

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Sentator Robert Frey at  
Chairperson

10:00 a.m./p.m. on February 8, 1985 in room 514-S of the Capitol.

All members ~~were~~ present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Steineger, Talkington and Winter.

Committee staff present:

Mary Torrence, Office of Revisor of Statutes  
Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

John Hayes, National Conference of Commissioners on Uniform State Laws  
John McCabe, Legal Counsel, National Conference of Commissioners on  
Uniform State Laws  
Marjorie Van Buren, Office of Judicial Administrator  
Judge William Clement, Junction City  
Jim Clark, Kansas County and District Attorneys Association  
Tom Gleason, Lawrence Attorney

Senate Bill 109 - Uniform Transfers to Minors Act.

John Hayes is one of the commissioners of the National Conference of Commissioners on Uniform State Laws. He explained the act is designed to improve what has been known as the Uniform Gifts To Minors Act which has been adopted in all of the states. He stated it is time to update the act and cover more ground than just gifts which is what you have before you today. A copy of the Prefactory note is attached (See Attachment I).

John McCabe is legal counsel legislative director of the National Conference of Commissioners on Uniform State Laws with offices in Chicago. He stated this bill changes two things. The kinds of property that may be transferred, and the kinds of transfers. This bill broadens kinds of property that may be transferred. The whole process needs to be uniform to accommodate the needs of the people all over the country. A copy of his testimony is attached (See Attachment II). Committee discussion with him followed. A committee member inquired, if there were restrictions in our law that would restrict the custodian and the beneficiary? Mr. McCabe replied there are limitations on who can be guardian. In response to a question, Mr. McCabe reported Idaho, Colorado and California have adopted this act and seventeen states have introductions to the act.

Mr. Hayes introduced Glee Smith, a former legislator and a member of the NCCUSL.

Senate Bill 68 - Time limit for request of jury trial in misdemeanor cases.

Marjorie Van Buren, Office of Judicial Administrator, explained this bill would require that request for jury trials be made within ten days after counsel is appointed, retained or waived in misdemeanor or traffic cases and in appeals to district courts from municipal court convictions of violating a city ordinance. A copy of her testimony is attached (See Attachment III).

Judge William Clement, Junction City, elaborated on why there is a problem. He stated the problem is particularly in rural areas where they do not use standing jury pools. As a result judges are anticipating these requests may be made, and they are requesting jury trials,

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 8, 1985

Senate Bill 68 continued

and jury trials are not held. The chairman inquired if this is regularly abused? Judge Clement replied, it is regularly occurring. It is a scheduling problem. Committee discussion with him followed.

Jim Clark, Kansas County and District Attorneys Association, testified in support of the bill. Their concern has been the inconvenience to witnesses in the criminal justice system. He stated there is going to be a tendency to request jury trials immediately and waive them at the end. Requiring a long period of time for juries would be more beneficial to the system. He feels plea bargaining is eliminated this way. Jury trials arise from the DWIs.

Tom Gleason, attorney from Lawrence, testified in opposition to the bill. He referred to section 4 of the bill which requires notice of jury trial be served within ten days. He stated if this is taken literally, it is an impossibility; have no idea there will even be an appeal. He commended the judicial administrator for speeding up litigation. He testified from his experience it will be a regular occurrence for notice of jury trial to be requested. This will necessitate great difficulties in scheduling and additional jury trials are going to be required. He stated he is opposed to limitations on jury trials. He feels this will deter the court system. He does not believe the proposal is workable.

The meeting adjourned.

A copy of the guest list is attached (See Attachment IV).



2-8-85

## UNIFORM TRANSFERS TO MINORS ACT

*Material in this supplement relating to the Uniform Gifts to Minors Act, as originally adopted in 1956 and as revised in 1966, is set out, supra, this supplement. The text of those acts is set out in the main volume.*

### Historical Note

The Uniform Transfers to Minors Act was approved by the National Conference of Commissioners on Uniform State Laws in 1966. It revises and re-

states the Uniform Gifts to Minors Act. The complete text of the act, the prefatory note and comments are set forth in this supplement.

### 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 prop-

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Attach. I



WHY THE UNIFORM TRANSFERS TO MINORS ACT?

The UGMA was a great success.

The Uniform Gifts to Minors Act (UGMA) has been one of the ULC's most popular products. Every jurisdiction of the United States has enacted some form of it since it was completed in 1956 and revised in 1965 and 1966.

The reason for UGMA's popularity is clear: it provides a simple, inexpensive means to a desirable end. The act allows an adult to bestow substantial gifts of property upon a child, without the child having to assume control of the property while he or she is still a minor.

Many states have found UGMA such a useful tool that they have gradually expanded the kinds of property that can be made the subject of a gift under the act, and have made other amendments to suit their needs.

Now the UTMA is needed.

Because the states have significantly changed their versions of UGMA over the years, an important aim of the original act -- uniformity -- has been lost. This means persons making transfers under their state's UGMA can't be assured the transaction will be recognized and subject to the same rules everywhere.

The new Uniform Transfers to Minors Act solves the problem. It offers all states the expansive approach some of them have already taken, and makes a variety of other improvements over the UGMA.

Under the UTMA, any kind of property -- real or personal, tangible or intangible -- can be transferred to a custodian for the benefit of a minor. The UGMA permitted only gifts of cash or securities. The UTMA covers not only outright gifts, but other transfers, such as payment of debts owed by a third party to a minor, and transfers of property from trusts or estates.

OTHER IMPROVEMENTS:

. Protective measures.

UTMA recognizes that increasing the kinds of property which can be transferred to a minor poses potentially greater liability problems for both minors and their custodians. To  
(over)



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Attach. II

offset that possibility, UTMA insulates both custodian and minor from personal liability when a third party brings a claim against the custodial property -- provided neither was personally at fault, and the custodian is not found to have concealed his or her custodial role.

. Flexible Guidelines.

States will also find more flexibility in the transfer process outlined in UTMA. The act extends the range of persons who may be selected as successor custodians, and provides for nomination of a "future custodian" -- that is, someone to serve as custodian for a transfer not scheduled to occur until a later date, generally when the transferor dies.

The change-over will be simple.

The flexibility of the UTMA will help smooth a state's transition from the old act to the new. The UTMA validates transfers attempted under the UGMA of another state which would not permit a transfer of that kind, and recognizes transfers which mistakenly refer to the UGMA after the effective date of the new act. The UTMA also provides continuity by validating gifts made previously under the enacting state's UGMA.

Adoption of the UTMA also will eliminate the conflict-of-law problems that have been created by the non-uniformity of the UGMA among the states.

Overall, the Uniform Transfers to Minors Act offers an updated, more complete approach to the goals the UGMA was originally created to achieve.

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COMPARISON OF  
MAJOR FEATURES OF UTMA AND UGMA

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<u>Feature</u>	<u>UTMA</u>	<u>1966 UGMA</u>
1. Covers Gifts	Yes	Yes
2. Transfers from Trusts and Estates - or specifically authorized - or not prohibited	Yes Yes	No No
3. Transfers from Guardianships	Yes	No
4. Transfers from other obligors	Yes	No
5. Covers cash, securities and insurance policy ownership	Yes	Yes
6. Covers Real Estate	Yes	No
7. Covers Benefit Plan, Insurance Policy etc. Beneficiary designations	Yes	No
8. Covers all other forms of property, real or personal	Yes	No
9. Provides for choice of law	Yes	No
10. Gives custodian broad powers to sell, borrow etc.	Yes	No
11. Protects third parties dealing with custodian	Yes	Yes
12. Continues custodianship until 21	Yes	Yes



Testimony on Senate Bill No. 68  
Offered by Marjorie Van Buren  
Office of Judicial Administration  
February 7, 1985

Enactment of Senate Bill No. 68 would require that request for jury trials be made <sup>within</sup> 10 days after counsel is appointed, retained or waived in misdemeanor or traffic cases and in appeals to district courts from municipal court convictions of violating a city ordinance. Currently, a request must be made no later than 48 hours before the trial.

This change would allow more efficient scheduling of jury trials and more effective use of judge time, court staff and courtroom facilities.

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Attach. III