

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

391R0517

HOUSE BILL NO. 1201

Introduced by: Representatives Lust, Boomgarden, Hunt, McLaughlin, Moser, Novstrup (David), Peters, and Rausch and Senators Dempster, Adelstein, Knudson, and Turbak Berry

1 FOR AN ACT ENTITLED, An Act to provide that certain tax laws applicable on December 31,
2 2009, apply to certain wills and trusts that refer to federal estate and generation-skipping
3 transfer tax laws, and to declare an emergency.

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

5 Section 1. A will or trust of a decedent who dies after December 31, 2009, and before
6 January 1, 2011, that contains a formula referring to the unified credit, estate tax exemption,
7 applicable exemption amount, applicable credit amount, applicable exclusion amount,
8 generation-skipping transfer tax exemption, GST exemption, marital deduction, maximum
9 marital deduction, unlimited marital deduction, inclusion ratio, applicable fraction, or any
10 section of the Internal Revenue Code relating to the federal estate tax or generation-skipping
11 transfer tax, or that measures a share of an estate or trust based on the amount that can pass free
12 of federal estate taxes or the amount that can pass free of federal generation-skipping transfer
13 taxes, or that is otherwise based on a similar provision of federal estate tax or generation-
14 skipping transfer tax law, shall be deemed to refer to the federal estate tax and generation-



1 skipping transfer tax laws as they applied with respect to estates of decedents dying on
2 December 31, 2009. This provision does not apply with respect to a will or trust that is executed
3 or amended after December 31, 2009, or that manifests an intent that a contrary rule applies if
4 the decedent dies on a date on which there is no then-applicable federal estate or generation-
5 skipping transfer tax. If the federal estate or generation-skipping transfer tax becomes effective
6 before that date, the reference to January 1, 2011, in this section refers instead to the first date
7 on which such tax becomes legally effective.

8 Section 2. The personal representative or any affected beneficiary under the will or other
9 instrument described in section 1 of this Act may bring a proceeding to determine whether the
10 decedent intended that the formulae under section 1 of this Act be construed with respect to the
11 law as it existed after December 31, 2009. Such a proceeding shall be commenced within twelve
12 months following the death of the testator or grantor.

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

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