

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 1078
HOUSE BILL 133

AN ACT TO PROVIDE THAT THE SAME TYPE OF JOINT ACCOUNTS AND TRUSTS ACCOUNTS ARE AVAILABLE TO CUSTOMERS OF ALL FINANCIAL INSTITUTIONS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 12 of Chapter 53 is amended by adding three new sections thereto as follows:

"§ 53-146.1. **Joint accounts.**-(a) Any two or more persons may establish a deposit account or accounts by written contract. The deposit account and any balance thereof shall be held for them as joint tenants, with or without right of survivorship, as the contract shall provide, or may be held pursuant to G.S. 41-2.1 and have the incidents set forth in that section, provided, however, if the account is held pursuant to G.S. 41-2.1 the contract shall set forth that fact. Unless the persons establishing the account have directed that withdrawals require more than one signature, payment by the bank to, or on the order of, any persons designated in the contract authorized by this section shall be a total discharge of the bank's obligation as to the amount so paid. A pledge of such account by any owner or owners, unless otherwise specifically agreed upon, shall be a valid pledge and transfer of such account, or of the amount so pledged, and shall not operate to sever or terminate the joint ownership of all or any part of the account. Persons establishing an account under this section shall sign a statement showing their decision in regard to the right of survivorship in the account, and containing the following language in a conspicuous manner:

'BANK (or name of institution) JOINT ACCOUNT

G.S. 53-146.1

We understand that by establishing a joint account under the provisions of North Carolina General Statute 53-146.1 that:

1. The bank (or name of institution) may pay the money in the account to, or on the order of, any person named in the account unless we have directed that withdrawals require more than one signature; and
2. If we elect to create the right of survivorship in the account, that upon the death of one joint owner the money remaining in the account will belong to the surviving joint owners and will not be inherited by the heirs of the deceased joint owner or be controlled by the deceased joint owner's will.

We _____ (write in 'do' or 'do not') elect to create the right of survivorship in this account.

_____ ,
_____ ,
This section shall not be deemed exclusive. Deposit accounts not conforming to this section shall be governed by other common law provisions of the General Statutes or the common law as appropriate.

(b) Nothing herein contained shall be construed to repeal or modify any of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or provisions of laws relating to estate taxes; the provisions herein shall regulate, govern and protect the bank in its relationship with such joint owners of deposit accounts as herein provided.

(c) No addition to such deposit account, nor any withdrawal, payment or revocation shall affect the nature of the account as a joint account.

"§ 53-146.2. Trust accounts.—(a) If any person establishing a deposit account shall execute a written agreement with the bank containing a statement that it is executed pursuant to the provisions of this subsection and providing for the account to be held in the name of such person as trustee for not more than one person designated as beneficiary, the account and any balance thereof shall be held as a trust account, and:

- (1) The trustee during the trustee's lifetime may change the designated beneficiary by a written direction to the bank; and
- (2) The trustee may withdraw or receive payment in cash or check payable to the trustee's personal order, and such payment or withdrawal shall constitute a revocation of the agreement as to the amount withdrawn; and
- (3) Upon the death of the trustee, the person designated as beneficiary, if such person is living at the death of the trustee, shall be the owner of the account, and payment by the bank to such owner shall be a total discharge of the bank's obligation as to the amount paid.

The person establishing an account under this subsection shall sign a statement containing the following language in a conspicuous manner:

'BANK (or name of institution) TRUST ACCOUNT
G.S. 53-146.2

I understand that by establishing a trust account under the provisions of North Carolina General Statute 53-146.2 that:

1. During my lifetime I may withdraw the money in the account; and
2. By written direction to the bank (or name of institution) I may change the beneficiary; and
3. Upon my death the money remaining in the account will belong to the beneficiary and the money will not be inherited by my heirs or be controlled by will.

(b) Whenever the beneficiary of a trust account does not survive the trustee, then the account and any balance thereof which exists shall be owned by the trustee in the trustee's own right and for the trustee's own use and benefit.

(c) No addition to such accounts, nor any withdrawal, payment, revocation or change of beneficiary shall affect the nature of such accounts as trust accounts.

(d) Nothing herein contained shall be construed to repeal or modify any of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or provisions of laws relating to estate taxes.

"§ 53-146.3. Personal agency accounts.—(a) Any person may establish a personal agency account by written contract containing a statement that it is executed pursuant to the provisions of this section. The written contract shall name an agent who shall have authority to act on behalf of the depositor in regard to the account in the actions set out in this subsection. The agent shall have the authority to:

- (1) Make, sign or execute checks drawn on the account;
- (2) Endorse checks made payable to the principal for deposit only into the account; and
- (3) Deposit cash or negotiable instruments, including instruments endorsed by the principal, into the account.

A person establishing an account under this section shall sign a statement containing the following language in a conspicuous manner:

'BANK (or name of institution) PERSONAL AGENCY ACCOUNT
G.S. 53-146.3

I understand that by establishing a personal agency account under the provisions of North Carolina General Statute 53-146.3 that the agent named in the account may:

1. Sign checks drawn on the account; and
2. Make deposits into the account.

I also understand that upon my death the money remaining in the account will be controlled by my will or inherited by my heirs.

(b) An account created under the provisions of this section grants no ownership right or interest in the agent. Upon the death of the principal there is no right of survivorship to the account and the authority set out in subsection (a) terminates.

(c) The written contract referred to in subsection (a) shall provide that the principal may elect to extend the authority of the agent set out in subsection (a) to act on behalf of the principal in regard to the account notwithstanding the subsequent incapacity or mental incompetence of the principal. If the principal so elects to extend such authority of the agent, then upon the subsequent incapacity or mental incompetence of the principal, the agent may continue to exercise such authority, without the requirement of bond or of accounting to any court, until such time as the agent shall receive actual knowledge that such authority has been terminated by a duly qualified guardian of the estate of the incapacitated or incompetent principal or by the duly appointed attorney-in-fact for the incapacitated or incompetent principal, acting pursuant to a durable power of attorney (as defined in G.S. 32A-8) which grants to the

attorney-in-fact that authority in regard to the account which is granted to the agent by the written contract executed pursuant to the provisions of this section, at which time the agent shall account to such guardian or attorney-in-fact for all actions of the agent in regard to the account during the incapacity or incompetence of the principal. If the principal does not so elect to extend the authority of the agent, then upon the subsequent incapacity or mental incompetence of the principal, the authority of the agent set out in subsection (a) terminates.

(d) When an account under this section has been established all or part of the account or any interest or dividend thereon may be paid on a check made, signed or executed by the agent. In the absence of actual knowledge that the principal has died or that the agency created by the account has been terminated, such payment shall be a valid and sufficient discharge to the bank for payment so made."

Sec. 2. G.S. 54-109.57 is hereby rewritten to read as follows:

"§ 54-109.57. Trusts accounts.—(a) Shares may be issued to and deposits received from any person holding or opening an account who shall execute a written agreement with the credit union containing a statement that it is executed pursuant to the provisions of this subsection and providing for the account to be held in the name of such person as trustee for not more than one person designated as beneficiary, the account and any balance thereof shall be held as a trust account, and:

- (1) The trustee during the trustee's lifetime may change the designated beneficiary by a written direction to the credit union; and
- (2) The trustee may withdraw or receive payment in cash or check payable to the trustee's personal order, and such payment or withdrawal shall constitute a revocation of the agreement as to the amount withdrawn; and
- (3) Upon the death of the trustee, the person designated as beneficiary, if such person is living at the death of the trustee, shall be the holder of the account, and payment by the credit union to the holder shall be a total discharge of the credit union's obligation as to the amount paid.

The person establishing an account under this subsection shall sign a statement containing the following language in a conspicuous manner:

'CREDIT UNION (or name of institution) TRUST ACCOUNT

G.S. 54-109.57

I understand that by establishing a trust account under the provisions of North Carolina General Statute 54-109.57 that:

1. During my lifetime I may withdraw the money in the account; and
2. By written direction to the credit union (or name of institution) I may change the beneficiary; and
3. Upon my death the money remaining in the account will belong to the beneficiary, and the money will not be inherited by my heirs or be controlled by my will.

(b) Whenever the beneficiary of a trust account does not survive the trustee, then the account and any balance thereof which exists shall be held by the trustee in the trustee's own right and for the trustee's own use and benefit.

(c) No addition to such accounts, nor any withdrawal, payment, revocation or change of beneficiary shall affect the nature of such accounts as trust accounts.

(d) Nothing herein contained shall be construed to repeal or modify any of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or provisions of law relating to estate taxes."

Sec. 3. G.S. 54-109.58 is hereby rewritten to read as follows:

"§ 54-109.58. Joint accounts.—(a) Shares may be issued to and deposits received from any two or more persons opening or holding an account or accounts, but no joint tenant, unless a member in his own right, shall be permitted to vote, obtain loans, or hold office or be required to pay an entrance or membership fee. The account and any balance thereof shall be held by them as joint tenants, with or without right of survivorship, as the contract shall provide, or may be held pursuant to G.S. 41-2.1 and have the incidents set forth in that section, provided, however, if the account is held pursuant to G.S. 41-2.1 the contract shall set forth that fact. Unless the persons establishing the account have directed that withdrawals require more than one signature, payment by the credit union to, or on the order of, any persons holding an account authorized by this section shall be a total discharge of the credit union's obligations as to the amount so paid. A pledge of such account by any holder or holders shall, unless otherwise specifically agreed upon, be a valid pledge and transfer of such account, or of the amount so pledged, and shall not operate to sever or terminate the joint ownership of all or any part of the account. Persons establishing an account under this section shall sign a statement showing their decision in regard to the right of survivorship in the account, and containing the following language in a conspicuous manner:

'CREDIT UNION (or name of institution) JOINT ACCOUNT
G.S. 54-109.58

We understand that by establishing a joint account under the provisions of North Carolina General Statute 54-109.58 that:

1. The credit union (or name of institution) may pay the money in the account to, or on the order of, any person named in the account unless we have directed that withdrawals require more than one signature; and
2. If we elect to create the right of survivorship in the account, that upon the death of one joint owner the money remaining in the account will belong to the surviving joint owners and will not be inherited by the heirs of the deceased joint owner or be controlled by the deceased joint owner's will.

We _____ [write in "do" or "do not"] elect to create the right of survivorship in this account.

_____ ,

This section shall not be deemed exclusive. Deposit accounts, not conforming to this section shall be governed by other applicable provisions of the General Statutes or the common law as appropriate.

(b) Nothing herein contained shall be construed to repeal or modify any of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or provisions of laws relating to estate taxes; the provisions herein shall regulate, govern and protect the credit union in its relationship with such joint owners of accounts as herein provided.

(c) No addition to such account, nor any withdrawal, payment or revocation shall affect the nature of the account as a joint account."

Sec. 4. Article 14F of Chapter 54 of the General Statutes is hereby amended by adding a new section thereto read as follows:

"§ 54-109.63. **Personal agency accounts.**—(a) A person may open a personal agency account by written contract containing a statement that it is executed pursuant to the provisions of this section. The written contract shall name an agent who shall have authority to act on behalf of the depositor in regard to the account as set out in this subsection. The agent shall have the authority to:

- (1) Make, sign or execute checks drawn on the account;
- (2) Endorse checks made payable to the principal for deposit only into the account; and
- (3) Deposit cash or negotiable instruments, including instruments endorsed by the principal, into the account.

A person establishing an account under this section shall sign a statement containing the following language in a conspicuous manner:

'CREDIT UNION (or name of institution) PERSONAL AGENCY ACCOUNT
G.S. 54-109.63

I understand that by establishing a personal agency account under the provisions of North Carolina General Statute 54-109.63 that the agent named in the account may:

1. Sign checks drawn on the account; and
2. Make deposits into the account.

I also understand that upon my death the money remaining in the account will be controlled by my will or inherited by my heirs.

(b) An account created under the provisions of this section grants no ownership right or interest in the agent. Upon the death of the principal there is no right of survivorship to the account and the authority set out in subsection (a) terminates.

(c) The written contract referred to in subsection (a) shall provide that the principal may elect to extend the authority of the agent set out in subsection (a) to act on behalf of the principal in regard to the account notwithstanding the subsequent incapacity or mental incompetence of the principal. If the principal so elects to extend such authority of the agent, then upon the subsequent incapacity or mental incompetence of the principal, the agent may continue to exercise such authority, without the requirement of bond or of accounting to any court, until such time as the

agent shall receive actual knowledge that such authority has been terminated by a duly qualified guardian of the estate of the incapacitated or incompetent principal or by the duly appointed attorney-in-fact for the incapacitated or incompetent principal, acting pursuant to a durable power of attorney (as defined in G.S. 32A-8) which grants to the attorney-in-fact that authority in regard to the account which is granted to the agent by the written contract executed pursuant to the provisions of this section, at which time the agent shall account to such guardian or attorney-in-fact for all actions of the agent in regard to the account during the incapacity or incompetence of the principal. If the principal does not so elect to extend the authority of the agent, then upon the subsequent incapacity or mental incompetence of the principal, the authority of the agent set out in subsection (a) terminates.

(d) When an account under this section has been established all or part of the account or any interest or dividend thereon may be paid by the credit union on a check made, signed or executed by the agent. In the absence of actual knowledge that the principal has died or that the agency created by the account has been terminated, such payment shall be a valid and sufficient discharge to the credit union for payment so made.

(e) An account established under the provisions of this section does not grant to the agent the authority to vote, obtain loans, or hold office and the agent shall not be required to pay an entrance or membership fee."

Sec. 5. G.S. 54B-129(a) and (b) are rewritten to read as follows:

"(a) Any two or more persons may open or hold a withdrawable account or accounts. The withdrawable account and any balance thereof shall be held by them as joint tenants, with or without right of survivorship, as the contract shall provide, or may be held pursuant to G.S. 41-2.1 and have incidents set forth in that section, provided, however, if the account is held pursuant to G.S. 41-2.1 the contract shall set forth that fact. Unless the persons establishing the account have directed that withdrawals require more than one signature, payment by the association to, or on the order of, any persons holding an account authorized by this section shall be a total discharge of the association's obligation as to the amount so paid. A pledge of such account by any holder or holders shall, unless otherwise specifically agreed upon, be a valid pledge and transfer of such account, or of the amount so pledged, and shall not operate to sever or terminate the joint ownership of all or any part of the account. Persons establishing an account under this section shall sign a statement showing their decision in regard to the right of survivorship in the account, and containing the following language in a conspicuous manner:

'SAVINGS AND LOAN (or name of institution) JOINT ACCOUNT

G.S. 54B-129

We understand that by establishing a joint account under the provisions of North Carolina General Statute 54B-129 that:

1. The savings and loan association (or name of institution) may pay the money in the account to, or on the order of, any person named in the account unless we have directed that withdrawals require more than one signature; and

2. If we elect to create the right of survivorship in the account, that upon the death of one joint owner the money remaining in the account will belong to the surviving joint owners and will not be inherited by the heirs of the deceased joint owner or be controlled by the deceased joint owner's will.

We _____ [write in "do" or "do not"] elect to create the right of survivorship in this account.

_____ ,

This section shall not be deemed exclusive. Deposit accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes or the common law as appropriate.

(b) Nothing herein contained shall be construed to repeal or modify any of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or provisions of law relating to estate taxes; the provisions herein shall regulate, govern and protect the association in its relationships with such joint owners of deposit accounts as herein provided."

Sec. 6. G.S. 54B-130 is rewritten to read as follows:

"(a) If any person holding or opening a withdrawable account shall execute a written agreement with the association containing a statement that it is executed pursuant to the provisions of this subsection and providing for the account to be held in the name of such person as trustee for not more than one person designated as beneficiary, the account and any balance thereof shall be held as a trust account and:

- (1) The trustee during the trustee's lifetime may change the designated beneficiary by a written direction to the association; and
- (2) The trustee may withdraw or receive payment in cash or check payable to the trustee's personal order, and such payment or withdrawal shall constitute a revocation of the agreement as to the amount withdrawn; and
- (3) Upon the death of the trustee, the person designated as beneficiary, if such person is living at the death of the trustee, shall be the holder of the account, and payment by the association to the holder shall be a total discharge of the association's obligation as to the amount paid.

The person establishing an account under this subsection shall sign a statement containing the following language in a conspicuous manner:

'SAVINGS AND LOAN (or name of institution) TRUST ACCOUNT
G.S. 54B-130(a)

I understand that by establishing a trust account under the provisions of North Carolina General Statute 54B-130(a) that:

1. During my lifetime I may withdraw the money in the account; and
2. By written direction to the savings and loan association (or name of institution) I may change the beneficiary; and

3. Upon my death the money remaining in the account will belong to the beneficiary, and the money will not be inherited by my heirs or be controlled by my will.

(b) Whenever the beneficiary of a trust account does not survive the trustee then the account and any balance thereof which exists shall be held by the trustee in the trustee's own right and for the trustee's own use and benefit.

(c) No addition to such accounts, nor any withdrawal, payment, revocation or change of beneficiary shall affect the nature of such accounts as trust accounts.

(d) Nothing herein contained shall be construed to repeal or modify any of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or provisions of laws relating to estate taxes."

Sec. 7. Article 6 of Chapter 54B of the General Statutes is hereby amended by adding a new section thereto to read as follows:

"§ 54B-139. Personal agency accounts.—(a) A person may open a personal agency account by written contract containing a statement that it is executed pursuant to the provisions of this section. The written contract shall name an agent who shall have authority to act on behalf of the depositor in regard to the account as set out in this subsection. The agent shall have the authority to:

- (1) Make, sign or execute checks drawn on the account;
- (2) Endorse checks made payable to the principal for deposit only into the account; and
- (3) Deposit cash or negotiable instruments, including instruments endorsed by the principal, into the account.

A person establishing an account under this section shall sign a statement containing the following language in a conspicuous manner:

'SAVINGS AND LOAN (or name of institution)
PERSONAL AGENCY ACCOUNT
G.S. 54B-139

I understand that by establishing a personal agency account under the provisions of North Carolina General Statute 54B-139 that the agent named in the account may:

1. Sign checks drawn on the account; and
2. Make deposits into the account.

I also understand that upon my death the money remaining in the account will be controlled by my will or inherited by my heirs.

(b) An account created under the provisions of this section grants no ownership right or interest in the agent. Upon the death of the principal there is no right of survivorship to the account and the authority set out in subsection (a) terminates.

(c) The written contract referred to in subsection (a) shall provide that the principal may elect to extend the authority of the agent set out in subsection (a) to act on behalf of the principal in regard to the account notwithstanding the subsequent

incapacity or mental incompetence of the principal. If the principal so elects to extend such authority of the agent, then upon the subsequent incapacity or mental incompetence of the principal, the agent may continue to exercise such authority, without the requirement of bond or of accounting to any court, until such time as the agent shall receive actual knowledge that such authority has been terminated by a duly qualified guardian of the estate of the incapacitated or incompetent principal or by the duly appointed attorney-in-fact for the incapacitated or incompetent principal, acting pursuant to a durable power of attorney (as defined in G.S. 32A-8) which grants to the attorney-in-fact that authority in regard to the account which is granted to the agent by the written contract executed pursuant to the provisions of this section, at which time the agent shall account to such guardian or attorney-in-fact for all actions of the agent in regard to the account during the incapacity or incompetence of the principal. If the principal does not so elect to extend the authority of the agent, then upon the subsequent incapacity or mental incompetence of the principal, the authority of the agent set out in subsection (a) terminates.

(d) When an account under this section has been established all or part of the account or any interest or dividend thereon may be paid by the association on a check made, signed or executed by the agent. In the absence of actual knowledge that the principal has died or that the agency created by the account has been terminated, such payment shall be a valid and sufficient discharge to the association for payment so made."

Sec. 8. Chapter 36A of the General Statutes is hereby amended by adding a new Article thereto to read as follows:

"Article 10

"Trusts Accounts in Financial Institutions

"§ 36A-120. **Discretionary Revocable trust accounts in financial institution.**—Trusts created under the provisions of G.S. 53-146.2, G.S. 54-109.57 or G.S. 54B-129 are governed by the provisions of those statutes."

Sec. 9. All accounts opened pursuant to any statute amended by this act before the effective date of this act shall continue to be governed by the provisions of those statutes as they read prior to the effective date of this act.

Sec. 10. This act shall become effective July 1, 1989.

In the General Assembly read three times and ratified this the 8th day of July, 1988.