

By Ms. Flavin of Easthampton, petition of Nancy Flavin relative to the administration of trusts. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and One.

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 203 of the General Laws, as appearing in the 1998  
2 Official Edition, is hereby amended by inserting after Section 14B  
3 the 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-skip-  
7 ping transfer tax exemption (or exemptions, in the case of more  
8 than one transferor), property held or to be held in a trust would  
9 otherwise be partially exempted from the generation-skipping  
10 transfer tax, a trustee is hereby authorized, without prior approval  
11 or leave of any court, i) to divide the trust into separate trusts,  
12 whether or not equal, and ii) to allocate property and the genera-  
13 tion-skipping transfer tax exemption among such separate trusts,  
14 in order to create trusts that are either wholly exempt from or  
15 wholly subject to the generation-skipping transfer tax. The trust  
16 shall be severed on a fractional basis, but the separate trusts need  
17 not be funded with a pro rata portion of each asset held by the  
18 undivided trust. The trusts may be funded on a non pro rata basis  
19 provided funding is based on either the fair market value of the  
20 assets on the date of funding or in a manner that fairly reflects the  
21 net appreciation or depreciation in the value of the assets mea-  
22 sured from the date of death to the date of funding.

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

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

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

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

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

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

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

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