

HOUSE BILL REPORT

HB 2380

As Reported by House Committee On:
Judiciary

Title: An act relating to the uniform transfers to minors act.

Brief Description: Changing the threshold age of minors under the uniform transfers to minors act.

Sponsors: Representatives Serben and Lantz.

Brief History:

Committee Activity:

Judiciary: 1/10/06, 1/18/06 [DP].

Brief Summary of Bill

- Allows property to remain in a custodianship under the Uniform Transfers to Minors Act (UTMA) until a "minor" has reached age 25, instead of age 21;
- Raises from 14 years old to 18 years old the minimum age of minors who may make certain decisions independently under the UTMA.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 9 members: Representatives Lantz, Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby, Serben, Springer and Wood.

Minority Report: Without recommendation. Signed by 1 member: Representative Flannigan, Vice Chair.

Staff: Bill Perry (786-7123).

Background:

A person may wish to transfer property to a minor, but for legal or other reasons the immediate transfer of the property directly to the minor may not be possible or desirable.

In 1959, Washington adopted the Uniform Gifts to Minors Act. In 1991, that act was replaced by The Uniform Transfers to Minors Act (UTMA) which has remained largely unchanged since then.

The UTMA allows a person to transfer property irrevocably to a minor with the property being held by a custodian nominated by the transferor. The custodianship of the property lasts until the earlier of the minor's death or 21st birthday, or for some types of transfers until the minor reaches age 18. A transfer under the UTMA may be made either by a gift or through a power of appointment. During the custodianship, the custodian may spend as much of the property for the benefit of the minor as the custodian considers advisable. The custodian is also entitled to reimbursement for reasonable expenses incurred. At the end of the custodianship, any remaining property goes to the minor or the minor's estate.

Under federal tax law, a person is allowed to make certain individual gifts without incurring federal tax liability. One of the requirements for qualifying for this tax exemption is that the gift must be of a "present interest" in the property given. A transfer of property to custodianship under the UTMA will not be disqualified as a "future interest" so long as the minor for whom the property is being held will receive the property before the age of 21.

During the custodianship of property transferred under the UTMA, the interests of the minor are protected by certain rights with respect to the management of the property. At age 14 the minor may exercise some of these rights independently. These age-affected rights include:

- The right of the minor to demand financial records from the custodian or to petition a court for an accounting;
- The right of the minor to petition a court to have some of the custodial property paid to the minor or spent for the minor's benefit; and
- The right of the minor to be notified of the resignation of a custodian, to petition for the removal of a custodian and to designate a successor custodian.

Summary of Bill:

At the election of the transferor, the custodianship of property under The Uniform Transfers to Minors Act (UTMA) may be extended until the "minor" reaches age 25, instead of age 21. Such an extension must be elected by the transferor at the time of the initial nomination of the custodian of the property. Such extensions are available only for transfers of property made on or after July 1, 2007.

The statutory sample instrument for transfers under the UTMA is amended to include a warning statement about the possible federal gift tax consequences of extending a custodianship beyond the minor's 21st birthday. Any custodianship forms made available by financial institutions or investment advisers must contain the same warning.

The age at which a minor may independently exercise certain rights under a UTMA custodianship is raised from 14 years old to 18 years old.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect on July 1, 2007.

Testimony For: Allowing the option of extending a custodianship until a minor reaches age 25 gives people more flexibility. Custodianships are less expensive and less complex than trusts are and can be an important tool for people with more modest estates. The bill provides warnings about the possible tax consequences of extending a custodianship, but in many cases the real tax effect would be zero anyway.

Increasing the minimum age at which a minor can independently exercise rights under a custodianship is appropriate. It is usually in the best interest of the minor and the custodianship for the minor to have adult supervision until age 18. This is particularly true with respect to the ability to appoint a new custodian. For most other important legal purposes, a person does not gain adult authority until age 18. A minor under age 18 will continue to be able to petition a court for a special representative to protect his or her rights under the custodianship.

Testimony Against: None.

Persons Testifying: Luke E. Thomas; and Al Falk, Washington State Bar Association.

Persons Signed In To Testify But Not Testifying: None.