

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1088

52nd Legislature
1991 Regular Session

Passed by the House March 19, 1991
Yeas 98 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate April 11, 1991
Yeas 44 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1088** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

Secretary of State
State of Washington

ENGROSSED SUBSTITUTE HOUSE BILL 1088

Passed Legislature - 1991 Regular Session

State of Washington 52nd Legislature 1991 Regular Session

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

Read first time March 6, 1991.

1 AN ACT Relating to uniform transfers to minors; amending RCW
2 11.76.095, 11.98.170, 67.70.220, and 11.92.140; adding a new chapter to
3 Title 11 RCW; repealing RCW 11.93.010, 11.93.020, 11.93.030, 11.93.040,
4 11.93.050, 11.93.060, 11.93.070, 11.93.080, 11.93.900, 11.93.910,
5 11.93.911, 11.93.912, 11.93.920, and 11.76.090; providing an effective
6 date; and declaring an emergency.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** DEFINITIONS. Unless the context clearly
9 requires otherwise, the definitions in this section apply throughout
10 this chapter.

11 (1) "Adult" means an individual who has attained the age of twenty-
12 one years.

13 (2) "Benefit plan" means an employer's plan for the benefit of an
14 employee or partner.

1 (3) "Broker" means a person lawfully engaged in the business of
2 effecting transactions in securities or commodities for the person's
3 own account or for the account of others.

4 (4) "Guardian" means a person appointed or qualified by a court to
5 act as general, limited, or temporary guardian of a minor's property or
6 a person legally authorized to perform substantially the same
7 functions. Conservator means guardian for transfers made under another
8 state's law but enforceable in this state's courts.

9 (5) "Court" means a superior court of the state of Washington.

10 (6) "Custodial property" means (a) any interest in property
11 transferred to a custodian under this chapter and (b) the income from
12 and proceeds of that interest in property.

13 (7) "Custodian" means a person so designated under section 9 of
14 this act or a successor or substitute custodian designated under
15 section 18 of this act.

16 (8) "Financial institution" means a bank, trust company, savings
17 institution, or credit union, chartered and supervised under state or
18 federal law.

19 (9) "Legal representative" means an individual's personal
20 representative or guardian.

21 (10) "Member of the minor's family" means the minor's parent,
22 stepparent, spouse, grandparent, brother, sister, uncle, or aunt,
23 whether of the whole or half blood or by adoption.

24 (11) "Minor" means an individual who has not attained the age of
25 twenty-one years.

26 (12) "Person" means an individual, corporation, organization, or
27 other legal entity.

28 (13) "State" includes any state of the United States, the District
29 of Columbia, the Commonwealth of Puerto Rico, and any territory or
30 possession subject to the legislative authority of the United States.

1 (14) "Transfer" means a transaction that creates custodial property
2 under section 9 of this act.

3 (15) "Transferor" means a person who makes a transfer under this
4 chapter.

5 (16) "Trust company" means a financial institution, corporation, or
6 other legal entity, authorized to exercise general trust powers.

7 NEW SECTION. **Sec. 2.** SCOPE AND JURISDICTION. (1) This chapter
8 applies to a transfer that refers to this chapter in the designation
9 under section 9(1) of this act by which the transfer is made if at the
10 time of the transfer, the transferor, the minor, or the custodian is a
11 resident of this state or the custodial property is located in this
12 state. The custodianship so created remains subject to this chapter
13 despite a subsequent change in residence of a transferor, the minor, or
14 the custodian, or the removal of custodial property from this state.

15 (2) A person designated as custodian under this chapter is subject
16 to personal jurisdiction in this state with respect to any matter
17 relating to the custodianship.

18 (3) A transfer that purports to be made and which is valid under
19 the uniform transfers to minors act, the uniform gifts to minors act,
20 or a substantially similar act of another state is governed by the law
21 of the designated state and may be executed and is enforceable in this
22 state if at the time of the transfer, the transferor, the minor, or the
23 custodian is a resident of the designated state or the custodial
24 property is located in the designated state.

25 (4) A matter under this chapter subject to court determination is
26 governed by the procedures provided in chapter 11.96 RCW. However, no
27 guardian ad litem is required for the minor, except under section 19(1)
28 of this act, in the case of a petition by a unrepresented minor under
29 the age of fourteen years.

1 NEW SECTION. **Sec. 3.** NOMINATION OF CUSTODIAN. (1) A person
2 having the right to designate the recipient of property transferable
3 upon the occurrence of a future event may revocably nominate a
4 custodian to receive the property for a minor beneficiary upon the
5 occurrence of the event by naming the custodian followed in substance
6 by the words: "... as custodian for (name of minor) under
7 the Washington uniform transfers to minors act." The nomination may
8 name one or more persons as substitute custodians to whom the property
9 shall be transferred, in the order named, if the first nominated
10 custodian dies before the transfer or is unable, declines, or is
11 ineligible to serve. The nomination may be made in a will, a trust, a
12 deed, an instrument exercising a power of appointment, or in a writing
13 designating a beneficiary of contractual rights which is registered
14 with or delivered to the payor, issuer, or other obligor of the
15 contractual rights.

16 (2) A custodian nominated under this section shall be a person to
17 whom a transfer of property of that kind may be made under section 9(1)
18 of this act.

19 (3) The nomination of a custodian under this section does not
20 create custodial property until the nominating instrument becomes
21 irrevocable or a transfer to the nominated custodian is completed under
22 section 9 of this act. Unless the nomination of a custodian has been
23 revoked, upon the occurrence of the future event the custodianship
24 becomes effective and the custodian shall enforce a transfer of the
25 custodial property pursuant to section 9 of this act.

26 NEW SECTION. **Sec. 4.** TRANSFER BY GIFT OR EXERCISE OF POWER OF
27 APPOINTMENT. A person may make a transfer by irrevocable gift to, or
28 the irrevocable exercise of a power of appointment in favor of, a
29 custodian for the benefit of a minor pursuant to section 9 of this act.

1 NEW SECTION. **Sec. 5.** TRANSFER AUTHORIZED BY WILL OR TRUST. (1)

2 A personal representative or trustee may make an irrevocable transfer
3 pursuant to section 9 of this act to a custodian for the benefit of a
4 minor as authorized in the governing will or trust. The personal
5 representative or trustee may designate himself or herself as custodian
6 provided he or she falls within the class of persons eligible to serve
7 as custodian under section 9(1) of this act.

8 (2) If the testator or grantor has nominated a custodian under
9 section 3 of this act to receive the custodial property, the transfer
10 shall be made to that person.

11 (3) If the testator or grantor has not nominated a custodian under
12 section 3 of this act, or all persons so nominated as custodian die
13 before the transfer or are unable, decline, or are ineligible to serve,
14 the personal representative or the trustee, as the case may be, shall
15 designate the custodian from among those eligible to serve as custodian
16 for property of that kind under section 9(1) of this act. The personal
17 representative or trustee may designate himself or herself as
18 custodian, provided he or she falls within the class of persons
19 eligible to serve as custodian under section 9(1) of this act.

20 NEW SECTION. **Sec. 6.** OTHER TRANSFER BY FIDUCIARY. (1) A personal

21 representative or trustee may make an irrevocable transfer to an adult
22 or trust company for the benefit of a minor pursuant to section 9 of
23 this act, in the absence of a will or under a will or trust that does
24 not contain an authorization to do so, but only if:

25 (a) The personal representative or trustee, or the court if an
26 order is requested under (c) of this subsection, considers the transfer
27 to be in the best interest of the minor;

1 (b) The transfer is not prohibited by or inconsistent with
2 provisions of the applicable will, trust instrument, or other governing
3 instrument; and

4 (c) The transfer is authorized by the court if it exceeds thirty
5 thousand dollars in value.

6 The personal representative, the trustee, or a member of the
7 minor's family may select the custodian, subject to court approval.
8 The personal representative or trustee may serve as custodian, provided
9 he or she falls within the class of persons eligible to serve as
10 custodian under section 9(1) of this act.

11 (2) A member of the minor's family may request that the court
12 establish a custodianship if a custodianship has not already been
13 established, regardless of the value of the transfer.

14 NEW SECTION. **Sec. 7.** TRANSFER BY OBLIGOR. (1) Subject to
15 subsections (2) and (3) of this section, a person not subject to
16 section 5 or 6 of this act who holds property of or owes a liquidated
17 debt to a minor not having a guardian may make an irrevocable transfer
18 to a custodian for the benefit of the minor pursuant to section 9 of
19 this act.

20 (2) If a person having the right to do so under section 3 of this
21 act has nominated a custodian under that section to receive the
22 custodial property, the transfer shall be made to that person.

23 (3) If no custodian has been nominated under section 3 of this act,
24 or all persons so nominated as custodian die before the transfer or are
25 unable, decline, or are ineligible to serve, a transfer under this
26 section may be made to an adult member of the minor's family or to a
27 trust company unless the property exceeds thirty thousand dollars in
28 value.

1 (4) A member of the minor's family or the person who holds the
2 property of the minor or who owes a debt to the minor may request that
3 the court establish a custodianship if not previously established,
4 regardless of the value of the transfer.

5 NEW SECTION. **Sec. 8.** RECEIPT FOR CUSTODIAL PROPERTY. A written
6 confirmation of delivery by a custodian constitutes a sufficient
7 receipt and discharge of the transferor for custodial property
8 transferred to the custodian under this chapter.

9 NEW SECTION. **Sec. 9.** MANNER OF CREATING CUSTODIAL PROPERTY AND
10 EFFECTING TRANSFER--DESIGNATION OF INITIAL CUSTODIAN--CONTROL. (1)
11 Custodial property is created and a transfer is made if:

12 (a) An uncertificated security or a certificated security in
13 registered form is either:

14 (i) Registered in the name of the transferor, an adult other than
15 the transferor, or a trust company, followed in substance by the words:
16 "... as custodian for (name of minor) under the Washington
17 uniform transfers to minors act"; or

18 (ii) Delivered if in certificated form, or any document necessary
19 for the transfer of an uncertificated security is delivered, together
20 with any necessary endorsement to an adult other than the transferor or
21 to a trust company as custodian, accompanied by an instrument in
22 substantially the form set forth in subsection (2) of this section;

23 (b) Money is paid or delivered, or a security held in the name of
24 a broker, financial institution, or its nominee is transferred, to a
25 broker or financial institution for credit to an account in the name of
26 the transferor, an adult other than the transferor, or a trust company,
27 followed in substance by the words: "... as custodian for
28 (name of minor) under the Washington uniform transfers to minors act";

1 (c) The ownership of a life or endowment insurance policy or
2 annuity contract is either:

3 (i) Registered with the issuer in the name of the transferor, an
4 adult other than the transferor, or a trust company, followed in
5 substance by the words: "... as custodian for (name of
6 minor) under the Washington uniform transfers to minors act"; or

7 (ii) Assigned in a writing delivered to an adult other than the
8 transferor or to a trust company whose name in the assignment is
9 followed in substance by the words: "... as custodian for
10 (name of minor) under the Washington uniform transfers to minors act";

11 (d) An irrevocable exercise of a power of appointment or an
12 irrevocable present right to future payment under a contract is the
13 subject of a written notification delivered to the payor, issuer, or
14 other obligor that the right is transferred to the transferor, an adult
15 other than the transferor, or a trust company, whose name in the
16 notification is followed in substance by the words: "... as custodian
17 for (name of minor) under the Washington uniform transfers
18 to minors act";

19 (e) An interest in real property is recorded in the name of the
20 transferor, an adult other than the transferor, or a trust company,
21 followed in substance by the words: "... as custodian for
22 (name of minor) under the Washington uniform transfers to minors act";

23 (f) A certificate of title issued by a department or agency of a
24 state or of the United States which evidences title to tangible
25 personal property is either:

26 (i) Issued in the name of the transferor, an adult other than the
27 transferor, or a trust company, followed in substance by the words: "
28 ... as custodian for (name of minor) under the Washington
29 uniform transfers to minors act"; or

1 (ii) Delivered to an adult other than the transferor or to a trust
2 company, endorsed to that person followed in substance by the words:
3 "... as custodian for (name of minor) under the Washington
4 uniform transfers to minors act"; or

5 (g) An interest in any property not described in (a) through (f) of
6 this subsection is transferred to an adult other than the transferor or
7 to a trust company by a written instrument in substantially the form
8 set forth in subsection (2) of this section.

9 (2) An instrument in the following form satisfies the requirements
10 of subsection (1) (a)(ii) and (g) of this section:

11 "TRANSFER UNDER THE WASHINGTON
12 UNIFORM TRANSFERS TO MINORS ACT

13 I, (name of transferor or name and representative
14 capacity if a fiduciary) hereby transfer to (name of
15 custodian), as custodian for (name of minor) under the
16 Washington uniform transfers to minors act, the following: (insert a
17 description of the custodial property sufficient to identify it).

18 Dated:

19

20 (Signature)

21 (name of custodian) acknowledges receipt of the property
22 described above as custodian for the minor named above under the
23 Washington uniform transfers to minors act.

24 Dated:

25"

26 (Signature of Custodian)

27 (3) A transferor shall place the custodian in control of the
28 custodial property as soon as practicable.

1 NEW SECTION. **Sec. 10.** SINGLE CUSTODIANSHIP. A transfer may be
2 made only for one minor, and only one person may be the custodian. All
3 custodial property held under this chapter by the same custodian for
4 the benefit of the same minor constitutes a single custodianship.

5 NEW SECTION. **Sec. 11.** VALIDITY AND EFFECT OF TRANSFER. (1) The
6 validity of a transfer made in a manner prescribed in this chapter is
7 not affected by:

8 (a) Failure of the transferor to comply with section 9(3) of this
9 act concerning possession and control;

10 (b) Designation of an ineligible custodian, except designation of
11 the transferor in the case of property for which the transferor is
12 ineligible to serve as custodian under section 9(1) of this act; or

13 (c) Death or incapacity of a person nominated under section 3 of
14 this act or designated under section 9 of this act as custodian or the
15 disclaimer of the office by that person.

16 (2) A transfer made pursuant to section 9 of this act is
17 irrevocable, and the custodial property is indefeasibly vested in the
18 minor, but the custodian has all the rights, powers, duties, and
19 authority provided in this chapter, and neither the minor nor the
20 minor's legal representative has any right, power, duty, or authority
21 with respect to the custodial property except as provided in this
22 chapter.

23 (3) By making a transfer, the transferor incorporates in the
24 disposition all the provisions of this chapter and grants to the
25 custodian, and to any third person dealing with a person designated as
26 custodian, the respective powers, rights, and immunities provided in
27 this chapter.

1 NEW SECTION. **Sec. 12.** CARE OF CUSTODIAL PROPERTY. (1) A

2 custodian shall, as soon as custodial property is made available to the
3 custodian:

4 (a) Take control of custodial property;

5 (b) Register or record title to custodial property if appropriate;

6 and

7 (c) Collect, hold, manage, invest, and reinvest custodial property.

8 (2) In dealing with custodial property, a custodian shall observe
9 the standard of care applicable to fiduciaries under chapter 11.100
10 RCW. If a custodian has a special skill or expertise or is named
11 custodian on the basis of representations of a special skill or
12 expertise, the custodian shall use that skill or expertise. A
13 custodian, in the custodian's discretion and without liability to the
14 minor or the minor's estate, may retain any custodial property received
15 from a transferor according to the same standards as apply to a
16 fiduciary holding trust funds under RCW 11.100.060. However, the
17 provisions of RCW 11.100.025, 11.100.040, and 11.100.140 shall not
18 apply to a custodian.

19 (3) A custodian may invest in or pay premiums on life insurance or
20 endowment policies on (a) the life of the minor only if the minor or
21 the minor's estate is the sole beneficiary, or (b) the life of another
22 person in whom the minor has an insurable interest only to the extent
23 that the minor, the minor's estate, or the custodian in the capacity of
24 custodian, is the irrevocable beneficiary.

25 (4) A custodian at all times shall keep custodial property separate
26 and distinct from all other property in a manner sufficient to identify
27 it clearly as custodial property of the minor. Custodial property
28 consisting of an undivided interest is so identified if the minor's
29 interest is held as a tenant in common and is fixed. Custodial
30 property subject to recordation is so identified if it is recorded, and

1 custodial property subject to registration is so identified if it is
2 either registered, or held in an account designated, in the name of the
3 custodian, followed in substance by the words: "... as custodian for
4 (name of minor) under the Washington uniform transfers to
5 minors act."

6 (5) A custodian shall keep records of all transactions with respect
7 to custodial property, including information necessary for the
8 preparation of the minor's tax returns, and shall make them available
9 upon request for inspection by a parent or legal representative of the
10 minor or by the minor if the minor has attained the age of fourteen
11 years.

12 NEW SECTION. **Sec. 13.** POWERS OF CUSTODIAN. (1) A custodian,
13 acting in a custodial capacity, has all the rights, powers, and
14 authority over custodial property that unmarried adult owners have over
15 their own property, including without limitation all the powers granted
16 to a trustee under RCW 11.98.070, but a custodian may exercise those
17 rights, powers, and authority only in a custodial capacity.

18 (2) This section does not relieve a custodian from liability for
19 breach of section 12 of this act.

20 NEW SECTION. **Sec. 14.** USE OF CUSTODIAL PROPERTY. (1) A custodian
21 may deliver or pay to the minor or expend for the minor's benefit so
22 much of the custodial property as the custodian considers advisable for
23 the use and benefit of the minor, without court order and without
24 regard to (a) the duty or ability of the custodian personally or of any
25 other person to support the minor, or (b) any other income or property
26 of the minor which may be applicable or available for that purpose.

27 (2) On petition of an interested person or the minor if the minor
28 has attained the age of fourteen years, the court may order the

1 custodian to deliver or pay to the minor or expend for the minor's
2 benefit so much of the custodial property as the court considers
3 advisable for the use and benefit of the minor.

4 (3) A delivery, payment, or expenditure under this section is in
5 addition to, not in substitution for, and does not affect any
6 obligation of a person to support the minor.

7 NEW SECTION. **Sec. 15.** CUSTODIAN'S EXPENSES, COMPENSATION, AND

8 BOND. (1) A custodian is entitled to reimbursement from custodial
9 property for reasonable expenses incurred in the performance of the
10 custodian's duties.

11 (2) Except for one who is a transferor under section 4 of this act,
12 a custodian has a noncumulative election during each calendar year to
13 charge reasonable compensation for services performed during that year.

14 (3) Except as provided in section 18(6) of this act, a custodian
15 need not give a bond.

16 (4) Notwithstanding section 19 of this act, a custodian not
17 compensated for services is not liable for losses to the custodial
18 property unless they result from bad faith, intentional wrongdoing, or
19 gross negligence, or from failure to maintain the standard of prudence
20 in investing the custodial property provided in this chapter.

21 NEW SECTION. **Sec. 16.** EXEMPTION OF THIRD PERSON FROM LIABILITY.

22 A third person in good faith and without court order may act on the
23 instructions of or otherwise deal with any person purporting to make a
24 transfer or purporting to act in the capacity of a custodian or
25 successor custodian and, in the absence of knowledge, is not
26 responsible for determining:

27 (1) The validity of the purported custodian's designation;

1 (2) The propriety of, or the authority under this chapter for, any
2 act of the purported custodian;

3 (3) The validity or propriety under this chapter of any instrument
4 or instructions executed or given either by the person purporting to
5 make a transfer or by the purported custodian; or

6 (4) The propriety of the application of any property of the minor
7 delivered to the purported custodian.

8 NEW SECTION. **Sec. 17.** LIABILITY TO THIRD PERSONS. (1) A claim
9 based on:

10 (a) A contract entered into by a custodian acting in a custodial
11 capacity;

12 (b) An obligation arising from the ownership or control of
13 custodial property;

14 (c) A tort committed during the custodianship, may be asserted
15 against the custodial property by proceeding against the custodian in
16 the custodial capacity, whether or not the custodian or the minor is
17 personally liable therefor; or

18 (d) A noncontractual obligation, including obligations in tort, is
19 collectible from the custodial property only if:

20 (i) The obligation was a common incident of the kind of business
21 activity in which the custodian or the custodian's predecessor was
22 properly engaged for the custodianship;

23 (ii) Neither the custodian nor the custodian's predecessor, nor any
24 officer or employee of the custodian or the custodian's predecessor was
25 personally at fault in incurring the obligation; or

26 (iii) Although the obligation did not fall within (d)(i) or (ii) of
27 this subsection, the incident that gave rise to the obligation
28 increased the value of the custodial property.

1 If the obligation is within (d)(i) or (ii) or this subsection,
2 collection may be had of the full amount of damage proved. If the
3 obligation is within (d)(iii) of this subsection, collection may be had
4 only to the extent of the increase in the value of the trust property.

5 (2) A custodian is not personally liable:

6 (a) On a contract properly entered into in the custodial capacity
7 unless the custodian fails to reveal that capacity. The addition of
8 the words "custodian" or "as custodian" after the signature of a
9 custodian is adequate revelation of this capacity; or

10 (b) For an obligation arising from control of custodial property or
11 for a tort committed during the custodianship unless the custodial
12 property is not liable for the obligation under (b) of this subsection
13 and unless the custodian is personally at fault.

14 (3) A minor is not personally liable for an obligation arising from
15 ownership of custodial property or for a tort committed during the
16 custodianship unless the minor is personally at fault.

17 NEW SECTION. **Sec. 18.** RENUNCIATION, RESIGNATION, DEATH, OR
18 REMOVAL OF CUSTODIAN--DESIGNATION OF SUCCESSOR CUSTODIAN. (1) A person
19 nominated under section 3 of this act or designated under section 9 of
20 this act as custodian may decline to serve. If the event giving rise
21 to a transfer has not occurred and no substitute custodian able,
22 willing, and eligible to serve was nominated under section 3 of this
23 act, the person who made the nomination may nominate a substitute
24 custodian under section 3 of this act; otherwise the transferor or the
25 transferor's legal representative shall designate a substitute
26 custodian at the time of the transfer, in either case from among the
27 persons eligible to serve as custodian for that kind of property under
28 section 9(1) of this act. The custodian so designated has the rights
29 of a successor custodian.

1 (2) A custodian at any time may designate a trust company or an
2 adult other than a transferor under section 4 of this act as successor
3 custodian by executing and dating an instrument of designation. If the
4 instrument of designation does not contain or is not accompanied by the
5 resignation of the custodian, the designation of the successor does not
6 take effect until the custodian resigns, dies, becomes incapacitated,
7 or is removed, and custodial property is transferred to the successor
8 custodian.

9 (3) A custodian may resign at any time by delivering written notice
10 to the minor, if the minor has attained the age of fourteen years, and
11 to the successor custodian, and by delivering the custodial property to
12 the successor custodian.

13 (4) If a custodian is ineligible, dies, or becomes incapacitated
14 and no successor custodian has been designated as provided in this
15 chapter, and the minor has attained the age of fourteen years, the
16 minor may designate as successor custodian, in the manner prescribed in
17 subsection (2) of this section, an adult member of the minor's family,
18 a guardian of the minor, or a trust company. If the minor has not
19 attained the age of fourteen years or fails to act within sixty days
20 after the ineligibility, death, or incapacity, the guardian of the
21 minor becomes successor custodian. If the minor has no guardian or the
22 guardian declines to act, the transferor, the legal representative of
23 the transferor or of the custodian, an adult member of the minor's
24 family, or any other interested person may petition the court to
25 designate a successor custodian.

26 (5) A custodian who declines to serve under subsection (1) of this
27 section or resigns under subsection (3) of this section, or the legal
28 representative of a deceased or incapacitated custodian, as soon as
29 practicable, shall put the custodial property and records in the
30 possession and control of the successor custodian. The successor

1 custodian by action may enforce the obligation to deliver custodial
2 property and records and becomes responsible for each item as received.

3 (6) A transferor, the legal representative of a transferor, an
4 adult member of the minor's family, a guardian of the minor, or the
5 minor if the minor has attained the age of fourteen years may petition
6 the court to remove the custodian for cause and to designate a
7 successor custodian other than a transferor under section 4 of this act
8 or to require the custodian to give appropriate bond.

9 NEW SECTION. **Sec. 19.** ACCOUNTING BY AND DETERMINATION OF
10 LIABILITY OF CUSTODIAN. (1) A minor who has attained the age of
11 fourteen years, the minor's legal representative, an adult member of
12 the minor's family, a transferor, or a transferor's legal
13 representative may petition the court (a) for an accounting by the
14 custodian or the custodian's legal representative; or (b) for a
15 determination of responsibility, as between the custodial property and
16 the custodian personally, for claims against the custodial property
17 unless the responsibility has been adjudicated in an action under
18 section 17 of this act to which the minor or the minor's legal
19 representative was a party.

20 (2) A successor custodian may petition the court for an accounting
21 by the predecessor custodian.

22 (3) The court, in a proceeding under this chapter or in any other
23 proceeding, may require or permit the custodian or the custodian's
24 legal representative to account.

25 (4) If a custodian is removed under section 18(6) of this act, the
26 court shall require an accounting and order delivery of the custodial
27 property and records to the successor custodian and the execution of
28 all instruments required for transfer of the custodial property.

1 NEW SECTION. **Sec. 20.** TERMINATION OF CUSTODIANSHIP. Subject to
2 section 22 of act, the custodian shall transfer in an appropriate
3 manner the custodial property to the minor or to the minor's estate
4 upon the earlier of:

5 (1) The minor's attainment of twenty-one years of age with respect
6 to custodial property transferred under section 4 or 5 of this act;

7 (2) The minor's attainment of eighteen years of age with respect to
8 custodial property transferred under section 6 or 7 of this act; or

9 (3) The minor's death.

10 NEW SECTION. **Sec. 21.** APPLICABILITY. This chapter applies to a
11 transfer within the scope of section 2 of this act made after the
12 effective date of section 2 of this act, if:

13 (1) The transfer purports to have been made under the Washington
14 uniform gifts to minors act; or

15 (2) The instrument by which the transfer purports to have been made
16 uses in substance the designation "as custodian under the uniform gifts
17 to minors act" or "as custodian under the uniform transfers to minors
18 act" of any other state, and the application of this chapter is
19 necessary to validate the transfer.

20 NEW SECTION. **Sec. 22.** EFFECT ON EXISTING CUSTODIANSHIPS. (1) Any
21 transfer of custodial property as now defined in this chapter made
22 before the effective date of this section, is validated notwithstanding
23 that there was no specific authority in the Washington uniform gifts to
24 minors act for the coverage of custodial property of that kind or for
25 a transfer from that source at the time the transfer was made.

26 (2) This chapter applies to all transfers made before the effective
27 date of this section, in a manner and form prescribed in the Washington
28 uniform gifts to minors act, except insofar as the application impairs

1 constitutionally vested rights or extends the duration of
2 custodianships in existence on the effective date of this section.
3 However, as to any custodianship established after August 9, 1971, but
4 prior to January 1, 1985, a minor has the right after attaining the age
5 of eighteen to demand delivery from the custodian of all or any portion
6 of the custodial property.

7 NEW SECTION. **Sec. 23.** UNIFORMITY OF APPLICATION AND CONSTRUCTION.

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

11 NEW SECTION. **Sec. 24.** SHORT TITLE. This chapter may be cited as

12 the uniform transfers to minors act.

13 NEW SECTION. **Sec. 25.** CAPTIONS NOT LAW. Section headings as used

14 in this chapter do not constitute any part of the law.

15 NEW SECTION. **Sec. 26.** SAVINGS. To the extent that this chapter,

16 by virtue of section 22(2) of this act, does not apply to transfers
17 made in a manner prescribed in the uniform gifts to minors act of
18 Washington or to the powers, duties, and immunities conferred by
19 transfers in that manner upon custodians and persons dealing with
20 custodians, the repeal of the uniform gifts to minors act of Washington
21 does not affect those transfers or those powers, duties, and
22 immunities.

23 NEW SECTION. **Sec. 27.** The following acts or parts of acts are

24 each repealed:

25 (1) RCW 11.93.010 and 1985 c 30 s 12;

- 1 (2) RCW 11.93.020 and 1985 c 30 s 13;
- 2 (3) RCW 11.93.030 and 1985 c 30 s 14;
- 3 (4) RCW 11.93.040 and 1985 c 30 s 15;
- 4 (5) RCW 11.93.050 and 1985 c 30 s 16;
- 5 (6) RCW 11.93.060 and 1985 c 30 s 17;
- 6 (7) RCW 11.93.070 and 1985 c 30 s 18;
- 7 (8) RCW 11.93.080 and 1985 c 30 s 19;
- 8 (9) RCW 11.93.900 and 1985 c 30 s 20;
- 9 (10) RCW 11.93.910 and 1985 c 30 s 21;
- 10 (11) RCW 11.93.911 and 1985 c 30 s 22;
- 11 (12) RCW 11.93.912 and 1985 c 30 s 23; and
- 12 (13) RCW 11.93.920 and 1985 c 30 s 24.

13 **Sec. 28.** RCW 11.76.095 and 1988 c 29 s 5 are each amended to read
14 as follows:

15 When a decree of distribution is made by the court in
16 administration upon a decedent's estate or when distribution is made by
17 a personal representative under a nonintervention will and distribution
18 is ordered under such decree or authorized under such nonintervention
19 will to a person under the age of eighteen years, it shall be required
20 that:

21 (1) The money be deposited in a bank or trust company or be
22 invested in an account in an insured financial institution for the
23 benefit of the minor subject to withdrawal only upon the order of the
24 court in the original probate proceeding, or upon said minor's
25 attaining the age of eighteen years and furnishing proof thereof
26 satisfactory to the depository;

27 (2) A general guardian shall be appointed and qualify and the money
28 or property be paid or delivered to such guardian prior to the

1 discharge of the personal representative in the original probate
2 proceeding; ~~((or))~~

3 (3) The provisions of ~~((either))~~ RCW 11.76.090 ~~((or 11.93.020(4)))~~
4 are complied with; or

5 (4) A custodian be selected and the money or property be
6 transferred to the custodian subject to chapter 11.93 RCW.

7 **Sec. 29.** RCW 11.98.170 and 1985 c 30 s 59 are each amended to read
8 as follows:

9 (1) Any life insurance policy or retirement plan payment provision
10 may designate as beneficiary:

11 (a) A trustee named or to be named by will, and immediately after
12 the proving of the will, the proceeds of such insurance or of such plan
13 designated as payable to that trustee, in part or in whole, shall be
14 paid to the trustee in accordance with the beneficiary designation, to
15 be held and disposed of under the terms of the will governing the
16 testamentary trust; or

17 (b) A trustee named or to be named under a trust agreement executed
18 by the insured, the plan participant, or any other person, and the
19 proceeds of such insurance or retirement plan designated as payable to
20 such trustee, in part or in whole, shall be paid to the trustee in
21 accordance with the beneficiary designation, to be held and disposed of
22 by the trustee as provided in such trust agreement; a trust is valid
23 even if the only corpus consists of the right of the trustee to receive
24 as beneficiary insurance or retirement plan proceeds; any such trustee
25 may also receive assets, other than insurance or retirement plan
26 proceeds, by testamentary disposition or otherwise and, unless directed
27 otherwise by the transferor of the assets, shall administer all
28 property of the trust according to the terms of the trust agreement.

1 (2) If no qualified trustee makes claim to the insurance policy or
2 retirement plan proceeds from the insurance company or the plan
3 administrator within twelve months after the death of the insured or
4 plan participant, determination of the proper recipient of the proceeds
5 shall be made pursuant to the judicial or nonjudicial dispute
6 resolution procedures of chapter 11.96 RCW, unless prior to the
7 institution of the judicial procedures, a qualified trustee makes claim
8 to the proceeds, except that (a) if satisfactory evidence is furnished
9 the insurance company or plan administrator within the twelve-month
10 period showing that no trustee can or will qualify to receive such
11 proceeds, payment shall be made to those otherwise entitled to the
12 proceeds under the terms of the policy or retirement plan, including
13 the terms of the beneficiary designation except that (b) if there is
14 any dispute as to the proper recipient of insurance policy or
15 retirement plan proceeds, the dispute shall be resolved pursuant to the
16 judicial or nonjudicial resolution procedures in chapter 11.96 RCW.

17 (3) The proceeds of the insurance or retirement plan as collected
18 by the trustee are not subject to debts of the insured or the plan
19 participant to any greater extent than if the proceeds were payable to
20 any named beneficiary other than the personal representative or the
21 estate of the insured or of the plan participant.

22 (4) For purposes of this section the following definitions apply:

23 (a) "Plan administrator" means the person upon whom claim must be
24 made in order for retirement plan proceeds to be paid upon the death of
25 the plan participant.

26 (b) "Retirement plan" means any plan, account, deposit, annuity, or
27 benefit, other than a life insurance policy, that provides for payment
28 to a beneficiary designated by the plan participant for whom the plan
29 is established. The term includes, without limitation, such plans
30 regardless of source of funding, and, for example, includes pensions,

1 annuities, stock bonus plans, employee stock ownership plans, profit
2 sharing plans, self-employed retirement plans, individual retirement
3 accounts, individual retirement annuities, and retirement bonds, as
4 well as any other retirement plan or program.

5 (c) "Trustee" includes any custodian under chapter ((11.93)) 11.--
6 RCW (sections 1 through 26 of this 1991 act) or any similar statutory
7 provisions of any other state and the terms "trust agreement" and
8 "will" refer to the provisions of chapter ((11.93)) 11.-- RCW (sections
9 1 through 26 of this 1991 act) or such similar statutory provisions of
10 any other state.

11 (5) Enactment of this section does not invalidate life insurance
12 policy or retirement plan beneficiary designations executed prior to
13 January 1, 1985, naming a trustee established by will or by trust
14 agreement.

15 **Sec. 30.** RCW 67.70.220 and 1985 c 7 s 128 are each amended to read
16 as follows:

17 If the person entitled to a prize is under the age of eighteen
18 years, and such prize is less than five thousand dollars, the director
19 may direct payment of the prize by delivery to an adult member of the
20 minor's family or a guardian of the minor of a check or draft payable
21 to the order of such minor. If the person entitled to a prize is under
22 the age of eighteen years, and such prize is five thousand dollars or
23 more, the director may direct payment to such minor by depositing the
24 amount of the prize in any bank to the credit of an adult member of the
25 minor's family or a guardian of the minor as custodian for such minor.
26 The person so named as custodian shall have the same duties and powers
27 as a person designated as a custodian in a manner prescribed by the
28 Washington uniform ((gifts)) transfers to minors act, chapter ((11.93))
29 11.-- RCW (sections 1 through 26 of this 1991 act), and for the

1 purposes of this section the terms "adult member of a minor's family,"
2 "guardian of a minor," and "bank" shall have the same meaning as in
3 chapter (~~11.93~~) 11.-- RCW (sections 1 through 26 of this 1991 act).
4 The commission and the director shall be discharged of all further
5 liability upon payment of a prize to a minor pursuant to this section.

6 NEW SECTION. **Sec. 31.** RCW 11.76.090 and 1988 c 29 s 4, 1974 ex.s.
7 c 117 s 11, 1971 c 28 s 2, & 1965 c 145 s 11.76.090 are each repealed.

8 **Sec. 32.** RCW 11.92.140 and 1990 c 122 s 32 are each amended to
9 read as follows:

10 The court, upon the petition of a guardian of the estate of an
11 incapacitated person other than the guardian of a minor, and after such
12 notice as the court directs and other notice to all persons interested
13 as required by chapter 11.96 RCW, may authorize the guardian to take
14 any action, or to apply funds not required for the incapacitated
15 person's own maintenance and support, in any fashion the court approves
16 as being in keeping with the incapacitated person's wishes so far as
17 they can be ascertained and as designed to minimize insofar as possible
18 current or prospective state or federal income and estate taxes, permit
19 entitlement under otherwise available federal or state medical or other
20 assistance programs, and to provide for gifts to such charities,
21 relatives, and friends as would be likely recipients of donations from
22 the incapacitated person.

23 The action or application of funds may include but shall not be
24 limited to the making of gifts, to the conveyance or release of the
25 incapacitated person's contingent and expectant interests in property
26 including marital property rights and any right of survivorship
27 incident to joint tenancy or tenancy by the entirety, to the exercise
28 or release of the incapacitated person's powers as donee of a power of

1 appointment, the making of contracts, the creation of revocable or
2 irrevocable trusts of property of the incapacitated person's estate
3 which may extend beyond the incapacitated person's disability or life,
4 the establishment of custodianships for the benefit of a minor under
5 chapter 11.93 RCW, the Washington uniform transfers to minors act, the
6 exercise of options of the incapacitated person to purchase securities
7 or other property, the exercise of the incapacitated person's right to
8 elect options and to change beneficiaries under insurance and annuity
9 policies and the surrendering of policies for their cash value, the
10 exercise of the incapacitated person's right to any elective share in
11 the estate of the incapacitated person's deceased spouse, and the
12 renunciation or disclaimer of any interest acquired by testate or
13 intestate succession or by inter vivos transfer.

14 The guardian in the petition shall briefly outline the action or
15 application of funds for which approval is sought, the results expected
16 to be accomplished thereby and the savings expected to accrue. The
17 proposed action or application of funds may include gifts of the
18 incapacitated person's personal or real property. Gifts may be for the
19 benefit of prospective legatees, devisees, or heirs apparent of the
20 incapacitated person, or may be made to individuals or charities in
21 which the incapacitated person is believed to have an interest. Gifts
22 may or may not, in the discretion of the court, be treated as
23 advancements to donees who would otherwise inherit property from the
24 incapacitated person under the incapacitated person's will or under the
25 laws of descent and distribution. The guardian shall also indicate in
26 the petition that any planned disposition is consistent with the
27 intentions of the incapacitated person insofar as the intentions can be
28 ascertained, and if the incapacitated person's intentions cannot be
29 ascertained, the incapacitated person will be presumed to favor
30 reduction in the incidence of the various forms of taxation and the

1 partial distribution of the incapacitated person's estate as provided
2 in this section. The guardian shall not, however, be required to
3 include as a beneficiary any person whom there is reason to believe
4 would be excluded by the incapacitated person. No guardian may be
5 required to file a petition as provided in this section, and a failure
6 or refusal to so petition the court does not constitute a breach of the
7 guardian's fiduciary duties.

8 NEW SECTION. **Sec. 33.** Sections 1 through 26 of this act shall
9 constitute a new chapter in Title 11 RCW.

10 NEW SECTION. **Sec. 34.** This act is necessary for the immediate
11 preservation of the public peace, health, or safety, or support of the
12 state government and its existing public institutions, and shall take
13 effect July 1, 1991.

14 NEW SECTION. **Sec. 35.** If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.