**South Carolina General Assembly**

118th Session, 2009-2010

**A181, R220, S372**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Hayes and Ford

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Introduced in the Senate on February 3, 2009

Introduced in the House on May 12, 2009

Last Amended on May 6, 2010

Passed by the General Assembly on May 12, 2010

Governor's Action: May 28, 2010, Signed

Summary: Trusts

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/3/2009 Senate Introduced and read first time [SJ](file:///h:\SJ%20Archive\2009\02-03-09.docx)‑8

2/3/2009 Senate Referred to Committee on **Judiciary** [SJ](file:///h:\SJ%20Archive\2009\02-03-09.docx)‑8

2/6/2009 Senate Referred to Subcommittee: Malloy (ch), Ford, Massey, S.Martin, Mulvaney

5/6/2009 Senate Committee report: Favorable **Judiciary** [SJ](file:///h:\SJ%20Archive\2009\05-06-09.docx)‑8

5/7/2009 Senate Read second time [SJ](file:///h:\SJ%20Archive\2009\05-07-09.docx)‑24

5/12/2009 Senate Read third time and sent to House [SJ](file:///h:\SJ%20Archive\2009\05-12-09.docx)‑11

5/12/2009 House Introduced and read first time [HJ](file:///h:\HJ%20Archive\2009\05-12-09.docx)‑108

5/12/2009 House Referred to Committee on **Judiciary** [HJ](file:///h:\HJ%20Archive\2009\05-12-09.docx)‑108

3/24/2010 House Committee report: Favorable with amendment **Judiciary** [HJ](file:///h:\HJ%20Archive\2010\03-24-10.docx)‑28

4/15/2010 House Debate adjourned until Tuesday, April 20, 2010 [HJ](file:///h:\HJ%20Archive\2010\04-15-10.docx)‑46

4/20/2010 House Debate adjourned [HJ](file:///h:\HJ%20Archive\2010\04-20-10.docx)‑16

4/20/2010 House Debate adjourned until Wednesday, April 21, 2010 [HJ](file:///h:\HJ%20Archive\2010\04-20-10.docx)‑48

4/21/2010 House Debate adjourned until Thursday, April 22, 2010 [HJ](file:///h:\HJ%20Archive\2010\04-21-10.docx)‑14

4/22/2010 House Debate adjourned until Tuesday, April 27, 2010 [HJ](file:///h:\HJ%20Archive\2010\04-22-10.docx)‑17

4/27/2010 House Debate adjourned until Tuesday, May 4, 2010 [HJ](file:///h:\HJ%20Archive\2010\04-27-10.docx)‑36

5/4/2010 House Debate adjourned [HJ](file:///h:\HJ%20Archive\2010\05-04-10.docx)‑46

5/5/2010 House Debate adjourned [HJ](file:///h:\HJ%20Archive\2010\05-05-10.docx)‑14

5/6/2010 House Amended [HJ](file:///h:\HJ%20Archive\2010\05-06-10.docx)‑22

5/6/2010 House Read second time [HJ](file:///h:\HJ%20Archive\2010\05-06-10.docx)‑22

5/6/2010 House Unanimous consent for third reading on next legislative day [HJ](file:///h:\HJ%20Archive\2010\05-06-10.docx)‑23

5/7/2010 House Read third time and returned to Senate with amendments [HJ](file:///h:\HJ%20Archive\2010\05-07-10.docx)‑2

5/12/2010 Senate Concurred in House amendment and enrolled [SJ](file:///h:\SJ%20Archive\2010\05-12-10.docx)‑89

5/25/2010 Ratified R 220

5/28/2010 Signed By Governor

6/3/2010 Effective date 05/28/10

6/9/2010 Act No. 181

**VERSIONS OF THIS BILL**

[2/3/2009](file:///p:\pprever\2009-10\372_20090203.docx)

[5/6/2009](file:///p:\pprever\2009-10\372_20090506.docx)

[3/24/2010](file:///p:\pprever\2009-10\372_20100324.docx)

[5/6/2010](file:///p:\pprever\2009-10\372_20100506.docx)

(A181, R220, S372)

**AN ACT TO AMEND SECTION 62‑2‑207, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DETERMINATION OF AN ELECTIVE SHARE OF A SPOUSE, SO AS TO CLARIFY THAT AN INTEREST AS A BENEFICIARY IN A TESTAMENTARY TRUST OR IN PROPERTY PASSING TO AN INTER VIVOS TRUST THROUGH THE DECEDENT’S WILL IS A BENEFICIAL INTEREST CHARGEABLE TO THE ELECTIVE SHARE; AND TO AMEND SECTION 62‑7‑401, RELATING TO CREATION OF A TRUST, SO AS TO PROVIDE FOR THE INCLUSION OF A SURVIVING SPOUSE’S BENEFICIAL INTERESTS IN TRUST PROPERTY IN CALCULATING THE ELECTIVE SHARE.**

Be it enacted by the General Assembly of the State of South Carolina:

**Elective share, beneficial interest**

SECTION 1. Section 62‑2‑207 of the 1976 Code is amended to read:

“Section 62‑2‑207. (a) In the proceeding for an elective share, all property, including beneficial interest, which passes or has passed to the surviving spouse under the decedent’s will or by intestacy, by a homestead allowance, and by Section 62‑2‑401, or which would have passed to the spouse but was renounced, or which is contained in a trust created by the decedent’s will or a trust as described in Section 62‑7‑401(c) in which the spouse has a beneficial interest, is applied first to satisfy the elective share and to reduce contributions due from other recipients of transfers included in the probate estate. A beneficial interest that passes or has passed to a surviving spouse under the decedent’s will includes an interest as a beneficiary in a trust created by the decedent’s will or an interest as a beneficiary in property passing under the decedent’s will to an inter vivos trust created by the decedent. For purposes of this subsection, the value of the electing spouse’s beneficial interest in property which qualifies or would have qualified for the federal estate tax marital deduction pursuant to Section 2056 of the Internal Revenue Code, as amended and in effect on December 31, 2009, must be computed at the full value of the qualifying property. Qualifying for these purposes must be determined without regard to whether an election has been made to treat the property as qualified terminable interest property.

(b) Remaining property of the probate estate is applied so that liability for the balance of the elective share of the surviving spouse is satisfied from the probate estate with devises abating in accordance with Section 62‑3‑902.”

**Revocable trust, elective share**

SECTION 2. Section 62‑7‑401(c) of the 1976 Code is amended to read:

“(c) A revocable inter vivos trust may be created either by declaration of trust or by a transfer of property and is not rendered invalid because the settler retains substantial control over the trust including, but not limited to, (i) a right of revocation, (ii) substantial beneficial interests in the trust, or (iii) the power to control investments or reinvestments. This subsection does not prevent a finding that a revocable inter vivos trust, enforceable for other purposes, is illusory for purposes of determining a spouse’s elective share rights pursuant to Article 2, Title 62. A finding that a revocable inter vivos trust is illusory and thus invalid for purposes of determining a spouse’s elective share rights pursuant to Article 2, Title 62 does not render that revocable inter vivos trust invalid, but allows inclusion of the trust assets as part of the probate estate of the settlor only for the purpose of calculating the elective share. In that event, the trust property that passes or has passed to the surviving spouse, including a beneficial interest of the surviving spouse in that trust property, must be applied first to satisfy the elective share and to reduce contributions due from other recipient of transfers including the probate estate, and the trust assets are available for satisfaction of the elective share only to any remaining extent necessary pursuant to Section 62‑2‑207.”

**Severability**

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

**Time effective**

SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 25th day of May, 2010.

Approved the 28th day of May, 2010.

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