GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S 1 SENATE BILL 724 Short Title: Gifts by Attorney-In-Fact. (Public) Sponsors: Senator Hartsell. Referred to: Judiciary II/Election Laws April 13, 1995 A BILL TO BE ENTITLED AN ACT TO DESCRIBE CIRCUMSTANCES UNDER WHICH AN ATTORNEY-IN-FACT MAY MAKE GIFTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION. The General Assembly of North Carolina enacts: Section 1. G.S. 32A-1 reads as rewritten:" § 32A-1. Statutory Short Form of General Power of Attorney. The use of the following form in the creation of a power of attorney is lawful, and, when used, it shall be construed in accordance with the provisions of this Chapter. 'NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN CHAPTER 32A OF THE NORTH CAROLINA GENERAL STATUTES WHICH EXPRESSLY PERMITS THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES CONCERNED. State of County of I the undersigned, hereby appoint my attorney-in-fact for me and give such person full power to act in my name, place and stead in any way which I myself could do if I were personally present with respect to the following matters as each of them is defined in Chapter 32A of the North Carolina General Statutes to the extent that I am permitted by law to act through an agent. (DIRECTIONS: Initial the line opposite any one or

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1	more of the subdivisions as to which the principal desires to give the
2	attorney-in- fact authority.)
3	(1) Real property transactions; transactions
4	(2) Personal property transactions; transactions
5	(3) Bond, share and commodity transactions; transactions
6	(4) Banking transactions; transactions
7	(5) Safe deposits; deposits
8	(6) Business operating transactions; transactions
9	(7) Insurance transactions; transactions
10	(8) Estate transactions; transactions
11	(9) Personal relationships and affairs; affairs
12	(10) Social security and unemployment; unemployment
13	(11) Benefits from military service; military service
14	(12) Tax
15	(13) Employment of agents
16	(14) Gifts to individuals and charities
17	(15) Gifts to the named attorney-in-fact
18	(If power of substitution and revocation is to be given, add: 'I also give
19	to such person full power to appoint another to act as my attorney-in-fact
20	and full power to revoke such appointment.')
21	(If period of power of attorney is to be limited, add: 'This power
22	terminates, 19')
23	(If power of attorney is to be a durable power of attorney under the
24	provision of Article 2 of Chapter 32A and is to continue in effect after the
25	incapacity or mental incompetence of the principal, add: 'This power of
26	attorney shall not be affected by my subsequent incapacity or mental
27	incompetence.')
28	(If power of attorney is to take effect only after the incapacity or mental
29	incompetence of the principal, add: 'This power of attorney shall become
30	effective after I become incapacitated or mentally incompetent.')Dated
31	, 19(Seal)
32	Signature STATE OF COUNTY OFOn this day of
33	,
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35	personally
36	appeared
37	before me, the
38	said named
39	to me
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41	known to me
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43	person

1				described in
2				and who
3				executed the
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6				he (or she)
7				acknowledged
8				that he (or she)
9				executed the
10				same and
11				being duly
12				sworn by me,
13				made oath that
14				the statements
15				in the
16				foregoing
17				instrument are
18				true.
19		My C	ommission Expires	true.
20		Wiy C	ommission Expires	
21			(Signature of Notary Publi	(c)
22			Notary Public (Official Se	/
23		Sec 2 GS	. 32A-2 is amended by adding the following new	
24	read:	500. 2. G.5	. 32/1 2 is differed by adding the following new	Subul Visions to
25	read.	"(14) Gifts	to Individuals and Charities. –	
26		<u>a.</u>	Except as provided in G.S. 32A-2(14)b., to mak	e gifts of any of
27			the principal's property to any individual or to a	any organization
28			described in sections 170(c) and 2522(a) of the I	
29			Code or corresponding future provisions of fed	
30			both, in accordance with the principal's pers	
31			making or joining in the making of lifetime gifts.	-
32			subdivision 'Internal Revenue Code' means the '	
33			in G.S. 105-2.1.	code us defined
34		<u>b.</u>	Except as provided in G.S. 32A-2(14)c., a pov	ver described in
35		<u>o.</u>	G.S. 32A-2(14)a. may not be exercised by the at	
36			favor of the attorney-in-fact or the estate, credit	
37			of the estate of the attorney-in-fact.	cors, or creations
38		C	If the power described in G.S. 32A-2(14)a. is cor	iferred upon two
39		<u>C.</u>	or more attorneys-in-fact, it may be exercised by	-
40			fact or attorneys-in-fact who are not disqualified	
41			2(14)b. from exercising the power of appointment	-
42			the only attorney-in-fact or attorneys-in-fact.	it as if they were
⊤ ∠			are only autorney-in-ract of autorneys-in-ract.	

1		d.	An attorney-in-fact expressly authorized by this section to make
2			gifts of the principal's property may elect to request the clerk of
3			the superior court to issue an order to make a gift of the property
4			of the principal.
5	(15)	Gifts	to the Named Attorney-in-Fact - To make gifts to the attorney-in-

- (15) Gifts to the Named Attorney-in-Fact. To make gifts to the attorney-in-fact named in the power of attorney or the estate, creditors, or creditors of the estate of the attorney-in-fact."
- Sec. 3. Chapter 32A of the General Statutes is amended by adding the following new Articles to read:

"ARTICLE 2A.

"AUTHORITY OF ATTORNEY-IN-FACT TO MAKE GIFTS.

"§ 32A-14.1. Gifts under power of attorney.

- (a) Except as provided in subsection (b) of this section, if any power of attorney authorizes an attorney-in-fact to do, execute, or perform any act that the principal might or could do or evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property, the attorney-in-fact shall have the power and authority to make gifts in any amount of any of the principal's property to any individual or to any organization described in sections 170(c) and 2422(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. As used in this subsection, 'Internal Revenue Code' means the 'Code' as defined in G.S. 105-2.1.
- (b) Except as provided in subsection (c) of this section, or unless gifts are expressly authorized by the power of attorney, a power described in subsection (a) of this section may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact.
- (c) If the power of attorney described in subsection (a) of this section is conferred upon two or more attorneys-in-fact, it may be exercised by the attorney-in-fact or attorneys-in-fact who are not disqualified by subsection (b) of this section from exercising the power of appointment as if they were the only attorney-in-fact or attorneys-in-fact.
- (d) Subsection (a) of this section shall not in any way impair the right, power, or ability of any principal, by express terms in the power of attorney, to authorize or limit the authority of any attorney-in-fact to make gifts of the principal's property.
- (e) An attorney-in-fact expressly authorized by this section to make gifts of the principal's property may elect to request that the clerk of the superior court issue an order approving a gift or gifts of the property of the principal.
- (f) This section shall apply to all powers of attorney executed prior to, on, or after the effective date of this section.

"ARTICLE 2B.

"GIFTS AUTHORIZED BY COURT ORDER.

"§ 32A-14.10. Gifts authorized by court order.

An attorney-in-fact, acting under a power of attorney that does not contain the grant 1 2 of power set out in G.S. 32A-14.1 and does not expressly authorize gifts of the principal's 3 property, may initiate a special proceeding before the clerk of superior court in accordance with the procedures of Article 33 of Chapter 1 of the General Statutes for 4 5 authority to make gifts of the principal's property to the extent not inconsistent with the 6 express terms of the power of attorney. The principal and any guardian ad litem 7 appointed for the principal are the defendants in a proceeding pursuant to this Article. 8 The clerk may issue an order setting forth the amounts, frequency, recipients, and 9 proportions of any gifts of the principal's property after considering all relevant factors, 10 including, but not limited to: (i) the size of the principal's estate; (ii) the principal's foreseeable obligations; (iii) the principal's foreseeable maintenance needs; (iv) the 11 12 principal's personal history of making or joining in the making of lifetime gifts; (v) the principal's estate plan; and (vi) the tax effects of the gifts. If there is no appeal from the 13 14 decision and order of the clerk within the time prescribed by law, the clerk's order shall be submitted to the judge of the superior court and approved by the court before the order 15 becomes effective. 16

"§ 32A-14.11. Appeal; stay effected by appeal.

Any party in interest may appeal from the decision of the clerk to the judge of the superior court. The procedure for appeal shall be the same as the procedure for appeal in other special proceedings governed by Article 33 of Chapter 1 of the General Statutes. An appeal taken from the decision of the clerk shall stay the decision and order of the clerk until the cause is heard and determined by the judge upon the appeal taken.

"§ 32A-14.12. Costs and fees.

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28 29 All costs and fees arising in connection with a proceeding under this Article shall be assessed the same as costs and fees are assessed in special proceedings governed by Article 33 of Chapter 1 of the General Statutes."

- Sec. 4. Article 2A of Chapter 32A as set out in Section 3 of this act is intended as a codification of the existing North Carolina common law.
 - Sec. 5. This act is effective upon ratification.