

AN ACT

ENTITLED, An Act to provide that certain tax laws applicable on December 31, 2009, apply to certain wills and trusts that refer to federal estate and generation-skipping transfer tax laws, and to declare an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. A will or trust of a decedent who dies after December 31, 2009, and before January 1, 2011, that contains a formula referring to the unified credit, estate tax exemption, applicable exemption amount, applicable credit amount, applicable exclusion amount, generation-skipping transfer tax exemption, GST exemption, marital deduction, maximum marital deduction, unlimited marital deduction, inclusion ratio, applicable fraction, or any section of the Internal Revenue Code relating to the federal estate tax or generation-skipping transfer tax, or that measures a share of an estate or trust based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer taxes, or that is otherwise based on a similar provision of federal estate tax or generation-skipping transfer tax law, shall be deemed to refer to the federal estate tax and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009. This provision does not apply with respect to a will or trust that is executed or amended after December 31, 2009, or that manifests an intent that a contrary rule applies if the decedent dies on a date on which there is no then-applicable federal estate or generation-skipping transfer tax. If the federal estate or generation-skipping transfer tax becomes effective before that date, the reference to January 1, 2011, in this section refers instead to the first date on which such tax becomes legally effective.

Section 2. The personal representative or any affected beneficiary under the will or other instrument described in section 1 of this Act may bring a proceeding to determine whether the decedent intended that the formulae under section 1 of this Act be construed with respect to the law

as it existed after December 31, 2009. Such a proceeding shall be commenced within twelve months following the death of the testator or grantor.

Section 3. The provisions of this Act apply to decedents dying after December 31, 2009, and before January 1, 2011.

Section 4. Whereas, this Act is necessary for the immediate preservation of the public peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

An Act to provide that certain tax laws applicable on December 31, 2009, apply to certain wills and trusts that refer to federal estate and generation-skipping transfer tax laws, and to declare an emergency.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1201

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1201
File No. _____
Chapter No. _____

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Received at this Executive Office this ____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20__

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State