Georgia State University Law Review

Volume 8
Issue 1 *January 1992*

Article 30

1-1-1992

WILLS, TRUSTS, AND ADMINISTRATION OF ESTATES Laws Relating to Trusts

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Recommended Citation
Robert F. Dow, *WILLS, TRUSTS, AND ADMINISTRATION OF ESTATES Laws Relating to Trusts*, 8 Ga. St. U. L. Rev. (1992).
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WILLS, TRUSTS AND ADMINISTRATION OF ESTATES

Laws Relating to Trusts

CODE SECTIONS:	O.C.G.A. §§ 53-12-1 to -232 (amended)
BILL NUMBER:	HB 794
ACT NUMBER:	390
SUMMARY:	The Act reorganizes Georgia trust law and codifies many common law principles that were previously recognized in Georgia law, but had not been incorporated into statutory law. The Act recognizes the validity of spendthrift trusts, and makes the allocation of principal and income in trusts more consistent with national trust law.
EFFECTIVE DATE:	July 1, 1991

History

In 1987, the Fiduciary Law Section of the State Bar of Georgia appointed a committee to develop a new trust code.[1] The members of the Fiduciary Section saw a need for a new comprehensive trust code because of increasing use of trusts and the confused state of trust law in Georgia.[2] The Committee consisted of attorneys from various locations in Georgia who are interested in fiduciary law.[3] The Committee's work culminated in December 1990 with the Proposed Revision of the Trust Code of Georgia.[4]

Previous Georgia law was particularly problematic in dealing with the topic of spendthrift trusts. In a spendthrift trust, a beneficiary is prohibited from transferring her right to future payments from the trust, and creditors are unable to attach the beneficiary's interest in the trust.[5] These trusts are commonly used to provide the beneficiary

1. Anne Emanuel, The Proposed Revision of the Trust Code of Georgia, A Precis 1 (Mar. 7, 1991) (available in Georgia State University College of Law Library) [hereinafter Emanuel Article]. Professor Emanuel is a member of the faculty at Georgia State University College of Law and served as Reporter of the State Bar Committee which drafted the proposed revision.

2. *Id.*

3. *Id.*

4. Committee of the Fiduciary Law Section of the State Bar of Georgia, Proposed Revision of the Trust Code of Georgia (Dec. 14, 1990) [hereinafter Bar Proposal].

5. GEORGE T. BOGERT, TRUSTS § 40 (6th ed. 1987).

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with a steady source of income, which is safe from the beneficiary's own carelessness.[6] Because the trust is not subject to creditors' claims, the beneficiary cannot spend the anticipated income by borrowing against it.[7] Spendthrift trusts are valid in most American states.[8]

The validity of spendthrift provisions in Georgia trusts is the subject of some confusion.[9] One former statutory provision[10] provided for the creation of trusts for the benefit of persons who are incapable of managing property, sometimes referred to as "spendthrifts."[11] This provision only allows a trust to be formed, and says nothing about whether the trust benefits may be attached by creditors.[12] One 1903 case clearly recognizes the validity of a spendthrift provision.[13] The presence of this case induced a leading hornbook on trusts to list Georgia among the majority of states that recognize spendthrift trusts.[14] There were earlier cases, however, in which the Georgia Supreme Court refused to recognize the spendthrift provision.[15] The division in the case law has discouraged the use of a spendthrift provision among practitioners in Georgia.[16]

HB 794

The language of the Act was taken from the Bar Proposal with few changes.[17] There was relatively little controversy over the language of the bill.[18]

The Bar Proposal was intended primarily to reorganize and restate existing Georgia trust law, and to clarify the law.[19] In most areas of trust law, the substantive rules of law were not changed.[20]

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6. *Id.*

7. *Id.*

8. *Id.*

9. *See* Eugene H. Driver, Jr., *Trusts: Creditors' Claims Against Beneficiaries of Spendthrift and Support Trusts*, GA. STATE B.J. 356 (Feb. 1967), cited in Emanuel Article, *supra* note 1, at 3.

10. 1876 Ga. Laws 26 (formerly found at O.C.G.A. § 53-12-25 (1990)).

11. Driver, *supra* note 9, at 357 n.9; BLACK'S LAW DICTIONARY 1255 (5th ed. 1979) ("one who spends money profusely and improvidently; a prodigal; one who lavishes or wastes his estate").

12. *Cf.* Driver, *supra* note 9, at 357 n.9.

13. Moore v. Sinnot, 44 S.E. 810 (Ga. 1903).

14. BOGERT, *supra* note 5, at 152 n.17.

15. Bailie v. McWhorter, 56 Ga. 1983 (1876); Torrell v. Huff, 108 Ga. 655 (1899); Gray v. Obear, 54 Ga. 231 (1875).

16. Interview with Faryl Moss, Manager of Trust Department at First American Bank of Georgia, in Atlanta (Apr. 3, 1991) [hereinafter Moss Interview].

17. Telephone Interview with Rep. Charles Thomas, Chairman, House Judiciary Committee, House District No. 69 (Mar. 28, 1991) [hereinafter Thomas Interview].

18. *Id.*

19. Emanuel Article, *supra* note 1, at 2.

20. *Id.*

One area where the law, and the bill, were changed is in spendthrift trusts. As discussed above, there was much confusion concerning the validity of such trusts.[21] The Act ends this confusion by clearly establishing the validity of spendthrift trusts.[22] There are, however, some limitations imposed on the use of spendthrift provisions.

The Bar Proposal contained three limitations on spendthrift provisions. The first limitation invalidated any clause in a trust that prohibits involuntary transfers where the beneficiary of that trust is also the settlor.[23] This is a standard limitation in trust law which prevents individuals from setting up their own trusts for the purpose of evading their own creditors.[24]

The second limitation involved the amount of the beneficiary's interest that can be protected from creditors. A spendthrift provision is valid only to the extent that a distribution "would not be subject to garnishment under the laws of this state if the distribution were disposable earnings."[25] This limitation would treat trust distributions in a similar fashion to wages, allowing a portion to be garnished. Under current Georgia law, this would mean that twenty-five percent of the trust distributions could be attached by a creditor unless the creditor was holding a judgment for alimony, in which case the amount is raised to fifty percent.[26]

The third limitation involved pensions. A spendthrift provision in a bona fide pension or retirement plan is valid and is not subject to the first two limitations discussed above.[27] There is an exception provided "where a claim is made pursuant to a qualified domestic relations order as defined in 26 U.S.C. § 414(p)."[28] This language mirrors the requirements for a qualified plan under the Internal Revenue Code,[29] and thus avoids having any plan disqualified because of Georgia Trust Code requirements.[30] Furthermore, the Internal Revenue Service has taken the position, in reviewing plans for qualified status, that federal law preempts state law in this area.[31]

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21. *See supra* notes 9-16 and accompanying text.
22. O.C.G.A. § 53-12-28 (Supp. 1991).
23. Bar Proposal, *supra* note 4, at 7.
24. BOGERT, *supra* note 5, at 155-56.
25. Bar Proposal, *supra* note 4, at 7.
26. O.C.G.A. § 18-4-20 (Supp. 1990). *See* Emanuel Article, *supra* note 1, at 3.
27. Bar Proposal, *supra* note 4, at 7.
28. *Id.*
29. 26 U.S.C. § 401(a)(13) (1990): "(A) ... A trust shall not constitute a qualified trust ... unless the plan ... provides that benefits may not be assigned or alienated ... (B) ... subparagraph (A) shall not apply if the order is determined to be a qualified domestic relations order." *Id.* Qualified domestic relations orders are defined at 26 U.S.C. § 414(p) (1990), hence the reference to that section in the Bar Proposal and the Act.
30. *See* Emanuel Article, *supra* note 1, at 4.
31. *See* Ronald I. Kirschbaum, *ERISA Spendthrift Rules—It Just Shouldn't Be This Hard*, 11 CAMPBELL L.REV. 29, 32-33 (1988).

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In addition to the three limitations contained in the Bar Proposal, two new limitations were added.[32]

Legislators were concerned that trusts set up to provide support for mentally handicapped individuals would be invaded by creditors.[33] The Bar Proposal would have allowed any kind of claim to attach to trust distributions.[34] The sponsors of the bill limited the kind of claims that could attach to six specific types.[35] Contract claims are not enumerated.[36] This avoids the possibility of a mentally incompetent beneficiary signing for a contract debt, for example, a credit card, and then having the trust benefits attached.[37] But the broad language used in conjunction with the six enumerated claims excludes contract creditors from attaching any trust, not just those involving mental incompetents.[38]

The lobbyists for the mentally handicapped were not satisfied with the language as introduced. They were concerned over the inclusion of governmental claims. The lobbyists felt this left the door open too wide for claims against the trust.[39] The lobbyists' arguments persuaded the members of the House Judiciary Committee to amend the bill further.[40] The Committee decided to add language which would protect the trust of a mentally handicapped person from all kinds of claims. The problem confronting the Committee was how to define disability.[41] They used language from the Virginia statute, which had worked satisfactorily, to solve their dilemma.[42] During this process, the language was expanded to include physical as well as mental disabilities.[43] All of these changes were incorporated into the Committee substitute bill, and became part of the final Act as passed.[44]

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32. O.C.G.A. § 53-12-28(c), (d) (Supp. 1991).

33. Telephone Interview with Rep. Thurbert Baker, Chairman, Fiduciary Subcommittee of the House Judiciary Committee, House District No. 51 (Apr. 2, 1991) [hereinafter Baker Interview].

34. The Bar Proposal allowed trust distributions to be attached up to the 25%/50% limits set by Georgia law. Bar Proposal, *supra* note 4, at 7. *See supra* notes 25-26 and accompanying text.

35. HB 794, as introduced, 1991 Ga. Gen. Assem. The six categories are: "(1) Tort judgments; (2) Taxes; (3) Governmental claims; (4) Alimony; (5) Child support; or (6) Judgment for necessaries not voluntarily provided by the claimant." *Id.*

36. Emanuel Article, *supra* note 1, at 4.

37. Interview with Anne Emanuel, Reporter for the Committee of the Fiduciary Law Section of the State Bar of Georgia, in Atlanta (Mar. 29, 1991) [hereinafter First Emanuel Interview].

38. *Id.*

39. *Id.*

40. Baker Interview, *supra* note 33.

41. *Id.*

42. *Id.* See VA. CODE ANN. § 55-19(d)(2) (1990), using language almost identical to that adopted in O.C.G.A. § 53-12-28(c) (Supp. 1991) to describe disabilities.

43. Baker Interview, *supra* note 33; Bar Proposal, *supra* note 4, at 18 (Proposal § 53-12-173(a)).

44. HB 794 (HCS), 1991 Ga. Gen. Assem.; O.C.G.A. § 53-12-28 (Supp. 1991).

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One part of the bill which was controversial was the provision that deals with trustee compensation. The Bar Proposal was intended to codify existing Georgia law.[45] It is common practice in Georgia among professional trust service providers to draft the trust to make reference to some standard price schedule, with the provision that the trustee's compensation will increase whenever there is an increase in the published price list.[46] The language in the Bar Proposal appeared to allow this practice to continue as long as the possibility of price increases was clearly spelled out in the original trust agreement. There was concern about this practice, and limits safeguarding trusts were proposed for how high the banks could raise their fees after the trust agreement had been signed.[47]

As introduced, HB 794 would have made any automatic increase provision invalid unless the amount of increase was specifically set forth in the original agreement, the increase was based on a governmentally determined economic factor (for example, Consumer Price Index), or the resulting increase did not exceed the statutory fees for guardians.[48]

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45. Emanuel Article, *supra* note 1, at 8; Bar Proposal, *supra* note 4, at 18 [Proposal § 53-12-173(a)]:

> Trustees shall be compensated in accordance with either the trust instrument or any separate written agreement. The parties to the agreement shall be the trustee and the settlor or, after the settlor's death or incapacity or while the trust is irrevocable, the trustee and all sui juris income and vested remainder beneficiaries.

Bar Proposal, *supra* note 4, at 18.

46. Moss Interview, *supra* note 16.

47. Telephone Interview with Rep. Frank Pinkston, Chairman, House Banking and Financial Institution Committee, House District No. 100 (Apr. 1, 1991) [hereinafter Pinkston Interview]; Telephone Interview with Rep. Dubose Porter, House District No. 119 (Apr. 1, 1991) [hereinafter Porter Interview]. Reps. Pinkston and Porter were cosponsors of HB 794, along with Reps. Baker (*see supra* note 33) and Thomas (*see supra* note 17). *See* HB 794, as introduced, 1991 Ga. Gen. Assem.

Rep. Pinkston was particularly concerned with the issue of increases in trustee fees. Pinkston Interview, *supra*. Rep. Pinkston worked with Rep. Porter to draft language to create limits on trustee compensation. Pinkston Interview, *supra*; Porter Interview, *supra*. For the restrictive language they drafted, see *infra* note 48 and accompanying text.

48. HB 794, as introduced, 1991 Ga. Gen. Assem. (proposed § 53-12-173(a)):

> Trustees shall be compensated in accordance with either the trust instrument or any separate written agreement. The parties to the agreement shall be the trustee and the settlor or, after the settlor's death or incapacity or while the trust is irrevocable and subsequent to any original fee agreement entered into by the settlor and the trustee, the trustee and all sui juris income and vested remainder beneficiaries. Any provision in a compensation agreement that the trustees' fees shall automatically increase shall not be valid unless the amount of such automatic increase is specifically set forth in the agreement or, if not, any increase is based on an increase in governmentally determined economic factors commonly used in retirement, pension, or other contractual benefits or obligations and is specifically set forth in such agreement. A provision for increases may be included without such specification

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This approach prohibited the standard fee schedule method of determining fees unless the fee schedule was tied to an inflation factor.[49] It would not be possible to know years in advance the actual dollar amount of a bank's fee increases.

The bank lobbyists fought hard to have the fee increase limitations removed.[50] The lobbyists argued this was unfair treatment because bank trust departments were being singled out and treated differently than other segments of the money management industry.[51] Trusts could be set up by nonbank type trustees, for example, attorneys, who could charge a standard administrative fee and hire a brokerage firm to manage the funds. Because the brokerage firm is not the trustee, it could charge any fee amount without limitation. But the bank combines trust administration and investment management functions into one entity. The bank, therefore, could charge only one trust fee, which is limited by the proposed statutes. This would create unfair competition with the large national brokerage firms, and leave Georgia banks at a competitive disadvantage.[52]

The lobbyists also argued that parties to an original trust agreement should be able to agree to whatever kind of escalation clause that they choose as long as it is clearly disclosed. Under the language as introduced, even if the original settlor was agreeable to a fee tied to the bank's fee schedule, the clause would be invalid.[53] The members of the Fiduciary Subcommittee were persuaded by the lobbyists' arguments, and voted to amend the bill to remove all of the restrictive language. An attempt in the meeting of the full Judiciary Committee to restore some of the restrictive language failed,[54] and the Committee substitute went out without the restrictive language.[55]

When the bill went to the floor of the House, a floor amendment, similar to a provision in the original Bar Proposal,[56] was adopted.[57] This provision remained in the final version of the bill.[58] There were, however,

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> if the resultant increase would not exceed the same compensation guardians receive for similar services.

Id.

49. Moss Interview, *supra* note 16.
50. Porter Interview, *supra* note 47.
51. Baker Interview, *supra* note 33.
52. Moss Interview, *supra* note 16.
53. *Id.*
54. Baker Interview, *supra* note 33.
55. HB 794 (HCS), 1991 Ga. Gen. Assem. at 34 (§ 53-12-173(a)): "Trustees shall be compensated in accordance with either the trust instrument or any separate written agreement." *Id.*
56. *Compare infra* note 58 *with supra* note 45.
57. Porter Interview, *supra* note 47; HB 794 (HCSFA), 1991 Ga. Gen. Assem.
58. O.C.G.A. § 53-12-173(a) (Supp. 1991):

> Trustees shall be compensated in accordance with either the trust agreement

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a few changes in the provision wording which may create problems in interpretation of the Act.

The Bar Proposal and the Act state that the compensation agreement shall be between the beneficiaries and the trustee after the settlor's death or incapacity. But the Act states that the agreement must be "executed in writing at such time or times as changes, if any, occur."[59] The problem is in defining what constitutes a "change." There may be some disagreement as to how to interpret this language. It could mean that any change in the terms of the agreement requires a written execution. This construction would allow an automatic fee schedule escalation clause to be used as long as it was clearly spelled out in the original trust agreement.[60] Therefore, subsequent changes in the fee schedule would not be a "change" because the agreement is tied to the fee schedule as it exists at any given time. A change would occur only if there were a change in the method of determining fees. This might occur, for instance, if the trustee were changed from one financial institution to another that had a different fee schedule.

Another possible interpretation is that a "change" occurs any time the amount of compensation changes. This construction of the Act would defeat any attempt to put an escalation clause in a trust agreement. Every time an increase in compensation occurred, the contract would have to be renegotiated with the beneficiaries, even if the original agreement allowed for increases.[61]

The language of the Act could support either interpretation because the word "changes" appears near the end of the section without specifying the earlier language this word is modifying. The section earlier discussed both the agreement and the compensation under the agreement.[62] However, the first interpretation discussed above flows naturally from the language of the Act because the sentence in which "changes" occurs

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> or any separate written agreement. The agreement shall be between the trustee and the settlor, or after the settlor's death or incapacity or while the trust is irrevocable, and *subsequent to any original fee agreement* entered into by the settlor and the trustee, the trustee and *a majority in number of both of the sui juris income and vested remainder beneficiaries, executed in writing at such time or time as changes, if any, occur.*

Id. (emphasis added).

59. O.C.G.A. § 53-12-173(a) (Supp. 1991).

60. This is the construction that Rep. Porter appears to have had in mind when the bill was passed. Porter Interview, *supra* note 47. "Whatever standard they agreed on ... if done up front and they agreed to it, then that's a negotiated contract, and it doesn't need any further negotiation." *Id.*

61. This position is supported by Rep. Pinkston. Pinkston Interview, *supra* note 47. "My understanding of the legislative intent is that every time [the fee] is increased, it would require approval. The beneficiaries are entitled to know how much their fees would be." *Id.*

62. O.C.G.A. § 53-12-173(a) (Supp. 1991).

begins with "the agreement."[63] Also, the result in the second interpretation seems unduly harsh and places a severe restriction on the drafters of trust agreements.[64] The vagueness of the language and the lack of clear legislative history on this point may result in litigation.[65] Alternatively, a technical amendment may be needed to clarify the language.[66]

The compensation section also was changed with respect to the method of approval for changes once it is determined an approval is needed. The Bar Proposal would have required all beneficiaries to agree.[67] The House Committee substitute would have deleted all language pertaining to the beneficiaries.[68] The final language of the Act seems to strike a compromise by requiring approval of "a majority in number of both of the sui juris income and vested remainder beneficiaries."[69] Those representing the banks would have preferred a compromise that required a majority in interest rather than in number, and in fact, suggested such a compromise to some of the legislators.[70] This suggestion was rejected by the drafters of the final language. The majority in number creates some problems because there may be numerous, relatively small beneficiaries involved in a complex trust. Chasing all of them down to get their signatures on an amendment could be expensive and time consuming. Choosing either language, number or interest, would raise an additional problem: what to do if there are only two equal beneficiaries.[71]

One area that produced a major change during the legislative process involved the supervision of charitable trusts. Prior Georgia law provided for supervisory powers over charitable trusts by the State Revenue Commissioner.[72] The Bar Proposal[73] and the bill as introduced[74] would have deleted these sections entirely. The Revenue Commissioner objected to this diminution of his powers;[75] therefore, language was added back

63. *Id.*

64. Moss Interview, *supra* note 16.

65. *Cf.* Pinkston Interview, *supra* note 47.

66. *Id.*

67. Bar Proposal, *supra* note 4, at 18 (proposal § 53-12-173(a)): "The parties to the agreement shall be ... the trustee and all sui juris income and vested remainder beneficiaries." *Id.*

68. HB 794 (HCS), 1991 Ga. Gen. Assem.

69. O.C.G.A. § 53-12-173(a) (Supp. 1991).

70. Moss Interview, *supra* note 16.

71. *Id.*

72. 1975 Ga. Laws 1527 (formerly found at O.C.G.A. §§ 53-12-95 to -99 (1981)), and 1974 Ga. Laws 440 (formerly found at O.C.G.A. §§ 53-12-101 to -102 (1981)).

73. Bar Proposal, *supra* note 4.

74. HB 794, as introduced, 1991 Ga. Gen. Assem.

75. Pinkston Interview, *supra* note 47.

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to the bill in the House Judiciary Committee.[76] This language was almost identical to prior law,[77] and it remained in the final Act.[78]

There were a few changes made to the trust supervision powers of the Revenue Commissioner. One change to the prior law was that the misdemeanor penalty for failure to comply with the requirements of this part was removed.[79] However, courts may still use their contempt powers to compel compliance.[80]

Another change is that, for purposes of this section only, the definition of charitable trust is tied to that used in the Internal Revenue Code.[81] This has the effect of excluding from this section any public charities and including only private foundations.[82] Prior law had listed certain kinds of entities that were not subject to supervision.[83] Governmental, educational and religious organizations, hospitals, and cemeteries were generally excluded.[84] By using the Internal Revenue Code definition for private foundation, the Act narrows the scope of trusts that are subject

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76. *Id.*; HB 794 (HCS), 1991 Ga. Gen. Assem.

77. *Id. Cf.* 1975 Ga. Laws 1527.

78. O.C.G.A. § 53-12-116 (Supp. 1991).

79. 1974 Ga. Laws 440 (formerly found at O.C.G.A. § 53-12-102 (1981)).

80. O.C.G.A. § 53-12-116(g) (Supp. 1991). *Cf.* 1975 Ga. Laws 1527 (formerly found at O.C.G.A. § 53-12-95 (1981)).

81. O.C.G.A. § 53-12-116(a) (Supp. 1991); 26 U.S.C. § 509 (1990).

82. Interview with Anne Emanuel, Reporter for the Committee of the Fiduciary Law Section of the State Bar of Georgia, in Atlanta (Apr. 5, 1991) [hereinafter Second Emanuel Interview]. See John T. Baker, *Regulation of Not-For-Profit Corporations in Indiana*, 18 IND. L. REV. 777, 801 (1985), for a discussion of the distinction between private foundations and public charities as they are treated under the Internal Revenue Code.

83. 1974 Ga. Laws 440 (formerly found at O.C.G.A. § 53-12-101 (1981)):

> This part does not apply to the following entities:
> (1) The United States;
> (2) Any state, territory or possession of the United States;
> (3) The District of Columbia;
> (4) The Commonwealth of Puerto Rico;
> (5) Any of the agencies of the entities listed in paragraphs (1) through (4);
> (6) Any governmental subdivision;
> (7) Any religious corporation sole or other religious corporation or organization which holds property for religious purposes or any officer, director, or trustee thereof who holds property for like purposes;
> (8) A cemetery corporation; or
> (9) A charitable corporation organized and operated primarily as a religious organization, educational institution, or hospital.

Id.

84. *Id. See also* Corporation of Mercer Univ. v. Smith, 371 S.E.2d 858, 860-61 (Ga. 1988) (refusing to apply trust supervision provisions to a private educational institution); James C. Rehberg, *Wills, Trusts, and Administration of Estates*, 41 MERCER L. REV. 411, 421-22 (1989).

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to supervision. The Internal Revenue Code excludes trusts that receive more than one-third of their funds from public contributions.[85] Prior Georgia law did not refer to this restriction.[86] The Internal Revenue Code also lists certain specific kinds of organizations that are to be treated as private foundations.[87] Prior Georgia law applied to any trust holding more than $5,000 in property for charitable purposes.[88] A list of charitable purposes was set forth in prior law, but it was more general and less specific in nature than the list in the Internal Revenue Code.[89]

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85. 28 U.S.C. § 509(a) (1990) provides:

> (a) General rule—For purposes of this title, the term "private foundation" means a domestic or foreign organization described in section 501(c)(3) other than—(1) an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)); (2) an organization which—(A) normally receives *more than one-third of its support* in each taxable year from any combination of—(i) *gifts, grants, contributions, or membership fees*, and (ii) gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business (within the meaning of section 513), not including such receipts from any person, or from any bureau or similar agency of a governmental unit (as described in section 170(c)(1)), in any taxable year to the extent such receipts exceed the greater of $5000 or one percent of the organization's support in such taxable year, from persons other than disqualified persons (as defined in section 4946) with respect to the organization, from governmental units described in section 170(c)(1), or from organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)) . . . .

Id. (emphasis added).

86. 1974 Ga. Laws 440 (formerly found at O.C.G.A. § 53-12-91 (1981)).

87. 26 U.S.C. § 509(a) refers to 26 U.S.C. § 501(c)(3), which provides a list that follows:

> Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Id.

88. 1974 Ga. Laws 440 (formerly found at O.C.G.A. § 53-12-91 (1981)) provides:

> As used in this part, the term "trustee" means any individual, group of individuals, corporation, or other legal entity, unless excepted pursuant to Code Section 53-12-100, holding property of a value in excess of $5000 for any charitable purpose set out in Code Section 53-12-70.

Id.

89. 1933 Ga. Laws § 108-203 (formerly found at O.C.G.A. § 53-12-70 (1981)) provides:

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One final change to the Revenue Commissioner's supervisory role involved the power to write regulations. Under prior law, the Revenue Commissioner was authorized to issue regulations governing charitable trusts.[90] The Act deletes this provision, and thus removes the Revenue Commissioner's regulation-making authority.[91] The significance of this change is doubtful because the Revenue Commissioner never issued any regulations under prior law.[92]

Other than the major changes discussed above, most of HB 794 went through the General Assembly with few changes. The Act retains the language of the original Bar Proposal. The primary purpose of the legislation is to reorganize and clarify Georgia law on trusts.[93]

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> The following subjects are proper matters of charity for the jurisdiction of the superior court exercising equitable powers: (1) Relief of aged, impotent, diseased, or poor people; (2) Every educational purpose; (3) Religious instruction or worship; (4) Construction or repair of public works or highways or other public conveniences; (5) Promotion of any craft or persons engaging therein; (6) Redemption or relief of prisoners or captives; (7) Improvement or repair of cemeteries or tombstones; and (8) Other similar subjects, having for their object the relief of human suffering or the promotion of human civilization.

Id.

90. 1974 Ga. Laws 1527 (formerly found at O.C.G.A. § 53-12-99 (1981)) provides: "The state revenue commissioner is authorized to make necessary rules and regulations to carry out this part." *Id.*

91. O.C.G.A. § 53-12-116 (Supp. 1991).

92. Second Emanuel Interview, *supra* note 82.

93. Porter Interview, *supra* note 47.