

2009 SENATE JUDICIARY

SB 2073

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2073

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 26, 2009

Recorder Job Number: 7892

Committee Clerk Signature



Minutes:

**Senator Nething** opened the hearing on SB 2073, relating to payments under the uniform principal and income act.

**Judge Gail Hagerty** introduced the bill (see attached testimony #1).

The committee discussed where the language for the bill came from and how many other states have adopted this or something similar to it.

**Senator Nething** closed the hearing on SB 2073.

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2073

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/4/09

Recorder Job Number: 8637 start at 11:57

Committee Clerk Signature



Minutes: **Senator D. Nething, Chairman**

Committee work – Relating to payments under the uniform principal and income act.

**Senator Fiebiger-** Said he looked at the summary and the language and is satisfied with what it does to clarify these important technical changes related to interpretations relating to tax matters, these changes are to bring the Uniform Principal and Income act into compliance with the IRS's position to ensure trusts qualify for this marital deduction and minimize the state taxes in accordance with what the decedent is trying to do.

**Senator Fiebiger** motions do pass

**Senator Schneider** seconds

Vote- 6-0

**Senator Fiebiger** will carry



**REPORT OF STANDING COMMITTEE (410)**  
February 4, 2009 1:11 p.m.

**Module No: SR-22-1615**  
**Carrier: Fieblger**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2073: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2073 was placed on the  
Eleventh order on the calendar.

2009 HOUSE JUDICIARY

SB 2073

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2073

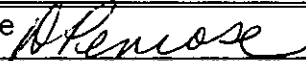
House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/3/09

Recorder Job Number: 10002, 10005

Committee Clerk Signature



Minutes:

**Chairman DeKrey:** We will open the hearing on SB 2073.

**Gail Hagerty, District Judge, South Central:** Support, explained bill (attachment).

**Chairman DeKrey:** So basically we're doing this to satisfy the IRS.

**Gail Hagerty:** Yes.

**Chairman DeKrey:** Thank you. Further testimony in support. Testimony in opposition. We will close the hearing. What are the committee's wishes in regard to SB 2073.

**Rep. Delmore:** I move a Do Pass.

**Rep. Wolf:** Second.

**11 YES 0 NO 2 ABSENT**

**DO PASS**

**CARRIER: Rep. Klemin**

Date: 3/3/09  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2073

**HOUSE JUDICIARY COMMITTEE**

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  DP  DNP  DP AS AMEND  DNP AS AMEND

Motion Made By Rep. DeImore Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. DeImore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl			Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser		
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 11 No 0

Absent 2

Floor Carrier: Rep. Klemin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)  
March 3, 2009 9:35 a.m.

Module No: HR-38-3881  
Carrier: Klemin  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**SB 2073: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS**  
(11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2073 was placed on the  
Fourteenth order on the calendar.

2009 TESTIMONY

SB 2073

In Support of SB2073  
Amendments to the  
Uniform Principal and  
Income Act

Attachment 1  
SB 2073

Uniform Principal & Income Act (2008 Amendments)

- A Summary -

Same given to  
to use

At its Annual Meeting in 2008, the Uniform Law Commission approved amendments to Sections 409 and 505 of the Uniform Principal & Income Act (UPIA), to implement technical changes related to developments and interpretations relating to tax matters. The amendments are as follows:

**Section 409:** Sometimes a person leaves his or her IRA or similar retirement plan to a trust for his or her spouse instead of to the spouse outright. This is not uncommon when the person has children by a prior marriage or has a spouse who is incapable or unwilling to manage money. Qualifying this trust for the federal estate tax marital deduction prevents estate tax from being incurred until the surviving spouse dies.

Revenue Ruling 2006-26 sets forth the Internal Revenue Service's view of when a Plan payable to a trust will qualify for the marital deduction. The spouse must have the right to require that the Plan's income be distributed to the spouse. To the extent that the Plan earns income (as defined in the UPIA), the trustee must pay to the spouse any distributions received from the Plan.

This IRS ruling directly criticizes the UPIA's formula for allocating IRA distributions between principal and income. The changes to this section are designed to bring the UPIA into compliance with the IRS' position,<sup>1</sup> to ensure that the trust qualifies for the marital deduction to minimize estate taxes in accordance with the decedent's plans. These changes also address the policies underlying the ruling that might cause concern in other situations.

**Section 505:** It is not uncommon for trusts that are required to pay income to a beneficiary to own an interest in a closely-held business ("entity"). Often, the trust needs to report its share of the entity's income, whether or not the trust actually receives all of this income. A limited liability company taxed as a partnership is a common example of such an entity.

Many such entities distribute to their owners only enough income to enable the owners to pay their tax obligations. They commonly reinvest the rest of the income in business operations. This strategy works well when the owners are individuals, but it can cause problems when the owners are mandatory income trusts, as described below.

Take, for example, a trust that has a 40% combined federal and state income tax rate and it is to be taxed on \$100 of the entity's income. The entity distributes \$40 to the trust to fund the tax obligation. If the trust is required to distribute the full \$40 to the beneficiary, the trust will be taxed on \$60 of income (\$100 minus the \$40 that was distributable to the beneficiary), but will have no money remaining to pay its taxes. The beneficiary would be liable for the taxes on the \$40 distribution.

UPIA section 505 provides a formula for calculating how much the trust needs to distribute and how much it can use to pay taxes. The existing language is ambiguous and has led to litigation. The proposed change clarifies that the trust will keep enough money to pay its taxes and distribute the balance of the income to the mandatory income beneficiary.

<sup>1</sup> The IRS would not provide an official opinion about the proposed changes until after they were adopted by the Uniform Law Commission. However, the two people who would most influence the IRS' position have informally indicated that these changes should be acceptable.



# Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws

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## Principal and Income Amendments (2008)

### Summary

The 2008 Amendments to UPIA update the act to reflect current policy of the Internal Revenue Service and to clarify technical language regarding withholdings.

### Final Act

Final Act (last revised or amended in 2008)  
 Final Act, No Comments (MS Word)  
 2008 Amendments, Approved Text

### Legislative Information Kit

Summary

### Bill Tracking

**Nebraska** : Introduced as LB 80 in 2008-09 - Banking  
**North Dakota** : Introduced as SB 2073 in 2008-09 - Passed Senate  
**Indiana** : Introduced as HB 1259 in 2008-09 - House Judiciary  
**Utah** : Introduced as SB 103 in 2008-09 - Passed Both Houses  
**Colorado** : Introduced as SB 139 in 2008-09 - Passed Senate  
**Virginia** : Introduced as HB 2435 in 2008-09 - Passed House  
**Arizona** : Introduced as HB 2334 in 2008-09 - House Rules  
**Idaho** : Introduced as HB 142 in 2008-09 - House Taxation  
**Washington** : Introduced as HB 5171 in 2008-09 - Senate 2nd Reading  
**West Virginia** : Introduced as HB 2685 in 2008-09 - House Judiciary

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