

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE DRS15079-ME-23 (2/11)

Short Title: Clarify Judicial Creation of Trust.

(Public)

Sponsors: Senator Hartsell.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THAT COURTS IN NORTH CAROLINA HAVE THE
3 AUTHORITY TO CREATE TRUSTS BY JUDICIAL ORDER OR JUDGMENT IN
4 CASES PROPERLY BEFORE THE COURT; AND TO SPECIFICALLY PROVIDE
5 THAT NORTH CAROLINA COURTS HAVE THE RIGHT TO CREATE TRUSTS
6 PURSUANT TO 42 U.S.C. § 1396P(D)(4)(A).

7 The General Assembly of North Carolina enacts:

8 SECTION 1. G.S. 36C-2-203(a)(9) reads as rewritten:

9 "§ 36C-2-203. Subject matter jurisdiction.

10 (a) The clerks of superior court of this State have original jurisdiction over all
11 proceedings concerning the internal affairs of trusts. Except as provided in subdivision (9) of
12 this subsection, the clerk of superior court's jurisdiction is exclusive. Proceedings concerning
13 the internal affairs of the trust are those concerning the administration and distribution of trusts,
14 the declaration of rights, and the determination of other matters involving trustees and trust
15 beneficiaries, to the extent that those matters are not otherwise provided for in the governing
16 instrument. These include proceedings:

17 ...

18 (9) To ascertain beneficiaries, to determine any question arising in the
19 administration or distribution of any trust, including questions of
20 construction of trust instruments, to create a trust, and to determine the
21 existence or nonexistence of trusts created other than by will and the
22 existence or nonexistence of any immunity, power, privilege, duty, or right.
23 Any party may file a notice of transfer of a proceeding pursuant to this
24 subdivision to the superior court division of the General Court of Justice as
25 provided in G.S. 36C-2-205(g1). In the absence of a transfer to Superior
26 Court, Article 26 of Chapter 1 of the General Statutes shall apply to a trust
27 proceeding pending before the clerk of superior court to the extent consistent
28 with this Article.

29 SECTION 2. G.S. 36C-4-401 reads as rewritten:

30 "§ 36C-4-401. Methods of creating trust.

31 A trust may be created by any of the following methods:

32 (1) Transfer of property by a settlor to a person as trustee during the settlor's
33 lifetime or by will or other disposition taking effect upon the settlor's death
34 including either of the following:



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- 1 a. The devise or bequest to the trustee of the trust as provided in
- 2 G.S. 31-47.
- 3 b. The designation of the trust as beneficiary of life insurance or other
- 4 death benefits as provided in G.S. 36C-4-401.1.
- 5 (2) Declaration by the owner of property that the owner holds identifiable
- 6 property as trustee unless the transfer of title of that property is otherwise
- 7 required by law.
- 8 (3) Exercise of a power of appointment in favor of a trustee.
- 9 (4) A court by judgment, order, or decree, including the establishment of a trust
- 10 pursuant to section 1396p(d)(4) of Title 42 of the United States Code."

11 **SECTION 3.** Article 4 of Chapter 36C of the General Statutes is amended by
12 adding a new section to read:

13 **"§ 36C-4-401.2. Trust pursuant to 46 U.S.C. § 1396p(d)(4).**

14 Any interested party may petition the court, in accordance with the provisions of this
15 Chapter, to establish a trust pursuant to section 1396p(d)(4) of Title 42 of the United States
16 Code. This section is not the exclusive method of establishing a trust pursuant to section
17 1396p(d)(4) of Title 42 of the United States Code; and the court shall maintain its authority to
18 create or establish any trust, including a trust pursuant to section 1396p(d)(4) of Title 42 of the
19 United States Code, by means of judgment, order, or decree in any matter properly before the
20 court."

21 **SECTION 4.** This act becomes effective October 1, 2009.