

2013 -- S 0286

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LC01071
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO FIDUCIARIES

Introduced By: Senators Jabour, Lombardi, Ottiano, and McCaffrey

Date Introduced: February 12, 2013

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 18-4-31 of the General Laws in Chapter 18-4 entitled "Powers of
2 Fiduciaries" is hereby amended to read as follows:

3 **18-4-31. Power to invade principal in trust.** -- (a) ~~(i)~~ Unless the trust instrument
4 expressly provides otherwise or unless the trust is a "Special Needs Trust" or "Supplemental
5 Needs Trust" created in accordance with 42 United States Code section 1396p(d)(4)(A), a trustee
6 who has ~~absolute power~~ authority under the terms of a trust to invade the principal of the trust,
7 referred to in this section as the "first trust," to make distributions to or for the benefit of one or
8 more persons, may instead exercise ~~the power~~ such authority by appointing all or part of the
9 principal of the trust subject to the power in favor of a trustee of another trust, referred to in this
10 section as the "second trust," for the current benefit of one or more of such persons under the
11 same trust instrument or under a different trust instrument, provided:

12 ~~(i)~~(1) The beneficiaries of the second trust may include only beneficiaries of the first
13 trust;

14 ~~(ii)~~(2) The second trust may not reduce any fixed income, annuity or unitrust interest in
15 the assets of the first trust; and

16 ~~(iii)~~(3) If any contribution to the first trust qualified for a marital or charitable deduction
17 for federal income, gift or estate tax purposes under the Internal Revenue Code of 1986, as
18 amended 26 U.S.C. section 1, et seq., the second trust shall not contain any provisions which, if
19 included in the first trust, would have prevented the first trust from qualifying for such a

1 deduction or would have reduced the amount of such deduction.

2 ~~(2) For purposes of this subsection, an absolute power to invade principal shall include a~~
3 ~~power to invade principal that is not limited to specific or ascertainable purpose, such as health,~~
4 ~~education, maintenance, and support whether or not the term "absolute" is used. A power to~~
5 ~~invade principal for purposes such as best interests, welfare, comfort, or happiness shall constitute~~
6 ~~an absolute power not limited to specific or ascertainable purposes.~~

7 (b) The exercise of a power to invade principal under subsection (a)~~(1) or (a)(2)~~ shall be
8 by an instrument in writing, signed and acknowledged by the trustee, and filed with the records of
9 the first trust.

10 (c) The exercise of a power to invade principal under subsection (a)~~(1) or (a)(2)~~ shall be
11 considered the exercise of a power of appointment, other than a power to appoint to the trustee,
12 the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate.

13 (d) The trustee shall notify all ~~qualified beneficiaries~~ Qualified Beneficiaries (as
14 hereinafter defined) of the first trust, in writing, of the manner in which the trustee intends to
15 exercise the power, such notice to be at least sixty (60) days prior to the effective date of the
16 trustee's exercise of the trustee's power to invade principal ~~pursuant to subsection (a)(1) or (a)(2)~~
17 ~~of the manner in which the trustee intends to exercise the power.~~ A copy of the proposed
18 instrument exercising the power shall satisfy the trustee's notice obligation under this subsection.
19 If all ~~qualified beneficiaries~~ Qualified Beneficiaries waive the notice period by signed written
20 instrument delivered to the trustee, the trustee's power to invade principal shall be exercisable
21 immediately. The trustee's notice under this subsection shall not limit the right of any beneficiary
22 to object to the exercise of the trustee's power to invade principal except as provided in other
23 applicable provisions of this title.

24 (e) "Qualified Beneficiary" means a living beneficiary who, on the date the beneficiary's
25 qualifications is determined:

26 (1) Is a distributee or permissible distribute of trust income or principal;

27 (2) Would be a distribute or permissible distribute of trust income or principal if the
28 interests of the distributes described in subsection (a) terminated on that date without causing the
29 trust to terminate; or

30 (3) Would be a distributee or permissible distribute of trust income or principal if the
31 trust terminated in accordance with its terms on that date.

32 (f) The exercise of the power to invade principal under subsection (a)~~(1) or (a)(2)~~ is not
33 prohibited by a spendthrift clause or by a provision in the trust instrument that prohibits
34 amendment or revocation of the trust.

1 (g) Nothing in this section is intended to create or imply a duty to exercise a power to
2 invade principal, and no inference of impropriety shall be made as a result of a trustee not
3 exercising the power to invade principal conferred under subsection (a)~~(1) or (a)(2)~~.

4 (h) The provisions of this section shall not be construed to abridge the right of any
5 trustee who has a power of invasion to appoint property in further trust that arises under the terms
6 of the first trust or under any other section of this title or under another provisions of law or under
7 common law.

8 SECTION 2. This act shall take effect upon passage and shall apply to all trusts,
9 whenever created.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO FIDUCIARIES

1 This act would clarify the organization and numbering of the provisions of the general
2 laws pertaining to fiduciaries and would permit a trustee to invade principal of a trust to make
3 distributions to a second trust with similar provisions where the trustee has authority to invade
4 principal of the trust.

5 This act would take effect upon passage and would apply to all trusts, whenever created.

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