



Romney Building, 10th Floor  
Lansing, Michigan 48909  
Phone: 517/373-6466

## UNIFORM TRANSFERS TO MINORS ACT

### House Bill 5643 with committee amendment First Analysis (3-31-98)

**Sponsor: Rep. Laura Baird**  
**Committee: Commerce**

#### ***THE APPARENT PROBLEM:***

Adopting the work of the National Conference of Commissioners on Uniform State Laws, the Michigan legislature enacted the Uniform Gifts to Minors Act in 1959, and then updated it in 1966. The original model act was drafted by the New York Stock Exchange and the Association of Stock Exchange Firms. All states and jurisdictions in the United States have adopted the act in some form, and it has become a popular way for people to transfer their wealth to future generations, and simultaneously to shield their wealth from taxation.

Some argue that Michigan should adopt the latest version of the Uniform Gifts to Minors Act, the newly named Uniform Transfers to Minors Act, which was completed by the national conference in 1983 and has been enacted by 47 states and the District of Columbia. Adoption is urged for several reasons: (1) any kind of property would be transferrable to a minor, whether real or personal, tangible or intangible (whereas the earliest version permitted gifts of securities only); (2) the new uniform act would allow the transfers of gifts based on the occurrence of a future event, and it would permit transfers by powers of appointment (whereas the earlier act contemplated present gifts from adult persons only); (3) it would deal with conflicts of law problems between different states where transferors, property, and recipients reside (whereas earlier acts do not provide for jurisdiction and the choice of law rules); and, (4) since the new version of the law expands the kinds of property that may be transferred, the liability of custodians would be limited.

#### ***THE CONTENT OF THE BILL:***

House Bill 5643 would repeal the Michigan Uniform Gifts to Minors Act, Public Act 172 of 1959, and replace that act with a new act, the Michigan Uniform Transfers to Minors Act.

(According to the Michigan Law Revision Commission, House Bill 5643 would expand the scope of the Uniform Gifts to Minors Act. The act provides for gifts of money, securities and insurance policy proceeds to minor does under the protection of a custodian. The primary advantages of this custodial mechanism, as compared with trusts, conservatorship and the like, are its economy and informality. The new language would: (1) expand the Uniform Gift to Minors Act's custodial mechanism so that it is available for a wider range of property interests and transactions; and (2) address an increasing lack of uniformity, and resulting conflicts and problems, produced by piecemeal modifications of the Uniform Gifts to Minors Act by various states in recent years.)

A brief description of certain sections of House Bill 5643 follows.

- Sections 3 through 5 provide definitions.
- Section 6 establishes that a transfer made under the act of a particular state would be governed by the law of that state. Any subsequent change in residence of the parties or removal of the property from the state would not alter the applicable law.
- Section 7 establishes that a person would have the right to nominate a custodian (and also substitute custodians) to receive property for a minor beneficiary, and it specifies that the nomination could be made in a will, trust, deed, or in other documents.
- Section 8 establishes that a person could make a transfer by irrevocable gift to a custodian for the benefit of a minor.
- Section 10 establishes conditions under which an irrevocable transfer to another adult could be made for the benefit of the minor, except that if a transfer

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exceeds \$10,000 in value, it would have to be authorized by the court.

- Section 13 establishes that custodial property would be created and transferred when any one of seven different actions was taken, followed by the words "as custodian for (name of minor) under the Michigan Uniform Transfers to Minors Act." Among the actions included are the transfer of securities; money paid to a broker or financial institution for credit to an account; ownership of a life or endowment insurance policy or annuity contract, either registered or assigned; written notice of an irrevocable present right to future payment under a contract; a recorded interest in real property; and, a title to tangible personal property, issued or delivered.

- Section 14 provides the proper form to record the transfer, in order to satisfy requirements of the act.

- Section 16 provides for the validity of a transfer, despite certain specified conditions.

- Section 17 specifies the responsibilities of a custodian, and would require the custodian to observe a prudent standard of care in which custodial property was kept separate and distinct from other property, and records of each transaction with respect to the property were properly recorded.

- Section 19 provides that a minor, 14 years of age or older, could petition a court to request that a custodian deliver or pay or expend for the minor's benefit any portion of the custodial property that the court considered advisable.

- Section 20 says that a custodian would be entitled to reimbursement from custodial property for reasonable expenses.

- Section 22 establishes that claims could be asserted against custodians in their custodial capacity, and specifies when a custodian would not be personally liable.

- Section 23 describes how a custodian could decline to serve.

- Section 24 describes how a custodian could resign or be removed by the court.

- Section 25 establishes that a minor who was older than 14 years of age (or others representing the minor) could petition the court for an accounting by the

custodian, or a determination of responsibility as between the custodial property and the custodian personally for claims against the custodial property.

- Section 26 would require the custodian to transfer the custodial property to the minor when the minor becomes 18, or upon the minor's death.

- Section 27 describes under what conditions transfers could be delayed.

- Section 28 specifies that the bill would apply to transfers made after the effective date of the bill, if those transfers were made under the Uniform Gifts to Minors Act, or the instrument of transfer used the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any state.

- Section 32 would repeal the Michigan Uniform Gift to Minors Act (MCL 554.451 to 554.461).

### **BACKGROUND INFORMATION:**

This bill is one of several recommended to the Michigan legislature by the Michigan Law Revision Commission, in order to update and to recodify bodies of law, including for example, the Uniform Commercial Code.

The National Conference of Commissioners on Uniform State Laws was created in 1892. The conference identifies outmoded statutes, substantiates its recommendations to eliminate those statutes with scholarly research, and then drafts uniform up-dated statutes. The updated "tentative" statutes are drafted over several years, allowing for ample review, argument, and revision. Revisions of the drafts are facilitated through a network of linkages constituted by scholars and practitioners who serve as members of the law sections of the federal and local bar associations, as well as those who serve as volunteer commissioners in state-level review commissions. These contexts provide an opportunity for stakeholders to study unacceptable statutes in light of emerging legal doctrines. The conference proposes the new statutes, first to the law sections, and then to the entirety of the American Bar Association for review by scholars, teachers of law, and legal practitioners. Once endorsed by the American Bar Association, the uniform statutes are disseminated to a network of state-level Uniform Law Commissions (for example the Michigan Law Revision Commission), whose members review the proposals once again, and then in some instances recommend their introduction as bills in the state legislatures.

According to the conference, since its organization, the conference has drafted more than 200 uniform laws on many subjects and in various fields of law, setting patterns for uniformity across the nation. Uniform acts include the Uniform Probate Code, the Uniform Child Custody Jurisdiction Act, the Uniform Partnership Act, the Uniform Anatomical Gift Act and the Uniform Limited Partnership Act. Beginning in 1940, the conference made a significant decision to attack major commercial problems with comprehensive legal solutions--a decision that set in motion the project to produce the Uniform Commercial Code. The code took ten years to complete and another 14 years before it was enacted across the country. It remains the signature product of the conference. Today the conference is recognized primarily for its work in commercial law, family law, probate and estates, law of business organizations, health law, and conflicts in law. It rarely drafts law that is regulatory in character.

The Michigan Law Revision Commission has issued more than 30 annual reports, although the commission was created by statute in 1986 (MCL 4.1401). Each year the commission issues a report to describe the topics of its study reports, and to recommend statutes. Some statutes are enacted into law. Under its enabling statute, section 401 of Public Act 268 of 1986, the commission's membership is: four legislators to be bicameral and bipartisan, the director of the Legislative Service Bureau (or designee), and four members appointed by the Legislative Council. The Legislative Council designates the chair. The commission's reports are available at its Web Site, <http://www.dcl.edu>.

**FISCAL IMPLICATIONS:**

Fiscal information is not available.

**ARGUMENTS:**

**For:**

The new version of the Uniform Transfers to Minors Act would make significant, needed, and long overdue changes to Michigan's Uniform Gifts to Minors Act. While the new act would serve the same purpose as the earlier acts, it makes marked improvement, including that irrevocable transfers could be made to minors to satisfy tax requirements; control could be placed in responsible hands until the minor comes of

age; and these matters could be accomplished by the execution of a simple, inexpensive document.

**POSITIONS:**

The National Conference of Commissioners on Uniform State Laws proposed the enactment of the bill.

The Michigan Bankers Association supports the bill. (3-25-98)

Analyst: J. Hunault

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.