

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**  
4 **By: Senator Harriman**

# A Bill

**SENATE BILL**

## **For An Act To Be Entitled**

"ARKANSAS CUSTODIAL TRUST ACT"

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

11

12 SECTION 1. Definitions. As used in this act:

13 (1) "Adult" means an individual who is at least eighteen (18) years of  
14 age.

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

18 (3) "Conservator" means a person appointed or qualified by a court to  
19 manage the estate of an individual or a person legally authorized to perform  
20 substantially the same functions.

21 (4) "Court" means the Probate Court of the appropriate county of this  
22 State.

23 (5) "Custodial trust property" means an interest in property transferred  
24 to or held under a declaration of trust by a custodial trustee under this act  
25 and the income from the proceeds of that interest.

26 (6) "Custodial trustee" means a person designated as trustee of a  
27 custodial trust under this act or a substitute or successor to the person  
28 designated.

29 (7) "Guardian" means a person appointed or qualified by a court as a  
30 guardian of an individual, including a limited guardian, but not a person who  
31 is only a guardian ad litem.

32 (8) "Incapacitated" means lacking the ability to manage property and  
33 business affairs effectively by reason of mental illness, mental deficiency,  
34 physical illness or disability, chronic use of drugs, chronic intoxication,  
35 confinement, detention by a foreign power, disappearance, minority, or other

1 disabling cause.

2 (9) "Legal representative" means a personal representative or  
3 conservator.

4 (10) "Member of the beneficiary's family" means a beneficiary's spouse,  
5 descendant, stepchild, parent, stepparent, grandparent, brother, sister,  
6 uncle, or aunt, whether of the whole or half blood or by adoption.

7 (11) "Person" means an individual, corporation, business trust, estate,  
8 trust, partnership, joint venture, association, or any other legal or  
9 commercial entity.

10 (12) "Personal representative" means an executor, administrator, or  
11 special administrator of a decedent's estate, a person legally authorized to  
12 perform substantially the same functions, or a successor to any of them.

13 (13) "State" means a state, territory, or possession of the United  
14 States, the District of Columbia, or the Commonwealth of Puerto Rico.

15 (14) "Transferor" means a person who creates a custodial trust by  
16 transfer or declaration.

17 (15) "Trust company" means a financial institution, corporation, or  
18 other legal entity, authorized to exercise general trust powers.

19

20 SECTION 2. Custodial Trust; General.

21 (a) A person may create a custodial trust of property by a written  
22 transfer of the property to another person, evidenced by registration or by  
23 other instrument of transfer, executed in any lawful manner, naming as  
24 beneficiary, an individual who may be the transferor, in which the transferee  
25 is designated, in substance, as custodial trustee under the Arkansas Custodial  
26 Trust Act.

27 (b) A person may create a custodial trust of property by a written  
28 declaration, evidenced by registration of the property or by other instrument  
29 of declaration executed in any lawful manner, describing the property and  
30 naming as beneficiary an individual other than the declarant, in which the  
31 declarant as titleholder is designated, in substance, as custodial trustee  
32 under the Arkansas Custodial Trust Act. A registration or other declaration  
33 of trust for the sole benefit of the declarant is not a custodial trust under  
34 this act.

35 (c) Title to custodial trust property is in the custodial trustee and

1 the beneficial interest is in the beneficiary.

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

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

9 (f) Any person may augment existing custodial trust property by the  
10 addition of other property pursuant to this act.

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

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

16

17 SECTION 3. Custodial Trustee for Future Payment or Transfer.

18 (a) A person having the right to designate the recipient of property  
19 payable or transferable upon a future event may create a custodial trust upon  
20 the occurrence of the future event by designating in writing the recipient,  
21 followed in substance by: "as custodial trustee for ..... (name of  
22 beneficiary) under the Arkansas Custodial Trust Act."

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

26 (c) A designation under this section may be made in a will, a trust, a  
27 deed, a multiple-party account, an insurance policy, an instrument exercising  
28 a power of appointment, or a writing designating a beneficiary of contractual  
29 rights. Otherwise, to be effective, the designation must be registered with  
30 or delivered to the fiduciary, payor, issuer, or obligor of the future right.

31

32 SECTION 4. Form and Effect of Receipt and Acceptance by Custodial  
33 Trustee, Jurisdiction.

34 (a) Obligations of a custodial trustee, including the obligation to  
35 follow directions of the beneficiary, arise under this act upon the custodial

1 trustee's acceptance, express or implied, of the custodial trust property.

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

4 CUSTODIAL TRUSTEE'S RECEIPT AND ACCEPTANCE

5 I, ..... (name of custodial trustee), acknowledge receipt of the  
6 custodial trust property described below or in the attached instrument and  
7 accept the custodial trust as custodial trustee for ..... (name of  
8 beneficiary) under the Arkansas Custodial Trust Act. I undertake to  
9 administer and distribute the custodial trust property pursuant to the  
10 Arkansas Custodial Trust Act. My obligations as custodial trustee are subject  
11 to the directions of the beneficiary unless the beneficiary is designated as,  
12 is, or becomes incapacitated. The custodial trust property consists of  
13 .....

14 Dated: .....  
15 (Signature of Custodial Trustee)

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

19

20 SECTION 5. Transfer to Custodial Trustee by Fiduciary or Obligor;  
21 Facility of Payment.

22 (a) Unless otherwise directed by an instrument designating a custodial  
23 trustee pursuant to Section 3, a person, including a fiduciary other than a  
24 custodial trustee, who holds property of or owes a debt to an incapacitated  
25 individual not having a conservator may make a transfer to an adult member of  
26 the beneficiary's family or to a trust company as custodial trustee for the  
27 use and benefit of the incapacitated individual. If the value of the property  
28 or the debt exceeds twenty thousand dollars (\$20,000), the transfer is not  
29 effective unless authorized by the court.

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

33

34 SECTION 6. Multiple Beneficiaries; Separate Custodial Trusts;  
35 Survivorship.

1 (a) Beneficial interests in a custodial trust created for multiple  
2 beneficiaries are deemed to be separate custodial trusts of equal undivided  
3 interests for each beneficiary. Except in a transfer or declaration for use  
4 and benefit of husband and wife, for whom survivorship is presumed, a right of  
5 survivorship does not exist unless the instrument creating the custodial trust  
6 specifically provides for survivorship.

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

10 (c) A custodial trustee of custodial trust property held for more than  
11 one beneficiary shall separately account to each beneficiary pursuant to  
12 Sections 7 and 15 for the administration of the custodial trust.

13

14 SECTION 7. General Duties of Custodial Trustee.

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

17 (b) If the beneficiary is not incapacitated, a custodial trustee shall  
18 follow the directions of the beneficiary in the management, control,  
19 investment, or retention of the custodial trust property. In the absence of  
20 effective contrary direction by the beneficiary while not incapacitated, the  
21 custodial trustee shall observe the standard of care that would be observed by  
22 a prudent person dealing with property of another and is not limited by any  
23 other law restricting investments by fiduciaries. However, a custodial  
24 trustee, in the custodial trustee's discretion, may retain any custodial trust  
25 property received from the transferor. If a custodial trustee has a special  
26 skill or expertise or is named custodial trustee on the basis of  
27 representation of a special skill or expertise, the custodial trustee shall  
28 use that skill or expertise.

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

32 (d) A custodial trustee at all times shall keep custodial trust property  
33 of which the custodial trustee has control, separate from all other property  
34 in a manner sufficient to identify it clearly as custodial trust property of  
35 the beneficiary. Custodial trust property, the title to which is subject to

1 recordation, is so identified if an appropriate instrument so identifying the  
2 property is recorded, and custodial trust property subject to registration is  
3 so identified if it is registered, or held in an account in the name of the  
4 custodial trustee, designated in substance: "as custodial trustee for  
5 ..... (name of beneficiary) under the Arkansas Custodial Trust Act."

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

11 (f) The exercise of a durable power of attorney for an incapacitated  
12 beneficiary is not effective to terminate or direct the administration or  
13 distribution of a custodial trust.

14

15 SECTION 8. General Powers of Custodial Trustee.

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

20 (b) This section does not relieve a custodial trustee from liability for  
21 a violation of Section 7.

22

23 SECTION 9. Use of Custodial Trust Property.

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

27 (b) If the beneficiary is incapacitated, the custodial trustee shall  
28 expend so much or all of the custodial trust property as the custodial trustee  
29 considers advisable for the use and benefit of the beneficiary and individuals  
30 who were supported by the beneficiary when the beneficiary became  
31 incapacitated, or who are legally entitled to support by the beneficiary.  
32 Expenditures may be made in the manner, when, and to the extent that the  
33 custodial trustee determines suitable and proper, without court order and  
34 without regard to other support, income, or property of the beneficiary.

35 (c) A custodial trustee may establish checking, savings, or other

1 similar accounts of reasonable amounts under which either the custodial  
2 trustee or the beneficiary may withdraw funds from, or draw checks against,  
3 the accounts. Funds withdrawn from, or checks written against, the account by  
4 the beneficiary or distributions of custodial trust property by the custodial  
5 trustee to the beneficiary.

6

7 SECTION 10. Determination of Incapacity; Effect.

8 (a) The custodial trustee shall administer the custodial trust as for an  
9 incapacitated beneficiary if (i) the custodial trust was created under Section  
10 5, (ii) the transferor has so directed in the instrument creating the  
11 custodial trust, or (iii) the custodial trustee has determined that the  
12 beneficiary is incapacitated.

13 (b) A custodial trustee may determine that the beneficiary is  
14 incapacitated in reliance upon (i) previous direction or authority given by  
15 the beneficiary while not incapacitated, including direction or authority  
16 pursuant to a durable power of attorney, (ii) the certificate of the  
17 beneficiary's physician, or (iii) other persuasive evidence.

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

24 (d) On petition of the beneficiary, the custodial trustee, or other  
25 person interested in the custodial trust property or the welfare of the  
26 beneficiary, the court shall determine whether the beneficiary is  
27 incapacitated.

28 (e) Absent determination of incapacity of the beneficiary under  
29 subsection (b) or (d) of this section, a custodial trustee who has reason to  
30 believe that the beneficiary is incapacitated shall administer the custodial  
31 trust in accordance with the provisions of this act applicable to an  
32 incapacitated beneficiary.

33 (f) Incapacity of a beneficiary does not terminate (i) the custodial  
34 trust, (ii) any designation of a successor custodial trustee, (iii) rights or  
35 powers of the custodial trustee, or (iv) any immunities of third persons

1 acting on instructions of the custodial trustee.

2

3 SECTION 11. Exemption of Third Person from Liability.

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

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

17

18 SECTION 12. Liability to Third Person.

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

26 (b) A custodial trustee is not personally liable to a third person:

27 (1) on a contract properly entered into in a fiduciary capacity  
28 unless the custodial trustee fails to reveal that capacity or to identify the  
29 custodial trust in the contract; or

30 (2) for an obligation arising from control of custodial trust  
31 property or for a tort committed in the course of the administration of the  
32 custodial trust unless the custodial trustee is personally at fault.

33 (c) A beneficiary is not personally liable to a third person for an  
34 obligation arising from beneficial ownership of custodial trust property or  
35 for a tort committed in the course of administration of the custodial trust



1 unless the beneficiary is personally in possession of the custodial trust  
2 property giving rise to the liability or is personally at fault.

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

6

7 SECTION 13. Declination, Resignation, Incapacity, Death, or Removal of  
8 Custodial Trustee, Designation of Successor Custodial Trustee.

9 (a) Before accepting the custodial trust property, a person designated  
10 as custodial trustee may decline to serve by notifying the person who made the  
11 designation, the transferor, or the transferor's legal representative. If an  
12 event giving rise to a transfer has not occurred, the substitute custodial  
13 trustee designated under Section 3 becomes the custodial trustee, or, if a  
14 substitute custodial trustee has not been designated, the person who made the  
15 designation may designate a substitute custodial trustee pursuant to Section  
16 3. In other cases, the transferor or the transferor's legal representative  
17 may designate a substitute custodial trustee.

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

25 (c) If a custodial trustee or successor custodial trustee is ineligible,  
26 resigns, dies, or becomes incapacitated, the successor designated under  
27 Section 2(g) or 3 becomes custodial trustee. If there is no effective  
28 provision for a successor, the beneficiary, if not incapacitated, may  
29 designate a successor custodial trustee. If the beneficiary is incapacitated,  
30 or fails to act within ninety (90) days after the ineligibility, resignation,  
31 death, or incapacity of the custodial trustee, the resigning custodial trustee  
32 may designate a successor custodial trustee.

33 (d) If a successor custodial trustee is not designated pursuant to  
34 subsection (c) of this section, the transferor, the legal representative of  
35 the transferor or of the custodial trustee, an adult member of the

1 beneficiary's family, the guardian of the beneficiary, a person interested in  
2 the custodial trust property, or a person interested in the welfare of the  
3 beneficiary, may petition the court to designate a successor custodial  
4 trustee.

5 (e) A custodial trustee who declines to serve or resigns, or the legal  
6 representative of a deceased or incapacitated custodial trustee, as soon as  
7 practicable, shall put the custodial trust property and records in the  
8 possession and control of the successor custodial trustee. The successor  
9 custodial trustee may enforce the obligation to deliver custodial trust  
10 property and records and becomes responsible for each item as received.

11 (f) A beneficiary, the beneficiary's conservator, an adult member of the  
12 beneficiary's family, a guardian of the person of the beneficiary, a person  
13 interested in the custodial trust property, or a person interested in the  
14 welfare of the beneficiary, may petition the court to remove the custodial  
15 trustee for cause and designate a successor custodial trustee, to require the  
16 custodial trustee to furnish a bond or other security for the faithful  
17 performance of fiduciary duties, or for other appropriate relief.

18  
19 SECTION 14. Expenses, Compensation, and Bond of Custodial Trustee.

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

23 (1) is entitled to reimbursement from custodial trust property for  
24 reasonable expenses incurred in the performance of fiduciary services;

25 (2) has a noncumulative election, to be made no later than six (6)  
26 months after the end of each calendar year, to charge a reasonable  
27 compensation for fiduciary services performed during that year; and

28 (3) need not furnish a bond or other security for the faithful  
29 performance of fiduciary duties.

30  
31 SECTION 15. Reporting and Accounting by Custodial Trustee;  
32 Determination of Liability of Custodial Trustee.

33 (a) Upon the acceptance of custodial trust property, the custodial  
34 trustee shall provide a written statement describing the custodial trust  
35 property and shall thereafter provide a written statement of the

1 administration of the custodial trust property (i) once each year, (ii) upon  
2 request at reasonable times by the beneficiary or the beneficiary's legal  
3 representative, (iii) upon resignation or removal of the custodial trustee,  
4 and (iv) upon termination of the custodial trust. The statements must be  
5 provided to the beneficiary or to the beneficiary's legal representative, if  
6 any. Upon termination of the beneficiary's interest, the custodial trustee  
7 shall furnish a current statement to the person to whom the custodial trust  
8 property is to be delivered.

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

14 (c) A successor custodial trustee may petition the court for an  
15 accounting by a predecessor custodial trustee.

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

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

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

30

31 SECTION 16. Limitations of Action Against Custodial Trustee.

32 (a) Except as provided in subsection (c) of this section, unless  
33 previously barred by adjudication, consent, or limitation, a claim for relief  
34 against a custodial trustee for accounting or breach of duty is barred as to a  
35 beneficiary, a person to whom custodial trust property is to be paid or

1 delivered, or the legal representative of an incapacitated or deceased  
2 beneficiary or payee:

3 (1) who has received a final account or statement fully disclosing  
4 the matter unless an action or proceeding to assert the claim is commenced  
5 within two (2) years after receipt of the final account or statement; or

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

9 (b) Except as provided in subsection (c) of this section, a claim for  
10 relief to recover from a custodial trustee for fraud, misrepresentation, or  
11 concealment related to the final settlement of the custodial trust or  
12 concealment of the existence of the custodial trust, is barred unless an  
13 action or proceeding to assert the claim is commenced within five (5) years  
14 after 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 (2) years after the  
17 claimant becomes an adult or dies;

18 (2) is an incapacitated adult, until the earliest of two (2) years  
19 after (i) the appointment of a conservator, (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  
22 two (2) years after the claimant's death.

23

24 SECTION 17. Distribution on Termination.

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

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

28 (2) to the conservator 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 (i) as last directed in a writing signed by the deceased  
32 beneficiary while not incapacitated and received by the custodial trustee  
33 during the life of the deceased beneficiary;

34 (ii) to the survivor of multiple beneficiaries if  
35 survivorship is provided for pursuant to Section 6;

1 (iii) as designated in the instrument creating the custodial  
2 trust; or

3 (iv) to the estate of the deceased beneficiary.

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

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

11

12 SECTION 18. Methods and Forms for Creating Custodial Trusts.

13 (a) If a transaction, including a declaration with respect to or a  
14 transfer of specific property, otherwise satisfies applicable law, the  
15 criteria of Section 2 are satisfied by:

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

18 TRANSFER UNDER THE ARKANSAS CUSTODIAL TRUST ACT

19 I, ..... (name of transferor or name and representative capacity  
20 if a fiduciary), transfer to ..... (name of trustee other than  
21 transferor), as custodial trustee for ..... (name of beneficiary) as  
22 beneficiary and ..... as distributee on termination of the trust in  
23 absence of direction by the beneficiary under the Arkansas Custodial Trust  
24 Act, the following: (insert a description of the custodial trust property  
25 legally sufficient to identify and transfer each item of property).

26 Dated: ..... ..

27 (Signature)

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

31 DECLARATION OF TRUST UNDER THE ARKANSAS CUSTODIAL TRUST ACT

32 I, ..... (name of owner of property), declare that henceforth I  
33 hold as custodial trustee for ..... (name of beneficiary other than  
34 transferor) as beneficiary and ..... as distributee on termination of  
35 the trust in absence of direction by the beneficiary under the Arkansas

1 Custodial Trust Act, the following: (insert a description of the custodial  
2 trust property legally sufficient to identify and transfer each item of  
3 property).

4 Dated: .....  
5 (Signature)

6 (b) Customary methods of transferring or evidencing ownership of  
7 property may be used to create a custodial trust, including any of the  
8 following:

9 (1) registration of a security in the name of a trust company, an  
10 adult other than the transferor, or the transferor if the beneficiary is other  
11 than the transferor, designated in substance: "as custodial trustee for  
12 ..... (name of beneficiary) under the Arkansas Custodial Trust Act";

13 (2) delivery of a certificated security, or a document necessary  
14 for the transfer of an uncertificated security, together with any necessary  
15 endorsement, to an adult other than the transferor or to a trust company as  
16 custodial trustee, accompanied by an instrument in substantially the form  
17 prescribed in subsection (a)(1) of this section;

18 (3) payment of money or transfer of a security held in the name of  
19 a broker or a financial institution or its nominee to a broker or financial  
20 institution for credit to an account in the name of a trust company, an adult  
21 other than the transferor, or the transferor if the beneficiary is other than  
22 the transferor, designated in substance: "as custodial trustee for  
23 ..... (name of beneficiary) under the Arkansas Custodial Trust Act";

24 (4) registration of ownership of a life or endowment insurance  
25 policy or annuity contract with the issuer in the name of a trust company, an  
26 adult other than the transferor, or the transferor if the beneficiary is other  
27 than the transferor, designated in substance: "as custodial trustee for  
28 ..... (name of beneficiary) under the Arkansas Custodial Trust Act";

29 (5) delivery of a written assignment to an adult other than the  
30 transferor or to a trust company whose name in the assignment is designated in  
31 substance by the words: "as custodial trustee for ..... (name of  
32 beneficiary) under the Arkansas Custodial Trust Act";

33 (6) irrevocable exercise of a power of appointment, pursuant to  
34 its terms, in favor of a trust company, an adult other than the donee of the  
35 power, or the donee who holds the power if the beneficiary is other than the

1 donee, whose name in the appointment is designated in substance: "as  
2 custodial trustee for ..... (name of beneficiary) under the Arkansas  
3 Custodial Trust Act";

4 (7) delivery of a written notification or assignment of a right to  
5 future payment under a contract to an obligor which transfers the right under  
6 the contract to a trust company, an adult other than the transferor, or the  
7 transferor if the beneficiary is other than the transferor, whose name in the  
8 notification or assignment is designated in substance: "as custodial trustee  
9 for ..... (name of beneficiary) under the Arkansas Custodial Trust  
10 Act";

11 (8) execution, delivery, and recordation of a conveyance of an  
12 interest in real property in the name of a trust company, an adult other than  
13 the transferor, or the transferor if the beneficiary is other than the  
14 transferor, designated in substance: "as custodial trustee for .....  
15 (name of beneficiary) under the Arkansas Custodial Trust Act";

16 (9) issuance of a certificate of title by an agency of a state or  
17 of the United States which evidences title to tangible personal property  
18 issued in the name of a trust company, an adult other than the transferor, or  
19 the transferor if the beneficiary is other than the transferor, designated in  
20 substance: "as custodial trustee for ..... (name of beneficiary) under  
21 the Arkansas Custodial Trust Act"; or

22 (10) execution and delivery of an instrument of gift to a trust  
23 company or an adult other than the transferor, designated in substance: "as  
24 custodial trustee for ..... (name of beneficiary) under the Arkansas  
25 Custodial Trust Act."  
26

27 SECTION 19. Applicable Law.

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

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

4

5 SECTION 20. Uniformity of Application and Construction.

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

9

10 SECTION 21. Short Title.

11 This act may be cited as the "Arkansas Custodial Trust Act."

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13 SECTION 22. All provisions of this act of a general and permanent  
14 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
15 Code Revision Commission shall incorporate the same in the Code.

16

17 SECTION 23. If any provision of this act or the application thereof to  
18 any person or circumstance is held invalid, such invalidity shall not affect  
19 other provisions or applications of the act which can be given effect without  
20 the invalid provision or application, and to this end the provisions of this  
21 act are declared to be severable.

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23 SECTION 24. All laws and parts of laws in conflict with this act are  
24 hereby repealed.

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