

FINAL BILL REPORT

ESHB 1088

C 193 L 91
Synopsis As Enacted

Brief Description: Adopting the uniform transfers to minors act.

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

House Committee on Judiciary
Senate Committee on Law & Justice

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 conference has drafted recommended changes to the act.

The state's statutory scheme for making a gift to a minor has remained essentially the same since 1959: Property is transferred to a custodian who controls and manages the property for the minor until the minor reaches the age of majority. Once made, the gift is irrevocable and the minor has legal title to the property. The act defines a minor as someone who is younger than 21 years of age.

Custodial property: The law covers gifts of tangible or intangible personal property interests, including money, securities, 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 another person as custodian for the minor. A will or trust agreement may name a custodian 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.

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 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 the 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 upon request.

Liability: The custodian is a fiduciary and subject to the reasonably prudent person standard. A custodian who is not compensated is personally liable only for losses resulting from the custodian's bad faith, intentional wrongdoing, gross negligence, or failure 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 determine the validity of the custodian's appointment or instructions.

Summary:

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

Custodial property: The act governs gifts to minors of any real or tangible or intangible personal property. Also explicitly included are 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. The minor's and the custodian's rights and duties are limited to those delineated. Custodial property is to be used for the use and benefit of the minor.

Transfers of custodial property: 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.

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: A custodian may deal with 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: A custodian is held to the same standard as a trustee. The standard liability of a custodian who serves without compensation is unchanged.

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 the law governing jurisdiction and procedure of probate, trust, and guardianship matters.

Miscellaneous: A statute allowing distribution of a minor's estate to a member of the minor's family, if the value of the estate is less than \$5,000, is repealed. The establishment of a custodianship is added to the choices a personal representative has in making a distribution to a minor under court supervision.

Votes on Final Passage:

House	98	0
Senate	44	0

Effective: July 1, 1991