

HOUSE BILL REPORT

ESHB 1088

*As Passed House
March 19, 1991*

Title: An act relating to uniform transfers to minors.

Brief Description: Adopting the uniform transfers to minors act.

Sponsor(s): By House Committee on Judiciary (originally sponsored by Representatives Appelwick and Paris).

Brief History:

Reported by House Committee on:
Judiciary, March 5, 1991, DPS;
Passed House, March 19, 1991, 98-0.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *That Substitute House Bill No. 1088 be substituted therefor, and the substitute bill do pass.*
Signed by 18 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Belcher; Broback; Forner; Hargrove; Inslee; R. Meyers; Mielke; H. Myers; Riley; Scott; D. Sommers; Tate; Vance; and Wineberry.

Staff: Jeff Fishel (786-7191).

Background:

Introduction: The State adopted the Uniform Gifts to Minors Act in 1959 upon the recommendation of the National Conference of Commissioners on Uniform State Laws. The National Conference promotes uniform state laws to expedite regulation of activities and interests that extend beyond state boundaries. Members from each state comprise the Conference. Washington's members form the Uniform Legislation Commission which is appointed by the governor.

The statutory scheme has remained essentially the same since 1959: property is transferred to a custodian who controls and manages custodial property for the minor until the minor reaches the age of majority. Once made, the gift is irrevocable and the minor has legal title. Although

Washington's age of majority is 18, the act defines a minor as someone who is younger than 21 years of age.

Custodial property: The original law governed gifts of securities and money. The law currently governs, in addition to securities and money, gifts of tangible or intangible personal property interests, including life insurance policies and annuity contracts, and gifts of real property interests.

Transfers of custodial property: Generally, property is transferred by placing the property in the name of the custodian as custodian for the minor. The 1956 law applied to gifts made during the life of the donor. Now, a custodian may be named in a will or trust agreement to whom the legal representative transfers property of the estate or trust on the occurrence of a future event. If no provision for a custodianship is made in the will or trust agreement, the legal representative may petition the court to appoint a custodian. Gifts can be made only to one minor and in the custody of one person.

Powers and duties of the custodian: Although a custodian does not have legal title to the property, he or she has all the rights and duties of a guardian of the estate of the minor and a trustee. A custodian may collect, hold, manage, invest or reinvest, convey, repair, or divide custodial property. The custodian may invest custodial property as long as the same investment would be made by a reasonably prudent person of discretion and intelligence who is seeking a reasonable income and preservation of capital. If custodial property involves a partnership interest, the custodian participates in partnership decisions for the minor; if custodial property involves securities, the custodian may vote the minor's shares.

The custodian must use custodial property for support, maintenance, education, and benefit of the minor as the custodian deems advisable. The custodian must keep a record of every transaction concerning custodial property and make it available to the minor or the minor's legal representative.

Liability: The custodian is a fiduciary and subject to the reasonably prudent person standard. A custodian who is not compensated is personally liable for losses as a result of the custodian's bad faith, intentional wrongdoing, gross negligence, or from failing to follow the prudent investment standard. Third parties such as a transfer agent, bank, life insurance company, or other person acting on behalf of the custodian have no duty to ensure the validity of the custodian's appointment or instructions.

Summary of Bill:

Title: The name of the act is changed to the "Uniform Transfers to Minors Act."

Uniformity: The conference found that many states changed, or failed to change, the Uniform Gifts to Minors Act since it first proposed the act in 1956. Therefore, the conference followed the trend represented by Washington's law to propose a law that is more expansive in its coverage than the 1956 proposal, or the amendatory proposal of 1966. Because of the broader coverage and to distinguish this proposal from the 1956 and 1966 proposals, the conference recommends that the title of the act refer to transfers rather than gifts.

Custodial property: The bill governs any real or tangible or intangible personal property, and includes equity interests, life or endowment insurance policies, irrevocable powers of appointment, and future payment rights. Legal and equitable property interests vest in the minor but control and management of the property rests solely with the custodian. Both the minor's and custodian's rights and duties are only those delineated in the bill. Custodial property is to be used for the use and benefit of the minor.

Transfers of custodial property: The way transfers may be made under the bill are similar to current law except that an obligor of a minor, or a legal representative of a decedent's estate or legal representative of a trust without express authority in the will or trust agreement, may create a custodianship for a minor who has no legal guardian. If the property is worth more than \$30,000, the legal representative must obtain a court order. Future payment rights, e.g., royalties, interest or principal on a promissory note, or benefits from an insurance contract, may be assigned to the custodian as custodian for a minor.

Transfers of custodial property: A personal representative or trustee may appoint himself or herself as custodian if he or she qualifies to be a custodian under the particular type of property transferred. A family member may request the court to establish a custodianship despite the value of the transfer.

Powers and duties of the custodian: The custodian may deal with the custodial property as an unmarried adult would deal with his or her property and has all the rights and duties of a trustee as long as the custodian is acting as a custodian.

Liability: The custodian is held to the same standard as a trustee. A custodian who serves without compensation is personally liable under the same situations as under the prior law.

The custodian and minor are liable for obligations arising from the custodial property only to the extent of the custodial property whether or not either is personally liable. The custodian or minor is not personally liable for torts or obligations arising from the custodial property unless the custodian or minor is personally at fault.

Court Procedure: If court action is requested or required under the bill, requirements of jurisdiction, notice to parties, and other procedural requirements are determined under current law governing jurisdiction and procedure of probate, trust, and guardianship matters.

Laws affected: The bill repeals the statute allowing distribution of a minor's estate to a member of the minor's family for property valued less than \$5,000. The establishment of a custodianship is added to the choices a personal representative has in making a distribution to a minor under court supervision.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect July 1, 1991.

Testimony For: None.

Testimony Against: None.

Witnesses: None.