

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE DRS85117-LT-63 (3/9)

Short Title: Account Transfers and Agency Appointments. (Public)

Sponsors: Senator Clodfelter.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR ACCOUNT TRANSFERS AND AGENCY
APPOINTMENTS BETWEEN AFFILIATED TRUST INSTITUTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-301(a) is amended by adding the following new subdivisions to read:

"(3a) "Affiliate transfer" means a transfer of an account pursuant to Part 7 of this Article by one trust institution affiliate of that trust institution.

...

(49a) "Transferring trust institution" means a trust institution that proposes to make, or does make, an affiliate transfer.

(49b) "Transferee trust institution" means a trust institution to which an affiliate transfer is proposed to be made, or is made.

...."

SECTION 2. Article 24 of Chapter 53 of the General Statutes is amended by adding the following new Part to read:

"Part 7. Affiliate Transfers; Agent Appointments.

"§ 53-420. Affiliate transfers authorized; procedure.

(a) A trust institution may make an affiliate transfer of one or more accounts subject to the provisions of this Part unless the provisions governing the account explicitly provide that an affiliate transfer shall not be made.

(b) The affiliate transfer shall be made pursuant to a written agreement between the transferring trust institution and the transferee trust institution.

(c) Between 90 and 30 days prior to the proposed date of the affiliate transfer, the transferring trust institution shall give written notice of the proposed affiliate transfer to all clients and other persons to whom the transferring trust institution last sent reports or

1 statements for the account or to whom the next regular report or statement would be
2 sent. The notice shall include the following information:

3 (1) A brief description of the proposed affiliate transfer.

4 (2) The client's right to object in writing to the affiliate transfer, and the
5 physical and mailing addresses to which the written objection may be
6 sent; the transferring trust institution also may provide electronic mail
7 or facsimile addresses, or both, as additional methods for giving
8 written notice of objection.

9 (3) The date upon which the affiliate transfer is proposed to be effective.

10 (4) The identity, mailing address, and telephone number of one or more
11 employees of the transferee trust institution who can respond to
12 inquiries if the affiliate transfer is complete.

13 (5) The identity, mailing address, and telephone number of one or more
14 employees of the transferring trust institution who can respond to
15 inquiries about the proposed affiliate transfer.

16 (d) Notices shall be sent to the addresses for clients or their representatives on
17 record with the transferring trust institution and shall be effective upon receipt. Notices
18 shall be deemed received three days after they have been posted for mailing with the
19 United States Postal Service or deposited for delivery with a reputable courier service,
20 with all postage or delivery charges prepaid.

21 **"§ 53-421. Objection to affiliate transfer.**

22 If a client, or a person acting on behalf of the client, delivers a written objection to
23 the affiliate transfer to the transferring trust institution at anytime prior to the date of the
24 affiliate transfer, the transferring trust institution shall exclude that account from the
25 affiliate transfer unless the objection is withdrawn. An objection to an affiliate transfer
26 shall not affect the right of the transferring trust institution to continue to administer the
27 account or to seek to transfer the account pursuant to the documents and law governing
28 the account.

29 **"§ 53-422. Effect of affiliate transfer.**

30 (a) Following an affiliate transfer, the transferee trust institution shall have all of
31 the rights, powers, privileges, appointments, accounts, and designations of the
32 transferring trust institution and shall be deemed successor to the transferring trust
33 institution in any deed, trust, agreement, filing, instrument, notice, certificate, pleading,
34 or other document related to the account.

35 (b) Following an affiliate transfer, the transferee trust institution is responsible
36 for the performance of all duties, responsibilities, and obligations related to an account
37 subject to the affiliate transfer.

38 (c) The affiliate transfer does not limit the transferring trust institution's liability
39 for any of its acts as fiduciary.

40 (d) Unless the affiliate transfer is authorized by the documents governing the
41 account, the transferring trust institution remains liable and responsible for the
42 transferee trust institution's administration of accounts subject to an affiliate transfer.
43 For purposes of this subsection, an affiliate transfer of an account made in reliance on

1 subsection (e) of this section shall not be deemed to be authorized by the documents
2 governing the account.

3 (e) Except as explicitly provided in provisions or laws governing accounts:

4 (1) Qualifications for administration such as capital, assets, assets under
5 management, or similar standards set forth in documents or laws
6 governing the account may be satisfied by the combined financial
7 resources of the transferring trust institution and the transferee trust
8 institution.

9 (2) Standards relating to the location or charter of the trust institution
10 administering the account may be satisfied by the transferring trust
11 institution or the transferee trust institution.

12 (f) Nothing in this Part shall be construed to impair any right of a trust institution
13 to resign from administration of an account, or the right of a trust institution or a person
14 interested in the account to seek the appointment of a replacement.

15 (g) Neither the rights of creditors to nor any liens upon the property held in an
16 account shall be impaired by an affiliate transfer.

17 (h) Any claim or proceeding by or against the transferring trust institution
18 pending at the time of the affiliate transfer may proceed as if the affiliate transfer had
19 not taken place.

20 **"§ 53-423. Trust institution as agent.**

21 A trust institution may appoint another trust institution that is its affiliate as its agent
22 for the performance of acts, obligations, and responsibilities with respect to any
23 account. In that event, the trust institution shall remain fully responsible and liable with
24 respect to all actions of the affiliated trust institution as if those actions were performed
25 by the trust institution. Except as explicitly provided in documents or laws governing an
26 account, appointment of an affiliate agent is not:

27 (1) An impermissible delegation of responsibility or duty by the
28 appointing trust institution.

29 (2) A transfer or relinquishment of account powers by the appointing
30 institution.

31 (3) A resignation or disqualification from the account by the appointing
32 trust institution.

33 **"§ 53-424. Construction.**

34 (a) Except as expressly provided in this Part, nothing in this Part shall be
35 construed to amend or modify the laws of this State governing the establishment or
36 administration of accounts or the actions of trust institutions.

37 (b) An affiliate transfer is not, in itself, a transfer of substantially all of the
38 transferring trust institution's assets and liabilities.

39 (c) Except as explicitly provided by the documents governing the account,
40 neither an affiliate transfer nor an agency appointment under G.S. 53-423 shall be
41 subject to G.S. 36A-13 or any other provision requiring court approval for removal of
42 fiduciary funds from this State.

43 (d) Except as explicitly provided by the documents governing the account, an
44 affiliate transfer, but not an agency appointment, shall be subject to any provision of law

1 requiring notice of a transfer of the principal place of administration of the account. The
2 manner or timing of a notice required under G.S. 53-420(c) may be altered to comport
3 with any provision of law requiring notice of a transfer of the principal place of
4 administration of the account."

5 **SECTION 3.** This act becomes effective October 1, 2005.