

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 1252
HOUSE BILL 1437

AN ACT TO PROVIDE FOR ADMINISTRATION OF CHARITABLE REMAINDER TRUSTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 36A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4A.

"Charitable Remainder Trusts Administration Act.

"§ 36A-55. Short title. — This Article shall be known as the Charitable Remainder Trusts Administration Act.

"§ 36A-56. General rule. — Notwithstanding any provisions in the laws of this State or in the governing instruments to the contrary, any charitable remainder annuity trust and any charitable remainder unitrust that cannot qualify for a deduction for federal tax purposes under § 2055 or § 2522 of the Code in the absence of this Article shall be administered in accordance with this Article.

"§ 36A-57. Definitions. — The following definitions apply to this Article unless the context clearly requires otherwise:

- (1) 'Charitable remainder trust' means a trust that provides for a specified distribution at least annually for either life or a term of years to one or more beneficiaries, at least one of which is not a charity, (hereinafter referred to as 'beneficiaries') with an irrevocable remainder interest to be held for the benefit of, or paid over to, charity. For purposes of this Article, only a charitable remainder annuity trust or a charitable remainder unitrust is considered a charitable remainder trust.
- (2) 'Charitable remainder annuity trust' means a charitable remainder trust:
 - a. from which a sum certain (which is not less than five percent (5%) of the initial net fair market value of all property placed in trust) is to be paid at least annually to one or more persons (at least one of which is not an organization described in § 170(c) of the Code and, in the case of individuals, only to an individual who was living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals;
 - b. from which no amount other than the payments described in a. above may be paid to and/or for the use of anyone other than an organization that is or was described in § 170(c) of the Code; and
 - c. following the termination of the payments described in a. above, the remainder interest in the trust is to be transferred to, or for the use of, an organization that is or was described in § 170(c) of the Code or is to be retained by the trust for such a use.
- (3) 'Charitable remainder unitrust' means a charitable remainder trust:
 - a. from which a fixed percentage (which is not less than five percent (5%)) of the net fair market value of its assets, valued annually, is to

be paid at least annually to one or more persons (at least one of which is not an organization described in § 170(c) of the Code and, in the case of individuals, only to an individual who was living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals;

- b. from which no amount other than the payments described in a. above may be paid to or for the use of anyone other than an organization that is or was an organization described in § 170(c) of the Code; and
- c. following the termination of the payments described in a. above, the remainder interest in the trust is to be transferred to, or for the use of, an organization that is or was described in § 170(c) of the Code, or is to be retained by the trust for such a use.

Notwithstanding the provisions of a. and b. above, the trust instrument may provide that the trustee shall pay to the income beneficiary for any year (i) the amount of the trust income if that amount is less than the amount required to be distributed under a. above, and (ii) any amount of the trust income that exceeds the amount required to be distributed under a. above to the extent that (by reason of a.) the aggregate of the amounts paid in prior years is less than the aggregate of the required amounts.

- (4) 'Code' means the Internal Revenue Code of 1954 as amended.

"§ 36A-58. Administrative provisions applicable to both charitable remainder annuity trusts and charitable remainder unitrusts. — (a) Creation of remainder interests in charity. Upon the termination of the noncharitable interests, the trustee shall distribute all of the then principal and income of the trust, other than any amount due the noncharitable beneficiary or beneficiaries, to the designated charity or charities, or shall hold the property in trust for the designated charity or charities in accordance with the terms of the trust document.

(b) Selection of alternate charitable beneficiary if remaindermen do not qualify under § 170(c) of the Code at time of distribution. If the designated charity is not an organization described in § 170(c) of the Code at the time when any principal or income of the trust is to be distributed to it, the trustee shall distribute the principal or income to one or more organizations then described in § 170(c) of the Code selected in accordance with the terms of the trust instrument. If the trust instrument does not provide for a method of selecting alternate charitable beneficiaries that are then qualified under § 170(c) of the Code, the trustee shall, in his sole discretion, select alternate trust beneficiaries that are qualified under § 170(c) of the Code.

(c) Prohibitions governing trustees. Except for payment of the annuity amount or the unitrust amount to the beneficiaries, whichever is applicable the trustee is prohibited from engaging in any act of self-dealing as defined in § 4941(d) of the Code, retaining any excess business holdings as defined in § 4943(c) of the Code that would subject the trust to tax under § 4943 of the Code, making any investments that would subject the trust to tax under § 4944 of the Code, and making any taxable expenditures as defined in § 4945(d) of the Code. The trustee shall make distributions at such time and in such manner as not to subject the trust to tax under § 4942 of the Code.

(d) Distribution to charity during term of noncharitable interests and distributions in kind. If the governing instrument of the trust provides for distribution to charity during the term of the noncharitable interests, the trustee may pay to the designated charity the amounts specified in the governing instrument that exceed the annuity amount or the unitrust amount payable to any of the beneficiaries for the taxable year of the trust in which the income is earned. If the governing instrument of the trust provides for distribution to charity in kind, the adjusted basis for federal income tax purposes of any trust property the trustee distributes in kind to charity during the term of the noncharitable interests must be fairly representative of the

adjusted basis for such purposes of all trust property available for distribution on the date of distribution.

(e) Investment restrictions on trustee. Nothing in the trust instrument shall be construed to restrict the trustee from investing the trust assets in a manner that could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of trust assets.

(f) Distribution from trust used to administer an estate to charitable remainder trust. If the governing instrument of a revocable inter vivos trust provides that the revocable inter vivos trust will be used partially to administer the estate of the grantor or for some other purpose, and further provides the assets will then be distributed to another trust that is a charitable remainder trust, upon the death of the grantor, or upon the occurrence of any event that causes the trust to become irrevocable, the trust shall become irrevocable and the trustee of this trust shall perform any remaining duties or obligations provided for in the trust instrument and then transfer the property specified in the governing instrument to the trustee of the charitable remainder trust to be held, administered and distributed in the manner and according to the terms and conditions provided by the charitable remainder trust.

"§ 36A-59. Administrative provisions applicable to charitable remainder annuity trusts only. — (a) Creation of annuity amount for period of years or life. The trustee shall pay the annuity amount designated in the trust instrument to the beneficiaries named in the trust instrument during their lives (or if the governing instrument so provides, for a period of 20 years or less) in each taxable year of the trust. The annuity amount shall be paid annually or in more frequent equal or unequal installments if the governing instrument so provides. The annuity amount shall be paid from income, and, to the extent that income is not sufficient, from principal. Any income of the trust for a taxable year in excess of the annuity amount shall be added to principal.

The total amount payable at least annually to a person or persons named in the trust document, at least one of which is not an organization described in § 170(c) of the Code, may not be less than five percent (5%) of the initial net fair market value of the property placed in trust as finally determined for federal tax purposes, except as provided in subsection (g).

(b) Computation of annuity amount in short and final taxable years. For a short taxable year and for the taxable year in which the noncharitable beneficiary's interest terminates by death or otherwise, the trustee shall prorate the annuity amount on a daily basis.

(c) Prohibition of additional contributions. No additional contributions shall be made to the trust after the initial contribution.

(d) Deferral of annuity amount during period of administration or settlement. When property passes to the trust at the death of the grantor, the obligation to pay the annuity amount commences with the date of death of the grantor, but payment of the annuity amount may be deferred from the date of the grantor's death to the end of the taxable year in which complete funding of the trust occurs. Payment of the annuity amount so deferred, plus interest computed at six percent (6%) a year, compounded annually, shall be made within a reasonable time after the close of the taxable year in which complete funding occurs.

(e) Dollar amount annuity may be stated as fraction or percentage. If the governing instrument of the trust states the amount of the annuity as a fraction or a percentage, the trustee shall pay to the beneficiaries in each taxable year of the trust during their lives an annuity amount equal to a percentage (that percentage being stipulated in the governing instrument of the trust and, in any event, being five percent (5%) or greater) of the initial net fair market value of the assets constituting the trust. In determining this amount, assets shall be valued at their values as finally determined for federal tax purposes. If the fiduciary incorrectly determines the initial net fair market value of the assets constituting the trust, then, within a reasonable period after a final determination, the trustee shall pay to the beneficiaries in the case of an undervaluation or shall receive from the beneficiaries in the case of an overvaluation

an amount equal to the difference between the annuity amount properly payable and the annuity amount actually paid.

(f) Annuity amount may be allocated among class of noncharitable beneficiaries in discretion of trustee. If the governing instrument of the trust provides that the annuity trust amount may be allocated among a class of noncharitable beneficiaries in the discretion of the trustee, then the trustee shall pay the annuity amount, which is defined in the governing instrument of the trust, in each taxable year of the trust to the member or members of the class of noncharitable beneficiaries in such amount and proportions as the trustee in its absolute discretion shall from time to time determine until the last of the noncharitable beneficiaries dies. The trustee may pay the entire annuity amount to one member of this class or may apportion it among the various members in such manner as the trustee shall from time to time deem advisable as long as the power to allocate does not cause any person to be treated as the owner of any part of the trust under the rules of § 671 through § 678 of the Code. If the class provided for in the governing instrument is open, then the distribution shall be for a period of years not to exceed 20, notwithstanding a provision to the contrary in the trust instrument. If the class provided for in the governing instrument is closed at the creation of the trust, and all members of the class are ascertainable, the distribution may be for the lives of the members of the class or for a period not exceeding 20 years. The trustee shall pay the entire annuity amount for each taxable year annually and may not delay payment of the annuity amount.

(g) Reduction of annuity amount if part of corpus is paid to charity at expiration of term of years or on death of recipient. If the governing instrument of the trust provides for the reduction of the annuity amount if part of the corpus is paid to charity at the expiration of a term of years or upon the death of a recipient, then during the term of years or during the joint lives of the noncharitable beneficiaries, the trustee shall, in each taxable year of the trust, pay a total annuity amount of at least five percent (5%) of the initial net fair market value of the assets placed in trust. Upon the expiration of the term of years; or the death of a beneficiary, the trustee shall distribute an amount or percentage of the trust assets, as provided in the governing instrument of the trust, to the charity named in the governing instrument, and thereafter, the trustee shall pay, annually or in more frequent installments, to the survivors for their lives, an annuity amount that in each taxable year of the trust, bears the same ratio to five percent (5%) of the initial net fair market value of the trust assets as the net fair market value of the trust assets valued as of the date of distribution, less the amount or percentage of trust assets distributed to the charity, bears to the net fair market value of the trust assets as of the date of distribution.

(h) Termination of annuity amount on payment date preceding termination of noncharitable interest. If the governing instrument of the trust provides that payment of the annuity amount may terminate with the regular payment preceding the termination of all noncharitable interests, then the trustee shall pay to the noncharitable beneficiary during the term of the noncharitable interest the annuity amount, defined in the trust document, in each taxable year of the trust. The obligation of the trustee to pay the annuity amount shall terminate with the payment preceding the death of the noncharitable beneficiary or other event that terminates the noncharitable interest.

(i) Retention of testamentary power to revoke noncharitable interest. If the governing instrument of the trust provides that the grantor of the trust shall retain the power, exercisable only by will, to revoke or terminate the interest of any recipient other than an organization described in § 170(c) of the Code, then the trustee shall pay to the grantor during his life the annuity amount, as defined in the governing instrument of the trust, and, upon the death of the grantor, if the noncharitable beneficiary survives the grantor the trustee shall pay to the noncharitable beneficiary during his life the annuity amount equal to the amount paid to the grantor. The grantor shall have the power, exercisable only by his will, to revoke and terminate the interest of the noncharitable beneficiary under the trust. Upon the first to occur of (i) the

death of the survivor of the grantor and noncharitable beneficiary or (ii) the death of the grantor if he effectively exercised his testamentary power to revoke and terminate the interest of the noncharitable beneficiary, the trustee shall distribute all of the then principal and income of the trust, other than any amount due the grantor or noncharitable beneficiary, to the charity named in the trust document or, if the governing instrument so provides, the trustee shall continue to hold the principal and income in trust for the charity or for the charitable purposes specified in the trust. No other retained power to terminate an interest in the trust shall be effective.

"§ 36A-59.1. Administrative provisions applicable to charitable remainder unitrusts only.

— (a) Creation of unitrust amount for a period of years or life. The trustee shall pay to the beneficiaries named in the trust instrument in each taxable year of the trust during their lives, or, if the governing instrument so provides, for a period not exceeding 20 years, a unitrust amount equal to a fixed percentage, as stated in the governing instrument of the trust, of the net fair market value of the trust assets valued annually on the date or by the method designated in the governing instrument of the trust or, if no date or method is specified, on the date or by the method selected by the trustee in his discretion, so long as the same valuation date or dates or valuation methods are used each year. The unitrust amount shall be paid annually or in more frequent equal or unequal installments if the governing instrument so provides. The unitrust amount shall be paid from income, and, to the extent that income is not sufficient, from principal. Any income of the trust for a taxable year in excess of the unitrust amount shall be added to principal.

The fixed percentage to be paid at least annually to all beneficiaries cannot be less than five percent (5%).

(b) Unitrust amount expressed as the lesser of income or a fixed percentage. If the governing instrument of the trust provides that the trustee shall pay, instead of a regular unitrust amount (the fixed percentage of the net fair market value of the trust assets, determined annually), the amount of trust income for the taxable year to the extent that this amount is not greater than the amount required to be distributed as a regular unitrust amount for that taxable year and/or the amount of the trust income for the taxable year that exceeds the regular unitrust amount for that taxable year to the extent that the aggregate of the amounts paid in prior years is less than the aggregate of the regular unitrust amount for those prior years, then the trustee shall pay to the beneficiaries in each taxable year of the trust during their lives, or for a period not exceeding 20 years if the trust agreement so provides, an amount equal to the lesser of (i) the trust income for the taxable year, as defined in § 643(b) of the Code and the regulations thereunder, and (ii) the percentage, as stated in the governing instrument, of the net fair market value of the trust assets valued as of the taxable year decreased as elsewhere provided if the taxable year is a short taxable year or is the taxable year in which the noncharitable interest terminates by death or otherwise, and increased as elsewhere provided if additional contributions are made in the taxable year.

If the governing instrument of the trust so provides and if the trust income for any taxable year exceeds the amount determined under (ii) above, the payment to beneficiaries shall also include the excess income to the extent that the aggregate of the amounts paid to beneficiaries in prior years is less than the percentage of the aggregate net fair market value of the trust assets, which percentage is defined in the governing instrument of the trust, for these years. Payments to beneficiaries shall be made annually or in more frequent equal or unequal installments if the governing instrument so provides. Any income of the trust in excess of such payments shall be added to principal.

(c) Adjustment for incorrect valuation. If the fiduciary incorrectly determines the net fair market value of the trust assets for any taxable year, the trustee shall, within a reasonable period after the final determination of the correct value, pay to the beneficiaries in the case of an undervaluation or receive from the beneficiaries in the case of an overvaluation an amount

equal to the difference between the unitrust amount properly payable and the unitrust amount actually paid.

(d) Computation of unitrust amount in short and final taxable years. For a short taxable year and for the taxable year in which the noncharitable beneficiary's interest terminates by death or otherwise, the trustee shall prorate the unitrust amount on a daily basis. If a trust provides for a valuation date other than the first day of the taxable year, and the valuation date does not occur in a taxable year of the trust because the taxable year is either a short taxable year or is the taxable year in which the noncharitable interests terminate, the trust assets shall be valued as of the last day of the short taxable year or the day on which the noncharitable interests terminate, as appropriate.

(e) Additional contributions. If the governing instrument does not prohibit additional contributions and additional contributions are made to the trust after the initial contribution in the trust, the unitrust amount for the taxable year in which the additional contributions are made shall be a fixed percentage, as stated in the governing instrument of the trust, of the sum of (i) the net fair market value of trust assets, excluding the additional contributions and any income from or appreciation of these contributions and (ii) that proportion of the value of the additional contributions excluded under (i) which the number of days in the period beginning with the date of contribution and ending with the earlier of the last day of the taxable year or the day the noncharitable beneficiary's interest terminated bears to the number of days in the period beginning on the first day of the taxable year and ending with the earlier of the last day in the taxable year or the day the noncharitable beneficiary's interest terminated. If no valuation date occurs after the contributions are made, the assets so added shall be valued as of the time of contribution.

(f) Deferral of unitrust amount during period of administration or settlement. When property passes to the trust at the death of the grantor, the obligation to pay the unitrust amount commences with the date of the grantor's death, but payment of the unitrust amount may be deferred from the date of the grantor's death to the end of the taxable year of the trust in which complete funding of the trust occurs. Within a reasonable time after the occurrence of this event, the trustee shall pay the amount determined under the method described in Treasury Regulation § 1.6641(a)(5)(h) less the sum of any amounts previously distributed, including interest paid on the amounts distributed computed at six percent (6%) a year, compounded annually, from the date of distribution to the occurrence of this event.

(g) Unitrust amount may be allocated among class of noncharitable beneficiaries in discretion of trustee. If the governing instrument of the trust provides that the unitrust amount may be allocated to a class of noncharitable beneficiaries in the discretion of the trustee, then the trustee shall pay, in each taxable year of the trust, the unitrust amount to the member or members of the class of noncharitable beneficiaries in such amounts and proportions as the trustee in its absolute discretion shall from time to time determine until the last of the noncharitable beneficiaries dies. The trustee may pay the unitrust amount to any one member of the class or may apportion it among the various members in such manner as the trustee shall from time to time deem advisable as long as the power to allocate does not cause any person to be treated as the owner of any part of the trust under the rules of § 671 through § 678 of the Code. If the class provided for in the governing instrument is open, the distribution shall be for a period not exceeding 20 years, notwithstanding a provision to the contrary in the trust instrument. If the class provided for in the governing instrument is closed at the creation of the trust, and all members of the class are ascertainable, the distribution may be for the lives of the members of the class or for a period not exceeding 20 years. The trustee shall pay the entire unitrust amount for each taxable year annually and may not delay payment of the unitrust amount.

(h) Reduction of unitrust amount if part of corpus is paid to charity at expiration of term of years or on death of a recipient. If the governing instrument of the trust provides for the

reduction of the unitrust amount if part of the corpus is paid to charity at the expiration of a term of years or upon the death of a recipient, then during the term of years or during the joint lives of the noncharitable beneficiaries the trustee shall, in each taxable year of the trust, pay the total unitrust amount equal to a percentage of the net fair market value of the trust assets valued annually, which shall not be less than five percent (5%). Upon expiration of the term of years or the death of a recipient, the trustee shall distribute an amount or percentage of the trust assets, as provided in the governing instrument of the trust, to the charity named in the governing instrument, and thereafter the trustee shall pay to the survivors for their lives a unitrust amount in each taxable year of the trust equal to at least five percent (5%) (the actual percentage being defined in the trust instrument) of the net fair market value of the remaining trust assets valued annually.

(i) Termination of unitrust amount on payment date preceding termination of noncharitable interests. If the governing instrument of the trust provides that payment of the unitrust amount may terminate with the regular payment preceding the termination of all noncharitable interests, then the trustee shall pay the unitrust amount to the noncharitable beneficiary in each taxable year of the trust during the term of the noncharitable interest. The obligation of the trustee to pay the unitrust amount terminates with the payment preceding the termination of the noncharitable interest by death or otherwise. The five percent (5%) requirement provided in subsection (a) shall be met until the termination of all payments of the unitrust amount.

(j) Retention of testamentary power to revoke noncharitable interest. If the governing instrument of the trust provides that the grantor of the trust shall retain the power, exercisable only by will, to revoke or terminate the interest of any recipient other than an organization described in § 170(c) of the Code, then the trustee shall pay the unitrust amount to the grantor during his life and, upon the death of the grantor, shall pay the unitrust amount to the noncharitable beneficiary during his life provided the noncharitable beneficiary survives the grantor. The grantor shall have the power, exercisable only by his will, to revoke and terminate the interest of the noncharitable beneficiary under the trust. Upon the first to occur of (i) the death of the survivor of the grantor and the noncharitable beneficiary or (ii) the death of the grantor if he effectively exercised his testamentary power to revoke and terminate the interest of the noncharitable beneficiary, the trustee shall distribute all of the then principal and income of the trust, other than any amount due the noncharitable beneficiaries, to the charity named in the trust document or, if the governing instrument so provides, the trustee shall continue to hold the principal and income in trust for the charity or for the charitable purposes specified in the trust. No other retained power to terminate an interest in the trust shall be effective.

"§ 36A-59.2. Interpretation. — This Article shall be interpreted and construed to effectuate its general purpose to cause all charitable remainder annuity trusts and all charitable remainder unitrusts to be administered in accordance with the provisions of § 2055 and § 2522 of the Code and the regulations thereunder."

Sec. 2. This act is effective upon ratification and applies to all charitable remainder annuity trusts and all charitable remainder unitrusts that would not qualify for the deduction pursuant to § 2055 or § 2522 of the Code in the absence of this Article that are in existence on that date or are established after that date. For trusts in existence on that date, this act relates back to the date of creation of the trust.

In the General Assembly read three times and ratified, this the 18th day of June, 1982.