

HOUSE No. 1705

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act To Protect the Intentions of Settlers or Donors of Trusts..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Notwithstanding the provisions of this section or any other general or special law to the
2 contrary, no asset of a discretionary trust created by a person related by consanguinity or affinity,
3 which has as a beneficiary a party to a divorce, shall be considered a marital asset capable of
4 division or assignment by the Court in a divorce proceeding. In the event a party who is not the
5 beneficiary of such discretionary trust has gross income less than 300% of the federal poverty
6 income level applicable to the size of that party’s family, then the income of such a discretionary
7 trust may be considered for the purpose of making an order of child support under the Child
8 Support Guidelines or for the purpose of spousal support, but only to the extent that such orders
9 may be necessary to raise the income of the non-beneficiary party to 300% of the federal poverty
10 income level applicable to the size of the party’s family. Such trust income may be taken into
11 account without regard to whether the trustee has exercised powers of discretion to make income
12 distributions. For the purposes of determining the size of the non-beneficiary party’s family for
13 the purposes of this section, said family shall include the minor children of the divorcing parties.
14 Nothing herein is meant to determine the appropriate level of support of a non-beneficiary party.

15 Any inheritance which has vested in a party after the filing of a divorce complaint, any
16 trust created for the benefit of a party after the filing of a divorce complaint, or the beneficial
17 interest of which has vested after the filing of a divorce complaint, and any gift received by a
18 party after the filing of a divorce complaint, shall not be considered marital property for the
19 purpose of the division of assets pursuant to G.L. c.208, sec.34.