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Willem Jewett, Esq.  
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Re: Uniform Transfers to Minors Act

Dear Willem:

It was nice speaking with you on the telephone once again yesterday. I am pleased that there is already enthusiasm for the passage of this act in the upcoming legislative session.

Pursuant to our conversation, I have enclosed sections from our Bureau of National Affairs Tax Management Service that concern both the Uniform Gifts to Minors Act and the Uniform Transfers to Minors Act. Also enclosed are pages from the National Conference of Commissioners on Uniform State Laws' website that summarize the Uniform Transfers to Minors Act and why the Uniform Transfers to Minors Act should be adopted, and confirm that Vermont and South Carolina are now the only two states that have retained the Uniform Gifts to Minors Act.

Vermont's Uniform Gifts to Minors Act was enacted in 1957, and is quite outdated. The Vermont Legislature should join its counterparts throughout the country in adopting the Uniform Transfers to Minors Act for the following reasons:

- The Uniform Transfers to Minors Act enables custodians to retain property until beneficiaries attain the age of 21. An unintended consequence of the reduction of the age of majority to 18 has been the outright distribution of substantial assets to many young adults at an especially impressionable age. It is difficult, at best, for prospective donors to know how mature children will be at age 18. Most young adults are far more capable of making sound investment decisions at age 21 than they are at age 18.

- The Uniform Transfers to Minors Act greatly expands the scope of property in which custodians can invest on behalf of minors. Custodians should be permitted to invest in real estate and partnership interests, for instance, if they believe that these are prudent investments. Such investments are not currently permitted under Vermont's Uniform Gifts to Minors Act.

- As noted above, almost all states have now adopted the Uniform Transfers to Minors Act. An important goal of the original Uniform Gifts to Minors Act, uniformity, has now been lost. Grandparents making transfers for the benefit of minors in Vermont should be assured that their gifts will be governed by the rules that are in place in almost all other states. Furthermore, if the Uniform Transfers to Minors Act is adopted, it will eliminate, or at least minimize, the conflict of law problems that exist due to the non-uniformity of the Uniform Gifts to Minors Act among the states.

- The Uniform Transfers to Minors Act expands the range of persons that may be selected as successor custodians, and provides for nomination of future custodians without resorting to court proceedings. The Act encompasses not only outright gifts, but other transfers, such as from trusts and estates; banks holding a joint or payable on death account in which a minor is the surviving owner; life insurance policies and retirement plans in which proceeds are payable to a minor; and tort judgments benefiting minors.

- As also noted above, the Uniform Transfers to Minors Act enables custodians to invest in significantly greater kinds of property. This, in turn, exposes both custodians and minors to potentially greater liability. The Uniform Transfers to Minors Act shields both custodians and minors from personal liability when third parties bring claims against the custodial property, provided that neither was at fault, and the custodian did not conceal his or her custodial role.

I believe that the Uniform Transfers to Minors Act is an updated, more comprehensive approach to the goals the Uniform Gifts to Minors Act was originally created to achieve, and therefore encourage the Vermont Legislature to adopt this modern act. I would welcome the opportunity to testify before the Legislature on this important matter. If either you or any of your colleagues have any questions concerning this matter, and if I may be of any further assistance, I hope that you will let me know.

With continued best wishes.

Sincerely,



Joseph F. Cook

/jfc  
Enclosures



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The National Conference of Commissioners on Uniform State Laws



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## Transfers to Minors Act Summary

In 1956, the ULC promulgated the Uniform Gifts to Minors Act. It was derived from an earlier Model Act sponsored by the New York Stock Exchange and the Association of Stock Exchange Firms. There were further amendments in 1965 and 1966. All states and jurisdictions in the United States have adopted this Act in one of its prior forms. Some states have, also, added non-uniform amendments, expanding the scope of the Gifts to Minors Act. In response to these non-uniform amendments, the ULC promulgated the Uniform Transfers to Minors Act (UTMA) in 1983. Although it incorporates the predecessor Gifts to Minors Act, its expanded provisions require it to be treated as more than an amended Gifts to Minors Act. It is a different Act, superseding all the earlier Gifts to Minors Acts.

Transfers of property to minors create significant problems. To begin with, most transferors do not wish to place valuable property under the control of inexperienced children. The probability of mismanagement, or no management whatsoever, remains a significant specter to those who would make such transfers. Somehow, control of the property must be retained in competent hands. Further, third parties often will not deal with minors, even if they are technically competent to manage their own affairs. Minors can disaffirm contracts, and third parties do business with them only with some risk. Yet, certain transfers to minors are very advantageous, particularly for the purposes of estate planning.

A trust, in which control and management reside with a trustee, for the designated beneficiaries, offers one solution. But trusts are complex and expensive to create and manage. For smaller property transfers, they are not a satisfactory alternative. Formal guardianships or conservatorships are, also, not generally useful for the purpose. What the Gifts to Minors Act proposed, and what the new UTMA continues, is a custodianship, in an adult or appropriate institution, of property that otherwise transfers directly to the minor. The custodianship remains until the minor becomes 21. The custodial relationship is created by executing a rather simple document, the form of which is provided in the Act itself. The minor does not obtain control of the property. The custodian has certain statutory authority to deal with it on the minor's behalf, and third parties have no occasion to be uncertain about dealing with the custodian. And the transfer is a complete and irrevocable transfer to the minor, satisfying the requirements of tax law.

The new UTMA differs significantly from the earlier Acts in these ways:

(1) Any kind of property may be transferred to a minor under this Act, whether real or personal, tangible or intangible. The earliest Gifts to Minors Act permitted gifts of securities only. An expansion of property subject to that Act came with the 1965 and 1966 amendments. UTMA eliminates all restrictions on kinds of property.

(2) The earlier Gifts to Minors Act contemplated present gifts from adult persons only. UTMA permits transfers based on the occurrence of a future event. It allows transfers by powers of appointment. Transfers may be made by a personal representative or a trustee pursuant to the authorization of a will or trust instrument. Anybody obligated to a minor for property held, or for a liquidated debt, can make a transfer under UTMA. A gift, as a kind of transfer, does not encompass all the possible transfers contemplated under the new Act.

(3) UTMA provides for jurisdiction over transfers under this Act and choice of law rules. None of the Gifts to Minors Acts dealt with these conflict of law problems. UTMA applies to a transfer in any enacting state, if that state is the residence of the transferor, the minor, or the custodian, or if the

custodial property is located in that state. Any transfer made pursuant to the law of another state that has adopted UTMA, a version of the Gifts to Minors Act, or anything substantially similar, remains subject to that law.

(4) Under UTMA, because the kinds of property which may be transferred have been expanded, the liability of custodians is, also, to be limited.

Although UTMA makes these significant changes over the earlier Gifts to Minors Acts, the new Act still serves the same purposes as the earlier Acts. Irrevocable transfers can be made to minors to satisfy tax requirements. Control can be placed in responsible hands until the minor comes of age. These matters can be accomplished by the execution of a simple, inexpensive document. The new Act simply makes marked improvements on these basic functions.

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## Why States Should Adopt UTMA

### 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 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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## Legislative Fact Sheet - Transfers to Minors Act

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**Act** Transfers to Minors Act

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**Origin** Completed by the Uniform Law Commissioners in 1983, and amended in 1986.

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**Description** This act updates and expands the usefulness of the Uniform Gifts to Minors Act (1966).

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**Endorsements** American Bar Association

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**Enactments** Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, U.S. Virgin Islands, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming

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**2014 Introductions**

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**Staff Liaison(s)** Benjamin Orzeske

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***a. Uniform Gifts to Minors Act Transfers***

**(1) Overview**

A version of the MGSMA or UGMA was adopted in each of the 50 states and the District of Columbia, but most have since adopted the UTMA (discussed at V, D, 4, b, below). The text of the UGMA is reproduced in the Worksheets, below.

**(2) Advantages**

Using the UGMA custodianship for transfers to a minor donee offers numerous advantages. Implementing the transfer is simple. All that need be done is for the transfer instrument to declare that the property is transferred to the custodian "as custodian for" the minor donee under the state UGMA. The reference to the state UGMA incorporates the entire statute so that no other instrument need be executed. Since the statute grants the custodian broad powers to accumulate or expend income and principal,<sup>180</sup> an extensive trust-type document is unnecessary. More importantly, and unlike the guardianship, the custodian can act without court approval. To the extent that various state versions of the UGMA differ, the donor can select which state law is to apply by virtue of selecting as custodian a domiciliary of a particular state. In sum, the UGMA constitutes a significant improvement in the administration of property given to minors, as compared to the guardianship.

<sup>180</sup>See *Weiss v. Weiss*, 1996 WL 91641, 1996 U.S. Dist. LEXIS 2471 (S.D.N.Y. 1996) (adoptive father's use of custodianship property to pay for summer camps, sports activities, vacations, and college expenses was permitted as such expenses were not part of the obligation of support; if the expenses had been for support, the father's use would have been theft). For additional discussion, see II, A, 1, c, (2), above.

**(3) Disadvantages**

Significant restrictions on the attractiveness of UGMA transfers exist, however. One serious problem is that most state statutes permit only the transfer of securities, money, insurance policies, and annuity contracts; real property and other personal property cannot be transferred. This restriction probably was premised on the thought that the UGMA custodianship was designed for relatively passive property involving minimal administrative burdens on the custodian. For property requiring more supervision, a trust with explicit administrative provisions in the instrument presumably would be a better device. Nonetheless, some states expanded the scope of permissible UGMA property to include real property, mineral interests, and tangible personal property.<sup>181</sup> Although permitting a broader range of properties to be held by a custodianship may place a somewhat greater burden on the custodian, it would significantly enhance the usefulness of the custodianship, and the UTMA (discussed in V, D, 4, b, below), in contrast, does expand the permitted property interests.<sup>182</sup>

<sup>181</sup>Texas had done so prior to adopting the UTMA. See former Tex. UGMA, Tex. Prop. Code Ann. §§141.001-141.014 (1995) (repealed 1995).



<sup>182</sup>The NCCUSL replaced the UGMA with the UTMA, which permits the transfer of interests in land and life insurance, plus testamentary transfers and transfers from trusts.

Another distinct disadvantage of the UGMA custodianship is that it is automatically to terminate by distribution to the donee upon his or her attaining the age of 21 years (or less if an adopting state grants majority at a lesser age). Although legal majority exists at that age, maturity and good judgment regarding money may not exist.<sup>183</sup> This problem is even more acute if property that might appreciate substantially (real estate or an interest in a business entity, for example) is transferred to a UGMA custodian. It is exceedingly difficult to forecast what might be the date-of-termination value of custodianship property, and the mandatory distribution at age 21 represents a significant drawback of this custodianship.

<sup>183</sup>See VI, G, below, for a discussion of possible techniques to postpone the effective access of the donee to the gift property.

For a discussion of various tax consequences associated with use of custodianship property to satisfy a parent's obligation to support a minor child, see II, A, 1, c, above.

### ***b. Uniform Transfers to Minors Act Transfers***

#### **(1) Overview**

The UGMA, originally adopted by the NCCUSL in 1956, permitted gifts only of money and securities. The NCCUSL undertook a significant revision that was promulgated as the UTMA.<sup>184</sup> The text of the UTMA is reproduced in the Worksheets, below.

<sup>184</sup>8C U.L.A. 13 (2001).

#### **(2) Advantages**

The UTMA was expanded significantly relative to the UGMA to allow the transfer of any type of property, real or personal, tangible or intangible, and wherever located (within or without the state) to a custodianship.<sup>185</sup> In addition, the UTMA permits (in addition to outright lifetime gifts) transfers from trusts, estates, and guardianships, even if the instrument creating the entity does not expressly permit such transfers.<sup>186</sup> Transfers from persons indebted to the minor also may be made to the custodianship if the minor does not have a conservator.<sup>187</sup> The UTMA also permits the legal representative of the minor to transfer other property of the minor to the custodianship for the purpose of convenience or economy.<sup>188</sup> As a result of these changes, the UTMA is much more versatile and useful in a wider range of situations than was the UGMA.

<sup>185</sup>UTMA §1 cmt. (1986), 8C U.L.A. at 15. The UTMA is intended to permit the transfer of joint interests with right of survivorship, beneficial interests in land trusts, as well as all other intangible interests in property. Contingent or expectancy interests (e.g., designation as beneficiary of insurance policies or employer's benefit plans) become custodial property only when the designation is irrevocable, but the UTMA also permits the nomination of a future custodian. UTMA §3 (1986), 8C U.L.A. at 25. Transfers to a custodianship also may be made by the irrevocable exercise of a power of appointment in favor of the custodianship. UTMA §4

(1986), 8C U.L.A. at 26.

<sup>186</sup>UTMA §6 (1986), 8C U.L.A. at 28-29.

<sup>187</sup>UTMA §7 (1986), 8C U.L.A. at 32.

<sup>188</sup>UTMA §6 (1986), 8C U.L.A. at 28-29.

Another significant change in the UTMA is that it terminates when the beneficiary attains the age of 21 years.<sup>189</sup> The law of most states provides that majority is attained at an age less than 21, but the UTMA adopts age 21 for termination of the custodianship because many donors prefer to leave the property in the custodianship for the maximum duration.<sup>190</sup>

<sup>189</sup>UTMA §20 (1986), 8C U.L.A. at 72-73. The custodianship will terminate upon the attainment of the age of majority (less than 21 years in many states) with respect to certain transfers to the custodianship from debtors of the minor, trustees, conservators, and personal representatives of estates. UTMA §§6, 7, cmts. (1986), 8C U.L.A. at 28-53.

<sup>190</sup>Pennsylvania has adopted a UTMA statute that permits termination to occur not later than the time the minor attains the age of 25 years, but only with respect to certain transfers by a personal representative of a decedent or a trustee. See 20 Pa. Cons. Stat. Ann. §§5305, 5321(c) (2004).

### **(3) Disadvantages**

Although the UTMA custodianship is more flexible and useful than the UGMA custodianship, it suffers from the same disadvantage: termination when the donee is quite young. The UTMA prescribes termination at age 21 (regardless of state law as to age of majority), but such an age is not likely to reflect mature judgment.