

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 483

Short Title: Clarify Judicial Creation of Trust. (Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary II.

March 10, 2009

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:  
35 a. The devise or bequest to the trustee of the trust as provided in  
36 G.S. 31-47.



b. The designation of the trust as beneficiary of life insurance or other death benefits as provided in G.S. 36C-4-401.1.

(2) Declaration by the owner of property that the owner holds identifiable property as trustee unless the transfer of title of that property is otherwise required by law.

(3) Exercise of a power of appointment in favor of a trustee.

(4) A court by judgment, order, or decree, including the establishment of a trust pursuant to section 1396p(d)(4) of Title 42 of the United States Code."

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

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

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

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