

HOUSE BILL NO. HB0145

Principal and income act amendments.

Sponsored by: Representative(s) Brown and Walters and  
Senator(s) Nicholas, P., Perkins and Ross

A BILL

for

1 AN ACT relating to fiduciaries; providing authority for a  
2 trustee to include capital gains in income as specified;  
3 authorizing certain distributions from income and  
4 principal; authorizing adjustments between income and  
5 principal; repealing provisions; and providing for an  
6 effective date.

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8 *Be It Enacted by the Legislature of the State of Wyoming:*

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10 **Section 1.** W.S. 2-3-835 is created to read:

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12 **2-3-835. Trustee discretion to include capital gains**  
13 **in income.**

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1 (a) To the extent a trustee is given the power to make  
2 mandatory or discretionary distributions of income, the  
3 trustee may, on an annual basis, include realized capital  
4 gains in trust income and in determining section 643(a) of  
5 the Internal Revenue Code distributable net income, if the  
6 allocation is reasonable and impartial.

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8 (b) To the extent a trustee is given the power to make  
9 mandatory or discretionary distributions of principal, the  
10 trustee may, on an annual basis, include realized capital  
11 gains in determining Section 643(a) Internal Revenue Code  
12 distributable net income, if the allocation is reasonable  
13 and impartial.

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15 **Section 2.** W.S. 2-3-804 by creating a new subsection  
16 (h), 2-3-826(a), 2-3-827(a)(i), (ii) and (iv),  
17 2-3-831(a)(intro) and 2-3-909(a)(i) are amended to read:

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19 **2-3-804. Trustee's power to adjust; liability of**  
20 **trustee.**

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22 (h) If a trustee elects to exercise the power to  
23 adjust under this statute, the trustee may, on an annual

1 basis, include net realized capital gains in determining  
2 trust income and section 643(a) of the Internal Revenue  
3 Code distributable net income, if the allocation is  
4 reasonable and impartial.

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6 **2-3-826. Disbursements from income.**

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8 (a) A trustee shall make the following disbursements  
9 from income to the extent that they are not disbursements  
10 to which W.S. 2-3-806(a)(ii)(B) or (C) applies:

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12 (i) ~~One half (1/2) of the regular compensation~~  
13 ~~of the trustee and of any person providing investment~~  
14 ~~advisory or custodial services to the trustee~~ Interest,  
15 except interest on taxes as provided in W.S.  
16 2-3-827(a)(vi);

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18 (ii) ~~One half (1/2) of all expenses for~~  
19 ~~accountings, judicial proceedings or other matters that~~  
20 ~~involve both the income and remainder interests~~ Ordinary  
21 repairs and maintenance of real estate;

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1           (iii) ~~All of the other ordinary expenses~~  
 2 ~~incurred in connection with the administration, management~~  
 3 ~~or preservation of trust property and the distribution of~~  
 4 ~~income, including interest, ordinary repairs, Real estate~~  
 5 ~~taxes and other~~ regularly recurring taxes assessed against  
 6 principal; ~~and expenses of a proceeding or other matter~~  
 7 ~~that concerns primarily the income interest; and~~

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 9           **2-3-827. Disbursements from principal.**

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 11           (a) A trustee shall make the following disbursements  
 12 from principal:

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 14           (i) ~~The remaining one-half (1/2) of the~~  
 15 ~~disbursements described in W.S. 2-3-826(a)(i) and (ii)~~  
 16 ~~Extraordinary expenses incurred in connection with the~~  
 17 ~~administration, management or preservation of trust~~  
 18 ~~property and the distribution of income;~~

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 20           (ii) ~~All of the trustee's compensation~~  
 21 ~~calculated on principal as a fee for acceptance,~~  
 22 ~~distribution, or termination, and disbursements made to~~  
 23 ~~prepare property for sale Extraordinary repairs;~~

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**2-3-831. Adjustments between principal and income.**

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**2-3-909. Treatment and allocation of income.**

(iv) Expenses ~~of a proceeding that concerns primarily principal, including a proceeding to construe in connection with accountings and judicial or other proceedings to construe, modify or reform~~ the trust or to protect the trust or its property;

(a) ~~A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:~~ Subject to W.S. 2-3-826 and 2-3-827, a trustee may, in the discretion of the trustee, allocate to income, principal or partly to each, the ordinary expenses incurred in connection with the administration, management or preservation of trust property and the distribution of income including the compensation of the trustee and of agents hired by the trustee including investment advisors, custodians or income tax preparation services.

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2 (a) Following the conversion of an income trust to a  
3 total return unitrust or upon creation of a total return  
4 unitrust by a settlor, the trustee:

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6 (i) Shall treat the unitrust amount as ~~if it~~  
7 ~~were~~ net income of the trust for purposes of determining  
8 the amount available, from time to time, for distribution  
9 from the trust; and

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11 **Section 3.** W.S. 2-3-827(a)(iii) and 2-3-831(a)(i)  
12 through (iii) are repealed.

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14 **Section 4.** This act is effective July 1, 2015.

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(END)