

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 393

Short Title: Uniform Custodial Trust Act.

(Public)

Sponsors: Senators Hartsell; and Soles.

Referred to: Judiciary I.

April 1, 1991

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

6 The General Assembly of North Carolina enacts:

7 Section 1. The General Statutes of North Carolina are hereby amended by  
8 adding a new Chapter to read as follows:

9 **“CHAPTER 33B.**

10 **“NORTH CAROLINA UNIFORM CUSTODIAL TRUST ACT.**

11 **“§ 33B-1. Definitions.**

12 As used in this act:

- 13 (1) ‘Adult’ means an individual who is at least 18 years of age.  
14 (2) ‘Beneficiary’ means an individual for whom property has been  
15 transferred to or held under a declaration of trust by a custodial trustee  
16 for the individual's use and benefit under this act.  
17 (3) ‘Guardian of the estate’ means a guardian appointed for the purpose of  
18 managing the property, estate, and business affairs of a ward, or a  
19 person legally authorized to perform substantially the same functions.  
20 As used in this act the term ‘guardian of the estate’ includes a general  
21 guardian or guardian of the estate appointed under the provisions of  
22 Chapter 35A of the General Statutes.  
23 (4) ‘Court’ means the clerk of superior court of this State.

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

37 **"§ 33B-2. Custodial trust; general.**

38           (a) A person may create a custodial trust of property by a written transfer of the  
39 property to a trust company or an adult other than the transferor executed in any lawful  
40 manner, naming as beneficiary an individual, who may be the transferor, in which the  
41 transferee is designated, in substance, as custodial trustee under the North Carolina  
42 Uniform Custodial Trust Act.

43           (b) An adult may create a custodial trust of property by a written declaration  
44 which names as beneficiary an individual other than the declarant. The declaration shall

1 be evidenced by registration of the property or by other instrument of declaration  
2 executed in any lawful manner, describing the property and designating the declarant, in  
3 substance, as custodial trustee under the North Carolina Uniform Custodial Trust Act.  
4 A registration or other declaration of trust for the sole benefit of the declarant is not a  
5 custodial trust under this act.

6 (c) Title to custodial trust property is in the custodial trustee and the beneficial  
7 interest is in the beneficiary.

8 (d) Except as provided in subsection (e), a transferor may not terminate a  
9 custodial trust.

10 (e) The beneficiary, if not incapacitated, or the guardian of the estate of an  
11 incapacitated beneficiary, may terminate a custodial trust by delivering to the custodial  
12 trustee a writing signed by the beneficiary or guardian of the estate declaring the  
13 termination. If not previously terminated, the custodial trust terminates on the death of  
14 the beneficiary.

15 (f) Any person may augment existing custodial trust property by the addition of  
16 other property pursuant to a written instrument satisfying the requirements of  
17 subsections (a) or (b).

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

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

23 **"§ 33B-3. Custodial trust to begin in the future.**

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

28 (1) A will;

29 (2) A trust;

30 (3) An insurance policy;

31 (4) A deed;

32 (5) A payable-on-death account;

33 (6) An instrument exercising a power of appointment, provided that the  
34 donor of the power has not expressly prohibited the exercise of the  
35 power in favor of a custodial trustee, and provided further that the  
36 beneficiary of the custodial trust is a permissible object of the power,  
37 although the custodial trustee need not be a permissible object of the  
38 power; or

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

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

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

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

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

**CUSTODIAL TRUSTEE'S RECEIPT AND ACCEPTANCE**

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

.....

Dated: .....

.....

(Signature of Custodial Trustee)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (d) A custodial trustee at all times shall keep custodial trust property of which the  
17 custodial trustee has control, separate from all other property in manner sufficient to  
18 identify it clearly as custodial trust property of the beneficiary. Custodial trust property,  
19 the title to which is subject to recordation, is adequately identified as such if an  
20 appropriate instrument so identifying the property is recorded in the name of the  
21 custodial trustee, designated in substance 'as custodial trustee for ..... (name of  
22 beneficiary) under the North Carolina Uniform Custodial Trust Act.' Custodial trust  
23 property subject to registration is so identified if it is registered, or held in an account in  
24 the name of the custodial trustee, designated in substance 'as custodial trustee for  
25 ..... (name of beneficiary) under the North Carolina Uniform Custodial  
26 Trust Act'.

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

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

34 **"§ 33B-8. General powers of custodial trustee.**

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

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

41 **"§ 33B-9. Use of custodial trust property.**

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

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

7 (c) A custodial trustee may establish checking, savings, or other similar accounts  
8 of reasonable amounts from which either the custodial trustee or the beneficiary may  
9 withdraw funds, or against which either may draw checks. Funds withdrawn from, or  
10 checks written against, the account of the beneficiary are distributions of custodial trust  
11 property by the custodial trustee to the beneficiary.

12 **"§ 33B-10. Determination of incapacity; effect.**

13 (a) The custodial trustee shall administer the custodial trust as for an  
14 incapacitated beneficiary if (i) the custodial trust was created under G.S. 33B-5, (ii) the  
15 transferor has so directed in the instrument creating the custodial trust, (iii) a  
16 determination that a beneficiary is an incompetent adult has been made under the  
17 provisions of Chapter 35A, including a determination of limited incompetence under the  
18 provisions of G.S. 35A-1112(d), unless the court provided otherwise, or (iv) the  
19 custodial trustee has determined that the beneficiary is incapacitated under subsection  
20 (b).

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

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

32 (d) Regardless of whether any determination of incapacity under subsection (b)  
33 has or has not been made, the beneficiary, the custodial trustee, or other person  
34 interested in the custodial trust property or the welfare of the beneficiary, may petition  
35 under the procedures of Chapter 35A for a determination by the court whether the  
36 beneficiary is incapacitated as defined in G.S. 33B-1(8). A determination of incapacity  
37 does not require appointment of a guardian of the estate unless in the discretion of the  
38 court such appointment is otherwise warranted.

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

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

1 **"§ 33B-11. Third party transactions.**

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

- 6 (1) The validity of the purported custodial trustee's designation;  
7 (2) The propriety of, or the authority under this act for, any action of the  
8 purported custodial trustee;  
9 (3) The validity or propriety of an instrument executed or instruction  
10 given pursuant to this act either by the person purporting to make a  
11 transfer or declaration or by the purported custodial trustee; or  
12 (4) The propriety of the application of property vested in the purported  
13 custodial trustee.

14 **"§ 33B-12. Liability to the third person.**

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

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

- 22 (1) On a contract entered into in a fiduciary capacity if the custodial  
23 trustee fails to reveal that capacity or to identify the custodial trust in  
24 the contract; or  
25 (2) For an obligation arising from control of custodial trust property or for  
26 a tort committed in the course of the administration of the custodial  
27 trust if the custodial trustee is personally at fault.

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

33 (d) Subsections (b) and (c) do not preclude actions or proceedings to establish  
34 liability of the custodial trustee or beneficiary as owner or possessor of the custodial  
35 trust property to the extent that person is protected as the insured by liability insurance.

36 **"§ 33B-13. Declination, resignation, incapacity, death, or removal of custodial**  
37 **trustee; designation of successor custodial trustee.**

38 (a) Before accepting the custodial trust property, a person designated as custodial  
39 trustee may decline to serve by notifying the person who made the designation, the  
40 transferor, or the transferor's legal representative. In such case, the transferor or the  
41 transferor's legal representative may designate a substitute custodial trustee. If the  
42 custodial trust is being created under G.S. 33B-3, the substitute custodial trustee  
43 designated under G.S. 33B-3 becomes the custodial trustee, or, if a substitute custodial

1 trustee has not been designated, the person who made the designation may designate a  
2 substitute custodial trustee pursuant to G.S. 33B-3.

3 (b) A custodial trustee who has accepted the custodial trust property may resign  
4 by (i) delivering written notice to a successor custodial trustee, if any, the beneficiary  
5 and, if the beneficiary is incapacitated, to the beneficiary's guardian of the estate, if any,  
6 and (ii) transferring and, where appropriate, registering or recording an instrument  
7 relating to the custodial trust property in the name of the successor custodial trustee  
8 identified under subsection (c).

9 (c) If a custodial trustee or successor custodial trustee is ineligible, resigns, dies,  
10 or becomes incapacitated, the successor designated under G.S. 33B-2 or G.S. 33B-3  
11 becomes custodial trustee. If there is no effective provision for a successor, the  
12 beneficiary, if not incapacitated, may designate a successor custodial trustee; if the  
13 beneficiary fails to act within 90 days the resigning custodial trustee may designate a  
14 successor custodial trustee. If there is no effective provision for a successor custodial  
15 trustee and if the beneficiary is incapacitated, the beneficiary's guardian of the estate  
16 becomes successor custodial trustee. If the beneficiary does not have a guardian of the  
17 estate or the guardian of the estate fails to act as custodial trustee, the resigning  
18 custodial trustee may designate a successor custodial trustee.

19 (d) If a successor custodial trustee is not designated pursuant to subsection (c),  
20 the following persons may in the order listed petition the court to designate a successor  
21 custodial trustee: the transferor, the legal representative of the transferor, the legal  
22 representative of the custodial trustee, the general guardian of the beneficiary, the  
23 guardian of the estate of the beneficiary, an adult member of the beneficiary's family, a  
24 person interested in the custodial trust property, or a person interested in the welfare of  
25 the beneficiary.

26 (e) A custodial trustee who declines to serve or resigns, or the legal  
27 representative of a deceased or incapacitated custodial trustee shall put the custodial  
28 trust property and records in the possession and control of the successor custodial  
29 trustee as soon as practical. The successor custodial trustee shall enforce the obligation  
30 to deliver custodial trust property and records.

31 (f) A beneficiary, the beneficiary's guardian of the estate, an adult member of the  
32 beneficiary's family, a guardian of the person of the beneficiary, a person interested in  
33 the custodial trust property, or a person interested in the welfare of the beneficiary, may  
34 petition the court (i) to remove the custodial trustee for cause and to designate a  
35 successor custodial trustee, (ii) to require the custodial trustee to furnish a bond or other  
36 security for the faithful performance of fiduciary duties, or (iii) for other appropriate  
37 relief.

38 **§ 33B-14. Expenses, compensation, and bond of custodial trustee.**

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

- 41 (1) Is entitled to reimbursement from custodial trust property for  
42 reasonable expenses incurred in the performance of fiduciary services;



1           (2) May charge, no later than six months after the end of each calendar  
2           year, a reasonable compensation for fiduciary services performed  
3           during that year; and

4           (3) Need not furnish a bond or other security for the faithful performance  
5           of fiduciary duties.

6 **"§ 33B-15. Reporting and accounting by custodial trustee; determination of**  
7 **liability of custodial trustee.**

8           (a) Upon the acceptance of custodial trust property, the custodial trustee shall  
9 provide a written statement describing the custodial trust property and shall thereafter  
10 provide a written statement of the administration of the custodial trust property (i) once  
11 each year, (ii) upon request at reasonable times by the beneficiary or the beneficiary's  
12 legal representative, (iii) upon resignation or removal of the custodial trustee, and (iv)  
13 upon termination of the custodial trust. The statements must be provided to the  
14 beneficiary or to the beneficiary's legal representative. Upon termination of the  
15 beneficiary's interest, the custodial trustee shall furnish a statement to the person to  
16 whom the custodial trust property is to be delivered.

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

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

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

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

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

36 **"§ 33B-16. Limitations of action against custodial trustee.**

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

41           (1) Who has received a final account or statement fully disclosing the  
42 matter unless an action or proceeding to assert the claim is commenced  
43 within two years after receipt of the final account or statement, or

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

4 (b) Except as provided in subsection (c), a claim for relief to recover from a  
5 custodial trustee for fraud, misrepresentation, or concealment is barred unless action or  
6 proceeding to assert the claim is commenced within five years after the termination of  
7 the custodial trust.

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

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

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

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

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

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

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

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

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

24 a. As last directed in a writing signed by the deceased beneficiary  
25 while not incapacitated and received by the custodial trustee  
26 during the life of the deceased beneficiary;

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

28 c. To the estate of the deceased beneficiary.

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

32 (c) Death of a beneficiary does not terminate the power of the custodial trustee to  
33 discharge obligations of the custodial trustee or beneficiary incurred before the  
34 termination of the custodial trust.

35 **§ 33B-18. Methods and forms of creating custodial trusts.**

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

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

41 **TRANSFER UNDER THE NORTH CAROLINA**  
42 **UNIFORM CUSTODIAL TRUST ACT**

43 I, ..... (name of transferor or name and representative capacity if a  
44 fiduciary), transfer to ..... (name of trustee other than transferor), as custodial

1 trustee for ..... (name of beneficiary) as beneficiary and ..... as  
2 distributee on termination of the trust in absence of direction by the beneficiary under  
3 the North Carolina Uniform Custodial Trust Act, the following:

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

6 Dated: .....

7 .....

8 (Signature); or

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

11 **DECLARATION OF TRUST UNDER THE NORTH CAROLINA**  
12 **UNIFORM CUSTODIAL TRUST ACT**

13 I, ..... (name of owner of property, declare that henceforth I hold as  
14 custodial trustee for ..... (name of beneficiary other than transferor) as  
15 beneficiary and ..... as distributee on termination of the trust in absence of  
16 direction by the beneficiary under the North Carolina Uniform Custodial Trust Act, the  
17 following: (Insert a description of the custodial trust property legally sufficient to  
18 identify and transfer each item of property).

19 Dated: .....

20 .....

21 (Signature)

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

24 (1) Registration of a security in the name of a trust company, an adult  
25 other than the transferor, or the transferor if the beneficiary is other  
26 than the transferor, designated in substance 'as custodial trustee for  
27 ..... (name of beneficiary) under the North Carolina Uniform  
28 Custodial Trust Act';

29 (2) Delivery of a certificated security, or a document necessary for the  
30 transfer of an uncertificated security, together with any necessary  
31 endorsement, to an adult other than the transferor or to a trust company  
32 as custodial trustee, accompanied by an instrument in substantially the  
33 form prescribed in subsection (a)(1);

34 (3) Payment of money or transfer of a security held in the name of a  
35 broker or a financial institution or its nominee to a broker or financial  
36 institution for credit to an account in the name of a trust company, an  
37 adult other than the transferor, or the transferor if the beneficiary is  
38 other than the transferor, designated in substance 'as custodial trustee  
39 for ..... (name of beneficiary) under the North Carolina  
40 Uniform Custodial Trust Act';

41 (4) Registration of ownership of a life or endowment insurance policy or  
42 annuity contract with the issuer in the name of a trust company, an  
43 adult other than the transferor, or the transferor if the beneficiary is  
44 other than the transferor, designated in substance 'as custodial trustee

- 1                   for ..... (name of beneficiary) under the North Carolina
- 2                   Uniform Custodial Trust Act';
- 3           (5)       Delivery of a written assignment to an adult other than the transferor
- 4                   or to a trust company designated in the assignment in substance by the
- 5                   words 'as custodial trustee for ..... (name of beneficiary) under
- 6                   the North Carolina Uniform Custodial Trust Act';
- 7           (6)       Irrevocable exercise of a power of appointment, pursuant to its terms,
- 8                   in favor of a trust company, an adult other than the donee of the power,
- 9                   or 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
- 16                   the transferor if the beneficiary is other than the transferor, designated
- 17                   in the 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
- 21                   in the name of a trust company, an adult other than the transferor, or
- 22                   the transferor if the beneficiary is other than the transferor, designated
- 23                   in substance 'as custodial trustee for ..... (name of
- 24                   beneficiary) 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
- 33                   transferor or endorsed by the transferor to that person,
- 34                   designated in substance 'as custodial trustee for ..... (name of beneficiary) under the North Carolina Uniform
- 35                   Custodial Trust Act'; or
- 36                   Custodial Trust Act'; or
- 37           (10)       Execution and delivery of an instrument of gift to a trust company or
- 38                   an adult other than the transferor, designated in substance 'as custodial
- 39                   trustee for ..... (name of beneficiary) under the North
- 40                   Carolina Uniform Custodial Trust Act'.

**"§ 33B-19. Applicable law.**

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

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

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

7 **"§ 33B-20. Uniformity of application and construction.**

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

10 **"§ 33B-21. Short title.**

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

12 Sec. 2. G.S. 32A-1 is hereby amended, before the line "Dated....., 19....",  
13 by adding the following paragraph:

14 "( If power of attorney is to be effective to terminate or direct the administration of a  
15 custodial trust created under the Uniform Custodial Trust Act, add: 'In the event of my  
16 subsequent incapacity or mental incompetence, the attorney-in-fact of this power of  
17 attorney shall have the power to terminate or to direct the administration of any  
18 custodial trust naming myself as beneficiary.')

19 Sec. 3. The Revisor of Statutes shall cause to be printed, as annotations to the  
20 published General Statutes, all relevant portions of the Official Comments to the  
21 Uniform Custodial Trust Act and all explanatory comments of the drafters of this act as  
22 the Revisor may deem appropriate.

23 Sec. 4. This act becomes effective October 1, 1991.