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HOUSE BILL NO. 755

Offered January 13, 2010

Prefiled January 12, 2010

A *BILL to amend the Code of Virginia by adding a section numbered 64.1-62.4, relating to wills and trusts; formula clauses referring to federal estate and generation-skipping transfer tax laws; application.*

Patron—Janis

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 64.1-62.4 as follows:

§ 64.1-62.4. *Certain formula clauses to be construed to refer to federal estate and generation-skipping transfer tax laws applicable to estates of decedents dying after December 31, 2009, and before January 1, 2011.*

A. *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 shall 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 shall apply 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 subsection shall refer instead to the first date on which such tax becomes legally effective.*

B. *The personal representative or any affected beneficiary under the will or other instrument may bring a proceeding to determine whether the decedent intended that the formulae under subsection A be construed with respect to the law as it existed after December 31, 2009. Such a proceeding shall be commenced within 12 months following the death of the testator or grantor.*

2. That the provisions of this Act are effective retroactive to December 31, 2009, and an emergency exists and this Act is in force from its passage.

INTRODUCED

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