

Senate Bill 461

By: Senators Harp of the 29th, Hamrick of the 30th, Smith of the 52nd, Cowser of the 46th and Ramsey, Sr. of the 43rd

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Article 6 of Chapter 4 of Title 53 of the Official Code of Georgia Annotated,
2 relating to construction of wills and testamentary gifts, so as to provide for the construction
3 of wills and trust instruments referring to federal estate and generation-skipping transfer tax
4 laws for testators and settlors dying on or after December 31, 2009, but prior to January 1,
5 2011; to provide for judicial construction of such wills and trust instruments; to provide for
6 related matters; to provide for an effective date; to repeal conflicting laws; and for other
7 purposes.

8 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

9 **SECTION 1.**

10 Article 6 of Chapter 4 of Title 53 of the Official Code of Georgia Annotated, relating to
11 construction of wills and testamentary gifts, is amended by adding a new Code section to
12 read as follows:

13 "53-4-75.

14 (a) For purposes of this Code section, the term 'effective date for federal estate and
15 generation-skipping transfer taxes' means the earlier of January 1, 2011, or the first date
16 after December 31, 2009, including a date before the date on which this Code section
17 became effective, upon which the federal estate tax and generation-skipping transfer tax
18 laws apply to estates of decedents dying on such date and to generation-skipping transfers
19 on such date.

20 (b) A provision of a will or trust instrument of a testator or settlor dying after December
21 31, 2009, and before the effective date for federal estate and generation-skipping transfer
22 taxes that:

23 (1) Refers to the 'unified credit,' 'estate tax exemption,' 'applicable exemption amount,'
24 'applicable credit amount,' 'applicable exclusion amount,' 'generation-skipping transfer
25 tax exemption,' 'GST exemption,' 'marital deduction,' 'maximum marital deduction,'
26 'unlimited marital deduction,' or any similar term;

27 (2) Refers to any similar provision of federal estate or generation-skipping transfer tax
28 laws; or
29 (3) Provides for determining the amount of a bequest, distribution, allocation, or division
30 of property of an estate or trust based on the amount that is exempt from or can pass free
31 of federal estate tax or federal generation-skipping transfer tax
32 shall be deemed to refer to the federal estate and generation-skipping transfer tax laws as
33 such laws applied to estates of decedents dying on December 31, 2009, and to
34 generation-skipping transfers on December 31, 2009.
35 (c) Subsection (b) of this Code section shall not apply to:
36 (1) A provision of a will or trust instrument that is executed or amended after December
37 31, 2009; or
38 (2) A provision of a will or trust instrument, whenever executed or amended, that
39 manifests an intention that such provision should be construed in a manner other than as
40 provided in subsection (b) of this Code section.
41 (d) A court may construe a will or trust instrument to determine whether subsection (b) of
42 this Code section applies to a provision of a will or trust instrument or whether the will or
43 trust instrument manifests an intention that such provision should be construed in a manner
44 other than as provided in subsection (b) of this Code section. A petition for construction
45 of a will or trust instrument under this Code section may be filed by the personal
46 representative, beneficiary, or trustee and shall be commenced within one year of the death
47 of the testator or settlor."

48 **SECTION 2.**

49 This Act shall become effective upon its approval by the Governor or upon its becoming law
50 without such approval.

51 **SECTION 3.**

52 All laws and parts of laws in conflict with this Act are repealed.