

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1000

Short Title: Life Plan Trust Act.

(Public)

Sponsors: Representatives Holt; and Colton.

Referred to: Judiciary I.

April 19, 1991

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA COMMUNITY TRUST FOR
PERSONS WITH SEVERE CHRONIC DISABILITIES.

The General Assembly of North Carolina enacts:

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

"ARTICLE 4B.

"NORTH CAROLINA COMMUNITY TRUST ACT.

**"§ 36A-59.10. North Carolina Community Trust for Persons with Severe Chronic
Disabilities; findings.**

(a) This act shall be known and may be cited as the 'North Carolina Community
Trust for Persons with Severe Chronic Disabilities Act'.

(b) The General Assembly finds that it is in the public interest to encourage
activities by voluntary associations and private citizens which will supplement and
augment those services provided by local, State, and federal government agencies in
discharge of their responsibilities toward individuals with severe chronic disabilities.
The General Assembly further finds that, as a result of changing social, economic, and
demographic trends, families of persons with severe chronic disabilities are increasingly
aware of the need for a vehicle by which they can assure ongoing individualized
personal concern for a severely disabled family member who may survive his parents or
other family members, and provide for the efficient management of small legacies or
trust funds to be used for the benefit of such a disabled person. In a number of other
states voluntary associations have established foundations or trusts intended to be
responsive to these concerns. Therefore, the General Assembly finds that North

1 Carolina will benefit by the enactment of enabling legislation expressly authorizing the
2 formation of community trusts in accordance with criteria set forth by statute and
3 administered by the Secretary of State, pursuant to Chapter 55A of the General Statutes.
4 These community trusts permit the pooling of resources contributed by families or
5 persons with philanthropic intent, along with the reservation of portions of these funds
6 for the use and benefit of designated beneficiaries.

7 (c) This act shall be liberally construed and applied to promote its underlying
8 purposes and policies, which are, among others, to:

9 (1) Encourage the orderly establishment of community trusts for the
10 benefit of persons with severe chronic disabilities;

11 (2) Ensure that community trusts are administered properly and that the
12 managing boards of the trusts are free from conflicts of interest;

13 (3) Facilitate sound administration of trust funds for persons with severe
14 chronic disabilities by allowing family members and others to pool
15 resources in order to make professional management investment more
16 efficient;

17 (4) Provide parents of persons with severe chronic disabilities peace of
18 mind in knowing that a means exists to ensure that the interests of their
19 children who have severe chronic disabilities are properly looked after
20 and managed after the parents die or become incapacitated;

21 (5) Help make guardians available for persons with severe chronic
22 disabilities who are incompetent, when no other family member is
23 available for this purpose;

24 (6) Encourage the availability of private resources to purchase for persons
25 with severe chronic disabilities goods and services that are not
26 available through any governmental or charitable program and to
27 conserve these resources by limiting purchases to those which are not
28 available from other sources;

29 (7) Encourage the inclusion, as beneficiaries of community trusts, of
30 persons who lack resources and whose families are indigent, in a way
31 that does not diminish the resources available to other beneficiaries
32 whose families have contributed to the trust; and

33 (8) Remove the disincentives that discourage parents and others from
34 setting aside funds for the future protection of persons with severe
35 chronic disabilities by ensuring that the interest of beneficiaries in
36 community trusts are not considered assets or income that would
37 disqualify them from any governmental or charitable entitlement
38 program with an economic means test.

39 **§ 36A-59.11. Definitions.**

40 As used in this Article, unless the context clearly requires otherwise:

41 (1) 'Beneficiary' means any person with a severe chronic disability who
42 has qualified as a member of the community trust program and who
43 has the right to receive those services and benefits vested with the
44 management of the business and affairs of a corporation, formed for

1 the purpose of managing a community trust, irrespective of the name
2 by which the group is designated.

3 (2) 'Community Trust' means a nonprofit organization that offers the
4 following services:

5 a. Administration of special trust funds for persons with severe
6 chronic disabilities;

7 b. Follow along services;

8 c. Guardianship for persons with severe chronic disabilities who
9 are incompetent, when no other family member or immediate
10 friend is available for this purpose; and

11 d. Advice and counsel to persons who have been appointed as
12 individual guardians of the persons or estates of persons with
13 severe chronic disabilities.

14 (3) 'Follow along services' means those services offered by community
15 trusts that are designed to ensure that the needs of each beneficiary are
16 being met for as long as may be required and may include periodic
17 visits to the beneficiary and to the places where the beneficiary
18 receives services, participation in the development of individualized
19 plans being made by service providers for the beneficiary, and other
20 similar services consistent with the purposes of this act.

21 (4) 'Severe chronic disability' means a physical or mental impairment that
22 is expected to give rise to a long-term need for specialized health,
23 social, and other services, and which makes the person with such a
24 disability dependent upon others for assistance to secure these
25 services.

26 (5) 'Trustee' means any member of the board of a corporation, formed for
27 the purpose of managing a community trust, whether that member is
28 designated as a trustee, director, manager, governor, or by any other
29 title.

30 (6) 'Surplus trust funds' means funds accumulated in the trust from
31 contributions made on behalf of an individual beneficiary which, after
32 the death of the beneficiary, are determined by the board to be in
33 excess of the actual cost of providing services during the beneficiary's
34 lifetime, including the beneficiary's share of administrative costs.

35 **"§ 36A-59.12. Scope.**

36 This Article shall apply to every community trust established in this State after the
37 effective date of this act. In addition to meeting the other requirements of the act, every
38 board which administers a community trust shall incorporate as a nonprofit corporation
39 pursuant to Chapter 55A of the General Statutes. Except as otherwise provided herein,
40 the provisions of Chapter 55A of the General Statutes shall apply to the community
41 trusts.

42 **"§ 36A-59.13. Administration; powers and duties.**

43 (a) Every community trust shall be administered by a board. The board shall be
44 comprised of no less than nine and no more than 21 members, at least one-third of

1 whom shall be parents or relatives of persons with severe chronic disabilities. No board
2 member shall be a provider of habilitative, health, social, or educational services to
3 persons with severe chronic disabilities or an employee of such a service provider. The
4 board may, however, allow service providers to serve on the board in an advisory
5 capacity. Board members shall be selected, to the maximum extent possible, from
6 geographic areas throughout the area served by the trust.

7 The certificate of incorporation filed with the Secretary of State pursuant to Chapter
8 55A of the General Statutes shall, in addition to the requirements set forth in that Title,
9 demonstrate that the requirements of this section have been met.

10 (b) Notwithstanding any other provision of law to the contrary, no trustee may be
11 compensated for services provided as a member of the board of a community trust. No
12 fees or commissions shall be paid to these trustees; however, a trustee may be paid for
13 necessary expenses incurred by the trustee and may receive indemnification as
14 permitted under Chapter 55A of the General Statutes.

15 (c) The board shall adopt bylaws that shall include a declaration delineating the
16 primary geographic area serviced by the trust and the principal services to be provided
17 and shall file the bylaws with the Secretary of State.

18 (d) The board may retain paid staff as it considers necessary to provide follow
19 along services to the extent required by each beneficiary. The board may authorize the
20 expenditure of funds for any goods or services which, in its sole discretion, it
21 determines will promote the well-being of any beneficiary, including recreational
22 services. The board may pay for the burial of any beneficiary. The board, however,
23 may not expend funds for any goods or services of comparable quality to those available
24 to any particular beneficiary through any governmental or charitable program,
25 insurance, or other sources. The board may expend funds to meet the reasonable costs
26 of administering the community trust.

27 (e) The board is not required to provide services to a beneficiary who is a
28 competent adult and who has refused to accept the services. Further, the board shall not
29 provide services of a nature or in a manner that would be contrary to the public policy
30 of this State at the time the services are to be provided. In either case, the board may
31 offer alternate services that are consistent with the purposes of this act and in keeping
32 with the best interests of the beneficiary.

33 (f) The board may accept appointment as guardian of the person, guardian of the
34 estate or guardian of both on behalf of any beneficiary. If the board accepts
35 appointment as guardian of the person of an individual, it shall assign a staff member to
36 carry out its responsibilities as the guardian. The board may, on request, offer
37 consultative and professional assistance to an individual, private or public guardian of
38 any of its beneficiaries.

39 (g) The board may accept contributions, bequests, and designations under life
40 insurance policies to the community trust on behalf of individuals with severe chronic
41 disabilities for the purpose of qualifying them as beneficiaries.

42 (h) At the time a contribution, bequest, or assignment of insurance proceeds is
43 made, the trustor shall receive a written statement of the services to be provided to the
44 beneficiary. The statement shall include a starting date for the delivery of services or

1 the condition precedent, such as the death of the trustor, which shall determine the
2 starting date. The statement shall describe the frequency with which services shall be
3 provided and their duration, and the criteria or procedures for modifying the program of
4 services from time to time in the best interests of the beneficiary.

5 **"§ 36A-59.14. Accountability.**

6 Along with the annual report filed with the Secretary of State pursuant to Title 15A
7 of the New Jersey Statutes, the board shall file an itemized statement which shows the
8 funds collected for the year, income earned, salaries, other expenses incurred, and the
9 opening and final trust balances. A copy of this statement shall be made available, upon
10 request, to any beneficiary, trustor, or designee of the trustor. In addition, once
11 annually, each trustor or the trustor's designee shall receive a detailed individual
12 statement of the services provided to the trustor's beneficiary during the previous 12
13 months and the services to be provided during the following 12 months. The board
14 shall make a copy of the individual statement available to any beneficiary, upon request.

15 **"§ 36A-59.15. Gifts, surplus trust funds.**

16 The board may accept gifts and use surplus trust funds for the purpose of qualifying
17 as beneficiaries any indigent person whose family members lack the resources to make
18 a full contribution on that person's behalf. The extent and character of the services and
19 selection of beneficiaries are at the discretion of the board. The board may not use
20 surplus trust funds to make any charitable contribution on behalf of any beneficiary or
21 any group or class of beneficiaries. The board may accept gifts to meet start-up costs,
22 reduce the charges to the trust for the cost of administration, and for any other purpose
23 that is consistent with this act. Gifts made to the trust for an unspecified purpose shall
24 be used by the board either to qualify indigent persons whose families lack the means to
25 qualify them as beneficiaries of the trust or to meet any start-up costs that the trust
26 incurs.

27 **"§ 36A-59.16. Special requests on behalf of beneficiary.**

28 The board may agree to fulfill any special requests made on behalf of a beneficiary
29 as long as the requests are consistent with this Article and provided an adequate
30 contribution has been made for this purpose on behalf of a beneficiary. The board may
31 agree to serve as trustee for any individual trust created on behalf of a beneficiary,
32 regardless of whether the trust is revocable or irrevocable, has one or more
33 remaindermen or contingent beneficiaries, or any other condition, so long as the
34 individual trust is consistent with the purposes of this Article.

35 **"§ 36A-59.17. Irrevocability; impossibility of fulfillment.**

36 A community trust for persons with severe chronic disabilities is irrevocable, but the
37 trustees in their sole discretion may provide compensation for any contribution to the
38 trust to any trustor who, upon good cause, withdraws a beneficiary designated by the
39 trustor from the trust, or if it becomes impossible to fulfill the conditions of the trust
40 with regard to an individual beneficiary for reasons other than the death of the
41 beneficiary.

42 **"§ 36A-59.18. Beneficiary's interest in trust not asset for income eligibility**
43 **determination.**

1 Notwithstanding any provisions of Chapter 108A of the General Statutes, the
2 beneficiary's interest in any community trust shall not be deemed to be an asset for the
3 purpose of determining income eligibility for any publicly operated program, nor shall
4 that interest be reached in satisfaction of a claim for support and maintenance of the
5 beneficiary. No agency shall reduce the benefits of services available to any individual
6 because that person is the beneficiary of a community trust.

7 **"§ 36A-59.19. Trust not subject to law against perpetuities, restraints on**
8 **alienation.**

9 A community trust shall not be subject to or held to be in violation of any principle
10 of law against perpetuities or restraints on alienation or perpetual accumulations of
11 trusts.

12 **"§ 36A-59.20. Settlement; trustee limitations.**

13 The board shall settle a community trust by filing a final accounting in the superior
14 court. In addition, at any time prior to the settlement of the final account, the board, the
15 Secretary of State, or the Attorney General may bring an action for the dissolution of a
16 nonprofit corporation in the superior court for the purpose of terminating the trust or
17 merging it with another charitable trust.

18 No trustee or any private individual shall be entitled to share in the distribution of
19 any of the trust assets upon dissolution, merger, or settlement of the community trust.
20 Upon dissolution, merger, or settlement, the superior court shall distribute all of the
21 remaining net assets of the community trust in a manner that is consistent with the
22 purposes of this Article."

23 Sec. 2. This act is effective upon ratification.