

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997

# A Bill

ACT 585 OF 1997  
SENATE BILL 499

4  
5 By: Senator Everett  
6  
7

## For An Act To Be Entitled

8  
9 "AN ACT TO PROVIDE TRUSTEES THE POWER TO DIVIDE TRUSTS  
10 INTO TWO OR MORE SEPARATE TRUSTS."  
11

### Subtitle

12  
13 "TRUSTEE DIVISION OF TRUSTS ACT"  
14

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
16

17 SECTION 1. Title 28, Chapter 69 of the Arkansas Code is amended by  
18 adding a new subchapter to read as follows:

19 "28-69-701. Short title.

20 This subchapter may be cited as the Trustee Division of Trusts Act.

21 28-69-702. Definitions.

22 For purposes of this subchapter, unless the context otherwise requires:

23 1. Trust means any express trust, with additions thereto, wherever and  
24 however created, or any separate share of a trust, and includes any  
25 arrangement, other than an estate, which, although not a trust, has  
26 substantially the same effect as a trust.

27 2. Trustee means an original, additional, or successor trustee of an  
28 inter vivos or testamentary trust, whether or not appointed or confirmed by a  
29 court, and, in the case of an arrangement which is not an estate or a trust,  
30 but which has substantially the same effect as a trust, the person in actual  
31 or constructive possession of the property subject to such arrangement.

32 28-69-703. Authority to divide trusts.

33 Unless expressly prohibited by the terms of the governing instrument,  
34 when property is held or to be held in a trust, the trustee is authorized, but  
35 not required, to divide the trust into two or more separate trusts, of equal  
36 or unequal value, if the trustee determines that division of the trust is in

1 the best interests of the beneficiaries or could result in a significant  
2 decrease in current or future federal income, gift, estate, or generation-  
3 skipping transfer taxes, or any other tax.

4 28-69-704. Exercise of authority by trustee.

5 (a) A trustee may exercise the authority granted in this subchapter  
6 without procuring any judicial authorization or approval.

7 (b) A trustee may exercise the authority granted in this subchapter to  
8 divide both funded and unfunded trusts, provided, however, that:

9 (1) an unfunded testamentary trust may be divided only after the  
10 will establishing the trust has been admitted to probate; and

11 (2) an unfunded nontestamentary trust may be divided only if the  
12 governing instrument establishing the trust is not revocable.

13 28-69-705. Effect of exercise of authority.

14 If a trustee divides a trust into separate trusts under this subchapter,  
15 the terms of the separate trusts need not be identical but must provide for  
16 the same succession of interests and beneficiaries as are provided in the  
17 original trust. Differing tax elections may be made for each of the separate  
18 trusts.

19 28-69-706. Applicability.

20 This subchapter applies to all trustees regardless of whether the trust  
21 was created before, on, or after date of enactment."

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23 SECTION 2. All provisions of this act of a general and permanent nature  
24 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
25 Revision Commission shall incorporate the same in the Code.

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27 SECTION 3. If any provision of this act or the application thereof to  
28 any person or circumstance is held invalid, such invalidity shall not affect  
29 other provisions or applications of the act which can be given effect without  
30 the invalid provision or application, and to this end the provisions of this  
31 act are declared to be severable.

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33 SECTION 4. All laws and parts of laws in conflict with this act are  
34 hereby repealed.

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APPROVED:3-17-97