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SENATE BILL 1003

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Short Title: Gifts by Guardians.

(Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATUTES REGULATING THE ABILITY OF GUARDIANS TO MAKE GIFTS FROM INCOMPETENT WARDS' ESTATES UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 35A-1335 reads as rewritten:

"§ 35A-1335. Gifts authorized with approval of judge of superior court.

With the approval of the resident judge of the superior court of the district in which the guardian ~~he~~ was appointed, upon a duly verified petition the guardian ~~or trustee~~ of a person judicially declared to be incompetent may, from the income of the incompetent, make gifts to the State of North Carolina, its agencies, counties or municipalities, or to the United States or its agencies or instrumentalities, or for religious, charitable, literary, scientific, historical, medical or educational ~~purposes.~~ purposes, or to individuals including the guardian. References in this Article to the 'guardian' include any Trustee appointed by the court under prior law as fiduciary for the incompetent ward's estate."

Section 2. G.S. 35A-1336 reads as rewritten:

1 **"§ 35A-1336. Prerequisites to approval by judge. judge of gifts for governmental or**  
2 **charitable purposes.**

3 The judge shall not approve ~~such~~ gifts from income for governmental or charitable  
4 purposes unless it appears to his ~~the judge's~~ satisfaction that all of the following apply:

- 5 (1) After ~~the making of such~~ the gifts and the payment of federal and State  
6 income taxes, the remaining income of the incompetent will be  
7 reasonable and adequate to provide for the support, maintenance,  
8 comfort and welfare of the incompetent and those legally entitled to  
9 support from the incompetent in order to maintain the incompetent and  
10 ~~such~~ those dependents in the manner to which the incompetent and ~~such~~  
11 those dependents are accustomed and in keeping with their station in life  
12 (and in no event less than twice the average, for the five calendar years  
13 preceding the calendar year of such gifts, of expenditures for the  
14 incompetent's support, maintenance, comfort and welfare); life.
- 15 (2) Each donee is a donee to which a competent donor could make a gift,  
16 without limit as to amount, without incurring federal or State gift tax  
17 ~~liability;~~ liability.
- 18 (3) Each donee is a donee qualified to receive tax deductible gifts under  
19 federal and State income tax ~~laws;~~ laws.
- 20 (4) The aggregate of ~~such~~ the gifts does not exceed the percentage of  
21 income fixed by federal law as the maximum deduction allowable for  
22 ~~such~~ the gifts in computing federal income tax liability."

23 Section 3. Chapter 35A of the General Statutes is amended by adding a new  
24 section to read:

25 **"§ 35A-1336.1. Prerequisites to approval by judge of gifts to individuals.**

26 The judge shall not approve gifts from income to individuals unless it appears to the  
27 judge's satisfaction that both the following requirements are met:

- 28 (1) After making the gifts and paying federal and State income taxes, the  
29 remaining income of the incompetent will be reasonable and adequate to  
30 provide for the support, maintenance, comfort, and welfare of the  
31 incompetent and those legally entitled to support from the incompetent  
32 in order to maintain the incompetent and those dependents in the  
33 manner to which the incompetent and those dependents are accustomed  
34 and in keeping with their station in life;
- 35 (2) The judge determines that either:
- 36 a. The incompetent, prior to being declared incompetent, executed a  
37 paper-writing with the formalities required by the laws of North  
38 Carolina for the execution of a valid will, including a paper-  
39 writing naming as beneficiary a revocable trust created by the  
40 incompetent, and each donee is entitled to one or more specific  
41 legacies, bequests, devises, or distributions of specific amounts  
42 of money, income, or property under the paper-writing or the  
43 revocable trust or both or is a residuary legatee, devisee, or

1 beneficiary designated in the paper-writing or revocable trust or  
2 both; or

3 b. That so far as is known the incompetent has not, prior to being  
4 declared incompetent, executed a will which could be probated  
5 upon the death of the incompetent, and each donee is a person  
6 who would share in the incompetent's estate, if the incompetent  
7 died contemporaneously with the signing of the order of the  
8 approval of the gifts; or

9 c. The donee is the spouse, parent, descendent of the incompetent,  
10 or descendant of the incompetent's parent, and the amount of the  
11 gift does not exceed the federal annual gift tax exclusion.

12 The judge may order that the gifts be made in cash or in specific assets and may order  
13 that the gifts be made outright, in trust, under the North Carolina Uniform Transfers to  
14 Minors Act, under the North Carolina Uniform Custodial Trust Act, or otherwise. The  
15 judge may also order that the gifts be treated as an advancement of some or all of the  
16 amount the donee would otherwise receive at the incompetent's death."

17 Section 4. G.S. 35A-1340 reads as rewritten:

18 **"§ 35A-1340. Gifts authorized with approval of judge of superior court.**

19 With the approval of the resident judge of the superior court of the district in which  
20 the guardian ~~or trustee~~ was appointed upon a duly verified petition, the guardian ~~or trustee~~  
21 of a person judicially declared to be incompetent may, from the principal of the  
22 incompetent's estate, make gifts to the State of North Carolina, its agencies, counties or  
23 municipalities, or the United States or its agencies or instrumentalities, or for religious,  
24 charitable, literary, scientific, historical, medical or educational ~~purposes.~~ purposes, or to  
25 individuals including the guardian. The incompetent's estate shall consist of all assets  
26 owned by the incompetent, including nonprobate assets. For purposes of this Article,  
27 nonprobate assets are those which would not be distributable in accordance with the  
28 incompetent's valid probated will or the provisions of Chapter 29 at the incompetent's  
29 death. The incompetent's nonprobate estate would include nonprobate assets only.  
30 References in this Article to the 'guardian' include any Trustee appointed by the court  
31 under prior law as fiduciary for the incompetent ward's estate."

32 Section 5. G.S. 35A-1341 reads as rewritten:

33 **"§ 35A-1341. Prerequisites to approval by ~~judge.~~ judge of gifts for governmental or**  
34 **charitable purposes.**

35 The judge shall not approve ~~such~~ any gifts from principal for governmental or  
36 charitable purposes unless it appears to ~~his~~ the judge's satisfaction ~~that:~~ all of the  
37 following requirements are met:

38 (1) The making of ~~such~~ the gifts will not leave the incompetent's remaining  
39 principal estate insufficient to provide reasonable and adequate income  
40 for the support, maintenance, comfort and welfare of the incompetent  
41 and those legally entitled to support from the incompetent in order to  
42 maintain the incompetent and ~~such~~ these dependents in the manner to

1 which the incompetent and ~~such those~~ dependents are accustomed and in  
2 keeping with their station in ~~life;~~ life.

3 (2) Each donee is a donee to which a competent donor could make a gift,  
4 without limit as to amount, without incurring federal or State gift tax  
5 ~~liability;~~ liability.

6 (3) Each donee is a donee qualified to receive tax deductible gifts under  
7 federal and State income tax ~~laws;~~ laws.

8 (4) The making of ~~such the~~ gifts will not jeopardize the rights of any  
9 creditor of the ~~incompetent;~~ and incompetent.

10 (5) It is improbable that the incompetent will recover competency during  
11 his or her ~~lifetime;~~ lifetime.

12 (5a) Sufficient credible evidence is presented to the court that the proposed  
13 gift is of a nature which the incompetent would have approved prior to  
14 being declared incompetent.

15 (6) Either a. or b. applies:

16 a. All of the following apply:

17 1. The incompetent, prior to being declared incompetent,  
18 executed a ~~paper-writing;~~ paper-writing with the formalities  
19 required by the laws of North Carolina for the execution  
20 of a valid ~~will;~~ will,

21 including a paper-writing naming as beneficiary a  
22 revocable trust created by the incompetent.

23 2. Specific legacies, ~~bequests or devises~~ bequests, devises, or  
24 nondiscretionary distributions of specific amounts of  
25 money, income or property included in ~~such the~~ paper-  
26 writing or revocable trust or both, will not be jeopardized  
27 by making ~~such gifts;~~ the gifts.

28 3. All residuary ~~legatees and~~ legatees, devisees and  
29 beneficiaries designated in ~~such the~~ paper-writing, paper-  
30 writing or revocable trust or both, who would take under  
31 the ~~paper-writing~~ paper-writing or revocable trust or both,  
32 if the incompetent died contemporaneously with the  
33 signing of the order of approval of ~~such the~~ gifts and ~~such~~  
34 ~~paper-writing~~ the paper-writing was probated as the  
35 incompetent's will and the spouse, if any, of ~~such the~~  
36 incompetent have been given at least 10 days' written  
37 notice that approval for ~~such the~~ gifts will be sought and  
38 that objection may be filed with the clerk of superior court  
39 of the county in which the guardian ~~or trustee~~ was  
40 appointed, within the 10-day ~~period;~~ period.

41 b. Both of the following apply:

- 1 1. That so far as is known the incompetent has not prior to  
2 being declared incompetent, executed a will which could  
3 be probated upon the death of the incompetent; and
- 4 2. All persons who would share in the incompetent's intestate  
5 estate, if the incompetent died contemporaneously with  
6 the signing of the order of approval, have been given at  
7 least 10 days' written notice that approval for ~~such~~ the gifts  
8 will be sought and that objection may be filed with the  
9 clerk of the superior court, of the county in which the  
10 guardian ~~or trustee~~ was appointed, within the 10-day  
11 period.

12 (7) If the gift for which approval is sought is of a nonprobate asset, all  
13 persons who would share in that nonprobate asset if the incompetent  
14 died contemporaneously with the signing of the order of approval have  
15 been given at least 10 days' written notice that approval for the gifts will  
16 be sought and that objection may be filed with the clerk of superior  
17 court of the county in which the guardian was appointed within the 10-  
18 day period. This notice requirement shall be in addition to the notice  
19 requirements contained in G.S. 35A-1341(6)a.3. and (6)b.2."

20 Section 6. Chapter 35A of the General Statutes is amended by adding a new  
21 section to read:

22 "**§ 35A-1341.1. Prerequisites to approval by judge of gifts to individuals.**

23 The judge shall not approve gifts from principal to individuals unless it appears to the  
24 judge's satisfaction that all of the following requirements have been met:

- 25 (1) Making the gifts will not leave the incompetent's remaining principal  
26 estate insufficient to provide reasonable and adequate income for the  
27 support, maintenance, comfort, and welfare of the incompetent in order  
28 to maintain the incompetent and any dependents legally entitled to  
29 support from the incompetent in the manner to which the incompetent  
30 and those dependents are accustomed and in keeping with their station  
31 in life.
- 32 (2) The making of the gifts will not jeopardize the rights of any existing  
33 creditor of the incompetent.
- 34 (3) It is improbable that the incompetent will recover competency during  
35 his or her lifetime.
- 36 (4) The judge determines that either a., b., c., or d. applies.
  - 37 a. All of the following apply:
    - 38 1. The incompetent, prior to being declared incompetent,  
39 executed a paper-writing with the formalities required by  
40 the laws of North Carolina for the execution of a valid  
41 will, including a paper-writing naming as beneficiary a  
42 revocable trust created by the incompetent.

- 1                   2.     Each donee is entitled to one or more specific legacies,  
2                   bequests, devises, or distributions of specific amounts of  
3                   money, income, or property under either the paper-writing  
4                   or revocable trust or both or is a residuary legatee,  
5                   devisee, or beneficiary designated in the paper-writing or  
6                   revocable trust or both.
- 7                   3.     The making of the gifts will not jeopardize any specific  
8                   legacy, bequest, devise, or distribution of specific amounts  
9                   of money, income, or property.
- 10                  b.     That so far as is known the incompetent has not, prior to being  
11                  declared incompetent, executed a will which could be probated  
12                  upon the death of the incompetent, and each donee is a person  
13                  who would share in the incompetent's intestate estate, if the  
14                  incompetent died contemporaneously with the signing of the  
15                  order of approval of the gifts.
- 16                  c.     The donee is a person who would share in the incompetent's  
17                  nonprobate estate, if the incompetent died contemporaneously  
18                  with the signing of the order of approval.
- 19                  d.     The donee is the spouse, parent, descendant of the incompetent,  
20                  or descendant of the incompetent's parent, and the amount of the  
21                  gift does not exceed the federal annual gift tax exclusion.
- 22                  (5)   If the incompetent, prior to being declared incompetent, executed a  
23                  paper-writing with the formalities required by the laws of North  
24                  Carolina for the execution of a valid will, including a paper-writing  
25                  naming as beneficiary a revocable trust created by the incompetent; then  
26                  all residuary legatees, devisees, and beneficiaries designated in the  
27                  paper-writing or revocable trust or both, who would take under the  
28                  paper-writing or revocable trust or both if the incompetent died  
29                  contemporaneously with the signing of the order of approval of the gifts  
30                  and the paper-writing was probated as the incompetent's will, the  
31                  spouse, if any, of the incompetent and all persons identified in G.S.  
32                  35A-1341.1(7) have been given at least 10 days' written notice that  
33                  approval for the gifts will be sought and that objection may be filed with  
34                  the clerk of superior court of the county in which the guardian was  
35                  appointed, within the 10-day period.
- 36                  (6)   If so far as is known, the incompetent has not, prior to being declared  
37                  incompetent, executed a will which could be probated upon the death of  
38                  the incompetent, all persons who would share in the incompetent's  
39                  estate, if the incompetent died contemporaneously with the signing of  
40                  the order of approval, have been given at least 10 days' written notice  
41                  that approval for the gifts will be sought and that objection may be filed  
42                  with the clerk of the superior court of the county in which the guardian  
43                  was appointed, within the 10-day period.

1           (7) If the gift for which approval is sought is of a nonprobate asset, all  
2 persons who would share in that nonprobate asset if the incompetent  
3 died contemporaneously with the signing of the order of approval have  
4 been given at least 10 days' written notice that approval for the gifts will  
5 be sought and that objection may be filed with the clerk of the superior  
6 court of the county in which the guardian was appointed within the 10-  
7 day period. This notice requirement shall be in addition to the notice  
8 requirements contained in G.S. 35A-1341.1(5) and (6) above.

9           The judge may order that the gifts be made in cash or in specific assets and may order  
10 that the gifts be made outright, in trust, under the North Carolina Uniform Transfers to  
11 Minors Act, under the North Carolina Uniform Custodial Trust Act, or otherwise. The  
12 judge may also order that the gifts be treated as an advancement of some or all of the  
13 amount the donee would otherwise receive at the incompetent's death."

14           Section 7. G.S. 35A-1342 reads as rewritten:

15 **"§ 35A-1342. Who deemed specific and residuary legatees and devisees of**  
16 **incompetent under § 35A-1341.**

17           For purposes of G.S. 35A-1341(6)a and G.S. 35A-1341.1(4) and (5), ~~of this Article, if~~  
18 ~~such paper-writing the paper-writing~~ provides for the residuary estate to be placed in trust  
19 for a term of years, or if the paper-writing names as beneficiary a revocable trust created  
20 by the incompetent, and the trust or trusts include dispositive provisions which provide  
21 that assets continue in trust for a term of years with stated amounts of income payable to  
22 designated beneficiaries during the term and stated amounts payable to designated  
23 beneficiaries upon termination of the trust, such trust or trusts, the designated beneficiaries  
24 shall be deemed to be specific legatees and devisees—legatees, devisees, and beneficiaries  
25 and those taking the remaining income of the trust or trusts and, at the end of the term,  
26 the remaining principal shall be deemed to be residuary legatees and devisees—legatees,  
27 devisees, and beneficiaries who would take under the paper-writing—paper-writing or  
28 revocable trust or both if the incompetent died contemporaneously with the signing of the  
29 order of approval of such the gifts. In no case shall any prospective executor or trustee be  
30 considered either a specific or residuary legatee and devisee—legatee, devisee, or  
31 beneficiary on the sole basis of prospective service as executor or trustee."

32           Section 8. G.S. 35A-1343 reads as rewritten:

33 **"§ 35A-1343. Notice to minors and incompetents under § 35A-1341 and §**  
34 **35A-1341.1.**

35           If any person, to whom notice must be given under the provisions of G.S. 35A-1341(6)  
36 35A-1341 and G.S. 35A-1341.1 ~~of this Article,~~ is a minor or is incompetent, or  
37 is an unborn or unascertained beneficiary, then the notice shall be given to his duly  
38 appointed guardian or other duly appointed representative: Provided, that if a ~~minor or~~  
39 ~~incompetent—minor, incompetent, unborn, or unascertained beneficiary~~ has no ~~such~~  
40 guardian or ~~representative—representative,~~ then a guardian ad litem shall be appointed by  
41 the judge and ~~such the~~ guardian ad litem shall be given the notice herein required."

42           Section 9. G.S. 35A-1251 reads as rewritten:

43 **"§ 35A-1251. Guardian's powers in administering incompetent ward's estate.**

1 In the case of an incompetent ward, a general guardian or guardian of the estate has  
2 the power to perform in a reasonable and prudent manner every act that a reasonable and  
3 prudent person would perform incident to the collection, preservation, management, and  
4 use of the ward's estate to accomplish the desired result of administering the ward's estate  
5 legally and in the ward's best interest, including but not limited to the following specific  
6 powers:

- 7 (1) To take possession, for the ward's use, of all the ward's estate, as defined  
8 in G.S. 35A-1202(5).
- 9 (2) To receive assets due the ward from any source.
- 10 (3) To maintain any appropriate action or proceeding to recover possession  
11 of any of the ward's property, to determine the title thereto, or to recover  
12 damages for any injury done to any of the ward's property; also, to  
13 compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise  
14 deal with and settle any other claims in favor of or against the ward.
- 15 (4) To complete performance of contracts entered into by the ward that  
16 continue as obligations of the ward or his estate, or to refuse to complete  
17 ~~such~~the contracts, as the guardian determines to be in the ward's best  
18 interests, taking into account any cause of action that might be  
19 maintained against the ward for failure to complete ~~such~~the contract.
- 20 (5) To abandon or relinquish all rights in any property when, in the  
21 guardian's opinion, acting reasonably and in good faith, it is valueless,  
22 or is so encumbered or is otherwise in ~~such~~a condition that it is of no  
23 benefit or value to the ward or his estate.
- 24 (5a) To renounce any interest in property as provided in Chapter 31B of the  
25 General Statutes, or as otherwise allowed by law.
- 26 (6) To vote shares of stock or other securities in person or by general or  
27 limited proxy, and to pay sums chargeable or accruing against or on  
28 account of securities owned by the ward.
- 29 (7) To insure the ward's assets against damage or loss, at the expense of the  
30 ward's estate.
- 31 (8) To pay the ward's debts and obligations that were incurred prior to the  
32 date of adjudication of incompetence or appointment of a guardian  
33 when the debt or obligation was incurred for necessary living expenses  
34 or taxes; or when the debt or obligation involves a specific lien on real  
35 or personal property, if the ward has an equity in the property on which  
36 there is a specific lien; or when the guardian is convinced that payment  
37 of the debt or obligation is in the best interest of the ward or his estate.
- 38 (9) To renew the ward's obligations for the payment of money. The  
39 guardian's execution of any obligation for the payment of money  
40 pursuant to this subsection shall not be held or construed to be binding  
41 on the guardian personally.
- 42 (10) To pay taxes, assessments, and other expenses incident to the collection,  
43 care, administration, and protection of the ward's estate.

- 1 (11) To sell or exercise stock subscription or conversion rights; consent,  
2 directly or through a committee or other agent, to the reorganization,  
3 consolidation, merger, dissolution, or liquidation of a corporation or  
4 other business enterprise.
- 5 (12) To expend estate income on the ward's behalf and to petition the court  
6 for prior approval of expenditures from estate principal.
- 7 (13) To pay from the ward's estate necessary expenses of administering the  
8 ward's estate.
- 9 (14) To employ persons, including attorneys, auditors, investment advisors,  
10 appraisers, or agents to advise or assist him in the performance of his  
11 duties as guardian.
- 12 (15) To continue any business or venture or farming operation in which the  
13 ward was engaged, where ~~such~~that continuation is reasonably necessary  
14 or desirable to preserve the value, including goodwill, of the ward's  
15 interest in ~~such~~the business.
- 16 (16) To acquire and retain every kind of property and every kind of  
17 investment, including specifically, but without in any way limiting the  
18 generality of the foregoing, bonds, debentures, and other corporate or  
19 governmental obligations; stocks, preferred or common; real estate  
20 mortgages; shares in building and loan associations or savings and loan  
21 associations; annual premium or single premium life, endowment, or  
22 annuity contracts; and securities of any management type investment  
23 company or investment trust registered under the Federal Investment  
24 Company Act of 1940, as from time to time amended.
- 25 (17) a. Without a court order to lease any of the ward's real estate for a term  
26 of not more than three years, or to sell, lease or exchange any of the  
27 ward's personal property including securities, provided that the  
28 aggregate value of all items of the ward's tangible personal property  
29 sold without court order over the duration of the estate shall not exceed  
30 one thousand five hundred dollars (\$1,500). When any item of the  
31 ward's tangible personal property has a value which when increased by  
32 the value of all other tangible personal property previously sold in the  
33 estate without a court order would exceed one thousand five hundred  
34 dollars (\$1,500), a guardian may sell the item only as provided in  
35 subdivision (17)b.
- 36 b. A guardian who is required by subdivision (17)a to do so shall,  
37 and any other guardian who so desires may, by motion in the  
38 cause, request the court to issue him an order to lease any of the  
39 ward's real estate or to sell any item or items of the ward's  
40 personal property. Notice of the motion and of the date, time and  
41 place of a hearing thereon shall be served, as provided in G.S.  
42 1A-1, Rule 5, Rules of Civil Procedure, upon all parties of record  
43 and upon ~~such~~any other persons ~~as~~ the clerk may direct, and the

- 1 court may issue the order after conducting a hearing and upon  
2 ~~such any~~ conditions as ~~that~~ the court may require; provided that:
- 3 1. A sale, lease, or exchange under this subdivision may not  
4 be subject to Article 29A of Chapter 1 of the General  
5 Statutes unless the order so requires; and
  - 6 2. The power granted in this subdivision shall not affect the  
7 power of the guardian to petition the court for prior  
8 approval of expenditures from estate principal under  
9 subdivision (12) of this section.
- 10 (18) To foreclose, as an incident to the collection of any bond, note or other  
11 obligation, any mortgage, deed or trust, or other lien securing ~~such the~~  
12 bond, note or other obligation, and to bid in the property at ~~such a~~  
13 foreclosure sale, or to acquire the property deed from the mortgagor or  
14 obligor without foreclosure; and to retain the property so bid in or taken  
15 over without foreclosure.
- 16 (19) To borrow money for ~~such any~~ periods of time and upon ~~such the~~ terms  
17 and conditions as to rates, maturities, renewals, and security as the  
18 guardian shall deem advisable, including the power of a corporate  
19 guardian to borrow from its own banking department, for the purpose of  
20 paying debts, taxes, and other claims against the ward, and to mortgage,  
21 pledge, or otherwise encumber ~~such that~~ portion of the ward's estate as  
22 may be required to secure ~~such the~~ loan or loans; provided, in respect to  
23 the borrowing of money on the security of the ward's real property,  
24 Subchapter III of this Chapter is controlling.
- 25 (20) To execute and deliver all instruments that will accomplish or facilitate  
26 the exercise of the powers vested in the guardian.
- 27 (21) To expend estate income for the support, maintenance, and education of  
28 the ward's minor children, spouse, and dependents, and to petition the  
29 court for prior approval of expenditures from estate principal for these  
30 purposes; provided, the clerk, in the original order appointing the  
31 guardian or a subsequent order, may require that the expenditures from  
32 estate income also be approved in advance. In determining whether and  
33 in what amount to make or approve these expenditures, the guardian or  
34 clerk shall take into account the ward's legal obligations to his minor  
35 children, spouse, and dependents; the sufficiency of the ward's estate to  
36 meet the ward's needs; the needs and resources of the ward's minor  
37 children, spouse, and dependents; and the ward's conduct or expressed  
38 wishes, prior to becoming incompetent, in regard to the support of these  
39 persons.
- 40 (22) To transfer to the spouse of the ward those amounts authorized for  
41 transfer to the spouse pursuant to 42 United States Code § 1396r-5.
- 42 (23) To create a trust for the benefit of the ward pursuant to 42 United States  
43 Code § 1396p(d)(4), provided that all amounts remaining in the trust

1                   upon the death of the ward, other than those amounts which must be  
2                   paid to a state government, are to be paid to the estate of the ward.  
3           (24)   To petition the court for prior approval of transfers of assets of the ward  
4                   to a revocable trust executed by the ward prior to the ward being  
5                   declared incompetent, provided that the ward executed a paper-writing  
6                   with all the formalities required by the laws of North Carolina for the  
7                   execution of a valid will prior to the ward being declared incompetent  
8                   and that will directs that the assets that are being transferred to the trust  
9                   are to be distributed to the trust at the ward's death or the revocable trust  
10                   has the same dispositive provisions as the ward's will or provides that  
11                   the assets in the trust are to be distributed to the ward's estate upon the  
12                   death of the ward. The guardian may at any time withdraw any assets  
13                   (or the proceeds of the sale of any assets) transferred by the guardian to  
14                   the trust upon 30 days' written notice to the trustee of the trust;  
15                   provided, however, no assets which have been distributed or otherwise  
16                   disposed of by the trustee (before the notice is received by the trustee) in  
17                   accordance with the terms of the trust can be so withdrawn."

18           Section 10. This act becomes effective October 1, 1999.