MINUTES OF THESENATE_	COMMITTEE ON	JUDICIARY	•
The meeting was called to order by	Sentator Robert	Frey Chairperson	at
10:00 a.m./pxxm. on Feb.	ruary 8	, 19 <u>8</u> 5in room <u>514</u>	of the Capitol.
All members were present execut:	Senators Frey, Ho Gaines, Langworth Talkington and Wi	ferer, Burke, Feleci y, Parrish, Steinege nter.	ano, er,

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,

1985

Date

Approved <u>February</u>

#### CONTINUATION SHEET

MINUTES	S OF THE	SENATI	E CO	MMITTE	E ON	JUDICI	IARY		
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room <u>51</u>	<u>4 – S</u> , Statel	nouse, at 🚅	10:00	a.m./pxxxx.	on	February	8	······································	19_85

## 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).

# GUEST LIST

COMMITTEE: SENATE JUDICIA	DATE: 2-8-85	
	ADDDDGG.	
NAME (PLEASE PRINT)	ADDRESS Confliction	COMPANY/ORGANIZATION
William D. Clement	Courthouse	Judica / Brawch
Mayorie Van Byren	· Topeka	- OJA
John Spurgeon	lauvence	Gudget
Jun Clock	Leeve	e KCDAA
Tom Aleison	Lawrence	self.
Fon Smith	· Topela	Ks Ban Assn
Blee SSmith	: Lained	NCCUSL + KoBar
John & Hayes	Thulchuso	//
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# 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 rolume.

#### Historical Note

The Uniform Transfers to Minors Act was approved by the National Conference of Commissioners on Uniform State Laws in 1983. It revises and restates 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 tuken 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 versious of UGMA, the title of the Act has been changed to refer to "Transfers" rather than to "Gifts," a much narrower

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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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

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

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Sec.	
1,	Definitions.
2.	Scope and Jurisdiction,
3.	Nomination of Custodian.
4.	Transfer by Gift or Exercise of
	Power of Appointment.
5.	Transfer Authorized by Will or
	Trust.
6. 7.	Other Transfer by Fiduciary,
7.	Transfer by Obligor.
8.	Receipt for Custodial Property.
9.	Manner of Creating Custodial Prop-
	erty and Effecting Transfer;
	Designation of Initial Custodian:
	Control.
10.	Single Custodianship.
11.	Validity and Effect of Transfer.

- struction, Short Title, Severability, Effective Date, Care of Custodial Property. Powers of Custodial Property. Use of Custodial Property.
- § 1. Definitions

15. Custodian's Expenses, Compensa-

tion and Bond.
Exemption of Third Person from

Exemption of Third Person from Liability.
Liability to Third Persons.
Renunciation, Resignation, Death, or Removal of Custodian; Designation of Successor Custodian, Accounting by and Determination of Liability of Custodianship.
Applicability

Applicability, Effect on Existing Custodianships, Uniformity of Application and Con-

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 em-
- ployee or partner, (3) "Broker" means a person lawfully engaged in the business of ef-
- feeting 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,

TRAN

- (8) "Financial institutio stitution, or credit union, eral law.
- (9) "Legal representativ tive or conservator.
- (10) "Member of the m parent, spouse, grandpare the whole or half blood or
- (11) "Minor" means an years.
- (12) "Person" means an legal entity.
- (13) "Personal represen cessor personal represent estate or a person legally functions.
- (14) "State" includes a Columbia, the Commonwe session subject to the legi (15) "Transfer" means
- under Section 9.
- (16) "Transferor" mean [Aet].
- (17) "Trust company" other legal entity, author

To reflect the broader scope unlimited types of property to the new Act will apply, a nu definitional changes have bee from the 1966 Act. In addition al definitions specifically appli the limited types of property securities and insurance policie ject to the 1966 Act have bee nated as unnecessary. These the definitions of "bank," "life insurance policy or annu tract," "security," and " agent." No change in the mea construction of these terms as this Act is intended by such d

The definitions of "domestic ! institution" and "insured final stitution" have been eliminated few if any states limit deposits todians to local institutions, prudent person rule of SI 12(b) of this Act may dictate of insured institutions as depo without having the Act so specify

The principal changes or add the remaining definitions are o below.

Paragraph (2). The define benefit plan" is intentional broad and is meant to co contract, plan, system, acc trust such as a pension plan ment plan, deuth benefit ;

#### 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 UCMA'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 UCMA.

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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# . 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 UCMA 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 UCMA.

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.

# COMPARISON OF MAJOR FEATURES OF UTMA AND UGMA

	Feature	UTMA	1966 UGMA
1.		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 or jury trials be made 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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