

## UNIFORM TRANSFERS TO MINORS ACT

### Section by Section Analysis of the Act

Section 1 contains definitions. It is important to note that at paragraph 11, the definition of minor is an individual who has not attained the age of 21.

Section 2 sets forth the scope and jurisdiction of the Act to address conflicts of laws questions. Subsection (c) allows the residents of an enacting state to elect to have the laws of another state apply to the transfer, provided that a nexus exists with the chosen state.

Section 3 provides for the nomination of a future custodian to receive a transfer.

Section 4 allows for transfers by gift or irrevocable exercise of a power of appointment in favor of a custodian.

Section 5 allows for transfers authorized by will or trust instrument. Subsection (c) provides that if the testator fails to nominate a custodian or the nominated custodian does not serve, the personal representative or trustee shall nominate the custodian from among those eligible to serve as custodian for property of that kind under Section 9(a) of the Act.

Section 6 provides for other transfers by a fiduciary. This section permits custodianships to be used as guardianship or conservator substitutes even though the settlor has not specifically authorized such a substitution. The fiduciary making the transfer must determine that the custodianship is in the best interests of the minor. Second, the custodianship may not be inconsistent with the terms of any governing instrument. Third, the value of the transfer must be relatively small.

Section 7, like Section 6, provides for the substitution of a custodianship for a conservatorship. This section further allows the custodian to receive payments due a minor from sources other than estates, trusts and existing guardianships. Subsection (b) requires transfers be made to the custodian where nominated. Subsection (c) sets a \$10,000 limit for transfers under this section. Where this amount is exceeded, a conservator must be appointed to receive it.

Section 8 requires a written receipt for custodial property delivered to a custodian.

Section 9, subsection (a), sets forth the manner for creating custodial property. Every category of property is covered. Subsection (b) sets forth the form of acceptance that must be executed by the custodian to make the disposition effective. Subsection (c) requires the transferrer to place the custodian in control of the custodial property as soon as practicable.

Section 10 provides that a transfer may be made only for one minor and only one person may be the custodian.

Section 11, subsection (a), sets forth circumstances that shall not affect the validity of the transfer. Subsection (b) qualifies the rights of the minor to the property as subject to "the rights, powers and duties" of the custodian.

Section 12 prescribes the standard of care the custodian shall exercise over the custodial property. Subsection (b) sets forth the prudent man fiduciary standard for the custodian. Subsection (c) sets forth the authority for the custodian to invest in life insurance on the minor's life provided the minor's estate is the beneficiary of this insurance. Subsection (d) requires that custodial property consisting of an undivided interest be held as a tenancy in common. Subsection (e) imposes the requirement that income tax information be maintained and made available by the custodian.

Section 13 contains the powers of the custodian. The custodian has all the rights, powers and authority over the custodial property as possessed by an unmarried adult.

Section 14, subsection (a), provides that the custodian may expend for the minor's use, as much custodial property as is advisable for the benefit of the minor. Subsection (c) provides that these expenditures may be made without regard to the duty of any other person to support the minor.

Section 15 provides for the custodian's reimbursement for reasonable expenses.

Section 16 exempts third persons who deal with transferrors from liability in determining the validity of the custodian's authority under the Act.

Section 17 seeks to limit the liability recourse of third parties solely to the custodial property. Subsection (b) provides for the custodian's personal liability only where there has been actual fault or failure to disclose custodial capacity. Subsection (c) provides for the minor's personal liability only where there is actual fault.

Section 18 provides that the custodian may appoint the successor custodian or failing to do so, the conservator of the minor or a court appointee shall serve. The section further provides that the minor, if age 14, may appoint the successor but any appointee may decline to serve.

Section 19 sets forth those interested persons who may petition the court for an accounting or determination of responsibility for custodial property by the custodian. Subsection (d) requires such an accounting where the custodian is removed.

Section 20 sets forth the criteria for termination of the custodianship.

Section 21 grandfathers those transfers made after the Act's effective date, but which reference the Uniform Gifts to Minors Act.

Section 22, subsection (a), validates those transfers made before the effective date of the Act. Despite the definition of a minor in Section 1(11) as under the age of 21, Subsection (c) avoids

resurrecting custodianships for those minors not yet 21 whose custodianships terminated during the period that the age of 18 governed termination.

Section 23 states that in interpreting the Act, precedent from other states that have enacted the Act should be used to maintain uniformity.

Section 24 provides the title for the Act.

Section 25 severs any sections of the Act that are held invalid from other provisions of the Act which can be given effect without the invalid provision.

Section 26 provides the time for taking effect of the Act.

Section 27 allows for repeal of any related statutes on the Uniform Gifts to Minors Act.