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Short Title: Uniform Custodial Trust Act.

(Public)

Sponsors:

Referred to:

March 8, 1995

A BILL TO BE ENTITLED
AN ACT TO BE KNOWN AS THE NORTH CAROLINA UNIFORM CUSTODIAL
TRUST ACT AND TO MAKE CONFORMING AMENDMENTS TO THE POWER
OF ATTORNEY STATUTES, AS RECOMMENDED BY THE GENERAL
STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read
as follows:

"CHAPTER 33B.

"NORTH CAROLINA UNIFORM CUSTODIAL TRUST ACT.

"§ 33B-1. Definitions.

As used in this act:

(1) 'Adult' means an individual who is at least 21 years of age.

(2) 'Beneficiary' means an individual for whom property has been transferred to or held under a declaration of trust by a custodial trustee for the individual's use and benefit under this act.

- 1 (3) 'Guardian of the estate' means a guardian appointed for the purpose of
2 managing the property, estate, and business affairs of a ward, or a
3 person legally authorized to perform substantially the same functions.
4 As used in this act the term 'guardian of the estate' includes a general
5 guardian or guardian of the estate appointed under the provisions of
6 Chapter 35A of the General Statutes.
- 7 (4) 'Court' means the clerk of superior court of this State.
- 8 (5) 'Custodial trust property' means an interest in property transferred to or
9 held under a declaration of trust by a custodial trustee under this act and
10 the income from and proceeds of that interest.
- 11 (6) 'Custodial trustee' means a person designated as trustee of a custodial
12 trust under this act or a substitute or successor to the person designated.
- 13 (7) 'Guardian of the person' means a guardian appointed for the purpose of
14 performing duties relating to the care, custody, and control of a ward,
15 but not a person who is only a guardian ad litem. As used in this act the
16 term 'guardian of the person' includes a general guardian or guardian of
17 the person appointed under the provisions of Chapter 35A of the
18 General Statutes.
- 19 (8) 'Incapacitated' means lacking the ability to manage property and
20 business affairs effectively by reason of mental illness, mental
21 deficiency, physical illness or disability, chronic use of drugs, chronic
22 intoxication, confinement, detention by a foreign power, disappearance,
23 being under 21 years of age, or other disabling cause.
- 24 (9) 'Legal representative' means a personal representative or guardian of the
25 estate.
- 26 (10) 'Member of the beneficiary's family' means a beneficiary's spouse,
27 descendant, parent, grandparent, brother, sister, uncle or aunt, whether
28 of the whole or half blood or by adoption.
- 29 (11) 'Person' means an individual, corporation, business trust, estate, trust,
30 partnership, joint venture, association, or any other legal or commercial
31 entity.
- 32 (12) 'Personal representative' means an executor, administrator, or special
33 administrator of a decedent's estate, a person legally authorized to
34 perform substantially the same function, or a successor to any of them.
- 35 (13) 'State' means a state, territory, or possession of the United States, the
36 District of Columbia, or the Commonwealth of Puerto Rico.
- 37 (14) 'Transferor' means a person who creates a custodial trust by transfer or
38 declaration.
- 39 (15) 'Trust company' means a financial institution, corporation, or other legal
40 entity, authorized to exercise general trust powers in North Carolina.
- 41 (16) 'General guardian' means a guardian of both the estate and the person.

42 **"§ 33B-2. Custodial trust; general.**

1 (a) A person may create a custodial trust of property by a written transfer of the
2 property to a trust company or an adult other than the transferor executed in any lawful
3 manner, naming as beneficiary an individual, who may be the transferor, in which the
4 transferee is designated, in substance, as custodial trustee under the North Carolina
5 Uniform Custodial Trust Act. A transfer is executed in a lawful manner if the
6 formalities, if any, of the transfer of the particular property necessary under general
7 principles of law are satisfied.

8 (b) An adult may create a custodial trust of property by a written declaration which
9 names as beneficiary an individual other than the declarant. The declaration shall be
10 evidenced by registration of the property or by other instrument of declaration executed
11 in any lawful manner, describing the property and designating the declarant, in substance,
12 as custodial trustee under the North Carolina Uniform Custodial Trust Act. A registration
13 or other declaration of trust for the sole benefit of the declarant is not a custodial trust
14 under this act. A registration or declaration is executed in a lawful manner if the
15 formalities, if any, of the transfer of the beneficial interest in the particular property under
16 general principles of law are satisfied.

17 (c) Title to custodial trust property is in the custodial trustee, and the beneficial
18 interest is in the beneficiary.

19 (d) Except as provided in subsection (e) of this section, a transferor may not
20 terminate a custodial trust.

21 (e) The beneficiary, if not incapacitated, or the guardian of the estate of an
22 incapacitated beneficiary, may terminate a custodial trust by delivering to the custodial
23 trustee a writing signed by the beneficiary or guardian of the estate declaring the
24 termination. If not previously terminated, the custodial trust terminates on the death of
25 the beneficiary.

26 (f) Any person may augment existing custodial trust property by the addition of
27 other property pursuant to a written instrument satisfying the requirements of subsections
28 (a) or (b) of this section.

29 (g) The transferor may designate, or authorize the designation of, a successor
30 custodial trustee in the trust instrument.

31 (h) This act does not displace or restrict other means of creating trusts. A trust, the
32 terms of which do not conform to this act, may be enforceable according to its terms
33 under the law.

34 **"§ 33B-3. Custodial trust to begin in the future.**

35 (a) A person may create a custodial trust to begin in the future by designating the
36 transferee in substance 'as custodial trustee for (name of beneficiary) under
37 the North Carolina Uniform Custodial Trust Act'. A designation under this section may
38 be made in:

- 39 (1) A will;
40 (2) A trust;
41 (3) An insurance policy;
42 (4) A deed;
43 (5) A payable-on-death account;

1 (6) An instrument exercising a power of appointment, provided that the
2 donor of the power has not expressly prohibited the exercise of the
3 power in favor of a custodial trustee, and provided further that the
4 beneficiary of the custodial trust is a permissible object of the power,
5 although the custodial trustee need not be a permissible object of the
6 power; or

7 (7) A writing designating a beneficiary of contractual rights, including but
8 not limited to rights under a pension or profit sharing plan, which is
9 registered with or delivered to the fiduciary, payor, issuer, or obligor of
10 the contractual right.

11 (b) Persons may be designated as substitute or successor custodial trustees to
12 whom the property must be paid or transferred in the order named if the preceding
13 designated custodial trustee is unable or unwilling to serve.

14 **"§ 33B-4. Form and effect of receipt and acceptance by custodial trustee;**
15 **jurisdiction.**

16 (a) Obligations of a custodial trustee, including the obligation to follow directions
17 of the beneficiary, arise under this act upon the custodial trustee's acceptance, express or
18 implied, of the custodial trust property.

19 (b) The custodial trustee's acceptance may be evidenced by a writing stating in
20 substance:

21 **'CUSTODIAL TRUSTEE'S RECEIPT AND ACCEPTANCE**

22 I,, (name of custodial trustee) acknowledge receipt of the custodial trust
23 property described below or in the attached instrument and accept the custodial trust as
24 custodial trustee for (name of beneficiary) under the North Carolina
25 Uniform Custodial Trust Act. I undertake to administer and distribute the custodial trust
26 property pursuant to the North Carolina Uniform Custodial Trust Act. My obligations as
27 custodial trustee are subject to the directions of the beneficiary unless the beneficiary is
28 designated as, is, or becomes incapacitated. The custodial trust property consists of
29

30 Dated:

31

32 (Signature of Custodial Trustee)'

33 (c) Upon accepting custodial trust property, a person designated as custodial
34 trustee under this act is subject to personal jurisdiction in this State with respect to any
35 matter relating to the custodial trust.

36 **"§ 33B-5. Transfer to custodial trustee by fiduciary or obligor; facility of payment.**

37 (a) A person, including a fiduciary other than a custodial trustee, who holds
38 property of or owes a debt to an incapacitated individual not having a guardian of the
39 estate may make a transfer to an adult member of the beneficiary's family or to a trust
40 company as custodial trustee for the use and benefit of the incapacitated individual. If the
41 value of the property or the debt exceeds twenty thousand dollars (\$20,000), the transfer
42 is not effective unless authorized by the court.

1 (b) A written acknowledgment of delivery, signed by a custodial trustee, is a
2 sufficient receipt and discharge for property transferred to the custodial trustee pursuant
3 to this section.

4 (c) This section shall not apply when the disposition of the property has been
5 directed by an instrument designating a custodial trustee pursuant to G.S. 33B-3.

6 **"§ 33B-6. Single beneficiaries; separate custodial trusts.**

7 (a) Beneficial interests in a custodial trust may not be created for multiple
8 beneficiaries.

9 (b) All custodial trust property held under this act by the same custodial trustee for
10 the use and benefit of a single beneficiary may be administered as a single custodial trust.

11 **"§ 33B-7. General duties of custodial trustee.**

12 (a) If appropriate, a custodial trustee shall register or record the instrument vesting
13 title to custodial trust property.

14 (b) If the beneficiary is not incapacitated, a custodial trustee shall follow the
15 directions of the beneficiary in the management, control, investment, or retention of the
16 custodial trust property.

17 If the beneficiary is incapacitated or the beneficiary has capacity but has not given
18 direction, the custodial trustee shall observe the standard of care that would be observed
19 by a prudent person dealing with property of another and is not limited by any other law
20 restricting investments by fiduciaries. However, a custodial trustee, in the custodial
21 trustee's discretion, may retain any custodial trust property received from the transferor.

22 If a custodial trustee has a special skill or expertise or is named custodial trustee on
23 the basis of representation of a special skill or expertise, the custodial trustee shall
24 observe the standard of care expected of one with that skill or expertise.

25 (c) Subject to subsection (b) of this section, a custodial trustee shall take control of
26 and collect, hold, manage, invest, and reinvest custodial trust property.

27 (d) A custodial trustee at all times shall keep custodial trust property of which the
28 custodial trustee has control, separate from all other property in a manner sufficient to
29 identify it clearly as custodial trust property of the beneficiary. Custodial trust property,
30 the title to which is subject to recordation, is adequately identified as such if an
31 appropriate instrument so identifying the property is recorded in the name of the custodial
32 trustee, designated in substance 'as custodial trustee for (name of beneficiary)
33 under the North Carolina Uniform Custodial Trust Act'. Custodial trust property subject
34 to registration is so identified if it is registered, or held in an account in the name of the
35 custodial trustee, designated in substance 'as custodial trustee for (name
36 of beneficiary) under the North Carolina Uniform Custodial Trust Act'.

37 (e) A custodial trustee shall keep records of all transactions with respect to
38 custodial trust property, including information necessary for the preparation of tax
39 returns, and shall make the records and information available at reasonable times to the
40 beneficiary or legal representative of the beneficiary.

41 (f) Unless the durable power of attorney specifically provides otherwise, the
42 exercise of the durable power of attorney for an incapacitated beneficiary is not effective
43 to terminate or direct the administration or distribution of a custodial trust.

1 **"§ 33B-8. General powers of custodial trustee.**

2 (a) A custodial trustee, acting in a fiduciary capacity, has all the rights and powers
3 over custodial trust property which an unmarried adult owner has over individually
4 owned property, but a custodial trustee may exercise those rights and powers in a
5 fiduciary capacity only.

6 (b) This section does not relieve a custodial trustee from liability for a violation of
7 G.S. 33B-7.

8 **"§ 33B-9. Use of custodial trust property.**

9 (a) A custodial trustee shall pay to the beneficiary or expend for the beneficiary's
10 use and benefit so much or all of the custodial trust property as the beneficiary while not
11 incapacitated may direct from time to time.

12 (b) If the beneficiary is incapacitated, the custodial trustee shall expend so much or
13 all of the custodial trust property as the custodial trustee considers advisable for the use
14 and benefit of the beneficiary and the spouse and children, and other dependents of the
15 beneficiary. Expenditures may be made in the manner, when, and to the extent that the
16 custodial trustee determines suitable and proper, without court order and without regard
17 to other support, income, or property of the beneficiary.

18 (c) A custodial trustee may establish checking, savings, or other similar accounts
19 of reasonable amounts from which either the custodial trustee or the beneficiary may
20 withdraw funds or against which either may draw checks. Funds withdrawn from, or
21 checks written against, the account of the beneficiary are distributions of custodial trust
22 property by the custodial trustee to the beneficiary.

23 **"§ 33B-10. Determination of incapacity; effect.**

24 (a) The custodial trustee shall administer the custodial trust as for an incapacitated
25 beneficiary if (i) the custodial trust was created under G.S. 33B-5, (ii) the transferor has
26 so directed in the instrument creating the custodial trust, (iii) a determination that a
27 beneficiary is an incompetent adult has been made under the provisions of Chapter 35A,
28 including a determination of limited incompetence under the provisions of G.S. 35A-
29 1112(d), unless the court provided otherwise, or (iv) the custodial trustee has determined
30 that the beneficiary is incapacitated under subsection (b) of this section.

31 (b) A custodial trustee may determine that the beneficiary is incapacitated in
32 reliance upon (i) previous direction or authority given by the beneficiary while not
33 incapacitated, including direction or authority pursuant to a durable power of attorney,
34 (ii) the certificate of the beneficiary's physician, (iii) authority given to the custodial
35 trustee in the instrument creating the trust to determine the incapacity of the beneficiary
36 after the creation of the custodial trust, or (iv) other reasonable evidence.

37 (c) If a custodial trustee for an incapacitated beneficiary determines that the
38 beneficiary's incapacity has ceased, or that circumstances concerning the beneficiary's
39 ability to manage property and business affairs have changed since the creation of a
40 custodial trust directing administration as for an incapacitated beneficiary, the custodial
41 trustee may administer the trust as for a beneficiary who is not incapacitated.

42 (d) Regardless of whether any determination of incapacity under subsection (b) of
43 this section has or has not been made, the beneficiary, the custodial trustee, or other

1 person interested in the custodial trust property or the welfare of the beneficiary, may
2 petition under the procedures of Chapter 35A for a determination by the court whether
3 the beneficiary is or continues to be incapacitated as defined in G.S. 33B-1(8). A
4 determination of incapacity does not require appointment of a guardian of the estate
5 unless in the discretion of the court such appointment is otherwise warranted.

6 (e) Incapacity of a beneficiary does not terminate (i) the custodial trust, (ii) any
7 designation of a successor custodial trustee, (iii) rights or powers of the custodial trustee,
8 or (iv) any immunities of third persons acting on instructions of the custodial trustee.

9 (f) A custodial trustee shall not be liable for any determinations authorized by this
10 section regarding the capacity or incapacity of the beneficiary made in good faith.

11 **"§ 33B-11. Third-party transactions.**

12 A third person in good faith and without a court order may act on instructions of, or
13 otherwise deal with, a person purporting to make a transfer as, or to act in the capacity of,
14 a custodial trustee. In the absence of actual knowledge to the contrary, the third person is
15 not responsible for determining:

16 (1) The validity of the purported custodial trustee's designation;

17 (2) The propriety of, or the authority under this act for, any action of the
18 purported custodial trustee;

19 (3) The validity or propriety of an instrument executed or instruction given
20 pursuant to this act either by the person purporting to make a transfer or
21 declaration or by the purported custodial trustee; or

22 (4) The propriety of the application of property vested in the purported
23 custodial trustee.

24 **"§ 33B-12. Liability to the third person.**

25 (a) A claim based on (i) a contract entered into by a custodial trustee acting in a
26 fiduciary capacity, (ii) an obligation arising from the ownership or control of custodial
27 trust property, (iii) a tort committed in the course of administering the custodial trust,
28 may be asserted by a third person against the custodial trust property by proceeding
29 against the custodial trustee in a fiduciary capacity, whether or not the custodial trustee or
30 the beneficiary is personally liable.

31 (b) A custodial trustee may be held personally liable to a third person:

32 (1) On a contract entered into in a fiduciary capacity if the custodial trustee
33 fails to reveal that capacity or to identify the custodial trust in the
34 contract; or

35 (2) For an obligation arising from control of custodial trust property or for a
36 tort committed in the course of the administration of the custodial trust
37 if the custodial trustee is personally at fault.

38 (c) A beneficiary is not personally liable to a third person for an obligation arising
39 from beneficial ownership of custodial trust property or for a tort committed in the course
40 of administration of the custodial trust unless the beneficiary is personally in possession
41 of the custodial trust property giving rise to the liability or is personally at fault.

42 (d) Subsections (b) and (c) of this section do not preclude actions or proceedings
43 to establish liability of the custodial trustee or beneficiary as owner or possessor of the

1 custodial trust property to the extent that person is protected as the insured by liability
2 insurance.

3 **"§ 33B-13. Declination, resignation, incapacity, death, or removal of custodial**
4 **trustee; designation of successor custodial trustee.**

5 (a) Before accepting the custodial trust property, a person designated as custodial
6 trustee may decline to serve by notifying the person who made the designation, the
7 transferor, or the transferor's legal representative. In such case, the transferor or the
8 transferor's legal representative may designate a substitute custodial trustee. If the
9 custodial trust is being created under G.S. 33B-3, the substitute custodial trustee
10 designated under G.S. 33B-3 becomes the custodial trustee, or, if a substitute custodial
11 trustee has not been designated, the person who made the designation may designate a
12 substitute custodial trustee pursuant to G.S. 33B-3.

13 (b) A custodial trustee who has accepted the custodial trust property may resign by
14 (i) delivering written notice to a successor custodial trustee, if any, the beneficiary, and, if
15 the beneficiary is incapacitated, to the beneficiary's guardian of the estate, if any, and (ii)
16 transferring and, where appropriate, registering or recording an instrument relating to the
17 custodial trust property in the name of the successor custodial trustee identified under
18 subsection (c) of this section.

19 (c) If a custodial trustee or successor custodial trustee is ineligible, resigns, dies, or
20 becomes incapacitated, the successor designated under G.S. 33B-2 or G.S. 33B-3
21 becomes custodial trustee. If there is no effective provision for a successor, the
22 beneficiary, if not incapacitated, may designate a successor custodial trustee; if the
23 beneficiary fails to act within 90 days, the resigning custodial trustee may designate a
24 successor custodial trustee. If there is no effective provision for a successor custodial
25 trustee and if the beneficiary is incapacitated, the beneficiary's guardian of the estate
26 becomes successor custodial trustee. If the beneficiary does not have a guardian of the
27 estate or the guardian of the estate fails to act as custodial trustee, the resigning custodial
28 trustee may designate a successor custodial trustee.

29 (d) If a successor custodial trustee is not designated pursuant to subsection (c) of
30 this section, the following persons may in the order listed petition the court to designate a
31 successor custodial trustee: the transferor, the legal representative of the transferor, the
32 legal representative of the custodial trustee, the general guardian of the beneficiary, the
33 guardian of the estate of the beneficiary, an adult member of the beneficiary's family, a
34 person interested in the custodial trust property, or a person interested in the welfare of
35 the beneficiary.

36 (e) A custodial trustee who declines to serve or resigns, or the legal representative
37 of a deceased or incapacitated custodial trustee shall put the custodial trust property and
38 records in the possession and control of the successor custodial trustee as soon as
39 practical. The successor custodial trustee shall enforce the obligation to deliver custodial
40 trust property and records.

41 (f) A beneficiary, the beneficiary's guardian of the estate, an adult member of the
42 beneficiary's family, a guardian of the person of the beneficiary, a person interested in the
43 custodial trust property, or a person interested in the welfare of the beneficiary, may

1 petition the court (i) to remove the custodial trustee for cause and to designate a successor
2 custodial trustee, (ii) to require the custodial trustee to furnish a bond or other security for
3 the faithful performance of fiduciary duties, or (iii) for other appropriate relief.

4 **"§ 33B-14. Expenses, compensation, and bond of custodial trustee.**

5 Except as otherwise provided in the instrument creating the custodial trust, in an
6 agreement with the beneficiary, or by court order, a custodial trustee:

- 7 (1) Is entitled to reimbursement from custodial trust property for reasonable
8 expenses incurred in the performance of fiduciary services;
9 (2) May charge, no later than six months after the end of each calendar
10 year, a reasonable compensation for fiduciary services performed during
11 that year; and
12 (3) Need not furnish a bond or other security for the faithful performance of
13 fiduciary duties.

14 **"§ 33B-15. Reporting and accounting by custodial trustee; determination of liability**
15 **of custodial trustee.**

16 (a) Upon the acceptance of custodial trust property, the custodial trustee shall
17 provide a written statement that the custodial trust property is held pursuant to this act
18 and describing the custodial trust property. The custodial trustee shall thereafter provide
19 a written statement of the administration of the custodial trust property (i) once each year,
20 (ii) upon request at reasonable times by the beneficiary or the beneficiary's legal
21 representative, (iii) upon resignation or removal of the custodial trustee, and (iv) upon
22 termination of the custodial trust. The statements must be provided to the beneficiary or
23 to the beneficiary's legal representative. Upon termination of the beneficiary's interest,
24 the custodial trustee shall furnish a statement to the person to whom the custodial trust
25 property is to be delivered.

26 (b) A beneficiary, the beneficiary's legal representative, an adult member of the
27 beneficiary's family, a person interested in the custodial trust property, or a person
28 interested in the welfare of the beneficiary may petition the court for an accounting by the
29 custodial trustee or the custodial trustee's legal representative.

30 (c) A successor custodial trustee may petition the court for an accounting by a
31 predecessor custodial trustee or the legal representative of a predecessor custodial trustee.

32 (d) In an action or proceeding under this act or in any other proceeding, the court
33 may require or permit the custodial trustee or the custodial trustee's legal representative to
34 account. The custodial trustee or the custodial trustee's legal representative may petition
35 the court for approval of annual or final accounts.

36 (e) If a custodial trustee is removed, the court shall require an accounting and
37 order delivery of the custodial trust property and records to the successor custodial trustee
38 and the execution of all instruments required for transfer of the custodial trust property.

39 (f) On petition of the custodial trustee or any person who could petition for an
40 accounting, the court, after notice to interested persons, may issue instructions to the
41 custodial trustee or review the propriety of the acts of a custodial trustee or the
42 reasonableness of compensation determined by the custodial trustee or others.

43 **"§ 33B-16. Limitations of action against custodial trustee.**

1 (a) Except as provided in subsections (b) and (c) of this section, a claim for relief
2 against a custodial trustee for accounting or breach of duty is barred as to a beneficiary, a
3 person to whom custodial trust property is to be paid or delivered, or the legal
4 representative of an incapacitated or deceased beneficiary or payee:

5 (1) Who has received a final account or statement fully disclosing the
6 matter unless an action or proceeding to assert the claim is commenced
7 within two years after receipt of the final account or statement; or

8 (2) Who has not received a final account or statement fully disclosing the
9 matter unless an action or proceeding to assert the claim is commenced
10 within three years after the termination of the custodial trust.

11 (b) Except as provided in subsection (c) of this section, a claim for relief to
12 recover from a custodial trustee for fraud, misrepresentation, or concealment is barred
13 unless an action or proceeding to assert the claim is commenced within five years after
14 the termination of the custodial trust.

15 (c) A claim for relief is not barred by this section if the claimant:

16 (1) Is a minor, until the earlier of two years after the claimant becomes an
17 adult or dies;

18 (2) Is an incapacitated adult, until the earliest of two years after (i) the
19 appointment of a guardian of the estate, (ii) the removal of the
20 incapacity, or (iii) the death of the claimant; or

21 (3) Was an adult, now deceased, who was not incapacitated, until two years
22 after the claimant's death if the claim was not barred by adjudication,
23 consent, or limitation prior to the claimant's death.

24 **"§ 33B-17. Distribution on termination.**

25 (a) Upon termination of a custodial trust, the custodial trustee shall transfer the
26 unexpended custodial trust property:

27 (1) To the beneficiary, if not incapacitated or deceased;

28 (2) To the guardian of the estate or other recipient designated by the court
29 for an incapacitated beneficiary; or

30 (3) Upon the beneficiary's death, in the following order:

31 a. As last directed in a writing signed by the deceased beneficiary
32 while not incapacitated and received by the custodial trustee
33 during the life of the deceased beneficiary;

34 b. As designated in the instrument creating the custodial trust; or

35 c. To the estate of the deceased beneficiary.

36 (b) If, when the custodial trust would otherwise terminate, the distributee is
37 incapacitated, the custodial trust continues for the use and benefit of the distributee as
38 beneficiary until the incapacity is removed or the custodial trust is otherwise terminated.

39 (c) Death of a beneficiary does not terminate the power of the custodial trustee to
40 discharge obligations of the custodial trustee or beneficiary incurred before the
41 termination of the custodial trust.

42 (d) The writing described in G.S. 33B-17(a)(3)a. or the instrument described in
43 G.S. 33B-17(a)(3)b. must also be signed by at least two witnesses, neither of whom is the

1 custodial trustee or the distributee of the custodial trust property, and be acknowledged
2 by the beneficiary or transferor before an individual authorized to administer oaths or
3 take acknowledgements. Failure to comply with the witness or acknowledgement
4 requirement shall not affect the validity of the custodial trust during the life of the
5 beneficiary, but shall invalidate only the direction or designation of the distributee on
6 termination of the custodial trust under G.S. 33B-17(a)(3)a. or G.S. 33B-17(a)(3)b., and
7 upon termination of the custodial trust the custodial trustee shall transfer the unexpended
8 custodial trust property according to the remaining provisions of this section.

9 **"§ 33B-18. Methods and forms of creating custodial trusts.**

10 (a) If a transaction (including a declaration with respect to or a transfer of specific
11 property) otherwise satisfies applicable law, the criteria of G.S. 33B-2 are satisfied by:

12 (1) The execution and either delivery to the custodial trustee or recording of
13 an instrument in substantially the following form:

14 **'TRANSFER UNDER THE NORTH CAROLINA**
15 **UNIFORM CUSTODIAL TRUST ACT**

16 I, (name of transferor or name and representative capacity if a
17 fiduciary), transfer to (name of trustee other than transferor), as custodial
18 trustee for (name of beneficiary) as beneficiary and as
19 distributee on termination of the trust in absence of direction by the beneficiary under the
20 North Carolina Uniform Custodial Trust Act, the following:

21 (insert a description of the custodial trust property legally sufficient to identify and
22 transfer each item of property).

23 Dated:(Seal)(Witness)

24 Signature

.....(Witness)

27 STATE OF COUNTY OF

28 On this day of,, personally appeared before me, the
29 said named to me known and known to me to be the person described
30 in and who executed the foregoing instrument and he (or she)
31 acknowledged that he (or she) executed the same and being duly sworn by
32 me, made oath that the statements in the foregoing instrument are true.

33 My Commission Expires

35
36
(Signature of Notary Public)
37 Notary Public (Official Seal)';

38 or(2) The execution and the recording or giving notice of its execution to the beneficiary
39 of an instrument in substantially the following form:

40 **'DECLARATION OF TRUST UNDER THE NORTH CAROLINA**
41 **UNIFORM CUSTODIAL TRUST ACT**

42 I, (name of owner of property,) declare that henceforth I hold as
43 custodial trustee for (name of beneficiary other than transferor) as

beneficiary and as distributee on termination of the trust in absence of direction by the beneficiary under the North Carolina Uniform Custodial Trust Act, the following: (Insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated:(Seal)(Witness)

Signature

.....(Witness)

STATE OF COUNTY OF

On this day of,, personally appeared before me, the said named to me known and known to me to be the person described in and who executed the foregoing instrument and he (or she) acknowledged that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

My Commission Expires

..... (Signature of Notary Public)

Notary Public (Official Seal)'(b) Any customary methods of transferring or evidencing ownership of property may be used to create a custodial trust, including, but not limited to, any of the following:

- (1) Registration of a security in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance 'as custodial trustee for (name of beneficiary) under the North Carolina Uniform Custodial Trust Act';
(2) Delivery of a certificated security, or a document necessary for the transfer of an uncertificated security, together with any necessary endorsement, to an adult other than the transferor or to a trust company as custodial trustee, accompanied by an instrument in substantially the form prescribed in subsection (a)(1);
(3) Payment of money or transfer of a security held in the name of a broker or a financial institution or its nominee to a broker or financial institution for credit to an account in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance 'as custodial trustee for (name of beneficiary) under the North Carolina Uniform Custodial Trust Act';
(4) Registration of ownership of a life or endowment insurance policy or annuity contract with the issuer in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance 'as custodial trustee for

- 1 (name of beneficiary) under the North Carolina Uniform
2 Custodial Trust Act;
- 3 (5) Delivery of a written assignment to an adult other than the transferor or
4 to a trust company designated in the assignment in substance by the
5 words 'as custodial trustee for (name of beneficiary) under the
6 North Carolina Uniform Custodial Trust Act';
- 7 (6) Irrevocable exercise of a power of appointment, pursuant to its terms, in
8 favor of a trust company, an adult other than the donee of the power, or
9 the donee who holds the power if the beneficiary is other than the
10 donee, designated in the appointment in substance 'as custodial trustee
11 for (name of beneficiary) under the North Carolina Uniform
12 Custodial Trust Act';
- 13 (7) Delivery of a written notification or assignment of a right to future
14 payment under a contract to an obligor which transfers the right under
15 the contract to a trust company, an adult other than the transferor, or the
16 transferor if the beneficiary is other than the transferor, designated in the
17 notification or assignment in substance 'as custodial trustee for
18 (name of beneficiary) under the North Carolina Uniform
19 Custodial Trust Act';
- 20 (8) Execution and delivery of a conveyance of an interest in real property in
21 the name of a trust company, an adult other than the transferor, or the
22 transferor if the beneficiary is other than the transferor, designated in
23 substance 'as custodial trustee for (name of beneficiary)
24 under the North Carolina Uniform Custodial Trust Act';
- 25 (9) Issuance of a certificate of title by an agency of a state or of the United
26 States which evidences title to tangible personal property:
- 27 a. Issued in the name of a trust company, an adult other than the
28 transferor, or the transferor if the beneficiary is other than the
29 transferor, designated in substance 'as custodial trustee for
30 (name of beneficiary) under the North Carolina
31 Uniform Custodial Trust Act'; or
- 32 b. Delivered to a trust company or an adult other than the transferor
33 or endorsed by the transferor to that person, designated in
34 substance 'as custodial trustee for (name of beneficiary)
35 under the North Carolina Uniform Custodial Trust Act'; or
- 36 (10) Execution and delivery of an instrument of gift to a trust company or an
37 adult other than the transferor, designated in substance 'as custodial
38 trustee for (name of beneficiary) under the North
39 Carolina Uniform Custodial Trust Act'.

40 "**§ 33B-19. Applicable law.**

- 41 (a) This act applies to a transfer or declaration creating a custodial trust that refers
42 to this act if, at the time of the transfer or declaration, the transferor, beneficiary, or
43 custodial trustee is a resident of or has its principal place of business in this State or the

1 custodial trust property is located in this State. The custodial trust remains subject to this
2 act despite a later change in residence or principal place of business of the transferor,
3 beneficiary, or custodial trustee, or removal of the custodial trust property from this State.

4 (b) A transfer made pursuant to an act of another state substantially similar to this
5 act is governed by the law of that state and may be enforced in this State.

6 **"§ 33B-20. Uniformity of application and construction.**

7 This act shall be applied and construed to effectuate its general purpose to make
8 uniform the law with respect to the subject of this act among states enacting it.

9 **"§ 33B-21. Short title.**

10 This act may be cited as the 'North Carolina Uniform Custodial Trust Act'."

11 Sec. 2. G.S. 32A-1 as amended by Chapter 331 of the 1995 Session Laws,
12 Senate Bill 724 reads as rewritten:

13 **"§ 32A-1. Statutory Short Form of General Power of Attorney.**

14 The use of the following form in the creation of a power of attorney is lawful, and,
15 when used, it shall be construed in accordance with the provisions of this Chapter.

16 'NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE
17 BROAD AND SWEEPING. THEY ARE DEFINED IN CHAPTER 32A
18 OF THE NORTH CAROLINA GENERAL STATUTES WHICH
19 EXPRESSLY PERMITS THE USE OF ANY OTHER OR DIFFERENT
20 FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES
21 CONCERNED.

22 State of

23 County of

24 I, appoint to be my attorney-in-fact, to act in my name
25 in any way which I could act for myself, with respect to the following
26 matters as each of them is defined in Chapter 32A of the North Carolina
27 General Statutes. (DIRECTIONS: Initial the line opposite any one or more
28 of the subdivisions as to which the principal desires to give the attorney-in-
29 fact authority.)

- 30 (1) Real property transactions
31 (2) Personal property transactions
32 (3) Bond, share, stock, securities and commodity
33 transactions
34 (4) Banking transactions
35 (5) Safe deposits
36 (6) Business operating transactions
37 (7) Insurance transactions
38 (8) Estate transactions
39 (9) Personal relationships and affairs
40 (10) Social security and unemployment
41 (11) Benefits from military service
42 (12) Tax matters
43 (13) Employment of agents

(14) Gifts to charities, and to individuals other than the attorney-in-fact

(15) Gifts to the named attorney-in-fact

(If power of substitution and revocation is to be given, add: "I also give to such person full power to appoint another to act as my attorney-in-fact and full power to revoke such appointment.")

(If period of power of attorney is to be limited, add: "This power terminates,")

(If power of attorney is to be a durable power of attorney under the provision of Article 2 of Chapter 32A and is to continue in effect after the incapacity or mental incompetence of the principal, add: "This power of attorney shall not be affected by my subsequent incapacity or mental incompetence.")

(If power of attorney is to take effect only after the incapacity or mental incompetence of the principal, add: "This power of attorney shall become effective after I become incapacitated or mentally incompetent.")

(If power of attorney is to be effective to terminate or direct the administration of a custodial trust created under the Uniform Custodial Trust Act, add: "In the event of my subsequent incapacity or mental incompetence, the attorney-in-fact of this power of attorney shall have the power to terminate or to direct the administration of any custodial trust of which I am the beneficiary.")

(If power of attorney is to be effective to determine whether a beneficiary under the Uniform Custodial Trust Act is incapacitated or ceases to be incapacitated, add: "The attorney-in-fact of this power of attorney shall have the power to determine whether I am incapacitated or whether my incapacity has ceased for the purposes of any custodial trust of which I am the beneficiary.")

Dated,

.....(Seal)

SignatureSTATE OF COUNTY OFOn this day of,, personally appeared before me, the said named to me known and known to me to be the person described in and who executed the foregoing instrument and he (or she) acknowledged that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.My Commission Expires

(Signature of Notary Public)

Notary Public (Official Seal)'" Sec. 3.

The Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all relevant portions of the Official Comments to the Uniform Custodial Trust Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

1 Sec. 4. This act becomes effective October 1, 1995.