
Civil Rights & Judiciary Committee

SB 5037

Brief Description: Enacting the uniform custodial trust act.

Sponsors: Senators Holy, Pedersen, Dhingra, Nobles, Shewmake and Wellman; by request of Uniform Law Commission.

Brief Summary of Bill

- Adopts the Uniform Custodial Trusts Act to allow for a simplified method of creating a trust in which the beneficiary who is not incapacitated has the power to direct the management of the trust property and the payment of income to the beneficiary.
- Provides that at a beneficiary's incapacity, the custodial trustee continues to manage the property as a discretionary trust under the prudent person standard for the benefit of the incapacitated beneficiary.
- Specifies the means of monitoring and enforcing a custodial trust, the rights and liability of third persons, limitations of action against the custodial trustee, and distribution of trust property on termination.

Hearing Date: 3/18/25

Staff: Yelena Baker (786-7301).

Background:

Trusts Generally.

A trust is a legal device that is used to hold and manage property for the benefit of one or more specified beneficiaries. Common reasons for trust creation are to avoid probate, minimize the tax liability of one's estate, or to provide for a family member with special needs.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

The person who provides the assets or property to be held and managed within the trust is a trustor or trust donor. A trust is created through a trust agreement or other document in which the donor names the trustee and beneficiaries. The donor then transfers property to the trustee who manages trust property as a fiduciary for the benefit of the beneficiaries. A trustee generally has broad powers and discretion to manage the assets in the trust but is required to comply with the rules and restrictions placed on the trust and its assets at the time the trust is created.

Uniform Law Commission.

The Uniform Law Commission (ULC) is a state-supported, nonpartisan, nonprofit organization that authors and promotes enactment of uniform laws in areas of law where national uniformity is desirable and practical.

Uniform Custodial Trusts Act.

In 1987 the ULC promulgated the Uniform Custodial Trust Act (UCTA), which has been enacted in 20 jurisdictions. The UCTA provides for a simplified method of creating a living trust called a "custodial trust" in which the trustee's powers are limited by the beneficiary who is not incapacitated.

Summary of Bill:

The Uniform Custodial Trusts Act (UCTA) is adopted to govern the creation, management, and termination of custodial trusts for beneficiaries who are not incapacitated and beneficiaries who are or become incapacitated.

Creating a Custodial Trust.

A person (transferor) may create a custodial trust by a written transfer of property to another person who acts as custodial trustee under the UCTA. The written transfer must name a beneficiary for whose use and benefit the property has been transferred to a custodial trustee. The transferor may be the beneficiary.

A person (declarant) may create a custodial trust by a written declaration that describes the trust property and names someone other than the declarant as the beneficiary. The declarant as titleholder is designated as custodial trustee. A registration or other declaration of trust for the sole benefit of the declarant does not create a custodial trust under the UCTA.

If a person has the right to designate the recipient of property payable or transferable upon a future event, the person may create a custodial trust to be effective upon the occurrence of that future event by designating a future custodial trustee to receive property for the beneficiary.

The UCTA also permits a custodial trust to be established in order to receive payments due to an incapacitated individual. A person who holds property of or owes a debt to an incapacitated individual without a conservator may create a custodial trust for the benefit of the incapacitated individual by making a transfer to an adult member of the individual's family or to a trust company who then act as a custodial trustee. If the value of the property or debt exceeds

\$20,000, the transfer is not effective unless authorized by the court.

Any person may augment existing custodial trust property by adding other property. A custodial trust may have more than one beneficiary. The interests of each beneficiary are separate, and the custodial trustee must account separately to each beneficiary for administration of the beneficiary's interest in the custodial trust.

Successor Trustees and Declination or Resignation of a Custodial Trustee.

A person designated as a custodial trustee may decline to serve before accepting the custodial trust property. A custodial trustee who has accepted the custodial trust property may resign by transferring the custodial trust property to a successor custodial trustee or by delivering written notice to a successor custodial trustee and the beneficiary.

If a custodial trustee or successor trustee is ineligible, resigns, dies, or becomes incapacitated, the designated successor trustee becomes the custodial trustee. If there is no designated successor trustee, the UCTA provides a list of persons who may designate a successor trustee and allows the court to do so if all other procedures for designating a successor trustee have been exhausted.

Duties and Powers of a Custodial Trustee.

If the beneficiary is not incapacitated, a custodial trustee must:

- follow the directions of the beneficiary in the management, control, investment, or retention of the custodial trust property; and
- pay to the beneficiary or expend for the beneficiary's use and benefit as much of the custodial trust property as the beneficiary may direct from time to time.

Unless the beneficiary instructs otherwise, the custodial trustee must observe the standard of care that would be observed by a prudent person dealing with property of another. If the custodial trustee has a special skill or expertise or is named the trustee on the basis of representation of a special skill or expertise, the custodial trustee must use that skill or expertise.

If the beneficiary is incapacitated, the custodial trustee must expend as much of the custodial trust property as the custodial trustee considers advisable for the use and benefit of the beneficiary and the beneficiary's dependents. Expenditures may be made in the manner and to the extent the custodial trustee determines suitable and proper, without court order and without regard to other support, income, or property of the beneficiary.

In addition, a custodial trustee must:

- record the title to recordable assets, such as land, that are in the custodial trust;
- take control of and collect, hold, manage, invest, and reinvest custodial trust property;
- keep custodial trust property separate from all other property;
- keep records of all transactions with respect to custodial trust property; and
- inform the beneficiary of the initiation of the trust and provide reasonably current reports of the trust administration to the beneficiary or the beneficiary's legal representative once a year or upon request.

Unless otherwise provided in the instrument creating the custodial trust, in the agreement with the beneficiary, or by court order, the custodial trustee is entitled to reimbursement from custodial trust property for reasonable expenses incurred in the performance of fiduciary duties and need not furnish a bond for the faithful performance of fiduciary duties.

Determination and Effect of the Beneficiary's Incapacity.

If the custodial trust is created for the benefit and use of an incapacitated beneficiary or the custodial trustee has determined that the beneficiary is incapacitated, the trustee must administer the custodial trust under the prudent person standard for the benefit of the incapacitated individual.

The custodial trustee may determine that the beneficiary is incapacitated based on the certificate of the beneficiary's physician, prior direction or authority of the beneficiary while not incapacitated, or other persuasive evidence. The determination of a beneficiary's incapacity may also be made by the court on petition of the beneficiary, the custodial trustee, or other person interested in the custodial trust property or the welfare of the beneficiary.

Absent determination of incapacity, a custodial trustee who has reason to believe that the beneficiary is incapacitated must administer the trust in accordance with the UCTA provisions applicable to an incapacitated beneficiary. If a custodial trustee for an incapacitated individual reasonably concludes that the beneficiary's incapacity has ceased, the trustee may administer the trust as for a beneficiary who is not incapacitated.

Termination of a Custodial Trust and Distribution of Trust Property on Termination.

A custodial trust may be terminated by the beneficiary who is not incapacitated or the conservator of an incapacitated beneficiary. Upon termination of a custodial trust, the custodial trustee must transfer the unexpended custodial trust property to the beneficiary who is not incapacitated, or to the conservator or court-designated recipient for an incapacitated beneficiary.

If not previously terminated, a custodial trust terminates on the death of the beneficiary. The order of distribution of the custodial trust property upon the beneficiary's death is specified in the UCTA and is controlled first by a writing signed by the deceased beneficiary while not incapacitated and second by the instrument creating the custodial trust. If no effective prior designation for the distribution of the property on the beneficiary's death is made, custodial trust property passes to the beneficiary's estate.

Rights and Liability of Third Persons.

A third person in good faith and without a court order may deal with or act on instructions of a custodial trustee. In the absence of knowledge to the contrary, the third person is not responsible for determining the validity of the custodial trustee's designation, the propriety of any action by the custodial trustee, or the validity or propriety of an instrument creating the custodial trust or any instruction given by the custodial trustee.

A third person may assert a claim against the custodial trust property based on:

- a contract entered into by the custodial trustee acting in a fiduciary capacity;
- an obligation arising from the ownership or control of custodial trust property; or
- a tort committed in the course of administering the trust property.

A custodial trustee is not personally liable to a third person unless the trustee fails to identify the trust or the trustee's role, or is personally at fault. A beneficiary is not personally liable to third persons unless the beneficiary is in possession of the custodial trust property giving rise to the claim, or is personally at fault.

Limitations on Actions against Custodial Trustee.

A statute of limitations is established for bringing claims against a custodial trustee for accounting, breach of duty, fraud, misrepresentation, or concealment. If the beneficiary becomes incapacitated or dies before the applicable time limitation expires, the statute of limitations is tolled until two years after removal of the disability, appointment of a conservator, or death.

Miscellaneous Provisions.

The UCTA applies to a custodial trust referencing the UCTA if the at the time of creation if custodial trust property is located in the state or if one of the parties to the trust is a resident of or has principal place of business in the state. The custodial trust remains subject to the UCTA despite a later change in residence or removal of the custodial trust property from the state.

Records related to a custodial trust under the UCTA are added to the definition of "nontestamentary estate planning documents" under the Uniform Electronic Estate Planning Documents Act, with the effect that a custodial trust record or a signature on a custodial trust record may be, but is not required to be, in electronic form and may not be denied legal effect or enforceability solely because it is in electronic form.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.