

NORTH CAROLINA GENERAL ASSEMBLY
1963 SESSION

CHAPTER 941
SENATE BILL 212

1 AN ACT TO AMEND G.S. 105-2 SO AS TO CLARIFY THE PROVISIONS RELATING TO
2 POWERS OF APPOINTMENT.

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4 The General Assembly of North Carolina do enact:

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6 **Section 1.** G.S. 105-2 is hereby amended by changing the comma (,) following the
7 figures "1939" in line 8 of numbered paragraph (4) of said Section to a period (.) and striking
8 out the remainder of said paragraph.

9 **Sec. 2.** G.S. 105-2 is hereby further amended by rewriting numbered paragraph (5)
10 thereof to read as follows:

11 "(5) For purposes of this Article, the term 'general power of appointment' means
12 a power which is exercisable in favor of the decedent, his estate, his
13 creditors or the creditors of his estate; except that a power to consume,
14 invade or appropriate property for the benefit of the decedent which is
15 limited by an ascertainable standard relating to the health, education,
16 support, or maintenance of the decedent shall not be deemed a general power
17 of appointment. Whenever any person shall have a general power of
18 appointment with respect to any interest in property, such person shall for
19 the purposes of this Article be deemed the owner of such interest, and
20 accordingly:

- 21 a. If in connection with any transfer of property taxable under this
22 Article the transferor shall give to any person a general power of
23 appointment with respect to any interest in such property, the
24 transferor shall be deemed to have given such interest in such
25 property to such person.
- 26 b. If any person holding a general power of appointment with respect to
27 any interest in property shall exercise such power in favor of any
28 other person or persons, either by will or by an appointment made in
29 contemplation of the death of such person, or by an appointment
30 intended to take effect in possession or enjoyment at or after such
31 death, he shall be deemed to have made a transfer of such interest to
32 such person or persons.
- 33 c. If any person holding a general power of appointment with respect to
34 any interest in property shall relinquish such power by any action
35 taken in contemplation of death or intended to take effect at or after
36 his death, or shall die without fully exercising such power, he shall
37 be deemed, to the extent of such relinquishment or nonexercise, to
38 have made a transfer of such interest to the person or persons who
39 shall benefit thereby."

40 **Sec. 3.** G. S. 105-2 is hereby further amended by rewriting numbered paragraph (6)
41 thereof to read as follows:

42 "(6) Neither the exercise nor the relinquishment of a special power of
43 appointment (which shall mean any power other than a general power) with

1 respect to an interest in property shall be deemed to constitute a transfer of
2 such interest within the meaning of this Article. If in connection with any
3 transfer taxable under this Article the transferor shall give to any person a
4 special power of appointment with respect to any interest in property, he
5 shall be deemed, for the purpose of computing the tax applicable thereto, to
6 have given such interest in equal shares to those persons, not more than two
7 (2), among the possible appointees and takers in default of appointment
8 whom the transferor's executor or administrator may designate as transferees
9 in the inheritance tax return, except that:

- 10 a. if a gift tax return is filed with respect to such transfer, the persons
11 designated therein shall also be designated in the inheritance tax
12 return, and
13 b. the tax shall be computed according to the relationship of the donee
14 of the power to the persons designated if the possible appointees and
15 takers in default of appointment include any person more closely
16 related to the donee of the power than to the donor, and if such
17 computation would produce a higher tax."

18 **Sec. 4.** All laws and clauses of laws in conflict with this Act are hereby repealed.

19 **Sec. 5.** This Act shall be in full force and effect on and after July 1, 1963.

20 In the General Assembly read three times and ratified, this the 18th day of June,

21 1963.