

SENATE BILL 180

Introduced by Mazurek

1/18	Introduced
1/18	Referred to Judiciary
1/24	Hearing
1/31	Committee Report--Bill Passed
2/02	2nd Reading Passed
2/04	3rd Reading Passed

Transmitted to House

2/21	Referred to Judiciary
3/08	Hearing
3/08	Tabled in Committee

1 Senate BILL NO. 180
2 INTRODUCED BY Thayn
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT THE UNIFORM
5 CUSTODIAL TRUST ACT; TO PROVIDE FOR STATUTORY TRUSTS FOR
6 CERTAIN ADULTS; TO PROVIDE PROTECTION FOR TRUST
7 BENEFICIARIES AGAINST POSSIBLE FUTURE INCAPACITY WITHOUT THE
8 NECESSITY OF CREATING A CONSERVATORSHIP; AND TO PROVIDE FOR
9 THE MONITORING AND ENFORCING OF THE CUSTODIAL TRUST."
10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 NEW SECTION. Section 1. Short title. [This act] may
13 be cited as the "Montana Uniform Custodial Trust Act".

14 NEW SECTION. Section 2. Definitions. As used in [this
15 act]:

16 (1) "Adult" means an individual who has attained the
17 age of 18 years.

18 (2) "Beneficiary" means an individual for whom
19 property has been delivered to a custodial trustee for the
20 individual's use and benefit under [this act].

21 (3) "Conservator" means a person appointed or
22 qualified by a court to manage the estate of an individual
23 or a person legally authorized to perform substantially the
24 same functions.

25 (4) "Court" means district court.

1 (5) "Custodial trust property" means an interest in
2 property transferred to 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
5 trustee of a custodial trust under [this act] and includes a
6 substitute or successor custodial trustee.

7 (7) "Guardian" means a person appointed or qualified
8 by a court as a guardian of an individual and includes a
9 limited guardian, but excludes a person who is merely a
10 guardian ad litem.

11 (8) "Incapacitated" means that an individual lacks the
12 ability to manage property and business affairs effectively
13 by reason of mental illness, mental deficiency, physical
14 illness or disability, chronic use of drugs, chronic
15 intoxication, confinement, detention by a foreign power,
16 disappearance, minority, or other cause. A beneficiary shall
17 be treated as incapacitated for the purpose of [this act] if
18 the transferor so directs in the instrument creating the
19 custodial trust.

20 (9) "Legal representative" means a personal
21 representative or conservator.

22 (10) "Member of the beneficiary's family" includes a
23 beneficiary's spouse, descendant, stepchild, parent,
24 stepparent, grandparent, brother, sister, uncle, or aunt,
25 whether of the whole or half blood or by adoption.

1 (11) "Person" means an individual, corporation,
2 organization, or other legal entity.

3 (12) "Personal representative" includes an executor,
4 administrator, or special administrator of a decedent's
5 estate or a person legally authorized to perform
6 substantially the same functions and includes a successor
7 personal representative.

8 (13) "State" means a state, commonwealth, territory, or
9 possession of the United States, or the District of
10 Columbia.

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

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

16 NEW SECTION. **Section 3. Custodial trust -- general.**

17 (1) A person may create a custodial trust of property by
18 transfer evidenced by registration or other written
19 instrument of transfer to another in any manner consistent
20 with law, naming an individual, who may be the transferor or
21 another, as beneficiary, in which the transferee is
22 designated, in substance, as custodial trustee under the
23 Montana Uniform Custodial Trust Act.

24 (2) A person may create a custodial trust of property
25 by declaration evidenced by registration or other written

1 instrument of declaration in any manner consistent with law,
2 naming an individual other than the declarant as
3 beneficiary, in which the declarant as titleholder is
4 designated, in substance, as custodial trustee under the
5 Montana Uniform Custodial Trust Act. A trust registration or
6 other declaration for the sole benefit of the declarant is
7 not a custodial trust under [this act].

8 (3) Title to custodial trust property is in the
9 custodial trustee, and the beneficial interest in custodial
10 trust property is in the beneficiary, subject to the
11 provisions of [this act].

12 (4) Except as provided in subsection (5), a custodial
13 trust may not be terminated by the transferor.

14 (5) A custodial trust may be terminated by the
15 beneficiary if not incapacitated, or by the conservator of
16 an incapacitated beneficiary, upon delivering to the
17 custodial trustee a writing signed by the beneficiary or
18 conservator declaring the termination. The exercise of a
19 durable power of attorney for an incapacitated beneficiary
20 is not effective to terminate or direct the distribution or
21 management of the trust. If not previously terminated, the
22 custodial trust property must be distributed as provided in
23 [section 18].

24 (6) Additional property may be placed in an existing
25 custodial trust pursuant to [this act].

(7) A successor custodial trustee may be designated, or the designation authorized, by the custodial trust instrument.

(8) [This act] does not restrict other means of creating trusts. A trust whose terms do not conform to [this act] may be valid and enforceable according to its terms under other law.

NEW SECTION. Section 4. Custodial trustee for future payment or transfer. A custodial trust may be created upon the occurrence of a future event. The person having the right to designate the recipient of property payable or transferable upon a future event may designate in writing a custodial trustee to receive and hold the property for a beneficiary of a custodial trust to be effective upon the occurrence of the event by designating the recipient, followed in substance by the words: "as custodial trustee for (name of beneficiary) under the Montana Uniform Custodial Trust Act". Persons may be designated as substitute or successor custodial trustees to whom the property must be transferred in the order named if the first designated custodial trustee is unable or unwilling to serve. The designation may be made in a will, a trust, a deed, a multiple party account, an insurance policy, an instrument exercising a power of appointment, or other writing designating a beneficiary of contractual rights. The

designation must be registered with or delivered to the fiduciary, payor, issuer, or obligor of the future right.

NEW SECTION. Section 5. Form and effect of receipt and acceptance by custodial trustee -- jurisdiction. (1) The obligations of a custodial trustee, including the obligation to follow directions of the beneficiary pursuant to [section 8], arise under [this act] upon the custodial trustee's acceptance, express or implied, of the custodial trust property.

(2) 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 Montana Uniform Custodial Trust Act. I undertake to administer and distribute the custodial trust property pursuant to the Montana 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:
.....

1 (Signature of Custodial Trustee)

2 (3) Upon acceptance of the custodial trust property, a
3 person designated as custodial trustee under [this act] is
4 subject to personal jurisdiction of the courts of this state
5 with respect to any matter relating to the custodial trust.

6 NEW SECTION. Section 6. Transfer to custodial trustee
7 by fiduciary or obligor -- facility of payment. (1) Unless
8 controlled by an instrument designating a custodial trustee
9 under [section 4], a person, including a fiduciary other
10 than a custodial trustee, who holds property of or owes a
11 debt to an incapacitated individual not having a conservator
12 may make a transfer to an adult member of the beneficiary's
13 family or to a trust company as custodial trustee for the
14 benefit of the incapacitated individual. If the property or
15 obligation exceeds \$20,000 in value, the transfer must be
16 authorized by the court.

17 (2) The written acknowledgment of delivery signed by a
18 custodial trustee constitutes a sufficient receipt and
19 discharge for property transferred to the custodial trustee
20 pursuant to this section.

21 NEW SECTION. Section 7. Multiple beneficiaries --
22 separate custodial trusts -- survivorship. (1) Beneficial
23 interests in a custodial trust created for multiple
24 beneficiaries are deemed to be separate custodial trusts of
25 equal and undivided interests for each beneficiary. Except

1 in transfers for benefit of husband and wife, for whom
2 survivorship is presumed, no right of survivorship exists
3 unless the writing creating the custodial trust specifically
4 provides for survivorship.

5 (2) Custodial trust property held under [this act] by
6 the same custodial trustee for the benefit of the same
7 beneficiary may be administered as a single custodial trust.

8 (3) A custodial trustee of property held for more than
9 one beneficiary shall separately account to each beneficiary
10 as provided in [sections 8 and 16] for the administration of
11 the custodial trust.

12 NEW SECTION. Section 8. General management duties of
13 custodial trustee. (1) A custodial trustee shall register or
14 record the instrument transferring title to custodial trust
15 property if appropriate.

16 (2) In the management, control, investment, or
17 retention of custodial trust property, a custodial trustee
18 shall follow the directions of the beneficiary if the
19 beneficiary is not incapacitated. In the absence of
20 effective contrary direction by the beneficiary while not
21 incapacitated, the custodial trustee shall observe the
22 standard of care that would be observed by a prudent person
23 dealing with property of another and is not limited by any
24 other law restricting investments by fiduciaries. However, a
25 custodial trustee, in the custodial trustee's discretion,

1 may retain any custodial trust property received from the
2 transferor. If a trust company or other custodial trustee
3 has a special skill or expertise or is named custodial
4 trustee on the basis of representation of a special skill or
5 expertise, the custodial trustee shall use that skill or
6 expertise.

7 (3) Subject to subsection (2), a custodial trustee
8 shall take control of and collect, hold, manage, invest, and
9 reinvest custodial trust property.

10 (4) A custodial trustee at all times shall keep
11 custodial trust property of which the custodial trustee has
12 possession and control, separate and distinct from all other
13 property in a manner sufficient to identify it clearly as
14 custodial trust property of the beneficiary. Custodial trust
15 property subject to recordation is so identified if it is
16 recorded, and custodial trust property subject to
17 registration is so identified if it is registered or held in
18 an account designated in the name of the custodial trustee
19 followed by words stating in substance: "as custodial
20 trustee for (name of beneficiary) under the
21 Montana Uniform Custodial Trust Act".

22 (5) A custodial trustee shall keep records of all
23 transactions with respect to custodial trust property,
24 including information necessary for the preparation of tax
25 returns, and shall make the records and information

1 available at reasonable intervals to the beneficiary or
2 legal representative of the beneficiary.

3 (6) The exercise of a durable power of attorney for an
4 incapacitated beneficiary is not effective to terminate or
5 direct the distribution or management of the custodial
6 trust.

7 NEW SECTION. Section 9. General powers of custodial
8 trustee. (1) A custodial trustee, acting in a fiduciary
9 capacity, has all the rights, powers, and authority over
10 custodial trust property that an unmarried adult owner has
11 over individually owned property, but a custodial trustee
12 may exercise those rights, powers, and authority in a
13 fiduciary capacity only.

14 (2) This section does not relieve a custodial trustee
15 from liability for breach of [section 8].

16 NEW SECTION. Section 10. Use of custodial trust
17 property. (1) The custodial trustee shall pay to the
18 beneficiary or expend for the beneficiary's benefit so much
19 or all of the custodial trust property as the beneficiary
20 while not incapacitated may direct from time to time.

21 (2) If the beneficiary is incapacitated, the custodial
22 trustee shall expend so much or all of the custodial trust
23 property as the custodial trustee determines advisable for
24 the use and benefit of the beneficiary and individuals who
25 were supported by the beneficiary at the time the

beneficiary became incapacitated or who are legally entitled to support by the beneficiary. Expenditures may be made in the manner, at the time, 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.

(3) A custodial trustee may establish checking, savings, or other similar accounts of reasonable amounts under which either the custodial trustee or the beneficiary may withdraw funds from or draw checks against the accounts. Funds withdrawn from or checks written against the account by the beneficiary are treated as distributions of custodial trust property by the custodial trustee to the beneficiary.

NEW SECTION. Section 11. Determination of incapacity -- proceeding -- effect. (1) A beneficiary is incapacitated for the purposes of [this act] and the custodial trustee shall administer and distribute the custodial trust as one for an incapacitated beneficiary if:

- (a) the custodial trust is created under [section 6];
- (b) the transferor has so directed in the writing creating the custodial trust; or
- (c) the custodial trustee has determined that the beneficiary has become incapacitated.

(2) A custodial trustee may determine that the beneficiary has become incapacitated in reliance upon:

(a) prior direction or authority given by the beneficiary while not incapacitated, including direction or authority pursuant to a durable power of attorney;

- (b) the certificate of the beneficiary's physician; or
- (c) other reasonable evidence.

(3) If a custodial trustee for an incapacitated beneficiary reasonably concludes that the beneficiary's incapacity has ceased or that circumstances concerning the beneficiary's ability to manage assets have changed since the creation of a custodial trust directing administration as for an incapacitated beneficiary, the custodial trustee may administer and distribute the custodial trust as one for a beneficiary who is not incapacitated.

(4) On petition of the beneficiary, the custodial trustee, or other person interested in the welfare of the beneficiary or custodial trust property, the court shall determine and declare whether or not the beneficiary is incapacitated.

(5) Absent determination of incapacity of the beneficiary under subsection (2) or (4), a custodial trustee who has reason to believe that the beneficiary has become incapacitated shall hold and administer the custodial property in accordance with the provisions of [this act] applicable to incapacitated beneficiaries.

(6) Incapacity of a beneficiary does not terminate the

1 custodial trust, any designation of a successor custodial
2 trustee, any powers or authority of the custodial trustee,
3 or any immunities of third persons acting on direction of
4 the custodial trustee.

5 NEW SECTION. Section 12. Exemption of third person
6 from liability. A third person in good faith and without a
7 court order may act on instructions of, or otherwise deal
8 with, a person purporting to make a transfer as or
9 purporting to act in the capacity of a custodial trustee
10 and, in the absence of knowledge to the contrary, is not
11 responsible for determining:

12 (1) the validity of the purported custodial trustee's
13 designation;

14 (2) the propriety of, or the authority under [this
15 act] for, any action of the purported custodial trustee;

16 (3) the validity or propriety under [this act] of any
17 instrument or instruction executed or given either by the
18 person purporting to make a transfer or by the purported
19 custodial trustee; or

20 (4) the propriety of the application of any property
21 delivered to the purported custodial trustee.

22 NEW SECTION. Section 13. Liability to third persons.

23 (1) A claim based on a contract entered into by a custodial
24 trustee acting in a fiduciary capacity, an obligation
25 arising from the ownership or control of custodial trust

1 property, or a tort committed in the course of administering
2 the custodial trust may be asserted against the custodial
3 trust property by proceeding against the custodial trustee
4 in the fiduciary capacity, whether or not the custodial
5 trustee or the beneficiary is personally liable.

6 (2) A custodial trustee is not personally liable:

7 (a) on a contract properly entered into in a fiduciary
8 capacity unless the custodial trustee fails to reveal that
9 capacity and to identify the custodial trust in the
10 contract; or

11 (b) for an obligation arising from control of
12 custodial trust property or for a tort committed in the
13 course of the administration of the custodial trust unless
14 the custodial trustee is personally at fault.

15 (3) A beneficiary is not personally liable for an
16 obligation arising from ownership of custodial trust
17 property or for a tort committed in the course of
18 administration of the custodial trust unless the beneficiary
19 is personally in possession of the custodial trust property
20 giving rise to the liability or is personally at fault.

21 (4) Neither subsection (2) or (3) precludes any
22 proceeding to establish liability of the custodial trustee
23 or beneficiary to the extent that either is protected as the
24 insured by liability insurance.

25 NEW SECTION. Section 14. Declination, resignation,

1 incapacity, death, or removal of custodial trustee --
 2 designation of successor custodial trustee. (1) A person
 3 designated as custodial trustee, before accepting the
 4 custodial trust property, may decline to serve by notifying
 5 the person who made the designation, the transferor, or the
 6 transferor's legal representative. If the event giving rise
 7 to a transfer has not occurred, the substitute custodial
 8 trustee designated under [section 4] becomes the custodial
 9 trustee, and, if a substitute custodial trustee has not been
 10 designated, the person who made the designation may
 11 designate a substitute custodial trustee under [section 4].
 12 In other cases, the transferor or the transferor's legal
 13 representative may designate a substitute custodial trustee.

14 (2) A custodial trustee who has accepted the custodial
 15 trust property may resign by:

16 (a) delivering written notice to the beneficiary and,
 17 if the beneficiary is incapacitated, to the beneficiary's
 18 conservator, if any, and to the successor custodial trustee,
 19 if any; and

20 (b) transferring, recording, or registering the
 21 custodial trust property in the name of and delivering the
 22 records to the successor custodial trustee identified under
 23 subsection (3).

24 (3) If a custodial trustee or successor custodial
 25 trustee is ineligible, resigns, dies, or becomes

1 incapacitated, the successor designated under [section 3 or
 2 4] becomes custodial trustee. If there is no effective
 3 provision for a successor, the beneficiary, if not
 4 incapacitated, may designate a successor custodial trustee.
 5 If the beneficiary is incapacitated or fails to act within
 6 90 days after the ineligibility, resignation, death, or
 7 incapacity of the custodial trustee, the beneficiary's
 8 conservator becomes successor custodial trustee; and, if the
 9 beneficiary does not have a conservator or the conservator
 10 declines to act, the resigning custodial trustee may
 11 designate a successor custodial trustee.

12 (4) If a successor custodial trustee is not designated
 13 by the foregoing procedure, the transferor, the legal
 14 representative of the transferor or of the custodial
 15 trustee, an adult member of the beneficiary's family, the
 16 guardian of the beneficiary, a person interested in the
 17 custodial trust property or, as appropriate, another person
 18 interested in the welfare of the beneficiary may petition
 19 the court to designate a successor custodial trustee.

20 (5) A custodial trustee who declines to serve or
 21 resigns or the legal representative of a deceased or
 22 incapacitated custodial trustee, as soon as practicable,
 23 shall put the custodial trust property and records in the
 24 possession and control of the successor custodial trustee. A
 25 successor custodial trustee may enforce the obligation to

1 deliver custodial trust property and records and becomes
2 responsible for each item as received.

3 (6) A beneficiary, the beneficiary's conservator, an
4 adult member of the beneficiary's family, a guardian of the
5 person of the beneficiary, a person interested in the
6 custodial trust property or, as appropriate, another person
7 interested in the welfare of the beneficiary, may petition
8 the court to remove the custodial trustee for cause and
9 designate a successor custodial trustee, to require the
10 custodial trustee to give bond, or for other appropriate
11 relief.

12 NEW SECTION. Section 15. Expenses, compensation, and
13 bond of custodial trustee. Except as provided otherwise in
14 the custodial trust instrument, in an agreement with the
15 beneficiary or by court order:

16 (1) a custodial trustee is entitled to reimbursement
17 from custodial trust property for reasonable expenses
18 incurred in the performance of fiduciary services;

19 (2) a custodial trustee has a noncumulative election
20 to be made no later than 6 months following the end of each
21 calendar year to charge a reasonable compensation for
22 fiduciary services performed during that year; and

23 (3) a custodial trustee need not post a bond for
24 faithful performance of the custodial trust.

25 NEW SECTION. Section 16. Reporting and accounting by

1 custodial trustee -- determination of liability of custodial
2 trustee. (1) Upon the acceptance of the custodial trust
3 property, a custodial trustee shall provide a written
4 statement describing the custodial trust property and shall
5 thereafter provide a written statement of the administration
6 of the custodial trust property once each year, upon request
7 at a reasonable time by the beneficiary or the beneficiary's
8 legal representative, upon resignation or removal of the
9 custodial trustee, and on termination of the custodial
10 trust. These statements must be provided to the beneficiary
11 or to the beneficiary's legal representative, if any. On
12 termination of the beneficiary's interest, a current
13 statement must be provided to the person to whom the
14 custodial trust property is to be delivered.

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

22 (3) A successor custodial trustee may petition the
23 court for an accounting by a predecessor custodial trustee.

24 (4) The court, in a proceeding under [this act] or in
25 any other proceeding, may require or permit the custodial

1 trustee or the custodial trustee's legal representative to
2 account; or the custodial trustee or the custodial trustee's
3 legal representative may petition the court for approval of
4 final accounts.

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

10 (6) On petition of the custodial trustee or any person
11 who could petition for an accounting, the court, after
12 notice to interested persons, may issue instructions to the
13 custodial trustee or review the propriety of the acts of a
14 custodial trustee or the reasonableness of compensation
15 determined by the custodial trustee for the services of the
16 custodial trustee or others.

17 NEW SECTION. **Section 17.** Limitations of action
18 against custodial trustee. (1) Except as provided in
19 subsection (3), unless previously barred by adjudication,
20 consent, or limitation, a claim for relief against a
21 custodial trustee for accounting or breach of duty is barred
22 as to a beneficiary, a person to whom the custodial trust
23 property is to be paid or delivered, or the legal
24 representative of an incapacitated or deceased beneficiary
25 or payee:

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

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

9 (2) Except as provided in subsection (3), a claim for
10 relief to recover from a custodial trustee for fraud,
11 misrepresentation, or concealment related to the final
12 settlement of the custodial trust or concealment of the
13 existence of the custodial trust is barred unless an action
14 or proceeding to assert the claim is commenced within 5
15 years after the termination of the custodial trust.

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

18 (a) is a minor, until the earlier of 2 years after:

19 (i) attaining majority; or

20 (ii) the claimant's death;

21 (b) is an incapacitated adult, until the earliest of 2
22 years after:

23 (i) the appointment of a conservator;

24 (ii) the removal of the incapacity; or

25 (iii) the death of the claimant; or

(c) was an adult, now deceased, who was not incapacitated, until 2 years after death.

NEW SECTION. Section 18. Termination and distribution. (1) A custodial trust terminates on the custodial trustee's receipt of a signed written direction of the beneficiary, if not incapacitated within [section 11], or of the beneficiary's conservator, if any, or upon the beneficiary's death. Upon termination, the custodial trustee shall transfer the unexpended custodial trust property:

(a) to the beneficiary, if not incapacitated;

(b) to the conservator or other court-designated recipient for an incapacitated beneficiary; or

(c) upon the beneficiary's death, in the following order:

(i) as last directed in a writing signed by the deceased beneficiary who was at the time not incapacitated and received by the custodial trustee during the life of the deceased beneficiary;

(ii) to the survivor of multiple beneficiaries when survivorship is provided pursuant to [section 7];

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

(iv) to the estate of the deceased beneficiary.

(2) If, when the custodial trust would otherwise terminate, the distributee is incapacitated, the custodial

trust continues for the benefit of the distributee as beneficiary until the incapacity is removed or the custodial trust is terminated by the distributee's conservator.

(3) The 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.

NEW SECTION. Section 19. Implementation, methods, and forms for creating custodial trusts. (1) If a transaction otherwise satisfies applicable law:

(a) the execution and either delivery to the custodial trustee or recording of an instrument in substantially the following form satisfies the requirements of [section 3]:

TRANSFER UNDER THE MONTANA

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 Montana Uniform Custodial Trust Act, the following: (insert a description of the custodial trust property sufficient to identify each asset).

Dated:

1

2 (Signature)

3 (b) the execution and the recording or giving notice
4 of its execution to the beneficiary of an instrument in
5 substantially the following form satisfies the requirements
6 of [section 3]:

7 DECLARATION OF TRUST UNDER THE MONTANA

8 UNIFORM CUSTODIAL TRUST ACT

9 I, (name of owner of property), declare that
10 henceforth I hold as custodial trustee for (name
11 of beneficiary other than transferor) as beneficiary and
12 as distributee on termination of the trust in
13 absence of direction by the beneficiary under the Montana
14 Uniform Custodial Trust Act, the following: (insert a
15 description of the custodial trust property sufficient to
16 identify each asset).

17 Dated:

18

19 (Signature)

20 (2) Customary methods of transferring or evidencing
21 ownership of assets may be used to create a custodial trust
22 and include the following:

23 (a) registration of a security in the name of a trust
24 company, an adult other than the transferor, or the
25 transferor if the beneficiary is other than the transferor,

1 followed in substance by the words "as custodial trustee for
2 (name of beneficiary) under the Montana Uniform
3 Custodial Trust Act";

4 (b) delivery of a certificated security or a document
5 necessary for the transfer of an uncertificated security,
6 together with any necessary endorsement, to an adult other
7 than the transferor or to a trust company as custodial
8 trustee, accompanied by an instrument in substantially the
9 form prescribed in subsection (1)(a);

10 (c) payment of money or transfer of a security held in
11 the name of a broker or a financial institution or its
12 nominee to a broker or financial institution for credit to
13 an account in the name of a trust company, an adult other
14 than the transferor, or the transferor if the beneficiary is
15 other than the transferor, followed in substance by the
16 words "as custodial trustee for (name of
17 beneficiary) under the Montana Uniform Custodial Trust Act";

18 (d) registration of ownership of a life or endowment
19 insurance policy or annuity contract with the issuer in the
20 name of a trust company, an adult other than the transferor,
21 or the transferor if the beneficiary is other than the
22 transferor, followed in substance by the words "as custodial
23 trustee for (name of beneficiary) under the
24 Montana Uniform Custodial Trust Act";

25 (e) delivery of a written assignment to an adult other

1 than the transferor or to a trust company whose name in the
2 assignment is followed in substance by the words "as
3 custodial trustee for (name of beneficiary)
4 under the Montana Uniform Custodial Trust Act";

5 (f) irrevocable exercise of a power of appointment,
6 pursuant to its terms, in favor of a trust company, an adult
7 other than the donee of the power, or the donee who holds
8 the power if the beneficiary is other than the donee, whose
9 name in the appointment is followed in substance by the
10 words "as custodial trustee for (name of
11 beneficiary) under the Montana Uniform Custodial Trust Act";

12 (g) delivery of a written notification or assignment
13 of a right to future payment under a contract to an obligor
14 which transfers the right under the contract to a trust
15 company, an adult other than the transferor, or the
16 transferor if the beneficiary is other than the transferor,
17 whose name in the notification or assignment is followed in
18 substance by the words "as custodial trustee for
19 (name of beneficiary) under the Montana Uniform Custodial
20 Trust Act";

21 (h) execution, delivery, and recordation of a
22 conveyance of an interest in real property in the name of a
23 trust company, an adult other than the transferor, or the
24 transferor if the beneficiary is other than the transferor,
25 followed in substance by the words "as custodial trustee for

1 (name of beneficiary) under the Montana Uniform
2 Custodial Trust Act";

3 (i) issuance of a certificate of title by an agency of
4 a state or of the United States which evidences title to
5 tangible personal property:

6 (i) issued in the name of a trust company, an adult
7 other than the transferor, or the transferor if the
8 beneficiary is other than the transferor, followed in
9 substance by the words "as custodial trustee for
10 (name of beneficiary) under the Montana Uniform Custodial
11 Trust Act"; or

12 (ii) delivered to a trust company or an adult other
13 than the transferor or endorsed by the transferor to that
14 person, followed in substance by the words "as custodial
15 trustee for (name of beneficiary) under the
16 Montana Uniform Custodial Trust Act"; or

17 (j) execution and delivery of an instrument of gift to
18 a trust company or an adult other than the transferor,
19 followed in substance by the words "as custodial trustee for
20 (name of beneficiary) under the Montana Uniform
21 Custodial Trust Act".

22 NEW SECTION. **Section 20.** Applicable law. (1) [This
23 act] applies to a registration, transfer, or declaration
24 that refers to [this act] as provided in [section 3] if, at
25 the time of the registration, transfer, or declaration, the

1 transferor, beneficiary, or custodial trustee is a resident
2 of this state or the custodial trust property is located in
3 this state. The custodial trust remains subject to [this
4 act] despite a subsequent change in residence of the
5 transferor, beneficiary, or custodial trustee or removal of
6 the custodial trust property from this state.

7 (2) A transfer made under a substantially similar act
8 of another state is governed by the law of that state and
9 may be executed or enforced in this state.

10 NEW SECTION. **Section 21. Uniformity of application**
11 **and construction.** [This act] shall be applied and construed
12 to effectuate its general purpose to make uniform the law
13 with respect to the subject of [this act] among states
14 enacting it.

15 NEW SECTION. **Section 22. Severability.** If a part of
16 [this act] is invalid, all valid parts that are severable
17 from the invalid part remain in effect. If a part of [this
18 act] is invalid in one or more of its applications, the part
19 remains in effect in all valid applications that are
20 severable from the invalid applications.

-End-

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25INTRODUCED BY Sen. Phyllis Kopp BILL NO. 180

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT THE UNIFORM CUSTODIAL TRUST ACT; TO PROVIDE FOR STATUTORY TRUSTS FOR CERTAIN ADULTS; TO PROVIDE PROTECTION FOR TRUST BENEFICIARIES AGAINST POSSIBLE FUTURE INCAPACITY WITHOUT THE NECESSITY OF CREATING A CONSERVATORSHIP; AND TO PROVIDE FOR THE MONITORING AND ENFORCING OF THE CUSTODIAL TRUST."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Short title. [This act] may be cited as the "Montana Uniform Custodial Trust Act".

NEW SECTION. **Section 2.** Definitions. As used in [this act]:

(1) "Adult" means an individual who has attained the age of 18 years.

(2) "Beneficiary" means an individual for whom property has been delivered to a custodial trustee for the individual's use and benefit under [this act].

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

(4) "Court" means district court.

There is no change on SB 180 and will not be reprinted. Please refer to white (introduced) for complete text.

1 Senate BILL NO. 180
2 INTRODUCED BY Thayer
3
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7 BENEFICIARIES AGAINST POSSIBLE FUTURE INCAPACITY WITHOUT THE
8 NECESSITY OF CREATING A CONSERVATORSHIP; AND TO PROVIDE FOR
9 THE MONITORING AND ENFORCING OF THE CUSTODIAL TRUST."
10
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20 individual's use and benefit under [this act].
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22 qualified by a court to manage the estate of an individual
23 or a person legally authorized to perform substantially the
24 same functions.
25 (4) "Court" means district court.

There are no changes on SB 180 and will not be reprinted. Please refer to white (introduced) or yellow (second reading) for complete text.