

UNIFORM TRANSFERS TO MINORS ACT

(Last Revised or Amended 1986)

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS NINETY-SECOND YEAR
IN BOCA RATON, FLORIDA
JULY 22-29, 1983

With Prefatory Note and Comments

UNIFORM TRANSFERS TO MINORS ACT

The Committee that acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Transfers to Minors Act was as follows:

LAWRENCE J. BUGGE, P.O. Box 1497, Madison, WI 53701, *Chairman*
CHARLES M. CROOK, 2 Dexter Avenue, Montgomery, AL 36104
DIANA S. DOWLING, Room 138, State Capitol, Helena, MT 59620
THOMAS L. JONES, P.O.Box 5557, University, AL 35486
CHARLES G. KEPLER, P.O. Box 490, Cody, WY 82414
BROCKENBROUGH LAMB, JR., 1200 Mutual Building, Richmond, VA 23219
ROBERT C. ROBINSON, P.O. Box 568, Portland, ME 04112
THOMAS A. SHIELS, Legislative Council, Legislative Hall, Dover, DE 19901
M. KING HILL, JR., Sixth Floor, 100 Light Street, Baltimore, MD 21202, *President (Member Ex Officio)*
CARLYLE C. RING, JR., 710 Ring Building, Washington, DC 20036, *Chairman, Executive Committee*
WILLIAM J. PIERCE, University of Michigan, School of Law, Ann Arbor, MI 48109, *Executive Director*
ELMER R. OETTINGER, 58 Oakwood Drive, Chapel Hill, NC 27514, *Chairman, Division F (Member Ex Officio)*

Review Committee

CHARLES M. WELLING, P.O. Box 33544, Charlotte, NC 28233, *Chairman*
MARION W. BENFIELD, JR., University of Illinois, College of Law, Champaign, IL 61820
LANI LIU EWART, 1600 Castle & Cooke Building, Honolulu, HI 96813

Advisor to Special Committee on Uniform Transfers to Minors Act

EDWARD B. BENJAMIN, JR., *American Bar Association*

Final, approved copies of this Act and copies of all Uniform and Model Acts issued by the Conference may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
645 North Michigan Avenue, Suite 510
Chicago, Illinois 60611
(312) 321-9710

UNIFORM TRANSFERS TO MINORS ACT

PREFATORY NOTE

This Act revises and restates the Uniform Gifts to Minors Act (UGMA), one of the Conference's most successful products, some version of which has been enacted in every American jurisdiction.

The original version of UGMA was adopted by the Conference in 1956 and closely followed a model "Act concerning Gifts of Securities to Minors" which was sponsored by the New York Stock Exchange and the Association of Stock Exchange Firms and which had been adopted in 14 states. The 1956 version of UGMA broadened the model act to cover gifts of money as well as securities but made few other changes.

In 1965 and 1966 the Conference revised UGMA to expand the types of financial institutions which could serve as depositories of custodial funds, to facilitate the designation of successor custodians, and to add life insurance policies and annuity contracts to the types of property (cash and securities) that could be made the subject of a gift under the Act.

Not all states adopted the 1966 revisions; some 11 jurisdictions retained their versions of the 1956 Act. More importantly, however, many states since 1966 have substantially revised their versions of UGMA to expand the kinds of property that may be made the subject of a gift under the Act, and a few states permit transfers to custodians from other sources, such as trusts and estates, as well as lifetime gifts. As a result, a great deal of non-uniformity has arisen among the states. Uniformity in this area is important, for the Conference has cited UGMA as an example of an act designed to avoid conflicts of law when the laws of more than one state may apply to a transaction or a series of transactions.

This Act follows the expansive approach taken by several states and allows any kind of property, real or personal, tangible or intangible, to be made the subject of a transfer to a custodian for the benefit of a minor (SECTION 1(6)). In addition, it permits such transfers not only by lifetime outright gifts (SECTION 4), but also from trusts, estates and guardianships, whether or not specifically authorized in the governing instrument (SECTIONS 5 and 6), and from other third parties indebted to a minor who does not have a conservator, such as parties against whom a minor has a tort claim or judgment, and depository institutions holding deposits or insurance companies issuing policies payable on death to a minor (SECTION 7). For this reason, and to distinguish the enactment of this statute from the 1956 and 1966 versions of UGMA, the title of the Act has been changed to refer to "Transfers" rather than to "Gifts," a much narrower term.

As so expanded, the Act might be considered a statutory form of trust or guardianship that continues until the minor reaches 21. Note, however, that unlike a trust, a custodianship is not a separate legal entity or taxpayer. Under SECTION 11(b) of this Act, the custodial property is

indefeasibly vested in the minor, not the custodian, and thus any income received is attributable to and reportable by the minor, whether or not actually distributed to the minor.

The expansion of the Act to permit transfers of any kind of property to a custodian creates a significant problem of potential personal liability for the minor or the custodian arising from the ownership of property such as real estate, automobiles, general partnership interests, and business proprietorships. This problem did not exist under UGMA under which custodial property was limited to bank deposits, securities and insurance. In response, SECTION 17 of this Act generally limits the claims of third parties to recourse against the custodial property, with the minor insulated against personal liability unless he is personally at fault. The custodian is similarly insulated unless he is personally at fault or fails to disclose his custodial capacity in entering into a contract.

Nevertheless, the Act should be used with caution with respect to property such as real estate or general partnership interests from which liabilities as well as benefits may arise. Many of the possible risks can and should be insured against, and the custodian has the power under SECTION 13(a) to purchase such insurance, at least when other custodial assets are sufficient to do so. If the assets are not sufficient, there is doubt that a custodian will act, or there are significant uninsurable risks, a transferor should consider a trust with spendthrift provisions, such as a minority trust under Section 2503(c), IRC, rather than a custodianship, to make a gift of such property to a minor.

The Act retains (or reverts to) 21 as the age of majority or, more accurately, the age at which the custodianship terminates and the property is distributed. Since tax law permits duration of Section 2503(c) trusts to 21, even though the statutory age of majority is 18 in most states, this age should be retained since most donors and other transferors wish to preserve a custodianship as long as possible.

Finally, the Act restates and rearranges, rather than amends, the 1966 Act. The addition of other forms of property and other forms of dispositions made adherence to the format and language of the prior act very unwieldy. In addition, the 1966 and 1956 Acts closely followed the language of the earlier model act, which had already been adopted in several states, even though it did not conform to Conference style. It is hoped that this rewriting and revision of UGMA will improve its clarity while also expanding its coverage.

UNIFORM TRANSFERS TO MINORS ACT

SECTION 1. DEFINITIONS.

In this [Act]:

- (1) "Adult" means an individual who has attained the age of 21 years.
- (2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.
- (3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.
- (4) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.
- (5) "Court" means [_____ court].
- (6) "Custodial property" means (i) any interest in property transferred to a custodian under this [Act] and (ii) the income from and proceeds of that interest in property.
- (7) "Custodian" means a person so designated under Section 9 or a successor or substitute custodian designated under Section 18.
- (8) "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.
- (9) "Legal representative" means an individual's personal representative or conservator.
- (10) "Member of the minor's family" means the minor's parent, stepparent, spouse,

grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) "Minor" means an individual who has not attained the age of 21 years.

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

(13) "Personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

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

(15) "Transfer" means a transaction that creates custodial property under Section 9.

(16) "Transferor" means a person who makes a transfer under this [Act].

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

COMMENT

To reflect the broader scope and the unlimited types of property to which the new Act will apply, a number of definitional changes have been made from the 1966 Act. In addition, several definitions specifically applicable to the limited types of property (cash, securities and insurance policies) subject to the 1966 Act have been eliminated as unnecessary. These include the definitions of "bank," "issuer," "life insurance policy or annuity contract," "security," and "transfer agent." No change in the meaning or construction of these terms as used in this Act is intended by such deletions.

The definitions of "domestic financial institution" and "insured financial institution" have been eliminated because few if any states limit deposits by custodians to local institutions, and the prudent person rule of SECTION 12(b) of this Act may dictate the use of insured institutions as depositories, without having the Act so specify.

The principal changes or additions to the remaining definitions are discussed below.

Paragraph (2). The definition of "benefit plan" is intentionally very broad and is meant to cover any contract, plan, system, account or trust such as a pension plan, retirement plan, death benefit plan, deferred compensation plan, employment agency arrangement or, stock bonus, option or profit sharing plan.

Paragraph (4). The term "conservator" rather than "guardian of the estate" has been employed in the Act to conform to Uniform Probate Code terminology. The term includes a guardian of the minor's property, whether general, limited or temporary, and includes a committee, tutor, or curator of the minor's property.

Paragraph (6). The definition of "custodial property" has been generalized and expanded to encompass every conceivable legal or equitable interest in property of any kind, including real estate and tangible or intangible personal property. The term is intended, for example, to include joint interests with right of survivorship, beneficial interests in land trusts, as well as all other intangible interests in property. Contingent or expectancy interests such as the designation as a beneficiary under insurance policies or benefit plans become "custodial property" only if the designation is irrevocable, or when it becomes so, but the Act specifically authorizes the "nomination" of a future custodian as beneficiary of such interests (see SECTION 3). Proceeds of custodial property, both immediate and remote, are themselves custodial property, as is the case under UGMA.

Custodial property is defined without reference to the physical location of the property, even if it has one. No useful purpose would be served by restricting the application of the Act to, for example, real estate "located in this state," since a conveyance recorded in the state of the property's location, if done with proper formalities, should be effective even if that state has not enacted this Act. The rights, duties and powers of the custodian should be determined by reference to the law of the state under which the custodianship is created, assuming there is sufficient nexus under SECTION 2 between that state and the transferor, the minor or the custodian.

Paragraph (11). This definition of "minor" retains the historical age of 21 as the age of majority, even though most states have lowered the age for most other purposes, as well as in their versions of the 1966 Act. Nevertheless, because the Internal Revenue Code continues to permit "minority trusts" under Section 2503(c), IRC, to continue in effect until age 21, and because it is believed that most donors creating minority trusts or custodianships prefer to retain the property under management for the benefit of the young person as long as possible, it is strongly suggested that the age of 21 be retained as the age of majority under this Act. For states that have reduced the age of majority in their versions of the 1966 Act, SECTION 22(c) of this Act provides that a change back to 21 will not affect custodianships that have already terminated at an earlier age.

Paragraph (13). The definition of the term "personal representative" is based upon that definition in Sec. 1-201(30) of the Uniform Probate Code.

Paragraph (15). The new definition of "transfer" is necessary to reflect the application of the Act not only to gifts, but also to distributions from trusts and estates, obligors of the minor, and transfers of the minor's own assets to a custodianship by the legal representative of a minor, all of which are now permitted by this Act.

Paragraph (16). The new definition of "transferor" is required because the term includes not only the maker of a gift, i.e., a donor in the usual sense, but also fiduciaries and obligors who control or own property that is the subject of the transfer. Nothing in this Act requires that a transferor be an "adult." If permitted under other law of the enacting state relating to emancipation or competence to make a will, gift, or other transfer, a minor may make an effective transfer of property to a custodian for his benefit or for the benefit of another minor.

Paragraph (17). Only entities authorized to exercise "general" trust powers qualify as "trust companies"; that is, the authority to exercise only limited fiduciary responsibilities, such as the authority to accept Individual Retirement Account deposits, is not sufficient.

SECTION 2. SCOPE AND JURISDICTION.

(a) This [Act] applies to a transfer that refers to this [Act] in the designation under Section 9(a) by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this State or the custodial property is located in this State. The custodianship so created remains subject to this [Act] despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this State.

(b) A person designated as custodian under this [Act] is subject to personal jurisdiction in this State with respect to any matter relating to the custodianship.

(c) A transfer that purports to be made and which is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act, or a substantially similar act, of another

state is governed by the law of the designated state and may be executed and is enforceable in this State if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

COMMENT

This section has no counterpart in the 1966 Act. It attempts to resolve uncertainties and conflicts-of-laws questions that have frequently arisen because of the present non-uniformity of UGMA in the various states and which may continue to arise during the transition from UGMA to this Act.

The creation of a custodianship must invoke the law of a particular state because of the form of the transfer required under SECTION 9(a). This section provides that a choice of the UTMA of the enacting state is appropriate and effective if any of the nexus factors specified in subsection (a) exists at the time of the transfer. This Act continues to govern, and subsection (b) makes the custodian accountable and subject to personal jurisdiction in the courts of the enacting state for the duration of the custodianship, despite subsequent relocation of the parties or the property.

Subsection (c) recognizes that residents of the enacting state may elect to have the law of another state apply to a transfer. That choice is valid if a nexus with the chosen state exists at the time of the transfer. If personal jurisdiction can be obtained in the enacting state under other law apart from this Act, the custodianship may be enforced in its courts, which are directed to apply the law of the state elected by the transferor.

If the choice of law under subsection (a) or (c) is ineffective because of the absence of the required nexus, the transfer may still be effective under the Act of another state with which a nexus does exist. See SECTION 21.

SECTION 3. NOMINATION OF CUSTODIAN.

(a) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: "as custodian for _____ (name of minor) under the [name of Enacting State] Uniform Transfers to Minors Act." The nomination may name one or

more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(b) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under Section 9(a).

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

COMMENT

This section is new and permits a future custodian for a minor to be nominated to receive a distribution under a will or trust, or as a beneficiary of a power of appointment, or of contractual rights such as a life or endowment insurance policy, annuity contract, P.O.D. Account, benefit plan, or similar future payment right. Nomination of a future custodian does not constitute a "transfer" under this Act and does not create custodial property. If it did, the nomination and beneficiary designation would have to be permanent, since a "transfer" is irrevocable and indefeasibly vests ownership of the interest in the minor under SECTION 11(b).

Instead, this section permits a revocable beneficiary designation that takes effect only when the donor dies, or when a lifetime transfer to the custodian for the minor beneficiary occurs, such as a distribution under an inter vivos trust. However, an unrevoked nomination under this section is binding on a personal representative or trustee (see SECTION 5(b)) and on insurance companies and other obligors who contract to pay in the future (see SECTION 7(b)).

The person making the nomination may name contingent or successive future custodians to serve, in the order named, in the event that the person first nominated dies, or is unable, declines, or is ineligible to serve. Such a substitute future custodian is a custodian "nominated ... under

Section 3" to whom the transfer must be made under SECTIONS 5(b) and 7(b).

Any person nominated as future custodian may decline to serve before the transfer occurs and may resign at any time after the transfer. See SECTION 18.

SECTION 4. TRANSFER BY GIFT OR EXERCISE OF POWER OF APPOINTMENT.

A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to Section 9.

COMMENT

To emphasize the different kinds of transfers that create presently effective custodianships under this Act, they are separately described in SECTIONS 4, 5, 6 and 7. This section in part corresponds to Section 2(a) of the 1966 Act and covers the traditional lifetime gift that was the only kind of transfer authorized by the 1966 Act. It also covers an irrevocable exercise of a power of appointment in favor of a custodian, as distinguished from the exercise of a power in a revocable instrument that results only in the nomination of a future custodian under SECTION 3.

SECTION 5. TRANSFER AUTHORIZED BY WILL OR TRUST.

(a) A personal representative or trustee may make an irrevocable transfer pursuant to Section 9 to a custodian for the benefit of a minor as authorized in the governing will or trust.

(b) If the testator or settlor has nominated a custodian under Section 3 to receive the custodial property, the transfer must be made to that person.

(c) If the testator or settlor has not nominated a custodian under Section 3, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under Section 9(a).

COMMENT

This section is new and has no counterpart in the 1966 Act. It is based on nonuniform

provisions adopted by Connecticut, Illinois, Wisconsin and other states to validate distributions from trusts and estates to a custodian for a minor beneficiary, when the use of a custodian is expressly authorized by the governing instrument. It also covers the designation of the custodian whenever the settlor or testator fails to make a nomination, or the future custodian nominated under SECTION 3 (and any alternate named) fails to qualify.

SECTION 6. OTHER TRANSFER BY FIDUCIARY.

(a) Subject to subsection (c), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to Section 9, in the absence of a will or under a will or trust that does not contain an authorization to do so.

(b) Subject to subsection (c), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to Section 9.

(c) A transfer under subsection (a) or (b) may be made only if (i) the personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor, (ii) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument, and (iii) the transfer is authorized by the court if it exceeds [\$10,000] in value.

COMMENT

This section is new and has no counterpart in the 1966 Act. It covers a new concept, already authorized by the law of some states through nonuniform amendments to the 1966 Act, to permit custodianships to be used as guardianship or conservator substitutes, even though not specifically authorized by the person whose property is the subject of the transfer. It also permits the legal representative of the minor, such as a conservator or guardian, to transfer the minor's own property to a new or existing custodianship for the purposes of convenience or economies of administration.

A custodianship may be created under this section even though not specifically authorized by the transferor, the testator, or the settlor of the trust if three tests are satisfied. First, the

fiduciary making the transfer must determine in good faith and in his fiduciary capacity that a custodianship will be in the best interests of the minor. Second, a custodianship may not be prohibited by, or inconsistent with, the terms of any governing instrument. Inconsistent terms would include, for example, a spendthrift clause in a governing trust, provisions terminating a governing trust for the minor's benefit at a time other than the time of the minor's age of majority, and provisions for mandatory distributions of income or principal at specific times or periodic intervals. Provisions for other outright distributions or bequests would not be inconsistent with the creation of a custodianship under this section. Third, the amount of property transferred (as measured by its value) must be of such relatively small amount that the lack of court supervision and the typically stricter investment standards that would apply to the conservator otherwise required will not be important. However, if the property is of significant size, transfer to a custodian may still be made if the court approves and if the other two tests are met.

The custodianship created under this section without express authority in the governing instrument will terminate upon the minor's attainment of the statutory age of majority of the enacting state apart from this Act, i.e., at the same age a conservatorship of the minor would end. See SECTION 20(b) and the Comment thereto.

SECTION 7. TRANSFER BY OBLIGOR.

(a) Subject to subsections (b) and (c), a person not subject to Section 5 or 6 who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to Section 9.

(b) If a person having the right to do so under Section 3 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(c) If no custodian has been nominated under Section 3, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds [\$10,000] in value.

COMMENT

This section is new and, like SECTION 6, permits a custodianship to be established as a substitute for a conservator to receive payments due a minor from sources other than estates, trusts,

and existing guardianships covered by SECTIONS 5 and 6. For example, a tort judgment debtor of a minor, a bank holding a joint or P.O.D. account of which a minor is the surviving payee, or an insurance company holding life insurance policy or benefit plan proceeds payable to a minor may create a custodianship under this section.

Use of this section is mandatory when a future custodian has been nominated under SECTION 3 as a named beneficiary of an insurance policy, benefit plan, deposit account, or the like, because the original owner of the property specified a custodianship (and a future custodian) to receive the property. If that custodian (or any alternate named) is not available, if none was nominated, or none could have been nominated (as in the case of a tort judgment payable to the minor), this section is permissive and does not preclude the obligor from requiring the appointment of a conservator to receive payment. It allows the obligor to transfer to a custodian unless the property exceeds the stated value, in which case a conservator must be appointed to receive it.

SECTION 8. RECEIPT FOR CUSTODIAL PROPERTY.

A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this [Act].

COMMENT

This section discharges transferors from further responsibility for custodial property delivered to and receipted for by the custodian. See also SECTION 16 which protects transferors and other third parties dealing with custodians. Because a discharge or release for a donative transfer is not necessary, this section had no counterpart in the 1966 Act.

This section does not authorize an existing custodian, or a custodian to whom an obligor makes a transfer under SECTION 7, to settle or release a claim of the minor against a third party. Only a conservator, guardian ad litem or other person authorized under other law to act for the minor may release such a claim.

SECTION 9. MANNER OF CREATING CUSTODIAL PROPERTY AND EFFECTING TRANSFER; DESIGNATION OF INITIAL CUSTODIAN; CONTROL.

(a) Custodial property is created and a transfer is made whenever:

(1) an uncertificated security or a certificated security in registered form is

either:

(i) registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ (name of minor) under the [Name of Enacting State] Uniform Transfers to Minors Act"; or

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

(2) money is paid or delivered, or a security held in the name of a broker, financial institution, or its nominee is transferred, to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ (name of minor) under the [Name of Enacting State] Uniform Transfers to Minors Act";

(3) the ownership of a life or endowment insurance policy or annuity contract is either:

(i) registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ (name of minor) under the [Name of Enacting State] Uniform Transfers to Minors Act"; or

(ii) assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the

words: "as custodian for _____ (name of minor) under the [Name of Enacting State] Uniform Transfers to Minors Act";

(4) an irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: "as custodian for _____ (name of minor) under the [Name of Enacting State] Uniform Transfers to Minors Act";

(5) an interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ (name of minor) under the [Name of Enacting State] Uniform Transfers to Minors Act";

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

(i) issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ (name of minor) under the [Name of Enacting State] Uniform Transfers to Minors Act"; or

(ii) delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: "as custodian for _____ (name of minor) under the [Name of Enacting State] Uniform Transfers to Minors Act"; or

(7) an interest in any property not described in paragraphs (1) through (6) is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (b).

(b) An instrument in the following form satisfies the requirements of paragraphs (1)(ii) and (7) of subsection (a):

"TRANSFER UNDER THE [NAME OF ENACTING STATE]

UNIFORM TRANSFERS TO MINORS ACT

I, _____ (name of transferor or name and representative capacity if a fiduciary) hereby transfer to _____ (name of custodian), as custodian for _____ (name of minor) under the [Name of Enacting State] Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Dated: _____

(Signature)

_____ (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the [Name of Enacting State] Uniform Transfers to Minors Act.

Dated: _____

_____ "

(Signature of Custodian)

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

COMMENT

The 1966 Act contained optional bracketed language permitting an adopting state to limit the class of eligible initial custodians to an adult member of the minor's family or a guardian of the minor. This optional limitation has been deleted because it would preclude the use of an individual and uncompensated custodian if no qualified or willing family member is available.

Otherwise, with respect to transfers of securities, cash, and insurance or annuity contracts, this section tracks the cognate provisions of subsection 2(a) of the 1966 Act, with one exception. Under subsection (a)(1)(ii) of this section, a transfer of securities in registered form may be accomplished without registering the transfer in the name of the custodian so that transfers may be accomplished more expeditiously, and so that securities may be held by custodians in street name. In other words, subsection (a)(1)(i) is not the exclusive manner for making effective transfers of securities in registered form.

In addition, subsection (a) creates new procedures for handling the additional types of property now subject to the Act; specifically:

Paragraph (3) covers the irrevocable transfer of ownership of life and endowment insurance policies and annuity contracts.

Paragraph (4) covers the *irrevocable* exercise of a power of appointment and the *irrevocable* present assignment of future payment rights, such as royalties, interest and principal payments under a promissory note, or beneficial interests under life or endowment or annuity insurance contracts or benefit plans. The payor, issuer, or obligor may require additional formalities such as completion of a specific assignment form and an endorsement, but the transfer is effective upon delivery of the notification. See SECTION 3 and the Comment thereto for the procedure for revocably "nominating" a future custodian as a beneficiary of a power of appointment or such payment rights.

Paragraph (5) is the exclusive method for the transfer of real estate and includes a disposition effected by will. Under the law of those states in which a devise of real estate vests in the devisee without the need for a deed from the personal representative of the decedent, a document such as the will must still be "recorded" under this provision to make the transfer effective. For inter vivos transfers, of course, a conveyance in recordable form would be employed for

dispositions of real estate to a custodian.

Paragraph (6) covers the transfer of personal property such as automobiles, aircraft, patent rights, and other property subject to registration of ownership with a state or federal agency. Either registration of the transfer in the name of the custodian or delivery of the endorsed certificate in registerable form makes the transfer effective.

Paragraph (7) is a residual classification, covering all property not otherwise covered in the preceding paragraphs. Examples would include nonregistered securities, partnership interests, and tangible personal property not subject to title certificates.

The form of transfer document recommended and set forth in subsection (b) contains an acceptance that must be executed by the custodian to make the disposition effective. While such a form of written acceptance is not specifically required in the case of registered securities under subsection (a)(1), money under (a)(2), insurance contracts or interests under (a)(3) or (4), real estate under (a)(5), or titled personal property under (a)(6), it is certainly the better and recommended practice to obtain the acknowledgment, consent, and acceptance of the designated custodian on the instrument of transfer, or otherwise.

A transferor may create a custodianship by naming himself as custodian, except for transfers of securities under subsection (a)(1)(ii), insurance and annuity contracts under (a)(3)(ii), and titled personalty under (a)(6)(ii), which are made without registering them in the name of the custodian, and transfers of the residual class of property covered by (a)(7). In all of these cases a transfer of possession and control to a third party is necessary to establish donative intent and consummation of the transfer, and designation of the transferor as custodian renders the transfer invalid under SECTION 11(a)(2).

Note, also, that the Internal Revenue Service takes the position that custodial property is includable in the gross estate of the donor if he appoints himself custodian and dies while serving in that capacity before the minor attains the age of 21. Rev. Rul. 57-366, C.B. 1957-2, 618; Rev. Rul. 59-357, C.B. 1959-2, 212; Rev. Rul. 70-348, C.B. 1970-2, 193; *Estate of Prudowsky v. Comm'r*, 55 T.C. 890 (1971), *affd. per curiam*, 465 F.2d 62 (7th Cir. 1972).

This Act has been drafted in an attempt to avoid income attribution to the parent or inclusion of custodial insurance policies on a custodian's life in the estate of the custodian through the changes made in the standards for expenditure of custodial property and the custodian's incidents of ownership in custodial property. See SECTIONS 13 and 14 and the Comments thereto. However, the much greater problem of inclusion of custodial property in the estate of the donor who serves as custodian remains. Therefore, despite the fact that this section of the Act permits it in the case of registered securities, money, life insurance, real estate, and personal property subject to titling laws, it is generally still inadvisable for a donor to appoint himself

custodian or for a parent of the minor to serve as custodian. See, generally Sections 2036 and 2038 I.R.C. and Rulings and cases cited above; with respect to gifts of closely held stock when a donor retains voting rights by serving as custodian, see Section 2036(b), I.R.C., overruling *U.S. v. Byrum*, 408 U.S. 125 (1972), rehearing denied 409 U.S. 898.

Subsection (c) tracks in substance Section 2(c) of the 1966 Act. However, it replaces the requirement that the transferor "promptly do all things within his power" to complete the transfer, with the requirement that such action must be taken "as soon as practicable." This change is intended only to reflect the fact that possession and control of property transferred from an estate can rarely be accomplished with the immediacy that the term "promptly" may have implied. In the case of inter vivos transfers, no relaxation of the former requirement is intended, since "prompt" transfer of dominion is usually practicable.

Section 9(a)(2) amended in 1986.

SECTION 10. SINGLE CUSTODIANSHIP.

A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this [Act] by the same custodian for the benefit of the same minor constitutes a single custodianship.

COMMENT

The first sentence follows Section 2(b) of the 1966 Act. The second sentence states what was implicit in the 1966 Act, that additional transfers at different times and from different sources may be made to an existing custodian for the minor and do not create multiple custodianships. This provision also permits an existing custodian to be named as successor custodian by another custodian for the same minor who resigns under SECTION 18 for the purpose of consolidating the assets in a single custodianship.

Note, however, that these results are limited to transfers made "under this Act." Gifts previously made under the enacting state's UGMA or under the UGMA or UTMA of another state must be treated as separate custodianships, even though the same custodian and minor are involved, because of possible differences in the age of distribution and custodian's powers under those other Acts.

Even when all transfers to a single custodian are made "under this Act" and a single custodianship results, custodial property transferred under SECTIONS 6 and 7 must be accounted for separately from property transferred under SECTIONS 4 and 5 because the custodianship will terminate sooner with respect to the former property if the enacting state has a statutory age of

majority lower than 21. See SECTION 20 and the Comment thereto.

SECTION 11. VALIDITY AND EFFECT OF TRANSFER.

(a) The validity of a transfer made in a manner prescribed in this [Act] is not affected by:

(1) failure of the transferor to comply with Section 9(c) concerning possession and control;

(2) designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under Section 9(a); or

(3) death or incapacity of a person nominated under Section 3 or designated under Section 9 as custodian or the disclaimer of the office by that person.

(b) A transfer made pursuant to Section 9 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this [Act], and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in this [Act].

(c) By making a transfer, the transferor incorporates in the disposition all the provisions of this [Act] and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this [Act].

COMMENT

Subsection (a) generally tracks Section 2(c) of the 1966 Act, except that the transferor's designation of himself as custodian of property for which he is not eligible to serve under

SECTION 9(a) makes the transfer ineffective. See Comment to SECTION 9.

The balance of this section generally tracks Section 3 of the 1966 Act with a number of necessary, and perhaps significant, changes required by the new kinds of property subject to custodianships. The 1966 Act provides that a transfer made in accordance with its terms "conveys to the minor indefeasibly vested legal title to the [custodial property]." Because equitable interests in property may be the subject of a transfer under this Act, the reference to "legal title" has been deleted, but no change concerning the effect or finality of the transfer is intended.

However, subsection (b) qualifies the rights of the minor in the property, by making them subject to "the rights, powers, duties and authority" of the custodian under this Act, a concept that may have been implicit and intended in the 1966 Act, but not expressed. The concept is important because of the kinds of property, particularly real estate, now subject to custodianship. If the minor is married, it would be possible for homestead, dower, or community property rights to attach to real estate (or other property) acquired after marriage by the minor through a transfer to a custodianship for his benefit. The quoted language qualifying the minor's interest in the property is intended to override these rights insofar as they may conflict with the custodian's ability and authority to manage, sell, or transfer such property while it is custodial property. Upon termination of the custodianship and transfer of the custodial property to the former minor, the custodial property would then become subject to such spousal rights for the first time.

For a list of the immunities enjoyed by third persons under subsection (c), see SECTION 16 and the Comment thereto.

Because a custodianship under this Act can extend beyond the age of majority in many states, or beyond emancipation of a minor through marriage or otherwise, the Drafting Committee considered the addition of a spendthrift clause to this section. The idea was rejected because neither the 1966 Act nor its predecessors had such a provision, because spendthrift protection would extend only until 21 in any event and judgments against the minor would then be enforceable, and because the spendthrift qualification on the interest of the minor in the property may be inconsistent with the theory of the Act to convey the property indefeasibly to the minor.

SECTION 12. CARE OF CUSTODIAL PROPERTY.

(a) A custodian shall:

- (1) take control of custodial property;
- (2) register or record title to custodial property if appropriate; and
- (3) collect, hold, manage, invest, and reinvest custodial property.

(b) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(c) A custodian may invest in or pay premiums on life insurance or endowment policies on (i) the life of the minor only if the minor or the minor's estate is the sole beneficiary, or (ii) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(d) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: "as a custodian for _____ (name of minor) under the [Name of Enacting State] Uniform Transfers to Minors Act."

(e) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall

make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained the age of 14 years.

COMMENT

Subsection (a) expands Section 4(a) of the 1966 Act to include the duties to take control and appropriately register or record custodial property in the name of the custodian.

Subsection (b) restates and makes somewhat stricter the prudent man fiduciary standard for the custodian, since it is now cast in terms of a prudent person "dealing with property *of another*" rather than one "who is seeking a reasonable income and the preservation of *his* capital," as under the 1966 Act. The rule also adds a slightly higher standard for professional fiduciaries. The rule parallels section 7-302 of the Uniform Probate Code in order to refer to the existing and growing body of law interpreting that standard. The 1966 Act permitted a custodian to retain any security or bank account received, without the obligation to diversify investment. This subsection extends that rule to any property received.

In order to eliminate any uncertainty that existed under the 1966 Act, subsection (c) grants specific authority to invest custodial property in life insurance on the minor's life, provided the minor's estate is the sole beneficiary, or on the life of another person in whom the minor has an insurable interest, provided the minor, the minor's estate, or the custodian in his custodial capacity is made the beneficiary of such policies.

Subsection (d) generally tracks Section 4(g) of the 1966 Act but adds the provision requiring that custodial property consisting of an undivided interest be held as a tenant in common. This provision permits the custodian to invest custodial property in common trust funds, mutual funds, or in a proportional interest in a "jumbo" certificate of deposit. Investment in property held in joint tenancy with right of survivorship is not permitted, but the Act does not preclude a transfer of such an interest to a custodian, and the custodian is authorized under subsection (b) to retain a joint tenancy interest so received.

Subsection (e) follows Section 4(h) of the 1966 Act, but adds the requirement that income tax information be maintained and made available for preparation of the minor's tax returns. Because the custodianship is not a separate legal entity or taxpayer, the minor's tax identification number should be used to identify all custodial property accounts.

SECTION 13. POWERS OF CUSTODIAN.

(a) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a

custodian may exercise those rights, powers, and authority in that capacity only.

(b) This section does not relieve a custodian from liability for breach of Section 12.

COMMENT

Subsection (a) replaces the specific list of custodian's powers in Section 4(f) of the 1966 Act which related only to securities, money, and insurance, then the only permitted kinds of custodial property. It was determined not to expand the list to try to deal with all forms of property now covered by the Act and to specify all powers that might be appropriate for each kind of property, or to refer to an existing body of state law, such as the Trustee's Powers Act, since such powers would not be uniform. Instead, this provision grants the custodian the very broad and general powers of an unmarried adult owner of the property, subject to the prudent person rule and to the duties of segregation and record keeping specified in SECTION 12. This approach permits the Act to be self-contained and more readily understandable by volunteer, non-professional fiduciaries, who most often serve as custodians. It is intended that the authority granted includes the powers most often suggested for custodians, such as the power to borrow, whether at interest or interest free, the power to invest in common trust funds, and the power to enter contracts that extend beyond the termination of the custodianship.

Subsection (a) further specifies that the custodian's powers or incidents of ownership in custodial property such as insurance policies may be exercised only in his capacity as custodian. This provision is intended to prevent the exercise of those powers for the direct or indirect benefit of the custodian, so as to avoid as nearly as possible the result that a custodian who dies while holding an insurance policy on his own life for the benefit of a minor will have the policy taxed in his estate. See, Section 2042, I.R.C.; but compare *Terriberry v. U.S.*, 517 F.2d 286 (5th Cir. 1975), and *Rose v. U.S.*, 511 F.2d 259 (5th Cir. 1975).

SECTION 14. USE OF CUSTODIAL PROPERTY.

(a) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to (i) the duty or ability of the custodian personally or of any other person to support the minor, or (ii) any other income or property of the minor which may be applicable or available for that purpose.

(b) On petition of an interested person or the minor if the minor has attained the

age of 14 years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

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

COMMENT

Subsections (a) and (b) track subsections (b) and (c) of Section 4 of the 1966 Act, but with two significant changes. The standard for expenditure of custodial property has been amended to read "for the use and benefit of the minor," rather than "for the support, maintenance, education and benefit of the minor" as specified under the 1966 Act. This change is intended to avoid the implication that the custodial property can be used only for the required support of the minor.

The IRS has taken the position that the income from custodial property, to the extent it is used for the support of the minor-donee, is includable in the gross income of any person who is legally obligated to support the minor-donee, whether or not that person or parent is serving as the custodian. Rev. Rul. 56-484, C.B. 1956-2, 23; Rev. Rul. 59-357, C.B. 1959-2, 212. However, Reg. 1.662(a)-4 provides that the term "legal obligation" includes a legal obligation to support another person if, and only if, the obligation is not affected by the adequacy of the dependent's own resources. Thus, if under local law a parent may use the resources of a child for the child's support in lieu of supporting the child himself or herself, no obligation of support exists, whether or not income is actually used for support, at least if the child's resources are adequate. See, Bittker, *Federal Taxation of Income Estates and Gifts*, ¶ 80.4.4 (1981).

For this reason, new subsection (c) has been added to specify that distributions or expenditures may be made for the minor without regard to the duty or ability of any other person to support the minor and that distributions or expenditures are not in substitution for, and shall not affect, the obligation of any person to support the minor. Other possible methods of avoiding the attribution of custodial property income to the person obligated to support the minor would be to prohibit the use of custodial property or its income for that purpose, or to provide that any such use gives rise to a cause of action by the minor against his parent to the extent that custodial property or income is so used. The first alternative was rejected as too restrictive, and the second as too cumbersome.

The "use and benefit" standard in subsections (a) and (b) is intended to include payment of the minor's legally enforceable obligations such as tax or child support obligations or tort claims. Custodial property could be reached by levy of a judgment creditor in any event, so there is no reason not to permit custodian or court-ordered expenditures for enforceable claims.

An "interested person" entitled to seek court ordered distributions under subsection (b) would include not only the parent or conservator or guardian of the minor and a transferor or a transferor's legal representative, but also a public agency or official with custody of the minor and a third party to whom the minor owes legally enforceable debts.

SECTION 15. CUSTODIAN'S EXPENSES, COMPENSATION, AND BOND.

(a) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) Except for one who is a transferor under Section 4, a custodian has a non-cumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(c) Except as provided in Section 18(f), a custodian need not give a bond.

COMMENT

This section parallels and restates Section 5 of the 1966 Act. It deletes the statement that a custodian may act without compensation for services, since that concept is implied in the retained provision that a custodian has an "election" to be compensated. However, to prevent abuse, the latter provision for permissive compensation is denied to a custodian who is also the donor of the custodial property.

The custodian's election to charge compensation must be exercised (although the compensation need not be actually paid) at least annually or it lapses and may not be exercised later. This provision is intended to avoid imputed income to the custodian who waives compensation, and also to avoid the accumulation of a large unanticipated claim for compensation exercisable at termination of the custodianship.

This section deletes as surplusage the bracketed optional standards contained in the 1966 Act for determining "reasonable compensation" which included, "in the order stated," a direction by the donor, statutes governing compensation of custodians or guardians, or court order. While compensation of custodians becomes a more likely occurrence and a more important issue under this Act because property requiring increased management may now be subject to custodianship, compensation can still be determined by agreement, by reference to a statute or by court order, without the need to so state in this Act.

SECTION 16. EXEMPTION OF THIRD PERSON FROM LIABILITY.

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

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

(2) the propriety of, or the authority under this [Act] for, any act of the purported custodian;

(3) the validity or propriety under this [Act] of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian;

or

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

COMMENT

This section carries forward, but shortens and simplifies, Section 6 of the 1966 Act, with no substantive change intended. The 1966 revision permitted a 14-year old minor to appoint a successor custodian and specifically provided that third parties were entitled to rely on the appointment. Because this section refers to any custodian, and "custodian" is defined to include successor custodians (SECTION 1(7)), a successor custodian appointed by the minor is included among those upon whom third parties may rely.

Similarly, because this section protects any third "person," it is not necessary to specify here or in SECTION 11(c) that it extends to any "issuer, transfer agent, bank, life insurance company, broker, or other person or financial institution," as did the 1966 Act. See the definition of "person" in SECTION 1(12).

This section excludes from its protection persons with "knowledge" of the irregularity of a transaction, a concept not expressed but probably implied in Section 6 of the 1966 Act. See, *e.g.*, *State ex rel Paden v. Currel*, 597 S.W.2d 167 (Mo. App. 1980) disapproving the pledge of custodial property to secure a personal loan to the custodian.

Similarly, this section does not alter the requirements for bona fide purchaser or holder in due course status under other law for persons who acquire from a custodian custodial property subject to recordation or registration.

SECTION 17. LIABILITY TO THIRD PERSONS.

(a) A claim based on (i) a contract entered into by a custodian acting in a custodial capacity, (ii) an obligation arising from the ownership or control of custodial property, or (iii) a tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor.

(b) A custodian is not personally liable:

(1) on a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or

(2) for an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

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

COMMENT

This section has no counterpart in the 1966 Act and is based upon Section 5-429 of the Uniform Probate Code, relating to limitations on the liability of conservators. Because some forms of custodial property now permitted under this Act can give rise to liabilities as well as benefits (*e.g.*, general partnership interests, interests in real estate or business proprietorships, automobiles, etc.) the Committee believes it is necessary to protect the minor and other assets he might have or acquire from such liabilities, since the minor is unable to disclaim a transfer to a custodian for his benefit. Similar protection for the custodian is necessary so as not to discourage nonprofessional or uncompensated persons from accepting the office. Therefore this section

generally limits the claims of third parties to recourse against the custodial property, as third parties dealing with a trust are generally limited to recourse against the trust corpus.

The custodian incurs personal liability only as provided in subsection (b) for actual fault or for failure to disclose his custodial capacity "in the contract" when contracting with third parties. In oral contracts, oral disclosure of the custodial capacity is sufficient. The minor, on the other hand, incurs personal liability under subsection (c) only for actual fault.

When custodial property is subjected to claims of third parties under this section, the minor or his legal representative, if not a party to the action by which the claim is successfully established, may seek to recover the loss from the custodian in a separate action. See SECTION 19 and the Comment thereto.

SECTION 18. RENUNCIATION, RESIGNATION, DEATH, OR REMOVAL OF CUSTODIAN; DESIGNATION OF SUCCESSOR CUSTODIAN.

(a) A person nominated under Section 3 or designated under Section 9 as custodian may decline to serve by delivering a valid disclaimer [under the Uniform Disclaimer of Property Interests Act of the Enacting State] to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under Section 3, the person who made the nomination may nominate a substitute custodian under Section 3; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under Section 9(a). The custodian so designated has the rights of a successor custodian.

(b) A custodian at any time may designate a trust company or an adult other than a transferor under Section 4 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the

successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(c) A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of 14 years and to the successor custodian and by delivering the custodial property to the successor custodian.

(d) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor has attained the age of 14 years, the minor may designate as successor custodian, in the manner prescribed in subsection (b), an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor has not attained the age of 14 years or fails to act within 60 days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(e) A custodian who declines to serve under subsection (a) or resigns under subsection (c), or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(f) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor, or the minor if the minor has attained the age of 14 years may petition the court to remove the custodian for cause

and to designate a successor custodian other than a transferor under Section 4 or to require the custodian to give appropriate bond.

COMMENT

This section tracks but condenses Section 7 of the 1966 Act to provide that the custodian, or if the custodian does not do so, the minor if he is 14, may appoint the successor custodian, or failing that, that the conservator of the minor or a court appointee shall serve. It also covers disclaimer of the office by designated or successor custodians or by nominated future custodians who decline to serve.

This Act broadens the category of persons who may be designated by the initial custodian as successor custodian from an adult member of the minor's family, his conservator, or a trust company to any adult or trust company. However, the minor's designation remains limited to an adult member of his family (expanded to include a spouse and a stepparent, see SECTION 1(10)), his conservator, or a trust company.

SECTION 19. ACCOUNTING BY AND DETERMINATION OF LIABILITY OF CUSTODIAN.

(a) A minor who has attained the age of 14 years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court (i) for an accounting by the custodian or the custodian's legal representative; or (ii) for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under Section 17 to which the minor or the minor's legal representative was a party.

(b) A successor custodian may petition the court for an accounting by the predecessor custodian.

(c) The court, in a proceeding under this [Act] or in any other proceeding, may

require or permit the custodian or the custodian's legal representative to account.

(d) If a custodian is removed under Section 18(f), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

COMMENT

This section carries forward Section 8 of the 1966 Act, but expands the class of parties who may require an accounting by the custodian to include any person who made a transfer to him (or any such person's legal representative), the minor's guardian of the person, and the successor custodian.

Subsection (b) authorizes but does not obligate a successor custodian to seek an accounting by the predecessor custodian. Since the minor and other persons mentioned in subsection (a) may also seek an accounting from the predecessor at any time, it is anticipated that the exercise of this right by the successor should be rare.

Subsection (a) also gives the same parties (other than a successor custodian) the right to seek recovery from the custodian for loss or diminution of custodial property resulting from successful claims by third persons under SECTION 17, unless that issue has already been adjudicated in an action under that section to which the minor was a party.

This section does not contain a separate statute of limitations precluding petitions for accounting after termination of the custodianship. Because custodianships can be created without the knowledge of the minor, a person might learn of a custodian's failure to turn over custodial property long after reaching majority, and should not be precluded from asserting his rights in the case of such fraud. In addition, the 1966 Act has no such preclusion and seems to have worked well. Other law, such as general statutes of limitation and the doctrine of laches, should serve adequately to protect former custodians from harassment.

SECTION 20. TERMINATION OF CUSTODIANSHIP.

The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(1) the minor's attainment of 21 years of age with respect to custodial property transferred under Section 4 or 5;

(2) the minor's attainment of [majority under the laws of this State other than this [Act]] [age 18 or other statutory age of majority of Enacting State] with respect to custodial property transferred under Section 6 or 7; or

(3) the minor's death.

COMMENT

This section tracks Section 4(d) of the 1966 Act, but provides that custodianships created by fiduciaries without express authority from the donor of the property under SECTION 6 and by obligors of the minor under SECTION 7 terminate upon the minor's attaining the age of majority under the general laws of the state, since these custodianships are substitutes for conservatorships that would otherwise terminate at that time. Because property in a single custodianship may be distributable at different times, separate accounting for custodial property by source may be required. See Comment to SECTION 10.

SECTION 21. APPLICABILITY.

This [Act] applies to a transfer within the scope of Section 2 made after its effective date if:

(1) the transfer purports to have been made under [the Uniform Gifts to Minors Act of the Enacting State]; or

(2) the instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of this [Act] is necessary to validate the transfer.

COMMENT

This section is new and has two purposes. First, it operates as a "savings clause" to validate transfers made after its effective date which mistakenly refer to the enacting state's UGMA rather than to this Act. Second, it validates transfers attempted under the UGMA of another state which would not permit transfers from that source or of property of that kind or under the UTMA of another state with no nexus to the transaction, provided in each case that the enacting state has a sufficient nexus to the transaction under SECTION 2.

SECTION 22. EFFECT ON EXISTING CUSTODIANSHIPS.

(a) Any transfer of custodial property as now defined in this [Act] made before [the effective date of this Act] is validated notwithstanding that there was no specific authority in [the Uniform Gifts to Minors Act of the Enacting State] for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(b) This [Act] applies to all transfers made before the effective date of this [Act] in a manner and form prescribed in [the Uniform Gifts to Minors Act of the Enacting State], except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on the effective date of this [Act].

[(c) Sections 1 and 20 with respect to the age of a minor for whom custodial property is held under this [Act] do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of [18] after [date prior Act was amended to specify [18] as age of majority] and before [the effective date of this Act].]

COMMENT

Subsection (a) is new and is based on Section 45-109a of the Connecticut Act which validates gifts of real estate and partnership interests made prior to their inclusion as "custodial property" under that Act. However, this provision goes further and purports also to validate prior transfers of the kind now covered by the Act, i.e., transfers from estates, trusts, guardianships, and obligors.

All states have previously enacted some version of UGMA, and it will be more orderly to subject gifts or other transfers under the prior Act to the procedures of this Act, rather than to keep both Acts in force, presumably for 18 or 21 years until all custodianships created under prior law have terminated. Subsection (b) is intended to apply this Act to prior gifts and existing custodianships insofar as it is constitutionally permissible to do so. However, prior custodianships will continue to terminate at the age prescribed under the prior Act.

Optional subsection (c) is also new and is based upon Section 45-109b of the Connecticut

Act. It is intended for adoption in those states that amended their Acts to reduce the age of majority to 18, but which adopt the recommended return to 21 as the age at which custodianships terminate. Its purpose is to avoid resurrecting custodianships for persons not yet 21 which terminated during the period that the age of 18 governed termination.

SECTION 23. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.

SECTION 24. SHORT TITLE.

This [Act] may be cited as the "[Name of Enacting State] Uniform Transfers to Minors Act."

SECTION 25. SEVERABILITY.

If any provisions of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end provisions of this [Act] are severable.

SECTION 26. EFFECTIVE DATE.

This [Act] takes effect _____.

SECTION 27. REPEALS.

[Insert appropriate reference to the existing Gifts to Minors Act of the Enacting State or

other jurisdiction] is hereby repealed. To the extent that this [Act], by virtue of Section 22(b), does not apply to transfers made in a manner prescribed in [the Gifts to Minors Act of the Enacting State] or to the powers, duties, and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of [the Gifts to Minors Act of the Enacting State] does not affect those transfers or those powers, duties, and immunities.