

# SENATE BILL 787

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CF HB 772

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By: **Senator Forehand**

Introduced and read first time: February 3, 2012

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 20, 2012

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Estates and Trusts – Maryland Uniform Principal and Income Act – Certain**  
3 **Payments to and from Trusts**

4 FOR the purpose of establishing certain requirements concerning allocation of  
5 principal and income for a distribution to a marital trust from an individual  
6 retirement account, qualified retirement plan account, or certain similar  
7 account or plan, or annuity; requiring a trustee of a marital trust to perform  
8 certain duties on request of a surviving spouse under certain circumstances;  
9 requiring a marital trust to increase receipts payable to a beneficiary under  
10 certain circumstances; requiring payment of income tax on receipts from a  
11 certain business entity to be charged in a certain manner; altering a certain  
12 definition; defining a certain term; providing for the application of certain  
13 provisions of this Act; and generally relating to the Maryland Uniform Principal  
14 and Income Act and certain payments to and from certain trusts.

15 BY repealing and reenacting, with amendments,  
16 Article – Estates and Trusts  
17 Section 15–516 and 15–527  
18 Annotated Code of Maryland  
19 (2011 Replacement Volume and 2011 Supplement)

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

22 **Article – Estates and Trusts**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 15-516.

2 (a) (1) **IN THIS SECTION THE FOLLOWING WORDS HAVE THE**  
3 **MEANINGS INDICATED.**

4 (2) (I) [In this section, “payment”] **“PAYMENT”** means a payment  
5 that a trustee may receive over a fixed number of years or during the life of one or  
6 more individuals because of services rendered or property transferred to the payer in  
7 exchange for future payments.

8 [(2)] (II) “Payment” includes:

9 1. [a] A payment made in money or property from the  
10 payer’s general assets or from a separate fund created by the payer[, including]; **OR**

11 2. **FOR THE PURPOSES OF SUBSECTION (D), (E), (F),**  
12 **OR (G) OF THIS SECTION, ANY PAYMENT FROM A SEPARATE FUND, REGARDLESS**  
13 **OF THE REASON FOR THE PAYMENT.**

14 (3) **“SEPARATE FUND” INCLUDES** a private or commercial annuity,  
15 an individual retirement account, and a pension, profit-sharing, stock-bonus, or  
16 stock-ownership plan.

17 (b) To the extent that a payment is characterized as interest ~~or a dividend or~~  
18 ~~a payment made in lieu of interest~~ [or], a dividend, **OR A PAYMENT MADE IN LIEU OF**  
19 **INTEREST OR A DIVIDEND**, a trustee shall allocate [it] **THE PAYMENT** to income.  
20 The trustee shall allocate to principal the balance of the payment and any other  
21 payment received in the same accounting period that is not characterized as interest, a  
22 dividend, or an equivalent payment.

23 (c) If no part of a payment is characterized as interest, a dividend, or an  
24 equivalent payment, and all or part of the payment is required to be made, a trustee  
25 shall allocate to income 10 percent of the part that is required to be made during the  
26 accounting period and the balance to principal. If no part of a payment is required to  
27 be made or the payment received is the entire amount to which the trustee is entitled,  
28 the trustee shall allocate the entire payment to principal. For purposes of this  
29 subsection, a payment is not “required to be made” to the extent that it is made  
30 because the trustee exercises a right of withdrawal.

31 (d) [If, to obtain an estate tax marital deduction for a trust, a trustee must  
32 allocate more of a payment to income than provided for by this section, the trustee  
33 shall allocate to income the additional amount necessary to obtain the marital  
34 deduction.] **EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (E) OF THIS**  
35 **SECTION, SUBSECTIONS (F) AND (G) OF THIS SECTION APPLY, AND SUBSECTIONS**

1 (B) AND (C) OF THIS SECTION DO NOT APPLY, IN DETERMINING THE  
2 ALLOCATION OF A PAYMENT MADE FROM A SEPARATE FUND TO:

3 (1) A TRUST TO WHICH AN ELECTION TO QUALIFY FOR A MARITAL  
4 DEDUCTION UNDER § 2056(B)(7) OF THE INTERNAL REVENUE CODE OF 1986  
5 HAS BEEN MADE; OR

6 (2) A TRUST THAT QUALIFIES FOR THE MARITAL DEDUCTION  
7 UNDER § 2056(B)(5) OF THE INTERNAL REVENUE CODE OF 1986.

8 (E) SUBSECTIONS (D), (F), AND (G) OF THIS SECTION DO NOT APPLY IF,  
9 AND TO THE EXTENT THAT, THE SERIES OF PAYMENTS WOULD, WITHOUT THE  
10 APPLICATION OF SUBSECTION (D) OF THIS SECTION, QUALIFY FOR THE  
11 MARITAL DEDUCTION UNDER § 2056(B)(7)(C) OF THE INTERNAL REVENUE  
12 CODE OF 1986.

13 (F) (1) A TRUSTEE SHALL DETERMINE THE INTERNAL INCOME OF  
14 EACH SEPARATE FUND FOR THE ACCOUNTING PERIOD AS IF THE SEPARATE  
15 FUND WERE A TRUST SUBJECT TO THIS SUBTITLE.

16 (2) ON REQUEST OF THE SURVIVING SPOUSE, THE TRUSTEE  
17 SHALL DEMAND THAT THE PERSON ADMINISTERING THE SEPARATE FUND  
18 DISTRIBUTE THE INTERNAL INCOME TO THE TRUST.

19 (3) THE TRUSTEE SHALL ALLOCATE:

20 (I) A PAYMENT FROM THE SEPARATE FUND TO INCOME TO  
21 THE EXTENT OF THE AMOUNT OF THE INTERNAL INCOME OF THE SEPARATE  
22 FUND AND DISTRIBUTE THAT AMOUNT TO THE SURVIVING SPOUSE; AND

23 (II) THE BALANCE OF THE PAYMENT TO PRINCIPAL.

24 (4) ON REQUEST OF THE SURVIVING SPOUSE, THE TRUSTEE  
25 SHALL ALLOCATE PRINCIPAL TO INCOME TO THE EXTENT THE INTERNAL  
26 INCOME OF THE SEPARATE FUND EXCEEDS PAYMENTS MADE FROM THE  
27 SEPARATE FUND TO THE TRUST DURING THE ACCOUNTING PERIOD.

28 (G) (1) IF A TRUSTEE CANNOT DETERMINE THE INTERNAL INCOME  
29 OF A SEPARATE FUND BUT CAN DETERMINE THE VALUE OF THE SEPARATE  
30 FUND, THE INTERNAL INCOME OF THE SEPARATE FUND IS DEEMED TO EQUAL  
31 4% OF THE FUND'S VALUE, ACCORDING TO THE MOST RECENT STATEMENT OF  
32 VALUE BEFORE THE BEGINNING OF THE ACCOUNTING PERIOD.

1           **(2) IF THE TRUSTEE CANNOT DETERMINE BOTH THE INTERNAL**  
 2 **INCOME OF THE SEPARATE FUND AND THE FUND'S VALUE, THE INTERNAL**  
 3 **INCOME OF THE FUND IS DEEMED TO EQUAL THE PRODUCT OF THE INTEREST**  
 4 **RATE AND THE PRESENT VALUE OF THE EXPECTED FUTURE PAYMENTS, AS**  
 5 **DETERMINED UNDER § 7520 OF THE INTERNAL REVENUE CODE OF 1986 FOR**  
 6 **THE MONTH PRECEDING THE ACCOUNTING PERIOD FOR WHICH THE**  
 7 **COMPUTATION IS MADE.**

8           **[(e)] (H)** This section does not apply to payments to which § 15-517 of this  
 9 subtitle applies.

10 15-527.

11           (a) A tax required to be paid by a trustee based on receipts allocated to  
 12 income shall be paid from income.

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

16           (c) A tax required to be paid by a trustee on the trust's share of an entity's  
 17 taxable income shall be paid **[proportionately]**:

18                   (1) From income to the extent that receipts from the entity are  
 19 allocated **ONLY** to income; **[and]**

20                   (2) From principal to the extent that**[:]**

21                           (i) **Receipts] RECEIPTS** from the entity are allocated **ONLY** to  
 22 principal; **[and]**

23                           (ii) The trust's share of the entity's taxable income exceeds the  
 24 total receipts described in paragraphs (1) and (2)(i) of this subsection**]**

25           **(3) PROPORTIONATELY FROM PRINCIPAL AND INCOME TO THE**  
 26 **EXTENT THAT RECEIPTS FROM THE ENTITY ARE ALLOCATED TO BOTH INCOME**  
 27 **AND PRINCIPAL; AND**

28           **(4) FROM PRINCIPAL TO THE EXTENT THAT THE TAX EXCEEDS**  
 29 **THE TOTAL RECEIPTS FROM THE ENTITY.**

30           (d) **[For purposes of this section, receipts allocated to principal or income**  
 31 **must be reduced by the amount distributed to a beneficiary from principal or income**  
 32 **for which the trust receives a deduction in calculating the tax] AFTER APPLYING**  
 33 **SUBSECTIONS (A) THROUGH (C) OF THIS SECTION, THE TRUSTEE SHALL ADJUST**

1 INCOME OR PRINCIPAL RECEIPTS TO THE EXTENT THAT THE TRUST'S TAXES  
2 ARE REDUCED BECAUSE THE TRUST RECEIVES A DEDUCTION FOR PAYMENTS  
3 MADE TO A BENEFICIARY.

4 SECTION 2. AND BE IT FURTHER ENACTED, That § 15-516 of the Estates  
5 and Trusts Article, as enacted by Section 1 of this Act, applies to a trust described in §  
6 15-516(d) on and after the following dates:

7 (1) if the trust is not funded on or before October 1, 2012, the date of  
8 the decedent's death;

9 (2) if the trust is initially funded in calendar year 2012, the date of the  
10 decedent's death; or

11 (3) if the trust is not described in item (1) or (2) of this section,  
12 January 1, 2012.

13 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That, subject to Section 2 of  
14 this Act, this Act shall take effect October 1, 2012.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.