

IN THE SENATE

SENATE BILL NO. 1120

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO THE UNIFORM PROBATE CODE; AMENDING SECTION 15-1-501, IDAHO CODE,  
2 TO REVISE PROVISIONS REGARDING THE CONSTRUCTION OF CERTAIN FORMULA  
3 CLAUSES; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.  
4

5 Be It Enacted by the Legislature of the State of Idaho:

6 SECTION 1. That Section 15-1-501, Idaho Code, be, and the same is hereby  
7 amended to read as follows:

8 15-1-501. CONSTRUCTION OF CERTAIN FORMULA CLAUSES. (1) A will or trust  
9 of a decedent who dies after December 31, 2009, and before January 1, 2011,  
10 that contains a formula referring to the "unified credit," "estate tax ex-  
11 emption," "applicable exemption amount," "applicable credit amount," "ap-  
12 plicable exclusion amount," "generation-skipping transfer tax exemption,"  
13 "GST exemption," "marital deduction," "maximum marital deduction" or "un-  
14 limited marital deduction," or that measures a share of an estate or trust  
15 based on the amount that can pass free of federal estate taxes or the amount  
16 that can pass free of federal generation-skipping transfer taxes, or that is  
17 otherwise based on a similar provision of federal estate tax or generation-  
18 skipping transfer tax law, shall be deemed to refer to the federal estate  
19 and generation-skipping transfer tax laws as they ~~applied~~ apply with respect  
20 to estates of decedents dying ~~on December 31, 2009~~ in 2010, without regard  
21 to whether the decedent's personal representative or other fiduciary elects  
22 not to have the estate tax apply with respect to that estate. This subsection  
23 provision shall not apply with respect to a will, or trust that is executed  
24 or amended after December 31, 2009, or other instrument that manifests an in-  
25 tent that a contrary rule shall apply if the decedent dies on a date on which  
26 there is no then-applicable federal estate or generation-skipping transfer  
27 tax. The reference to January 1, 2011, in this subsection shall, if the fed-  
28 eral estate and generation-skipping transfer tax becomes effective before  
29 that date, refer instead to the first date on which such tax shall become  
30 legally effective.

31 (2) The personal representative, trustee, other fiduciary or any af-  
32 fected beneficiary under the will, ~~or trust or other instrument~~ may bring a  
33 proceeding to determine whether the decedent intended that the ~~references~~  
34 ~~under will, trust or other instrument should be construed in a manner other~~  
35 ~~than as provided in subsection (1) of this section be construed with respect~~  
36 ~~to the law as it existed after December 31, 2009. Such a~~ A proceeding must  
37 under this section shall be commenced within twelve (12) months following  
38 the death of the testator or grantor, and not thereafter before January 1,  
39 2012. In a proceeding under this section, the court may consider extrinsic  
40 evidence that contradicts the plain meaning of the will, trust or other in-  
41 strument. The court shall have the power to modify a provision of the will,

1 trust or other instrument that refers to the federal estate tax or genera-  
2 tion-skipping tax laws as described in subsection (1) of this section to:

3 (a) Conform the terms to the decedent's intention; or

4 (b) Achieve the decedent's tax objectives in a manner that is not con-  
5 trary to the decedent's probable intention.

6 The court may provide that an interpretation or modification pursuant to  
7 this section shall be effective as of the decedent's date of death. A person  
8 who commences a proceeding under this section has the burden of proof, by  
9 clear and convincing evidence, in establishing the decedent's intent that  
10 the will, trust or other instrument should be construed in a manner other  
11 than as provided in subsection (1) of this section.

12 (3) This section shall apply to all proceedings pending before the  
13 courts of this state on the effective date of this act. For purposes of this  
14 section only, interested persons may enter into a binding agreement to  
15 determine whether the decedent intended that the will, trust or other in-  
16 strument should be construed in a manner other than as provided in subsection  
17 (1) of this section and to conform the terms to the decedent's intention,  
18 without court approval as provided in subsection (2) of this section. As  
19 used in the subsection, "interested persons" means persons whose consent  
20 would be required in order to achieve a binding settlement were the settle-  
21 ment to be approved by the court. In the case of a trust, the agreement may be  
22 by nonjudicial settlement agreement pursuant to chapter 8, title 15, Idaho  
23 Code. Any interested person may petition the court to approve the agreement  
24 or to determine whether all interested persons are parties to the agreement,  
25 either in person or by adequate representation where permitted by law, and  
26 whether the agreement contains terms the court could have properly approved.

27 SECTION 2. An emergency existing therefor, which emergency is hereby  
28 declared to exist, this act shall be in full force and effect on and after its  
29 passage and approval, and retroactively to January 1, 2010, and shall apply  
30 to all proceedings pending before the courts of this state on the effective  
31 date of this act.