

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 517
Judiciary I Committee Substitute Adopted 3/30/05
House Committee Substitute Favorable 7/27/05

Short Title: Account Transfers and Agency Appointments.

(Public)

Sponsors:

Referred to:

March 15, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR ACCOUNT TRANSFERS AND AGENCY
3 APPOINTMENTS BETWEEN AFFILIATED TRUST INSTITUTIONS.

4 The General Assembly of North Carolina enacts:

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

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

9 ...

10 (49a) "Transferring trust institution" means a trust institution that proposes
11 to make, or does make, an affiliate transfer.

12 (49b) "Transferee trust institution" means a trust institution to which an
13 affiliate transfer is proposed to be made, or is made.

14"

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

17 "Part 7. Affiliate Transfers; Agent Appointments.

18 "**§ 53-420. Affiliate transfers authorized; procedure.**

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

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

24 (c) Between 90 and 30 days prior to the proposed date of the affiliate transfer, the
25 transferring trust institution shall give written notice of the proposed affiliate transfer to
26 all clients and other persons to whom the transferring trust institution last sent reports or
27 statements for the account or to whom the next regular report or statement would be
28 sent. The notice shall include the following information:

- 1 (1) A brief description of the proposed affiliate transfer.
2 (2) The client's right to object in writing to the affiliate transfer, and the
3 physical and mailing addresses to which the written objection may be
4 sent; the transferring trust institution also may provide electronic mail
5 or facsimile addresses, or both, as additional methods for giving
6 written notice of objection.
7 (3) The date upon which the affiliate transfer is proposed to be effective.
8 (4) The identity, mailing address, and telephone number of one or more
9 employees of the transferee trust institution who can respond to
10 inquiries if the affiliate transfer is complete.
11 (5) The identity, mailing address, and telephone number of one or more
12 employees of the transferring trust institution who can respond to
13 inquiries about the proposed affiliate transfer.

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

19 **"§ 53-421. Objection to affiliate transfer.**

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

27 **"§ 53-422. Effect of affiliate transfer.**

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

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

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

38 (d) Unless the affiliate transfer is authorized by the documents governing the
39 account, the transferring trust institution remains liable and responsible, while affiliated
40 with the transferee trust institution, for the transferee trust institution's administration of
41 accounts subject to an affiliate transfer. For purposes of this subsection, an affiliate
42 transfer of an account made in reliance on subsection (e) of this section shall not be
43 deemed to be authorized by the documents governing the account.

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

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

6 (2) Standards relating to the location or charter of the trust institution
7 administering the account may be satisfied by the transferring trust
8 institution or the transferee trust institution.

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

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

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

17 **"§ 53-423. Trust institution as agent.**

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

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

26 (2) A transfer or relinquishment of account powers by the appointing
27 institution.

28 (3) A resignation or disqualification from the account by the appointing
29 trust institution.

30 **"§ 53-424. Construction.**

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

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

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

40 (d) Except as explicitly provided by the documents governing the account, an
41 affiliate transfer, but not an agency appointment, shall be subject to any provision of law
42 requiring notice of a transfer of the principal place of administration of the account. The
43 manner or timing of a notice required under G.S. 53-420(c) may be altered to comport

1 with any provision of law requiring notice of a transfer of the principal place of
2 administration of the account."

3 **SECTION 3.** Effective January 1, 2006, G.S. 53-424(c) as enacted by
4 Section 2 of this act reads as rewritten:

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

9 **SECTION 4.** This act becomes effective October 1, 2005.