLOCATION. THIS POWER MAY BE EXERCISED BY A COTRUSTEE IN THE
7 CIRCUMSTANCES DESCRIBED IN § 15.502.1(D) OF THIS SUBTITLE, AND MAY BE
8 RELEASED FOR THE REASONS AND IN THE MANNER DESCRIBED IN § 15-502.1(E) OF
9 THIS SUBTITLE. An allocation is presumed to be insubstantial if:

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

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

16 15-520.

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

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

31 15-528.

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

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

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

1 (3) The ownership by an estate or trust of an interest in an entity whose
2 taxable income, whether or not distributed, is includable in the taxable income of the
3 estate, trust, or a beneficiary, EXCEPT THAT A TRUSTEE SHALL MAKE AN
4 ADJUSTMENT FROM PRINCIPAL TO INCOME TO COMPENSATE AN INCOME
5 BENEFICIARY FOR TAXES PAID OR PAYABLE BY THE INCOME BENEFICIARY IN
6 RESPECT OF THE TAXABLE INCOME OF AN ENTITY THAT IS TAXABLE TO THE INCOME
7 BENEFICIARY BUT THAT IS DISTRIBUTED TO THE TRUSTEE AND ALLOCATED TO
8 PRINCIPAL.

9 (b) If the amount of an estate tax marital deduction or charitable contribution
10 deduction is reduced because a fiduciary deducts an amount paid from principal for
11 income tax purposes instead of deducting it for estate tax purposes, and as a result
12 estate taxes paid from principal are increased and income taxes paid by an estate,
13 trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits
14 from the decrease in income tax shall reimburse the principal from which the
15 increase in estate tax is paid. The total reimbursement must equal the increase in the
16 estate tax to the extent that the principal used to pay the increase would have
17 qualified for a marital deduction or charitable contribution deduction but for the
18 payment. The proportionate share of the reimbursement for each estate, trust, or
19 beneficiary whose income taxes are reduced must be the same as its proportionate
20 share of the total decrease in income tax. An estate or trust shall reimburse principal
21 from income.

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