

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 486
SENATE BILL 320

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.
- (3) 'Guardian of the estate' means a guardian appointed for the purpose of managing the property, estate, and business affairs of a ward, or a person legally authorized to perform substantially the same functions. As used in this act the term 'guardian of the estate' includes a general guardian or guardian of the estate appointed under the provisions of Chapter 35A of the General Statutes.
- (4) 'Court' means the clerk of superior court of this State.
- (5) 'Custodial trust property' means an interest in property transferred to or held under a declaration of trust by a custodial trustee under this act and the income from and proceeds of that interest.
- (6) 'Custodial trustee' means a person designated as trustee of a custodial trust under this act or a substitute or successor to the person designated.
- (7) 'Guardian of the person' means a guardian appointed for the purpose of performing duties relating to the care, custody, and control of a ward, but not a person who is only a guardian ad litem. As used in this act the term 'guardian of the person' includes a general guardian or guardian of the person appointed under the provisions of Chapter 35A of the General Statutes.

- (8) 'Incapacitated' means lacking the ability to manage property and business affairs effectively by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, disappearance, being under 21 years of age, or other disabling cause.
- (9) 'Legal representative' means a personal representative or guardian of the estate.
- (10) 'Member of the beneficiary's family' means a beneficiary's spouse, descendant, parent, grandparent, brother, sister, uncle or aunt, whether of the whole or half blood or by adoption.
- (11) 'Person' means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.
- (12) 'Personal representative' means an executor, administrator, or special administrator of a decedent's estate, a person legally authorized to perform substantially the same function, or a successor to any of them.
- (13) 'State' means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.
- (14) 'Transferor' means a person who creates a custodial trust by transfer or declaration.
- (15) 'Trust company' means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers in North Carolina.
- (16) 'General guardian' means a guardian of both the estate and the person.

"§ 33B-2. Custodial trust; general.

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

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

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

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

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

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

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

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

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

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

- (1) A will;
- (2) A trust;
- (3) An insurance policy;
- (4) A deed;
- (5) A payable-on-death account;
- (6) An instrument exercising a power of appointment, provided that the donor of the power has not expressly prohibited the exercise of the power in favor of a custodial trustee, and provided further that the beneficiary of the custodial trust is a permissible object of the power, although the custodial trustee need not be a permissible object of the power; or
- (7) A writing designating a beneficiary of contractual rights, including but not limited to rights under a pension or profit sharing plan, which is registered with or delivered to the fiduciary, payor, issuer, or obligor 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.

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

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

If the beneficiary is incapacitated or the beneficiary has capacity but has not given direction, the custodial trustee shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other law

restricting investments by fiduciaries. However, a custodial trustee, in the custodial trustee's discretion, may retain any custodial trust property received from the transferor.

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

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

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

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

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

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

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

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

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

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

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

(c) A custodial trustee may establish checking, savings, or other similar accounts of reasonable amounts from which either the custodial trustee or the beneficiary may

withdraw funds or against which either may draw checks. Funds withdrawn from, or checks written against, the account of the beneficiary are distributions of custodial trust property by the custodial trustee to the beneficiary.

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

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

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

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

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

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

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

"§ 33B-11. Third-party transactions.

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

- (1) The validity of the purported custodial trustee's designation;
- (2) The propriety of, or the authority under this act for, any action of the purported custodial trustee;

- (3) The validity or propriety of an instrument executed or instruction given pursuant to this act either by the person purporting to make a transfer or declaration or by the purported custodial trustee; or
- (4) The propriety of the application of property vested in the purported custodial trustee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Upon the acceptance of custodial trust property, the custodial trustee shall provide a written statement that the custodial trust property is held pursuant to this act and describing the custodial trust property. The custodial trustee shall thereafter

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

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

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

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

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

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

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

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

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

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

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

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

- (2) Is an incapacitated adult, until the earliest of two years after (i) the appointment of a guardian of the estate, (ii) the removal of the incapacity, or (iii) the death of the claimant; or
- (3) Was an adult, now deceased, who was not incapacitated, until two years after the claimant's death if the claim was not barred by adjudication, consent, or limitation prior to the claimant's death.

"§ 33B-17. Distribution on termination.

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

- (1) To the beneficiary, if not incapacitated or deceased;
- (2) To the guardian of the estate or other recipient designated by the court for an incapacitated beneficiary; or
- (3) Upon the beneficiary's death, in the following order:
 - a. As last directed in a writing signed by the deceased beneficiary while not incapacitated and received by the custodial trustee during the life of the deceased beneficiary;
 - b. As designated in the instrument creating the custodial trust; or
 - c. To the estate of the deceased beneficiary.

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

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

(d) The writing described in G.S. 33B-17(a)(3)a. or the instrument described in G.S. 33B-17(a)(3)b. must also be signed by at least two witnesses, neither of whom is the custodial trustee or the distributee of the custodial trust property, and be acknowledged by the beneficiary or transferor before an individual authorized to administer oaths or take acknowledgements. Failure to comply with the witness or acknowledgement requirement shall not affect the validity of the custodial trust during the life of the beneficiary, but shall invalidate only the direction or designation of the distributee on termination of the custodial trust under G.S. 33B-17(a)(3)a. or G.S. 33B-17(a)(3)b., and upon termination of the custodial trust the custodial trustee shall transfer the unexpended custodial trust property according to the remaining provisions of this section.

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

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

- (1) The execution and either delivery to the custodial trustee or recording of an instrument in substantially the following form:
'TRANSFER UNDER THE NORTH CAROLINA
UNIFORM CUSTODIAL TRUST ACT

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

Signature

.....(Witness)

.....(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)';

or

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

'DECLARATION OF TRUST UNDER THE NORTH CAROLINA
UNIFORM CUSTODIAL TRUST ACT

I, (name of owner of property,) declare that henceforth I hold as 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)

Signature

.....(Witness)

.....(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 (name of beneficiary) under the North Carolina Uniform Custodial Trust Act';
- (5) Delivery of a written assignment to an adult other than the transferor or to a trust company designated in the assignment in substance by the words 'as custodial trustee for (name of beneficiary) under the North Carolina Uniform Custodial Trust Act';
- (6) Irrevocable exercise of a power of appointment, pursuant to its terms, in favor of a trust company, an adult other than the donee of the power, or the donee who holds the power if the beneficiary is other than the

- donee, designated in the appointment in substance 'as custodial trustee for (name of beneficiary) under the North Carolina Uniform Custodial Trust Act';
- (7) Delivery of a written notification or assignment of a right to future payment under a contract to an obligor which transfers the right under the contract to a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in the notification or assignment in substance 'as custodial trustee for (name of beneficiary) under the North Carolina Uniform Custodial Trust Act';
- (8) Execution and delivery of a conveyance of an interest in real property 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';
- (9) Issuance of a certificate of title by an agency of a state or of the United States which evidences title to tangible personal property:
- a. Issued 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'; or
- b. Delivered to a trust company or an adult other than the transferor or endorsed by the transferor to that person, designated in substance 'as custodial trustee for (name of beneficiary) under the North Carolina Uniform Custodial Trust Act'; or
- (10) Execution and delivery of an instrument of gift to a trust company or an adult other than the transferor, designated in substance 'as custodial trustee for (name of beneficiary) under the North Carolina Uniform Custodial Trust Act'.

"§ 33B-19. Applicable law.

(a) This act applies to a transfer or declaration creating a custodial trust that refers to this act if, at the time of the transfer or declaration, the transferor, beneficiary, or custodial trustee is a resident of or has its principal place of business in this State or the custodial trust property is located in this State. The custodial trust remains subject to this act despite a later change in residence or principal place of business of the transferor, beneficiary, or custodial trustee, or removal of the custodial trust property from this State.

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

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

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

"§ 33B-21. Short title.

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

"§ 33B-22. Limitation on value of custodial trust property.

Transfers or declarations of property to the corpus of a custodial trust under this act shall not exceed in the aggregate one hundred thousand dollars (\$100,000) in value, exclusive of the value of the transferor's or declarant's personal residence. This limitation shall not apply to any appreciation in the value of the corpus held in the custodial trust. A good faith violation of this section shall not invalidate a custodial trust."

Sec. 2. G.S. 32A-1 as amended by Chapter 331 of the 1995 Session Laws, Senate Bill 724 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, appoint to be my attorney-in-fact, to act in my name in any way which I could act for myself, with respect to the following matters as each of them is defined in Chapter 32A of the North Carolina General Statutes. (DIRECTIONS: Initial the line opposite any one or more of the subdivisions as to which the principal desires to give the attorney-in-fact authority.)

- (1) Real property transactions_____
- (2) Personal property transactions_____
- (3) Bond, share, stock, securities and commodity transactions_____
- (4) Banking transactions_____
- (5) Safe deposits_____
- (6) Business operating transactions_____
- (7) Insurance transactions_____
- (8) Estate transactions_____
- (9) Personal relationships and affairs_____
- (10) Social security and unemployment_____
- (11) Benefits from military service_____
- (12) Tax matters_____
- (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)
Signature

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)"

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.

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

In the General Assembly read three times and ratified this the 26th day of July, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives