

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 85
House Committee Substitute Favorable 5/31/95

Short Title: Honorary/Pet/Cemetery Trusts.

(Public)

Sponsors:

Referred to:

January 30, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE HONORARY TRUSTS, TRUSTS FOR PETS, AND
3 TRUSTS FOR CEMETERY LOTS, AS RECOMMENDED BY THE GENERAL
4 STATUTES COMMISSION.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 36A of the General Statutes is amended by adding a new
7 Article to read:

8 **"ARTICLE 14.**

9 **"HONORARY TRUSTS; TRUSTS FOR PETS;
10 TRUSTS FOR CEMETERY LOTS.**

11 **"§ 36A-145. Honorary trusts.**

12 Except as otherwise provided in this Article, a trust (i) for a noncharitable
13 corporation or unincorporated society or (ii) for a lawful noncharitable purpose may be
14 performed by the trustee for 21 years but no longer, whether or not there is a beneficiary
15 who can seek the trust's enforcement or termination and whether or not the terms of the
16 trust contemplate a longer duration.

17 **"§ 36A-146. Trusts for cemetery lots.**

18 A trust, contract, or other arrangement to provide for the care of a cemetery lot, grave,
19 crypt, niche, mausoleum, columbarium, grave marker, or monument is valid without

1 regard to remoteness of vesting, duration of the arrangement, or lack of definite
2 beneficiaries to enforce the trust, provided that the trust, contract, or other arrangement
3 meets the requirements of G.S. 28A-19-10, Article 4 of Chapter 65 of the General
4 Statutes, Article 9 of Chapter 65 of the General Statutes, or other applicable law. This
5 section does not revoke, repeal, supersede, or diminish G.S. 36A-49.

6 **"§ 36A-147. Trusts for pets.**

7 (a) Subject to the provisions of this section, a trust for the care of one or more
8 designated domestic or pet animals alive at the time of creation of the trust is valid.

9 (b) Except as expressly provided otherwise in the trust instrument, no portion of
10 the principal or income may be converted to the use of the trustee or to any use other than
11 for the benefit of the designated animal or animals.

12 (c) The trust terminates at the death of the animal or last surviving animal. Upon
13 termination, the trustee shall transfer the unexpended trust property in the following
14 order:

15 (1) As directed in the trust instrument;

16 (2) If the trust was created in a preresiduary clause in the transferor's will or
17 in a codicil to the transferor's will, under the residuary clause in the
18 transferor's will;

19 (3) If no taker is produced by the application of subdivision (1) or (2) of
20 this subsection, to the transferor or the transferor's heirs determined as
21 of the date of the transferor's death under Chapter 29 of the General
22 Statutes.

23 (d) The intended use of the principal or income can be enforced by an individual
24 designated for that purpose in the trust instrument or, if none, by an individual appointed
25 by the clerk of superior court having jurisdiction over the decedent's estate upon
26 application to the clerk by an individual.

27 (e) Except as ordered by the clerk or required by the trust instrument, no filing,
28 report, registration, periodic accounting, separate maintenance of funds, appointment,
29 bond, or fee is required by reason of the existence of the fiduciary relationship of the
30 trustee.

31 (f) A governing instrument shall be liberally construed to bring the transfer within this
32 section, to presume against the merely precatory or honorary nature of the disposition,
33 and to carry out the general intent of the transferor. Extrinsic evidence shall be
34 admissible in determining the transferor's intent.

35 (g) The clerk may reduce the amount of the property transferred, if the clerk
36 determines that the amount substantially exceeds the amount required for the intended
37 use. The amount of the reduction, if any, passes as unexpended trust property under
38 subsection (c) of this section.

39 (h) If no trustee is designated or if no designated trustee agrees to serve or is able
40 to serve, the clerk shall name a trustee. The clerk may order the transfer of the property
41 to another trustee, if required to assure that the intended use is carried out and if no
42 successor trustee is designated in the trust instrument or if no designated successor trustee
43 agrees to serve or is able to serve. The clerk may also make such other orders and

1 determinations as shall be advisable to carry out the intent of the transferor and the
2 purpose of this section.

3 **"§ 36A-148. Termination of small trusts.**

4 Notwithstanding any other provision of this Article, a trust created under this Article
5 shall terminate upon the balance of the trust corpus falling below the sum of one hundred
6 dollars (\$100.00), at which time the remaining balance shall be disbursed as provided in
7 G.S. 36A-147(c)."

8 Sec. 2. G.S. 65-9 reads as rewritten:

9 **"§ 65-9. Funds to be kept perpetually.**

10 All money placed in the office of the superior court clerk in accordance with this
11 Article shall be held perpetually, ~~and~~ or until such time as the balance of the trust corpus
12 falls below one hundred dollars (\$100.00), at which time the trust shall terminate and the
13 clerk shall disburse the remaining balance as provided in G.S. 36A-147(c). Except as
14 otherwise provided herein, no one shall have authority to withdraw or change the
15 direction of the income on same."

16 Sec. 3. The Revisor of Statutes shall cause to be printed along with this act all
17 explanatory comments of the drafters of this act as the Revisor may deem appropriate.

18 Sec. 4. This act becomes effective October 1, 1995. Section 1 of this act
19 applies to trusts created on or after that date. Section 2 of this act applies to all cemetery
20 trusts in existence before or created on or after that date.