

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 395
Judiciary I Committee Substitute Adopted 4/23/91

Short Title: Termination of Small Trusts.

(Public)

Sponsors:

Referred to:

April 1, 1991

A BILL TO BE ENTITLED
AN ACT TO PROVIDE FOR THE TERMINATION OF INEFFICIENT SMALL
TRUSTS AS RECOMMENDED BY THE GENERAL STATUTES
COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 36A of the General Statutes is hereby amended by
inserting the following new Article:

"ARTICLE 11.

"TERMINATION OF SMALL TRUSTS.

"§ 36A-125. Termination of small trusts.

(a) If at any time the trustee of a noncharitable irrevocable trust determines in good faith that the value of the assets held in trust is ten thousand dollars (\$10,000) or less, and the continuance of the trust pursuant to its terms in relation to the cost of its administration would defeat or substantially impair the accomplishment of the purposes of the trust, the trustee, without approval of the court, may, but is not required to, terminate the trust and distribute the trust property, including principal and undistributed income, to the beneficiaries in a manner which conforms as nearly as possible to the intention of the settlor as determined by the trustee from the trust agreement; provided, however, that the trust property, including principal and undistributed income, shall be distributed to the income beneficiary of the trust if the trust otherwise qualifies for the marital deduction for federal estate tax or North Carolina inheritance tax purposes, or is a Qualified Subchapter S Trust as defined in the Internal Revenue Code. The trustee may enter into an agreement or make such other provisions that the trustee deems

1 necessary or appropriate to protect the interests of the beneficiaries and to carry out the
2 intent and purpose of the trust.

3 (b) Any trust property becoming distributable under subsection (a) of this section
4 to a minor or incompetent beneficiary may be distributed:

5 (1) To the guardian of the estate or general guardian of such beneficiary;
6 or

7 (2) In accordance with the North Carolina Uniform Transfers to Minors
8 Act, Chapter 33A of the General Statutes.

9 The trustee shall be under no duty to see to the application of the payment if the
10 trustee exercised due care in the selection of the person to whom such payment was
11 made. The receipt of such person shall be full acquittance to the trustee to the extent of
12 such payment.

13 (c) The trustee shall not be liable for such termination and distribution,
14 notwithstanding the existence or potential existence of other beneficiaries who are not
15 in esse or not determined until the happening of a future event. Any beneficiary
16 receiving a distribution from a trust terminated under this section shall incur no liability
17 and shall not be required to account to anyone for such distribution.

18 (d) The provisions of this section shall not apply where the instrument creating
19 the trust, by specific reference to this section, provides that it shall not apply.

20 (e) This section applies to trusts created prior to the effective date of this act
21 unless the trust agreement contains spendthrift or similar protective provisions,
22 including provisions described in G.S. 36A-115(b)(3). This section also applies to
23 trusts created on or after the effective date of this act notwithstanding the existence of
24 spendthrift or similar protective provisions, including provisions described in G.S. 36A-
25 115(b)(3), in the trust agreement."

26 Sec. 2. In the event that the 1991 General Assembly enacts the "North
27 Carolina Uniform Custodial Trust Act", G.S. 36A-125(b), as enacted by this act, is
28 rewritten to read:

29 "(b) Any trust property becoming distributable under subsection (a) of this section
30 to a minor or incompetent beneficiary may be distributed:

31 (1) To the guardian of the estate or general guardian of such beneficiary;

32 (2) In accordance with the North Carolina Uniform Transfers to Minors
33 Act, Chapter 33A of the General Statutes; or

34 (3) In accordance with the North Carolina Uniform Custodial Trust Act,
35 Chapter 33B of the General Statutes.

36 The trustee shall be under no duty to see to the application of the payment if the
37 trustee exercised due care in the selection of the person to whom such payment was
38 made. The receipt of such person shall be full acquittance to the trustee to the extent of
39 such payment."

40 Sec. 3. This act becomes effective October 1, 1991.