

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 395

Short Title: Termination of Small Trusts.

(Public)

Sponsors: Senators Hartsell; and Soles.

Referred to: Judiciary I.

April 1, 1991

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

5 The General Assembly of North Carolina enacts:

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

8 **"ARTICLE 11.**

9 **"TERMINATION OF SMALL TRUSTS.**

10 **"§ 36A-120. Termination of small trusts.**

11 (a) If at any time the trustee of a noncharitable irrevocable trust determines in
12 good faith that the value of the assets held in trust is twenty thousand dollars (\$20,000)
13 or less, and the continuance of the trust pursuant to its terms in relation to the cost of its
14 administration would defeat or substantially impair the accomplishment of the purposes
15 of the trust, the trustee, without approval of the court, may, but is not required to,
16 terminate the trust and distribute the trust property, including principal and undistributed
17 income, to the beneficiaries in a manner which conforms as nearly as possible to the
18 intention of the settlor as determined by the trustee from the trust agreement; provided,
19 however, that the trust property, including principal and undistributed income, shall be
20 distributed to the income beneficiary of the trust if the trust otherwise qualifies for the
21 marital deduction for federal estate tax or North Carolina inheritance tax purposes, or is
22 a Qualified Subchapter S Trust as defined in the Internal Revenue Code. The trustee
23 may enter into such an agreement or make such other provisions that the trustee deems
24 necessary or appropriate to protect the interests of the beneficiaries and to carry out the

1 intent and purpose of the trust. A trustee may exercise authority under this section
2 notwithstanding the existence of spendthrift or similar protective provisions in the trust
3 agreement.

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

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

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

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

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

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

21 Sec. 2. In the event that the 1991 General Assembly enacts the "North
22 Carolina Uniform Custodial Trust Act", G.S. 36A-120(b), as enacted by this act, is
23 rewritten to read:

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

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

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

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

31 The trustee shall be under no duty to see to the application of the payment if the
32 trustee exercised due care in the selection of the person to whom such payment was
33 made. The receipt of such person shall be full acquittance to the trustee to the extent of
34 such payment."

35 Sec. 3. This act becomes effective October 1, 1991, and applies to trusts in
36 existence or created on or after that date.