

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1098

Short Title: Amend Deposit Account Law.

(Public)

Sponsors: Representatives Church and Buchanan (Primary Sponsors).

Referred to: Financial Institutions.

April 11, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS CONCERNING CERTAIN TYPES OF DEPOSIT
ACCOUNTS IN NORTH CAROLINA TO MAKE THEM MORE
UNDERSTANDABLE TO CONSUMERS AND TO MAKE THEM MORE
FLEXIBLE IN MEETING CONSUMER PREFERENCES.

The General Assembly of North Carolina enacts:

PART I. ACCOUNTS AT COMMERCIAL BANKS.

SECTION 1. G.S. 53-146.2 reads as rewritten:

"§ 53-146.2. Trust Payable on Death (POD) accounts.

(a) If any person or persons establishing a deposit account shall execute a written agreement with the bank containing a statement that it is executed pursuant to the provisions of this ~~subsection~~ section and providing for the account to be held in the name of ~~such~~ the person or persons as ~~trustee owner or owners~~ for not more than one person for one or more persons designated as ~~beneficiary, beneficiaries,~~ beneficiary, beneficiaries, the account and any balance thereof shall be held as a ~~trust~~ Payable on Death account, with the following incidents:

(1) ~~The trustee~~ Any owner during the ~~trustee's~~ owner's lifetime may change ~~the~~ any designated beneficiary by a written direction to the bank.

(1a) If there are two or more owners of a Payable on Death account, the owners shall own the account as joint tenants with right of survivorship and, except as otherwise provided in this section, the account shall have the incidents set forth in G.S. 53-146.1.

(2) ~~The trustee~~ Any owner may withdraw funds by writing checks or otherwise, as set forth in the account contract, and receive payment in cash or check payable to the ~~trustee's~~ owner's personal order. ~~Such payment or withdrawal shall constitute a revocation of the trust agreement as to the amount withdrawn.~~

- 1 (3) If ~~the~~ only one beneficiary is living and of legal age at the death of the
2 ~~trustee, last surviving owner~~, the beneficiary shall be the owner of the
3 account, and payment by the bank to such owner shall be a total
4 discharge of the bank's obligation as to the amount paid. If two or
5 more beneficiaries are living at the death of the last surviving owner,
6 they shall be owners of the account as joint tenants with right of
7 survivorship as provided in G.S. 53-146.1, and payment by the bank to
8 the owners or any of the owners shall be a total discharge of the bank's
9 obligation as to the amount paid.
- 10 (4) If ~~the beneficiary predeceases the trustee,~~ one or more owners survive
11 the last surviving beneficiary, the account shall become an individual
12 account of the ~~trustee~~ owner, or a joint account with right of
13 survivorship of the owners, and shall have the legal incidents of an
14 individual ~~account.~~ account in the case of a single owner or a joint
15 account with right of survivorship, as provided in G.S. 53-146.1, in the
16 case of multiple owners.
- 17 (5) If ~~the named~~ only one beneficiary is living and that beneficiary is not
18 of legal age at the death of the ~~trustee, last surviving owner~~, the bank
19 shall transfer the funds in the account to the general guardian or
20 guardian of the estate, if any, of the minor beneficiary. If no guardian
21 of the minor beneficiary has been appointed, the bank shall hold the
22 funds in a similar interest bearing account in the name of the minor
23 until the minor reaches the age of majority or until a duly appointed
24 guardian withdraws the funds.
- 25 (6) Prior to the death of the last surviving owner, no beneficiary shall have
26 any ownership interest in a Payable on Death account. Funds in a ~~trust~~
27 Payable on Death account established pursuant to this subsection shall
28 belong to the beneficiary or beneficiaries upon the death of the ~~trustee~~
29 last surviving owner and the funds shall be subject only to the personal
30 representative's right of collection as set forth in G.S. 28A-15-10(a)(1).
31 Payment by the bank of funds in the ~~trust~~ Payable on Death account to
32 the beneficiary or beneficiaries shall terminate the personal
33 representative's authority under G.S. 28A-15-10(a)(1) to collect
34 against the bank for the funds so paid, but the personal representative's
35 authority to collect such funds from the beneficiary or beneficiaries is
36 not terminated.

37 The person or persons establishing an account under this subsection shall sign a
38 statement containing language set forth in a conspicuous manner and substantially
39 similar to the following:

40 "BANK (or name of institution)
41 TRUST PAYABLE ON DEATH ACCOUNT

42 G.S. 53-146.2

43 I (or we) understand that by establishing a ~~trust~~ Payable on Death account under the
44 provisions of North Carolina General Statute 53-146.2 that:

1 ~~payment or withdrawal shall constitute a revocation of the trust~~
2 ~~agreement as to the amount withdrawn.~~

3 (3) If ~~the~~ only one beneficiary is living and of legal age at the death of the
4 last surviving trustee, the beneficiary shall be the holder of the
5 account, and payment by the credit union to the holder shall be a total
6 discharge of the credit union's obligation as to the amount paid. If two
7 or more beneficiaries are living at the death of the last surviving
8 owner, they shall be owners of the account as joint tenants with right
9 of survivorship as provided in G.S. 54-109.58, and payment by the
10 credit union to the owners or to any of the owners shall be a total
11 discharge of the credit union's obligation as to the amount paid.

12 (4) If one or more owners survive the last surviving beneficiary, ~~the~~
13 ~~beneficiary predeceases the trustee,~~ the account shall become an
14 individual account of the ~~trustee owner,~~ or a joint account with right of
15 survivorship of the owners and shall have the legal incidents of an
16 individual ~~account.~~ account in the case of a single owner or a joint
17 account with right of survivorship, as provided in G.S. 54-109.58, in
18 the case of multiple owners.

19 (5) If ~~the named~~ only one beneficiary is living and that beneficiary is not
20 of legal age at the death of the ~~trustee,~~ last surviving owner, the credit
21 union shall transfer the funds in the account to the general guardian or
22 guardian of the estate, if any, of the minor beneficiary. If no guardian
23 of the minor beneficiary has been appointed, the credit union shall
24 hold the funds in a similar interest bearing account in the name of the
25 minor until the minor reaches the age of majority or until a duly
26 appointed guardian withdraws the funds.

27 (6) Prior to the death of the last surviving owner, no beneficiary shall have
28 any ownership interest in a Payable on Death account. Funds in a ~~trust~~
29 Payable on Death account established pursuant to this subsection shall
30 belong to the beneficiary or beneficiaries upon the death of the ~~trustee~~
31 last surviving owner and the funds shall be subject only to the personal
32 representative's right of collection as set forth in G.S. 28A-15-10(a)(1).
33 Payment by the credit union of funds in the ~~trust~~ Payable on Death
34 account to the beneficiary shall terminate the personal representative's
35 authority under G.S. 28A-15-10(a)(1) to collect against the credit
36 union for the funds so paid, but the personal representative's authority
37 to collect such funds from the beneficiary or beneficiaries is not
38 terminated.

39 The person or persons establishing an account under this subsection shall sign a
40 statement containing language set forth in a conspicuous manner and substantially
41 similar to the following:

42 "CREDIT UNION (or name of institution)
43 TRUST PAYABLE ON DEATH ACCOUNT
44 G.S. 54-109.57

1 I (or we) understand that by establishing a ~~trust~~ Payable on Death account under the
 2 provisions of North Carolina General Statute 54-109.57 that:

- 3 1. During ~~my lifetime~~ I (or our) lifetime I (or we) may withdraw the
 4 money in the account; and
- 5 2. By written direction to the credit union (or name of institution) I (or
 6 we), individually or jointly, may change the ~~beneficiary~~; beneficiary or
 7 beneficiaries; and
- 8 3. Upon my (or our) death the money remaining in the account will
 9 belong to the ~~beneficiary~~; beneficiary or beneficiaries, and the money
 10 will not be inherited by my (or our) heirs or be controlled by ~~my~~ will.

11 _____
 12 _____
 13 -----"
 14 -----"

15 (a1) This section shall not be deemed exclusive. Deposit accounts not conforming
 16 to this section shall be governed by other applicable provisions of the General Statutes
 17 or the common law, as appropriate.

18 (b) ~~Whenever the beneficiary of a trust account does not survive the trustee, then~~
 19 ~~the account and any balance thereof which exists shall be held by the trustee in the~~
 20 ~~trustee's own right and for the trustee's own use and benefit.~~

21 (c) No addition to such accounts, nor any withdrawal, payment, or change of
 22 beneficiary shall affect the nature of such accounts as ~~trust~~ Payable on Death accounts,
 23 or affect the right of a ~~trustee~~ any owner to terminate the account.

24 (d) ~~Nothing herein contained shall be construed to repeal or modify any of the~~
 25 ~~provisions of G.S. 105-24, relating to the administration of the estate tax laws of this~~
 26 ~~State, or provisions of law relating to estate taxes. This section does not repeal or~~
 27 ~~modify any provisions of law relating to estate taxes."~~

28 **PART III. ACCOUNTS AT SAVINGS AND LOAN ASSOCIATIONS.**

29 **SECTION 3.** G.S. 54B-130 reads as rewritten:

30 **"§ 54B-130. Trust Payable on Death (POD) accounts.**

31 (a) If any person or persons establishing a withdrawable account shall execute a
 32 written agreement with the association containing a statement that it is executed
 33 pursuant to the provisions of this ~~subsection~~ section and providing for the account to be
 34 held in the name of ~~such~~ the person or persons as ~~trustee for not more than one person~~
 35 owner or owners for one or more persons designated as ~~beneficiary~~; beneficiaries, the
 36 account and any balance thereof shall be held as a ~~trust~~ Payable on Death account with
 37 the following incidents:

38 (1) ~~The trustee~~ Any owner during the ~~trustee's~~ owner's lifetime may
 39 change ~~the~~ any designated beneficiary by a written direction to the
 40 association.

41 (1a) If there are two or more owners of a Payable on Death account, the
 42 owners shall own the account as joint tenants with right of
 43 survivorship and, except as otherwise provided in this section, the
 44 account shall have the incidents set forth in G.S. 54B-129.

- 1 (2) ~~The trustee~~ Any owner may withdraw funds by writing checks or
2 otherwise, as set forth in the account contract, and receive payment in
3 cash or check payable to the ~~trustee's~~ owner's personal order. ~~Such~~
4 ~~payment or withdrawal shall constitute a revocation of the trust~~
5 ~~agreement as to the amount withdrawn.~~
- 6 (3) If ~~the~~ only one beneficiary is living and of legal age at the death of the
7 ~~trustee,~~ last surviving owner, the beneficiary shall be the holder of the
8 account, and payment by the association to the holder shall be a total
9 discharge of the association's obligation as to the amount paid. If two
10 or more beneficiaries are living at the death of the last surviving
11 owner, they shall be owners of the account as joint tenants with right
12 of survivorship as provided in G.S. 54B-129, and payment by the
13 association to the owners or to any of the owners shall be a total
14 discharge of the association's obligation as to the amount paid.
- 15 (4) If ~~the beneficiary predeceases the trustee,~~ one or more owners survive
16 the last surviving beneficiary, the account shall become an individual
17 account of the ~~trustee~~ owner, or a joint account with right of
18 survivorship of the owners, and shall have the legal incidents of an
19 individual ~~account.~~ account in the case of a single owner or a joint
20 account with right of survivorship, as provided in G.S. 54B-129, in the
21 case of multiple owners.
- 22 (5) If ~~the named~~ only one beneficiary is living and that beneficiary is not
23 of legal age at the death of the ~~trustee,~~ last surviving owner, the
24 association shall transfer the funds in the account to the general
25 guardian or guardian of the estate, if any, of the minor beneficiary. If
26 no guardian of the minor beneficiary has been appointed, the
27 association shall hold the funds in a similar interest bearing account in
28 the name of the minor until the minor reaches the age of majority or
29 until a duly appointed guardian withdraws the funds.
- 30 (6) Prior to the death of the last surviving owner, no beneficiary shall have
31 any ownership interest in a Payable on Death account. Funds in a ~~trust~~
32 Payable on Death account established pursuant to this subsection shall
33 belong to the beneficiary or beneficiaries upon the death of the ~~trustee~~
34 last surviving owner and the funds shall be subject only to the personal
35 representative's right of collection as set forth in G.S. 28A-15-10(a)(1).
36 Payment by the association of funds in the ~~trust~~ Payable on Death
37 account to the beneficiary or beneficiaries shall terminate the personal
38 representative's authority under G.S. 28A-15-10(a)(1) to collect
39 against the association for the funds so paid, but the personal
40 representative's authority to collect such funds from the beneficiary or
41 beneficiaries is not terminated.

42 The person or persons establishing an account under this subsection shall sign a
43 statement containing language set forth in a conspicuous manner and substantially
44 similar to the following:

"SAVINGS AND LOAN (or name of institution)
TRUST PAYABLE ON DEATH ACCOUNT
 G.S. 54B-130(a)

I (or we) understand that by establishing a ~~trust~~ Payable on Death account under the provisions of North Carolina General Statute 54B-130(a) that:

1. During my (or our) lifetime I (or we), individually or jointly, may withdraw the money in the account; and
2. By written direction to the savings and loan association (or name of institution) I (or we), individually or jointly, may change the beneficiary; and
3. Upon my (or our) death the money remaining in the account will belong to the ~~beneficiary~~, beneficiaries, and the money will not be inherited by my (or our) heirs or be controlled by ~~my~~ will.

 -----"

(a1) This section shall not be deemed exclusive. Deposit accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes or the common law, as appropriate.

~~(b) Whenever the beneficiary of a trust account does not survive the trustee then the account and any balance thereof which exists shall be held by the trustee in the trustee's own right and for the trustee's own use and benefit.~~

(c) No addition to such accounts, nor any withdrawal, payment, or change of beneficiary shall affect the nature of such accounts as trust Payable on Death accounts, or affect the right of a ~~trustee~~ any owner to terminate the account.

(d) This section does not repeal or modify any provisions of laws relating to estate taxes."

PART IV. ACCOUNTS AT SAVINGS BANKS.

SECTION 4. G.S. 54C-166 reads as rewritten:

"§ 54C-166. Trust Payable on Death (POD) accounts.

(a) If a person or persons establishing a withdrawable account executes a written agreement with the savings bank containing a statement that it is executed under this ~~subsection~~ section and providing for the account to be held in the name of the person or persons as ~~trustee for not more than one person~~ owner or owners for one or more persons designated as ~~beneficiary~~, beneficiaries, the account and any balance of the account is held as a trust Payable on Death account with the following incidents:

- (1) ~~The trustee~~ Any owner during the ~~trustee's~~ owner's lifetime may change ~~the~~ any designated beneficiary by a written direction to the savings bank.

- (1a) If there are two or more owners of a Payable on Death account, the owners shall own the account as joint tenants with right of survivorship and, except as otherwise provided in this section, the account shall have the incidents set forth in G.S. 54C-165.

- 1 (2) ~~The trustee~~ Any owner may withdraw funds by writing checks or
2 otherwise, as set forth in the account contract, and receive payment in
3 cash or check payable to the ~~trustee's~~ owner's personal order. ~~The~~
4 ~~payment or withdrawal shall constitute a revocation of the trust~~
5 ~~agreement as to the amount withdrawn.~~
- 6 (3) If ~~the~~ only one beneficiary is living and of legal age at the death of the
7 ~~trustee,~~ last surviving owner, the beneficiary is the holder of the
8 account, and payment by the savings bank to the holder is a total
9 discharge of the savings bank's obligation as to the amount paid. If two
10 or more beneficiaries are living at the death of the last surviving
11 owner, they shall be owners of the account as joint tenants with right
12 of survivorship as provided in G.S. 54C-165, and payment by the
13 savings bank to the owners or to any of the owners shall be a total
14 discharge of the savings bank's obligation as to the amount paid.
- 15 (4) If ~~the beneficiary predeceases the trustee,~~ one or more owners survive
16 the last surviving beneficiary, the account shall become an individual
17 account of the ~~trustee~~ owner, or a joint account with right of
18 survivorship of the owners, and shall have the legal incidents of an
19 individual ~~account.~~ account in the case of a single owner or a joint
20 account with right of survivorship, as provided in G.S. 54C-165, in the
21 case of multiple owners.
- 22 (5) If ~~the named~~ only one beneficiary is living and that beneficiary is not
23 of legal age at the death of the ~~trustee,~~ last surviving owner, the
24 savings bank shall transfer the funds in the account to the general
25 guardian or guardian of the estate, if any, of the minor beneficiary. If
26 no guardian of the minor beneficiary has been appointed, the savings
27 bank shall hold the funds in a similar interest-bearing account in the
28 name of the minor until the minor reaches the age of majority or until a
29 duly appointed guardian withdraws the funds.
- 30 (6) Prior to the death of the last surviving owner, no beneficiary shall have
31 any ownership interest in a Payable on Death account. Funds in a ~~trust~~
32 Payable on Death account established under this subsection shall
33 belong to the beneficiary or beneficiaries upon the death of the last
34 surviving owner ~~trustee~~ and the funds shall be subject only to the
35 personal representative's right of collection as set forth in G.S.
36 28A-15-10(a)(1). Payment by the savings bank of funds in the ~~trust~~
37 Payable on Death account to the beneficiary or beneficiaries shall
38 terminate the personal representative's authority under G.S.
39 28A-15-10(a)(1) to collect against the savings bank for the funds so
40 paid, but the personal representative's authority to collect the funds
41 from the beneficiary or beneficiaries is not terminated.

42 The person or persons establishing an account under this subsection shall sign a
43 statement containing language set forth in a conspicuous manner and substantially
44 similar to the following:

"SAVINGS BANK (or name of institution) ~~TRUST~~ PAYABLE ON DEATH
ACCOUNT

G.S. 54C-166(a)

I (or we) understand that by establishing a ~~trust~~ Payable on Death account under G.S. 54C-166(a) that:

1. During ~~my lifetime~~ I my (or our) lifetime, I (or we) may withdraw the money in the account; and
2. By written direction to the savings bank (or name of institution) I (or we), individually or jointly, may change the beneficiary; and
3. Upon my (or our) death the money remaining in the account will belong to the ~~beneficiary~~, beneficiary or beneficiaries and the money will not be inherited by my (or our) heirs or be controlled by ~~my~~ will.

-----"

(a1) This section is not deemed exclusive. Deposit accounts not conforming to this section are governed by other applicable law, as appropriate.

~~(b) Whenever the beneficiary of a trust account does not survive the trustee, then the account and any balance of the account that exists is held by the trustee in the trustee's own right and for the trustee's own use and benefit.~~

(c) No addition to the accounts, nor any withdrawal, payment, or change of beneficiary shall affect the nature of the accounts as ~~trust~~ Payable on Death accounts, or affect the right of a ~~trustee~~ any owner to terminate the account.

(d) This section does not repeal or modify any law relating to estate taxes."

PART V. CONFORMING AMENDMENTS TO THE GENERAL STATUTES.

SECTION 5. G.S. 36A-120 reads as rewritten:

"**§ 36A-120. Discretionary revocable trust Payable on Death accounts in financial institution.**

~~Trusts~~ Payable on Death accounts created under the provisions of G.S. 53-146.2, G.S. 54-109.57 or G.S. 54B-129 are governed by the provisions of those statutes."

SECTION 6. G.S. 36A-125.1(3) reads as rewritten:

"(3) "Trust" means an express noncharitable trust. A trust is noncharitable if it is neither a wholly charitable trust nor a charitable split-interest trust subject to the provisions of Article 4 or 4A of Chapter 36A of the General Statutes. The term "trust" does not include constructive trusts, resulting trusts, conservatorships, personal representatives, ~~trust~~ accounts Payable on Death accounts as defined in G.S. 53-146.2, 54-109.57, and G.S. 54B-130, trust funds subject to G.S. 90-210.61, custodial arrangements pursuant to G.S. 33A-1 through G.S. 33A-24 and G.S. 33B-1 through G.S. 33B-22, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages,

1 profits, pensions, or employee benefits of any kind, or any
2 arrangement under which a person is nominee or escrowee for
3 another."

4 **SECTION 7.** G.S. 36A-161(d) reads as rewritten:

5 "(d) This Article does not apply:

6 (1) Unless the provisions of the trust provide otherwise by specific
7 reference to this Article, to:

- 8 a. Trusts under any federal employee retirement income security
9 statute or other retirement or pension trusts;
10 b. Trusts which are created by legislative act;
11 c. Trusts which are created by or pursuant to premarital or
12 postmarital agreements, divorce settlements, settlements of
13 other proceedings or disputes;
14 d. Transfers under the Uniform Transfers to Minors Act;
15 e. Transfers under the Uniform Custodial Trust Act; or
16 f. Honorary trusts, trusts for pets, and trusts for cemetery lots.

17 (2) To trusts imposed or required under another chapter of the General
18 Statutes or by rule in which the investment of the trust funds is
19 regulated by the other chapter or by rule, unless a provision of the
20 other chapter or the rule provides otherwise by a specific reference to
21 this Article.

22 (3) To:

- 23 a. Constructive trusts and resulting trusts;
24 b. Guardianship, conservatorship, and estates managed by
25 personal representatives; or
26 c. ~~Trust~~ Payable on Death accounts as defined in G.S. 53-146.2,
27 54-109.57, 54C-166, and G.S. 54B-130; or
28 d. Business trusts providing for certificates to be issued to
29 beneficiaries, common trust funds, voting trusts, security
30 arrangements, liquidation trusts, and trusts for the primary
31 purpose of paying debts, dividends, interests, salaries, wages,
32 profits, pensions, or employee benefits of any kind, and any
33 arrangement under which a person is nominee or escrowee for
34 another."

35 **PART VI. EFFECTIVE DATE.**

36 **SECTION 8.** This act becomes effective October 1, 2001, and applies to
37 accounts opened on or after that date.