

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 790*

Short Title: Test. Additions to Trusts/Will References.

(Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary II (Criminal).

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE LAW REGARDING TESTAMENTARY ADDITIONS TO TRUSTS, TO CODIFY THE DOCTRINES OF INCORPORATION BY REFERENCE AND ACTS OF INDEPENDENT SIGNIFICANCE, AND TO ALLOW, IF AUTHORIZED BY WILL, THE DISPOSITION OF TANGIBLE PERSONAL PROPERTY OTHER THAN MONEY BY A SEPARATE WRITING, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 31 of the General Statutes reads as rewritten:

"Article 8.

~~"Devise or Bequest to Trustee of an Existing Trust. Testamentary Additions to Trusts.~~
"§ 31-47. Devise or bequest to trustee of an existing trust. Testamentary additions to trusts.

~~A devise or bequest in a will duly executed pursuant to the provisions of this Chapter may be made in form or substance to the trustee of any trust, including an existing testamentary trust, if established in writing prior to the execution of such will. Such devise or bequest shall not be invalid because the trust is amendable or revocable or both by the settlor or any other person or persons; nor because the trust instrument or any amendment thereto was not executed in the manner required for wills, nor because the trust was amended after execution of the will. Unless the will provides otherwise, such devise or bequest shall operate to dispose of property under the terms of the trust as they appear in writing at the testator's death and the property shall not be deemed held under a testamentary trust. An entire revocation of the trust prior to the testator's death shall invalidate the devise or bequest.~~

(a) A will may validly devise property to:

(1) The trustee of a trust established before the testator's death by the testator, by the testator and some other person, or by some other person, including a trust authorized by G.S. 36C-4-401.1; or

1 Whether or not the provisions relating to holographic wills apply, a will may refer to
2 a written statement or list to dispose of items of tangible personal property not otherwise
3 specifically disposed of by the will, other than money. To be admissible under this
4 section as evidence of the intended disposition, the writing must be signed by the
5 testator and must describe the items and the devisees with reasonable certainty. The
6 writing may be referred to as one to be in existence at the time of the testator's death; it
7 may be prepared before or after the execution of the will; it may be altered by the
8 testator after its preparation; and it may be a writing that has no significance apart from
9 its effect on the dispositions made by will.

10 For purposes of this section, "devisee" means any person entitled to take real or
11 personal property under the provisions of a valid, probated will."

12 **SECTION 3.** The Revisor of Statutes shall cause to be printed along with
13 this act all relevant portions of the official comments to Sections 2-510 (Incorporation
14 by Reference), 2-511 (Testamentary Additions to Trusts), and 2-513 (Separate Writing
15 Identifying Devise of Certain Types of Tangible Personal Property) of the Uniform
16 Probate Code and all explanatory comments of the drafters of this act as the Revisor
17 deems appropriate.

18 **SECTION 4.** This act is effective when it becomes law and applies to estates
19 of decedents dying on or after that date regardless of when the will or instrument was
20 executed.