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State of Alaska

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Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

April 25, 1989

MEMORANDUM

TO: Senator Paul Fisher
Chair, Senate HESS Committee

FROM: Representative Max Gruenberg *Max*

RE: CS HB 165 (Judiciary), "An Act relating to the disposition of property including anatomical parts of the body; and providing for an effective date." (Uniform Transfers to Minors Act [UTMA])

I would appreciate it if you would schedule CSHB 165 (Judiciary) for the floor as soon as possible.

This bill updates the Uniform Gifts to Minors Act (UGMA) and makes several changes. The UGMA presently requires that property given to minors terminate at age 18. The UTMA will extend the date to 21, unless the donor specifies otherwise. The donor can specify any age between 18 and 25.

The UGMA is presently limited to securities, life insurance policies, life insurance annuity contracts and money. The UTMA covers all types of property.

THE UGMA covers only outright gifts made during a donor's lifetime. The UTMA will cover a number of transfers, including trusts, estates, guardianships and debtors.

The bill will also add a technical amendment to the Uniform Anatomical Gifts Act, easing restrictions on organ donations. At the Governor's request I also added Section 1 in the HESS Committee which amends the felonious killing statute in order to provide a judge some discretion in the disposition of a victim's estate.

Similar legislation, HB 468, passed the House last year, but died when session adjourned.

There is no known opposition to the bill. At least 28 states have already adopted the UTMA. Alaska will be the 29th.

Thank you.

STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
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LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 31, 1989

SUBJECT: Summary of W.O. 6-0510A
TO: Representative Max Gruenberg
FROM: Theresa L. Bannister *TB*
Legislative Counsel

You have requested a brief summary of bill draft 6-0510A (1-23-89). As a preliminary matter, note that this summary should not be considered an authoritative interpretation of the bill draft. The bill draft itself is the best statement of its contents.

1. SUMMARY OF CONTENTS.

Section 1 enacts the Alaska Uniform Transfers to Minors Act ("proposed act") as AS 13.46.

Section 2 makes a technical change.

Sections 3 and 4. Section 3 amends the Uniform Anatomical Gift Act (AS 13.50) by deleting the requirement that two persons must sign the document as witnesses to the donor's signature. Section 4 conforms another section to this change.

Section 5 repeals the sections of the present Alaska Uniform Gifts to Minors Act ("present act") (AS 45.60).

Section 6 makes the Act effective January 1, 1990.

2. MAJOR DIFFERENCES BETWEEN THE PROPOSED ACT AND THE PRESENT ACT. The proposed Uniform Transfers to Minors Act is an expanded and more comprehensive version of the present Uniform Gifts to Minors Act (AS 45.60). The major differences are discussed below.

Representative Max Gruenberg
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Property coverage. The proposed act expands the type of property that can be transferred to a minor. The present act only covers securities, life insurance policies, life insurance annuity contracts, and money. The proposed act covers all types of property.

Types of transfers. The proposed act expands the type of transfers that can be made. The present act covers only outright gifts made during the donor's lifetime. In addition to such outright gifts, the proposed act covers transfers from trusts, estates, and guardianships, and from persons who are indebted to the minor.

Extension beyond minority. The proposed act allows the custodial property to be held for the minor beyond the age of 18 to a maximum age of 25. The present act does not provide for this.

If I may be of further assistance, please advise.

TLB:gc
WKG6/062

6-0510H

COMMENTARY TO CSHB 165(Judiciary)

CONTAINING THE PROPOSED

Alaska Uniform Transfers to Minors Act
and other items

April 1989

Division of Legal Services
Legislative Affairs Agency
P.O. Box Y - State Capitol
Juneau, Alaska 99811

Preface

The Uniform Transfers to Minors Act (UTMA) revises and restates the Uniform Gifts to Minors Act (UGMA), one of the National Conference of Commissioners on Uniform State Laws 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 the UGMA broadened the model act to cover gifts of money as well as securities but made few other changes.

In 1956 and 1966 the Conference revised the 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 UGMA.

Alaska adopted the 1966 version of the UGMA in 1967 (AS 45.-60). Many states which adopted the 1956 or 1966 version of the UGMA, have substantially revised their versions of the UGMA to expand the kinds of property that may be made the subject of a gift under the UGMA. A few states permit transfers to custodians from other sources, such as trusts and estates, as well as from lifetime gift. Some states also permit the transferor to have an option to extend the date the custodial property may be distributed to the minor. 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 the 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.

The Alaska Uniform Transfers to Minors act (AkUTMA) 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 (sec. 13.46.990(6)). In addition, it permits such transfers not only by lifetime outright gifts

(sec. 13.46.030), but also from trusts, estates, and guardianships, whether or not specifically authorized in the governing instrument (secs. 13.46.040 and 13.46.050), 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 (sec. 13.46.060). For this reason, and to distinguish the enactment of this statute from the 1956 and 1966 versions of the UGMA, the title of this Act has been changed to refer to "Transfers" rather than to "Gifts," a much narrower term. Moreover, the AkUTMA permits the transferor or the minor to have an option to extend beyond the age of minority the date the custodial property may be distributed to the minor (sec. 13.46.195).

As so expanded, the AkUTMA might be considered a statutory form of trust or guardianship that may terminate between the ages of 18 and 25. Note, however, that unlike a trust, a custodianship is not a separate legal entity or taxpayer. Under sec. 13.46.100(b), 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 AkUTMA 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 the UGMA under which custodial property was limited to bank deposits, securities, and insurance. In response, sec. 13.46.160 generally limits the claims of third parties to recourse against the custodial property, with the minor insulated against personal liability unless the minor is personally at fault. The custodian is similarly insulated unless the custodian is personally at fault or fails to disclose the custodian's custodial capacity upon entering into a contract.

Nevertheless, the AkUTMA 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 sec. 13.46.120(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 26 U.S.C. 2503(c), (Internal Revenue Code) rather than a custodianship, to make a gift of such property to a minor.

Finally, the AkUTMA restates and rearranges rather than amends, the 1966 version of the UGMA. 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 version of the UGMA 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 re-writing and revision of the UGMA will improve its clarity while also expanding its coverage.

Section 1 allows a court to set aside (a), (b), (c), or (d) of AS 13.11.305 relating to the transfer of property after a felonious killing if the felonious killing was unintentional and if the court makes certain findings and conclusions that the provision would result in manifest injustice and should not be applied.

Section 2. Enacts the Alaska Uniform Transfers to Minors Act as AS 13.46.

Sec. 13.46.010. SCOPE AND JURISDICTION.

This section has no counterpart in the 1966 version of the UGMA. It attempts to resolve uncertainties and conflicts-of-law questions that have frequently arisen because of the present nonuniformity of the UGMA in the various states and which may continue to arise during the transition from the UGMA to the UTMA.

The creation of a custodianship must invoke the law of a particular state because of the form of the transfer required under sec. 13.46.080(a). Subsection (a) provides that a choice of the AkUTMA is appropriate and effective if any of the nexus factors specified in subsection (a) exists at the time of the transfer. Subsection (b) makes the custodian accountable and subject to personal jurisdiction in the courts of Alaska for the duration of the custodianship, despite subsequent relocation of the parties or the property.

Subsection (c) declares that a transfer that purports to be made and is valid under a similar act of another state is governed by the law of the designated state.

Sec. 13.46.020. NOMINATION OF CUSTODIAN.

This section is new and permits a future custodian for a minor to be nominated to receive a distribution under a will or trust, or as a beneficiary of a power of appointment, or of contractual rights such as a life or endowment insurance policy, annuity contract, P.O.D. account, benefit plan, or similar future payment right. Nomination of a future custodian does not constitute a "transfer" under the AkUTMA and does not create custodial property. If it did, the nomination and beneficiary designation would have to be permanent, since a "transfer" is irrevocable and indefeasibly vests

ownership of the interest in the minor under sec. 13.46.-100(b).

Instead, this section permits a revocable beneficiary designation that takes effect only when the donor dies, or when a lifetime transfer to the custodian for the minor beneficiary occurs, such as a distribution under an inter vivos trust. However, an unrevoked nomination under this section is binding on a personal representative or trustee (see sec. 13.-46.040(b)) and on insurance companies and other obligors who contract to pay in the future (see sec. 13.46.060(b)).

The person making the nomination may name contingent or successive future custodians to serve, in the order named, in the event that the person first nominated dies, or is unable, declines, or is ineligible to serve. Such a substitute future custodian is a custodian "nominated . . . under AS 13.46.020" to whom the transfer must be made under secs. 13.46.040(b) and 13.46.060(b).

Any person nominated as future custodian may decline to serve before the transfer occurs and may resign at any time after the transfer. See sec. 13.46.170.

Sec. 13.46.030. TRANSFER BY GIFT OR EXERCISE OF POWER OF APPOINTMENT.

To emphasize the different kinds of transfers that create presently effective custodianships under the AkUTMA, they are separately described in secs. 13.46.030, 13.46.040, 13.-46.050, and 13.46.060. This section in part corresponds to Section 2(a) of the 1966 version of the UGMA and covers the traditional lifetime gift that was the only kind of transfer authorized by the 1966 version of the UGMA. It also covers an irrevocable exercise of a power of appointment in favor of a custodian, as distinguished from the exercise of a power in a revocable instrument that results only in the nomination of a future custodian under sec. 13.46.020.

Sec. 13.46.040. TRANSFER AUTHORIZED BY WILL OR TRUST.

This section is new and has no counterpart in the UGMA. It is based on nonuniform provisions adopted by Connecticut, Illinois, Wisconsin, and other states to validate distributions from trusts and estates to a custodian for a minor beneficiary, when the use of a custodian is expressly autho-

rized by the governing instrument. It also covers the designation of the custodian whenever the settlor or testator fails to make a nomination, or the future custodian nominated under sec. 13.46.020 (and any alternate named) fails to qualify.

Sec. 13.46.050. OTHER TRANSFER BY FIDUCIARY.

This section is new and has no counterpart in the UGMA. It covers a new concept, already authorized by the law of some states through nonuniform amendments to the UGMA to permit custodianships to be used as guardianships or conservator substitutes, even though not specifically authorized by the person whose property is the subject of the transfer. It also permits the legal representative of the minor, such as a conservator or guardian, to transfer the minor's own property to a new or existing custodianship for the purposes of convenience or economies of administration.

A custodianship may be created under this section even though not specifically authorized by the transferor, the testator, or the settlor of the trust if three tests are satisfied. First, the fiduciary making the transfer must determine in good faith and in his fiduciary capacity that a custodianship will be in the best interests of the minor. Second, a custodianship may not be prohibited by, or inconsistent with, the terms of any governing instrument. Inconsistent terms would include, for example, a spendthrift clause in a governing trust, provisions terminating a governing trust for the minor's benefit at a time other than the time of the minor's age of majority, and provisions for mandatory distributions of income or principal at specific times or periodic intervals. Provisions for other outright distributions or bequests would not be inconsistent with the creation of a custodianship under this section. Third, the amount of property transferred, (as measured by its value) must be of such relative small amount that the lack of court supervision and the typically stricter investments standards that would apply to the conservator otherwise required will not be important. However, if the property is of significant size, transfer to a custodian may still be made if the court approves and if the other two tests are met.

The custodianship created under this section without express authority in the governing instrument will terminate upon the minor's attainment of the statutory age of majority in Alaska, i.e., at the same age a conservatorship of the minor

would end. See sec. 13.46.190 and the Commentary to sec. 13.46.190.

Sec. 13.46.060. TRANSFER BY OBLIGOR.

This section is new and, like sec. 13.46.050, permits a custodianship to be established as a substitute for a conservator to receive payments due a minor from sources other than estates, trusts, and existing guardianships covered by secs. 13.46.040 and 13.46.050. For example, a tort judgment debtor of a minor, a bank holding a joint or P.O.D. account of which a minor is the surviving payee, or an insurance company holding life insurance policy or benefit plan proceeds payable to a minor may create a custodianship under this section.

Transfer is mandatory when a future custodian has been nominated under sec. 13.46.020 as a named beneficiary of an insurance policy, benefit plan, deposit account, or the like, because the original owner of the property specified a custodianship (and a future custodian) to receive the property. If that custodian (or any alternate named) is not available, if none was nominated, or none could have been nominated (as in the case of a tort judgment payable to the minor), this section is permissive and does not preclude the obligor from requiring the appointment of a conservator to receive payment; it allows the obligor to transfer property to a custodian unless the property exceeds the stated value, in which case a conservator must be appointed to receive it.

Sec. 13.46.070. RECEIPT FOR CUSTODIAL PROPERTY.

This section discharges transferors from further responsibility for custodial property delivered to and receipted for by the custodian. See also sec. 13.46.150 which protects transferors and other third parties dealing with custodians. Because a discharge or release for a donative transfer is not necessary, this section had no counterpart in the UGMA.

This section does not authorize an existing custodian, or a custodian to whom an obligor makes a transfer under sec. 13.46.060 to settle or release a claim of the minor against a third party. Only a conservator, a guardian ad litem, or other person authorized under other law to act for the minor may release such a claim.

Sec. 13.46.080. MANNER OF CREATING CUSTODIAL PROPERTY AND EFFECTING TRANSFER; DESIGNATION OF INITIAL CUSTODIAN; CONTROL.

The 1966 version of the UGMA contained optional bracketed language permitting an adopting state to limit the class of eligible initial custodians to an adult member of the minor's family or a guardian of the minor. This optional limitation has been deleted because it would preclude the use of an individual and uncompensated custodian if no qualified or willing family member is available.

Otherwise, with respect to transfers of securities, cash, and insurance or annuity contracts, this section tracks the cognate provisions of subsection 2(a) of the 1966 version of the UGMA, with one exception. Under sec. 13.46.080(a)(1)-(ii), a transfer of securities in registered form may be accomplished without registering the transfer in the name of the custodian so that transfers may be accomplished more expeditiously, and so that securities may be held by custodians in street name. In other words, sec. 13.46.080(a)(1)-(i) is not the exclusive manner for making effective transfers of securities in registered form.

In addition, subsection (a) creates new procedures for handling the additional types of property now subject to the Act; specifically:

Paragraph (a)(3) covers the irrevocable transfer of ownership of life and endowment insurance policies and annuity contracts.

Paragraph (a)(4) covers the irrevocable exercise of a power of appointment and the irrevocable present assignment of future payment rights, such as royalties, interest, and principal payments under a promissory note, or beneficial interests under life or endowment or annuity insurance contracts or benefit plans. The payor, issuer, or obligor may require additional formalities such as completion of a specific assignment form and an endorsement, but the transfer is effective upon delivery of the notification. (See sec. 13.46.020 and the Commentary to sec. 13.46.020 for the procedure for revocably "nominating" a future custodian as a beneficiary of a power of appointment or such payment rights.)

Paragraph (a)(5) is the exclusive method for the transfer of real estate and includes a disposition effected by will. Under the law of those states in which a devise of real estate vests in the devisee without the need for a deed from the personal representative of the decedent, a document such as the will must still be "recorded" under this provision to make the transfer effective. For inter vivos transfers, of course, a conveyance in recordable form would be employed for dispositions of real estate to a custodian.

Paragraph (a)(6) covers the transfer of personal property such as automobiles, aircraft, and other property subject to registration of ownership with a state or federal agency. Either registration of the transfer in the name of the custodian or delivery of the endorsed certificate in registerable form makes the transfer effective.

Paragraph (a)(7) is a residual classification, covering all property not otherwise covered. Examples would include nonregistered securities, partnership interests, and tangible personal property not subject to title certificates.

The form of transfer document recommended and set out in subsection (b) contains an acceptance that must be executed by the custodian to make the disposition effective. While such a form of written acceptance is not specifically required in the case of registered securities under (a)(1), money under (a)(2), insurance contracts or interests under (a)(3) or (a)(4), real estate under (a)(5), or titled personal property under (a)(6), it is certainly the better and recommended practice to obtain the acceptance of the designated custodian on the instrument of transfer, or otherwise.

A transferor may create a custodianship by naming himself as custodian, except for transfers of securities under (a)(1)(B), insurance and annuity contracts under (a)(3)(B), and titled personally under (a)(6)(B), which are made without registering them in the name of the custodian, and transfers of the residual class of property covered by (a)(7). In all of these cases a transfer of possession and control to a third party is necessary to establish donative intent and consummation of the transfer, and designation of

the transferor as custodian renders the transfer invalid under sec. 13.46.100(a)(2).

Note, also, that the Internal Revenue Service takes the position that custodial property is includable in the gross estate of the donor if he appoints himself as custodian and dies while serving in that capacity before the minor attains the age of 21. Rev.Rul. 57-366, C.B. 1957-2, 618; Rev.Rul. 59-357, C.B. 1959-2, 212; Rev.Rul. 70-348, C.B. 1970-2, 193; Estate of Prudowsky v. Comm'r, 55 T.C. 890 (1971), affd. per curiam, 465 F.2d 62 (7th Cir. 1972).

The AkUTMA has been drafted in an attempt to avoid income attribution to the parent or inclusion of custodial insurance policies on a custodian's life in the estate of the custodian through the changes made in the standards for expenditure of custodial property and the custodian's incidents of ownership in custodial property. See secs. 13.46.-120 and 13.46.130 and the Commentary to secs. 13.46.120 and 13.46.130. However, the much greater problem of inclusion of custodial property in the estate of the donor who serves as custodian remains. Therefore, despite the fact that this section permits it in the case of registered securities, money, life insurance, real estate, and personal property subject to titling laws, it is generally still inadvisable for a donor to appoint himself custodian or for a parent of the minor to serve as custodian. See, generally Sections 2036 and 2038 Internal Revenue Code and Rulings and cases cited above; with respect to gifts of closely held stock when a donor retains voting rights by serving as custodian, see Section 2036(b), Internal Revenue Code overruling U.S. v. Byrum, 408 U.S. 125 (1972), rehearing denied 409 U.S. 898.

Subsection (c) tracks in substance Section 2(c) of the 1966 version of the UGMA. However, it replaces the requirement that the transferor "promptly do all things within his power" to complete the transfer, with the requirement that such action must be taken "as soon as practicable." This change is intended only to reflect the fact that possession and control of property transferred from an estate can rarely be accomplished with the immediacy that the term "promptly" may have implied. In the case of inter vivos transfers, no relaxation of the former requirement is intended, since "prompt" transfer of dominion is usually practicable.

Sec. 13.46.085. NATIVE CORPORATIONS; CUSTODIANS.

This section has no comparable provision in the UGMA or the UTMA. This section is derived from AS 45.60.016 which was added to the Alaska Uniform Gifts to Minors Act in 1972 to address the issue of transfers to minors arising under the Alaska Native Claims Settlement Act.

Sec. 13.46.090. SINGLE CUSTODIANSHIP.

The first sentence follows Section 2(b) of the 1966 version of the UGMA. The second sentence states what was implicit in the 1966 version of the UGMA, that additional transfers at different times and from different sources may be made to an existing custodian for the minor and do not create multiple custodianships. This provision also permits an existing custodian to be named as successor custodian by another custodian for the same minor who resigns under sec. 13.46.170 for the purpose of consolidating the assets in a single custodianship.

Note, however, that these results are limited to transfer made under the AkUTMA. Gifts previously made under the Alaska UGMA or under the UGMA or the UTMA of another state must be treated as separate custodianships, even though the same custodian and minor are involved, because of possible differences in the age of distribution and custodian's powers under those other Acts.

Even when all transfers to a single custodian are made under the AkUTMA and a single custodianship results, custodial property transferred under secs. 13.46.050 and 13.46.060 must be accounted for separately from property transferred under secs. 13.46.030 and 13.46.040 because the custodianship will terminate sooner with respect to the former property since the State of Alaska has a statutory age of majority at 18, which is lower than 21. See sec. 13.46.190 and the Commentary to sec. 13.46.190.

Sec. 13.46.100. VALIDITY AND EFFECT OF TRANSFER.

Subsection (a) generally tracks Section 2(c) of the 1966 version of the UGMA, except that the transferor's designation of himself as custodian of property for which he is not eligible to serve under sec. 13.46.080(a) makes the transfer ineffective. See Commentary to sec. 13.46.080.

The balance of this section generally tracks Section 3 of the 1966 version of the UGMA with a number of necessary, and

Sec. 13.46.110. CARE OF CUSTODIAL PROPERTY.

Subsection (a) expands Section 4(a) of the 1966 version of the UGMA to include the duties to take control and appropriately register or record custodial property in the name of the custodian.

Subsection (b) restates and makes somewhat stricter the "prudent person" fiduciary standard for the custodian, since it is now cast in terms of a prudent person "dealing with property of another" rather than one "who is seeking reasonable income and the preservation of his capital," as under the 1966 version of the UGMA. The rule also adds a slightly higher standard for professional fiduciaries. The rule parallels section 7-302 of the Uniform Probate Code (AS 13.36.-075) in order to refer to the existing and growing body of law interpreting that standard. The 1966 version of the UGMA permitted a custodian to retain any security or bank account received, without the obligation to diversify investment. This subsection extends that rule to any property received.

In order to eliminate any uncertainty that existed under the 1966 version of the UGMA, subsection (c) grants specific authority to invest custodial property in life insurance on the minor's life, provided the minor's estate is the sole beneficiary, or on the life of another person in whom the minor has an insurable interest, provided the minor, the minor's estate, or the custodian in his custodial capacity is made the beneficiary of the policies.

Subsection (d) generally tracks Section 4(g) of the 1966 version of the UGMA but adds the provision requiring that custodial property consisting of an undivided interest be held as a tenant in common. This provision permits the custodian to invest custodial property in common trust funds, mutual funds, or in a proportional interest in a "jumbo" certificate of deposit. Investment in property held in joint tenancy with right of survivorship is not permitted, but the AkUTMA does not preclude a transfer of such an interest to a custodian, and the custodian is authorized under subsection (b) to retain a joint tenancy interest so received.

Subsection (e) follows Section 4(h) of the 1966 version of the UGMA, but adds the requirement that income tax information be maintained and made available for preparation of the

property has been amended to read "for the use and benefit of the minor," rather than "for the support, maintenance, education and benefit of the minor" as specified under the 1966 version of the UGMA. This change is intended to avoid the implication that the custodial property can be used only for the required support of the minor.

The Internal Revenue Service has taken the position that the income from custodial property, to the extent it is used for the support of the minor-donee, is includable in the gross income of any person who is legally obligated to support the minor-donee, whether or not that person or parent is serving as the custodian. Rev.Rul. 56-484, C.B. 1956-2, 23; Rev.-Rul. 59-357, C.B. 1959-2, 212. However, Reg. 1.662(a)-4 provides that the term "legal obligation" includes a legal obligation to support another person if, and only if, the obligation is not affected by the adequacy of the dependent's own resources. Thus, if under local law a parent may use the resources of a child for the child's support in lieu of supporting the child himself or herself, no obligation of support exists, whether or not income is actually used for support, at least if the child's resources are adequate. See, Bittker, Federal Taxation of Income Estates and Gifts Para. 80.44 (1981).

For this reason, subsection (c) has been added to specify that distributions or expenditures may be made for the minor without regard to the duty or ability of any other person to support the minor and that distributions or expenditures are not in substitution for, and shall not affect, the obligation of any person to support the minor. Other possible methods of avoiding the attribution of custodial property income to the person obligated to support the minor would be to prohibit the use of custodial property or its income for that purpose, or to provide that any such use gives rise to a cause of action by the minor against his parent to the extent that custodial property or income is so used. The first alternative was rejected as too restrictive, and the second as too cumbersome.

The "use and benefit" standard in subsections (a) and (b) is intended to include payment of the minor's legally enforceable obligations such as tax or child support obligations or tort claims. Custodial property could be reached by levy of a judgment creditor in any event, so there is no reason not to permit custodian or court-ordered expenditures for enforceable claims.

An "interested person" entitled to seek court ordered distributions under subsection (b) would include not only the parent or conservator or guardian of the minor and a transferor or a transferor's legal representative, but also a public agency or official with custody of the minor and a third party to whom the minor owes legally enforceable debts.

Sec. 13.46.140. CUSTODIAN'S EXPENSES, COMPENSATION, AND BOND.

This section parallels and restates Section 5 of the 1966 version of the UGMA. It deletes the statement that a custodian may act without compensation for services, since that concept is implied in the retained provision that a custodian has an "election" to be compensated. However, to prevent abuse, the latter provision for permissive compensation is denied to a custodian who is also the donor of the custodial property.

The custodian's election to charge compensation must be exercised (although the compensation need not be actually paid) at least annually or it lapses and may not be exercised later. This provision is intended to avoid imputed income to the custodian who waives compensation, and also to avoid the accumulation of a large unanticipated claim for compensation exercisable at termination of the custodianship.

This section deletes as surplusage the bracketed optional standards contained in the 1966 version of the UGMA for determining "reasonable compensation" which included, "in the order stated," a direction by the donor, statutes governing compensation of custodians or guardians, or court order. While compensation of custodians becomes a more likely occurrence and a more important issue under the AkUTMA because property requiring increased management may now be subject to custodianship, compensation can still be determined by agreement, by reference to a statute or by court order, without the need to so state in the AkUTMA.

Sec. 13.46.150. EXEMPTION OF THE THIRD PERSON FROM LIABILITY.

Sec. 13.46.150 carries forward, but shortens and simplifies, Section 6 of the 1966 version of the UGMA with no substantive change intended. The 1966 version of the UGMA permit-

property, as third parties dealing with a trust are generally limited to recourse against the trust corpus.

The custodian incurs personal liability only as provided in subsection (b) for actual fault or for failure to disclose his custodial capacity "in the contract" when contracting with third parties. In oral contracts, oral disclosure of the custodial capacity is sufficient. The minor, on the other hand, incurs personal liability under subsection (c) only for actual fault.

When custodial property is subjected to claims of third parties under this section, the minor, the minor's legal representative, if not a party to the action by which the claim is successfully established, may seek to recover the loss from the custodian in a separate action. See sec. 13.46.180 and the commentary to sec. 13.46.180.

Sec. 13.46.170. RENUNCIATION, RESIGNATION, DEATH, OR REMOVAL OF CUSTODIAN; DESIGNATION OF SUCCESSOR CUSTODIAN.

This section tracks but condenses Section 7 of the 1966 version of the UGMA to provide that the custodian, or if the custodian does not do so, the minor if he is 14, may appoint the successor custodian, or failing that, that the conservator of the minor or a court appointee shall serve. It also covers disclaimer of the office by designated or successor custodians or by nominated future custodians who decline to serve.

The AkUTMA broadens the category of persons who may be designated by the initial custodian as successor custodian from an adult member of the minor's family, his conservator, or a trust company to any adult or trust company. However, the minor's designation remains limited to an adult member of his family (expanded to include a spouse and a stepparent, see sec. 13.46.990(10)), his conservator, or a trust company.

Sec. 13.46.180. ACCOUNTING BY AND DETERMINATION OF LIABILITY OF CUSTODIAN.

This section carries forward Section 8 of the 1966 version of the UGMA, but expands the class of parties who may require an accounting by the custodian to include any person who made a transfer to the custodian (or that person's legal

representative), the minor's guardian of the person, and the successor custodian.

Subsection (b) authorizes but does not obligate a successor custodian to seek an accounting by the predecessor custodian. Since the minor and other persons mentioned in subsection (a) may also seek an accounting from the predecessor at any time, it is anticipated that the exercise of this right by the successor should be rare.

Subsection (a) also gives the same parties (other than a successor custodian) the right to seek recovery from the custodian for loss or diminution of custodial property resulting from successful claims by third persons under sec. 13.46.160, unless that issue has already been adjudicated in an action under that section to which the minor was a party.

This section does not contain a separate statute of limitations precluding petitions for accounting after termination of the custodianship. Because custodianships can be created without the knowledge of the minor, a person might learn of a custodian's failure to turn over custodial property long after reaching majority, and should not be precluded from asserting his rights in the case of such fraud. In addition, the 1966 version of the UGMA has no such preclusion and seems to have worked well. Other law, such as general statutes of limitation and the doctrine of laches, should serve adequately to protect former custodians from harassment.

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Sec. 13.46.190. TERMINATION OF CUSTODIANSHIP.

This section provides that a custodianship terminates when the earliest of the following occurs:

- (1) the minor reaches 21, if the property was transferred to the minor under secs. 13.46.030 or 13.46.040, unless the term is changed under sec. 13.46.195 to a later date;
- (2) the minor reaches 18, if the property was transferred to the minor under sec. 13.46.050 or 13.46.060;
- (3) the date specified in the transfer made under sec. 13.46.080 is reached, if the time has been changed under sec. 13.46.195; or

(4) the minor's death.

Sec. 13.46.195. DELAY IN TRANSFER OF CUSTODIAL PROPERTY AFTER MINOR ATTAINS AGE 18.

This section is adopted from the California Uniform Transfers to Minors Act. This section is new. There is no provision for choice as to when custodial property shall be transferred to the minor under the Uniform Transfers to Minors Act or under prior Alaska law. This section gives this choice since most transferors who specifically authorize a custodian wish to preserve the custodianship as long as possible. This is most likely to be the case, for example, where the custodial property is intended to be preserved and used to finance a college education.

A transferor may feel that a particular child at 18 does not have, or will not have, sufficient maturity to manage a substantial gift, particularly when the transferor wishes to make the gift for a particular purpose, e.g. education. A custodian under the Alaska Uniform Gifts to Minors Act must deliver the property to the minor when the minor reaches 18 (AS 45.60.031(d)). Therefore, a testamentary or inter vivos trust may be necessary to achieve the transferor's goals. Continuing the custodianship past the age of 18 permits the transferor donor to avoid the expense of preparing a trust instrument to create a trust that otherwise would be required in order to retain the property under custodial management until the minor reaches the specified age.

For property transferred under sec. 13.46.030 or 13.46.040, allows the time for transfer of the property to the minor to be changed to a time other than when the minor attains the age of 18 years. Requires the time to be specified in the transfer under sec. 13.46.080.

Subsection (c) contains optional language which the donor-transferor may use to allow a minor the option of terminating the custodianship during a six month period beginning on the minor's 21st birthday. In order to exercise this option, a minor must provide written notice of the minor's intention to terminate to the custodian within 6 months of the minor's 21st birthday. This option has been provided so that a transferor may transfer property by irrevocable gift, under sec. 13.46.030, into a custodianship in a manner consistent with Section 2503(c) of the Internal Revenue Code

and the Internal Revenue Service's position as put forth in Rev.Rul. 74-43.

Rev.Rul. 74-43 provides, in relevant part, that a gift into a trust for the benefit of a minor, when such a trust contains a provision that the minor has the right to compel distribution at age 21 by giving written notice to the trustee, qualifies as a gift of a present interest, and, therefore, also qualifies for the annual exclusion provided in Section 2503(b) of the Internal Revenue Code.

The use of the optional language contained in subsection (c) that allows a minor to compel delivery of custodial property when the minor reaches the age of 21 should qualify a transfer of property by irrevocable gift under sec. 13.46.030 as a gift of a present interest under Section 2503(c) of the Internal Revenue Code.

Subsection (d) permits the custodianship to continue until the minor attains a specified age between 18 and 25 years where the transfer is made under a provision in a will or trust that provides that the custodianship is to continue until the specified age.

Subsection (e) permits the custodianship to continue until the minor attains a specified age between 18 and 25 years where the custodial property is transferred under sec. 13.-46.030 if the transfer specifies that the custodianship is to continue until the specified age.

Subsection (f) states that if the transfer under sec. 13.-46.080 doesn't specify an age, the time for the transfer is when the minor reaches 21.

Subsection (g) validates a transfer that specifies a maximum time for the duration of the custodianship that is longer than permitted by this section by reducing the duration of the custodianship to the maximum duration permitted for a custodianship created by that type of transfer.

Because property in a single custodianship may be distributable at different times, separate accounting for custodial property by source may be required. See Commentary to sec. 13.46.090. Also see 17 Cal.L.Rev.Comm. Reports 601 (1984); 84 Cal.S.J. 11794.

Sec. 13.46.200. APPLICABILITY.

This section is new and has two purposes. First, it operates as a "savings clause" to validate transfers made after its effective date which mistakenly refer to Alaska's UGMA rather than to the AkUTMA. Second, it validates transfers attempted under the UGMA of another state which would not permit transfers from the source or of property of that kind or under the UTMA of another state with no nexus to the transactions, provided in each case that Alaska has a sufficient nexus to the transaction under sec. 13.46.010.

Sec. 13.46.210. EFFECT ON EXISTING CUSTODIANSHIPS.

Subsection (a) is new and is based on Section 45-109a of the Connecticut Uniform Transfers to Minors Act which validates gifts of real estate and partnership interests made prior to their inclusion as "custodial property" under that Act. However, this provision goes further and purports also to validate prior transfers of the kind now covered by that Act, i.e., transfers from estates, trusts, guardianships, and obligators.

All states have previously enacted some version of the UGMA, and it will be more orderly to subject gifts or other transfers under the UGMA to the procedures of the UTMA rather than to keep both the UGMA and UTMA in force, presumably for 18 or 21 years until all custodianships created under prior law have terminated. Subsection (b) is intended to apply the AkUTMA to prior gifts and existing custodianships insofar as it is constitutionally permissible to do so. However, prior custodianships will continue to terminate at the age prescribed by the Act under which the gift or transfer was made.

Subsection (c) is also new and is based upon Section 45-109b of the Connecticut Act. This subsection is intended for adoption in those states that changed the age of majority. Its purpose is to avoid resurrecting custodianships which terminated during the period that another age of majority governed termination. The dates used are the dates when the age of majority was changed in the state.

Subsection (d) is also new. This subsection is derived from sec. 27 of the UTMA, relating to the effect of the repeal of the UGMA.

Sec. 13.46.220. UNIFORMITY OF APPLICATION.

No commentary.

Sec. 13.46.990. DEFINITIONS.

To reflect the broader scope and the unlimited types of property to which the AkUTMA will apply, a number of definitional changes have been made from the 1966 version of the UGMA. In addition, several definitions specifically applicable to the limited types of property (cash, securities, and insurance policies) subject to the 1966 version of the UGMA have been eliminated as unnecessary. These include the definitions of "bank," "issuer," "life insurance policy or annuity contract," "security," and "transfer agent." No change in the meaning or construction of these terms as used in the AkUTMA is intended by these deletions.

The definitions of "domestic financial institution" and "insured financial institution" have been eliminated because few, if any, states limit deposits by custodians to local institutions, and the prudent person rule of sec. 13.46.-110(b) of the AkUTMA may dictate the use of insured institutions as depositories, without having to so specify.

The principal changes or additions to the remaining definitions are discussed below.

"Benefit Plan" The definition of "benefit plan" is intentionally very broad and is meant to cover any contract, plan, system, account, or trust such as a pension plan, retirement plan, death benefit plan, deferred compensation plan, employment agency arrangement, or stock bonus, option or profit sharing plan.

"Conservator" The term "conservator" rather than "guardian of the estate" has been employed to conform to Uniform Probate Code terminology (AS 13.06 - 13.36). The term includes a guardian of the minor's property, whether general, limited or temporary, and includes a committee, tutor, or curator of the minor's property.

"Custodial Property" The definition of "custodial property" has been generalized and expanded to encompass every conceivable legal or equitable interest in property of any kind, including real estate and tangible or intangible personal property. The term is intended, for example, to include joint interests with right of survivorship, beneficial interest in land trusts, as well as all other intangible

interests in property. Contingent or expectancy interests such as the designation as a beneficiary under insurance policies or benefit plans become "custodial property" only if the designation is irrevocable, or when it becomes so, but the AkUTMA specifically authorizes the "nomination" of a future custodian as beneficiary of such interests (see sec. 13.46.020). Proceeds of custodial property, both immediate and remote, are themselves custodial property, as is the case under UGMA.

Custodial property is defined without reference to the physical location of the property, even if it has one. No useful purpose would be served by restricting the application of the AkUTMA to, for example, real estate "located in this state," since a conveyance recorded in the state of the property's location if done with proper formalities, should be effective even if that state has not enacted the UTMA. The rights, duties, and powers of the custodian should be determined by reference to the law of the state under which the custodianship is created, assuming there is sufficient nexus under sec. 13.46.010 between that state and the transferor, the minor, or the custodian.

"Minor" "Minor" is defined as an individual who has not attained the age of 18 years (consistent with AS 25.20.010), except that the term "minor" may include an older individual under some circumstances when the term is used with reference to the beneficiary for whose benefit custodial property is held or is to be held for a period past the age of 18 years. See the Commentary to secs. 13.46.190 and 13.46.195.

"Personal Representative" The definition of the term "personal representative" is based upon the definition in the Uniform Probate Code (AS 13.06.050(30)).

"Transfer" The new definition of "transfer" is necessary to reflect the application of the AkUTMA not only to gifts, but also to distributions from trusts and estates, obligors of the minor, and transfers of the minor's own assets to a custodianship by the legal representative of a minor, all of which are now permitted by the AkUTMA.

"Transferor" The new definition of "transferor" is required because the term includes not only the maker of a gift, i.e., a donor in the usual sense, but also fiduciaries and obligors who control or own property that is the subject of the transfer. Nothing in the AkUTMA requires that a trans-

feror be an "adult." If permitted under other law of the state relating to emancipation or competence to make a will, gift, or other transfer, a minor may make an effective transfer of property to a custodian for his benefit or for the benefit of another minor.

"Trust Company" Only entities authorized to exercise "general" trust powers qualify as a "trust company"; that is, the authority to exercise only limited fiduciary responsibilities, such as the authority to accept Individual Retirement Account deposits, is not sufficient.

Sec. 13.46.999. SHORT TITLE.

No commentary.

Section 3. Makes a technical citation change necessitated by the new chapter.

Sections 4 and 5. Amends Uniform Anatomical Gift Act (AS 13.50) by deleting witness requirement when donor signs donation document. Section 4 conforms another section to this change.

Section 6. Repeals the sections of the present Alaska Uniform Gifts to Minors Act (AS 45.60).

Section 7. Makes the Act effective January 1, 1990.

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March 17, 1989

Representative Max Gruenberg
Attn: Mark Hanley, Legislative
Alaska State Legislature
P.O. Box V
Juneau, Alaska 995811

Re: H.B. 165 ("AUTMA")

Dear Sirs:

The proposed Alaska Uniform Transfers to Minors Act ("AUTMA") (H.B. 165) provides a much needed revision and update to the current Alaska Uniform Gifts to Minors Act ("AUGMA"). AUGMA was originally enacted by the Legislature in 1967, and was based on the Uniform Gifts to Minors Act, which was created by the Uniform Commissioners in 1966. Since that time many states, on their own initiative, have greatly expanded the scope and flexibility of the Uniform Gifts to Minors Act. In response to these changes the Uniform Commissioners revised and updated the Uniform Gifts to Minors Act in 1983. The revised and updated Uniform Gifts to Minors Act was titled the Uniform Transfers to Minors Act; the proposed AUTMA (H.B. 165) is, with few exceptions, the Uniform Commissioners' revised and updated Uniform Transfers to Minors Act.

The proposed AUTMA improves the current AUGMA in three significant respects: (1) AUTMA allows virtually any type of property, real or personal, tangible or intangible, to be transferred into a custodial account; (2) AUTMA allows a custodial account to be established through the use of multiple legal vehicles (e.g. wills and trusts) from multiple parties (e.g. guardians, third party debtors, and estates); and (3) AUTMA allows tremendous flexibility in determining when the custodial property will be distributed to the beneficiary. These improvements are briefly described below.

Under the current AUGMA only cash, insurance, annuities, and securities may be held in a custodial account for the benefit of the beneficiary. This unnecessarily restricts the usefulness of a custodial account; for example, the family home or other interest in real property may not be transferred into a custodial account for the benefit of the beneficiary. The proposed AUTMA will allow virtually any type of property, real or personal, tangible or intangible, to be transferred into a custodial account.

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Under the current AUGMA the only way to transfer property into a custodial account is through a gift. This further unnecessarily restricts the usefulness of a custodial account; for example, a person cannot currently transfer property through his will or through his trust into a custodial account. The proposed AUTMA will allow such transfers. Moreover, the current AUGMA does not allow a trustee, personal representative, or third party debtor to establish a custodial account for the beneficiary's benefit; the proposed AUTMA would allow such a custodial account to be established.

And finally under the current AUGMA, the property in the custodial account must be distributed to the beneficiary at the age of 18. Many people prefer to have the beneficiary receive the distribution from the custodial account at a more mature age or would prefer to use the custodial account to give financial support to a beneficiary throughout college. The proposed AUTMA allows the creator of the custodial account to determine any age up to the age of 25 for distributions from the custodial account.

The current estate planning alternative to a custodial account is to use a trust. In many cases, the use of a trust is unnecessary and expensive. A trust has a far higher cost to create and to administer, and, in fact, professional administration is largely unavailable for a trust of less than \$50,000. In short, the proposed AUTMA would allow a custodial account to be used as a flexible and inexpensive alternative to a trust.

The proposed AUTMA does differ in some respects from the Uniform Commissioners' Uniform Transfers to Minors Act. The differences, however, largely reflect clarifications to the Uniform Transfers to Minors Act which were adopted by California. The major substantive difference, however, which also reflects the approach adopted by California, is that the distribution of the property in the custodial account may be delayed until the age of 25.

In my current position as Chairman of the Estate Planning and Probate Section of the Alaska Bar Association, I have had occasion to discuss the proposed AUTMA with several estate planning attorneys. In fact, the proposed AUTMA has been extensively discussed at several of our Section meetings. All of the estate

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planning attorneys with which I have discussed the proposed AUTMA are in support of its enactment. If there are any questions or if I may be of any assistance, please feel free to call. Thank you for your consideration.

LAW OFFICE OF ROBIN O. BRENA, INC.

By: Robin O. Brena
Robin O. Brena

ROB:bg

Effect of amendments. — The 1986 amendment rewrote this section.

Sec. 13.11.045. Meaning of "child" and related terms. If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person,

(1) an adopted person is the child of an adopting parent and not of the natural parents unless the decree of adoption specifically provides for the continuation of inheritance rights;

(2) in cases not covered by (1) of this section, a person born out of wedlock is a child of the mother; that person is also a child of the father, if:

(A) the natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or

(B) the paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, except that the paternity established under this subparagraph is ineffective to qualify the father or the father's kindred to inherit from or through the child unless the father has openly treated the child as the father's, and has not refused to support the child. (§ 1 ch 78 SLA 1972; am § 34 ch 56 SLA 1973; am § 3 ch 154 SLA 1976; am § 1 ch 140 SLA 1986)

Effect of amendments. — The 1986 amendment substituted "unless the decree of adoption specifically provides for the continuation of inheritance rights" for "except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either natural parent" in paragraph (1).

Article 8. General Provisions.

Section 305. Effect of felonious killing on intestate succession, wills, joint assets, life insurance, and beneficiary designations

Sec. 13.11.305. Effect of felonious killing on intestate succession, wills, joint assets, life insurance, and beneficiary designations. (a) A surviving spouse, heir, or devisee who feloniously kills the decedent is not entitled to any benefits under the will or under this chapter, and the estate of the decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(b) A joint tenant who feloniously kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as the decedent's property and the killer has no rights by survivorship. This provision applies to joint tenancies and

tenancies by the entirety in real and personal property, joint and multiple-party accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of co-ownership with survivorship incidents.

(c) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

(d) Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section.

(e) A final judgment of conviction of felonious killing is conclusive for purposes of this section. In the absence of a conviction of felonious killing the court may determine by a preponderance of evidence whether the killing was felonious for purposes of this section.

(f) This section does not affect the rights of a person who, before rights under this section have been adjudicated, purchases from the killer for value and without notice property that the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. An insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless before payment it has received at its home office or principal address written notice of a claim under this section.

(g) In this section, a "felonious killing" means a crime defined under AS 11.41.100 — 11.41.140. (§ 1 ch 78 SLA 1972; am § 1 ch 36 SLA 1979; am §§ 3 — 8 ch 164 SLA 1988)

Effect of amendments. — The 1988 amendment, in the catchline, substituted "felonious killing" for "homicide" and made a minor punctuation change; substituted "heir, or devisee who feloniously" for "heir or devisee who feloniously and intentionally" in the first sentence in subsection (a); deleted "and intentionally" following "feloniously" in the first sentence in subsection (b); in subsection (c), deleted "and intentionally" following "feloni-

ously" and made a minor punctuation change; in subsection (e), deleted "and intentional" following "felonious" in the first sentence and twice in the second sentence; in subsection (f), substituted "a person" for "any person" and "that" for "which" in the first sentence, and "And" for "Any" in the second sentence, and made a minor punctuation change in the second sentence; and added subsection (g).

(4) "offer" means an offer made by any person directly or through an agent by advertisement or any other written or oral communication to offerees to purchase the number of shares or other units of any class of equity security of the offeree company that, together with the offeror's presently owned shares, will in the aggregate exceed five percent of the outstanding shares of that class;

(5) "offeree" means a person, whether a security holder of record or a beneficial owner, to whom a takeover bid is made;

(6) "offeree company" means a corporation incorporated under the laws of Alaska or a corporation which has its principal office and substantial assets located in Alaska, whose equity securities are the subject of a takeover bid;

(7) "offeror" means a person who makes a takeover bid, and includes two or more persons

(A) whose takeover bids are made jointly or in concert, or

(B) who intend to exercise jointly or in concert any voting rights attaching to the equity securities for which a takeover bid is made;

(8) "offeror's presently owned equity securities" means, with respect to any class of securities of an offeree company, the aggregate number of shares or other units which, on the date of a takeover bid, are beneficially owned or subject to a right of acquisition directly or indirectly by the offeror or an associate of the offeror;

(9) "Securities Exchange Act of 1934" means the federal statutes of that name as in effect or subsequently amended;

(10) "takeover bid" means an offer, other than an exempt offer. (§ 1 ch 129 SLA 1976)

Revisor's notes. — Reorganized in 1986 to alphabetize the defined terms.

Sec. 45.57.120. Short title. This chapter may be cited as the Takeover Bid Disclosure Act. (§ 1 ch 129 SLA 1976)

Chapter 60. Alaska Uniform Gifts to Minors Act.

Section

- 11. Manner of making gift
16. Native corporations; custodians
21. Effect of gift
31. Duties and powers of custodian
41. Custodian's expenses, compensation, bond and liabilities
51. Exemption of third persons from liability

Section

- 61. Resignation, death or removal of custodian
71. Accounting by custodian
81. Construction
91. Definitions
101. Short title

Revisor's notes. — Chapter 20, SLA 1967 is based on the Revised Uniform Gifts to Minors Act. Collateral references. — Construction and effect of Uniform Gifts to Minors Act. 60 ALR3d 628.

Sec. 45.60.010. [Repealed, § 1 ch 20 SLA 1967.]

Sec. 45.60.011. Manner of making gift. (a) An adult person may, during the person's lifetime, make a gift of a security, a life insurance policy or annuity contract or money to a person who is a minor on the date of the gift

(1) if the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult person, an adult member of the minor's family, a guardian of the minor or a trust company, followed, in substance, by the words: "as custodian for (name of minor) under the Alaska Uniform Gifts to Minors Act";

(2) if the subject of the gift is a security not in registered form, by delivering it to an adult other than the donor, an adult member, other than the donor, of the minor's family, a guardian of the minor or a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian: GIFT UNDER THE ALASKA UNIFORM GIFTS TO MINORS ACT — 1, (name of donor) hereby deliver to (name of custodian) as custodian for (name of minor) under the Alaska Uniform Gifts to Minors Act, the following security(ies); (insert an appropriate description of the security or securities delivered sufficient to identify it or them).

(Signature of donor)

..... (name of custodian) hereby acknowledges receipt of the above described security(ies) as custodian for the above minor under the Alaska Uniform Gifts to Minors Act.

Dated:

(Signature of custodian)

(3) if the subject of the gift is money, by paying or delivering it to a broker or a financial institution for credit to an account in the name of the donor, another adult, an adult member of the minor's family, a guardian of the minor, or a trust company, followed, in substance, by the words: "as custodian for (name of minor) under the Alaska Uniform Gifts to Minors Act";

(4) if the subject of the gift is a life insurance policy or annuity contract by causing the ownership of the policy or contract to be registered with the issuing insurance company in the name of the donor,

another adult, an adult member of the minor's family, a guardian of the minor or a trust company, followed, in substance, by the words: "as custodian for (name of minor) under the Alaska Uniform Gifts to Minors Act."

(b) A gift made in a manner prescribed in (a) of this section may be made to only one minor and only one person may be the custodian.

(c) A donor who makes a gift to a minor in a manner prescribed in (a) of this section shall promptly do all things within the donor's power to put the subject of the gift in the possession and control of the custodian, but neither the donor's failure to comply with this subsection, nor the designation of an ineligible person as custodian, nor renunciation by the person designated as custodian affects the consummation of the gift. (§ 1 ch 20 SLA 1967)

Sec. 45.60.016. Native corporations; custodians. (a) Stock or membership in a corporation organized under Alaska law pursuant to the Alaska Native Claims Settlement Act which a minor is entitled to receive under the Settlement Act shall be issued by the corporation to a custodian.

(b) The custodian shall be determined in accordance with the order of priority set out below, and the appointment becomes effective upon the corporation's receipt of the custodian's written consent to the appointment:

- (1) the legal guardian, if any, of the minor;
- (2) a parent, if any, of the minor, as selected by the parents;
- (3) an adult member of the minor's family, as defined in AS 45.60.091; it may also include members of the family with whom the minor has customarily lived.

(c) For good cause, a district court or the superior court may vary the order of priority set out in (b) of this section or appoint another suitable person as custodian, and, for good cause, the superior court may establish a guardianship under AS 13.26 for a minor.

(d) The custodianship is governed by this chapter, as modified by the following:

(1) in AS 45.60.031(d), "deliver or pay it over to the estate of the minor" includes delivery to the heirs by intestate succession or custodians for the heirs, under this chapter;

(2) under AS 45.60.051, a third person is responsible for determining whether stock is inalienable under the Settlement Act;

(3) the custodian shall give an appropriate receipt for the stock or other property received for the minor, which may include real or personal property, gifts to a minor, and alienable stock vested in the minor;

(4) the custodian may not alienate inalienable property except within the limits provided by law;

(5) the form of registration or title shall be "as custodian for (name of minor) under the Alaska Native Claims Settlement";

(6) a custodian may not receive compensation except, upon application to and approval by the superior court, for unusual and extraordinary services;

(7) "custodial property" includes securities, money and other real and personal property under supervision as a consequence of the Settlement Act.

(e) In this section, "Settlement Act" means 43 U.S.C. 1601 — 1628 (Alaska Native Claims Settlement Act, P.L. 92-203, 85 Stat. 688) and amendments. (§ 7 ch 70 SLA 1972; am § 51 ch 53 SLA 1973)

Cross references. — For purpose of the Act that enacted this section, see § 1, ch. 70, SLA 1972 in the Temporary and Special Acts. **Legislative history reports.** — For report on § 7, ch. 70, SLA 1972 (CSHB 731), see 1972 House Journal, p. 842.

Sec. 45.60.020. [Repealed, § 1 ch 20 SLA 1967.]

Sec. 45.60.021. Effect of gift. (a) A gift made in a manner prescribed in this chapter is irrevocable and conveys to the minor indefeasibly vested legal title to the security, life insurance policy, annuity contract or money given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in this chapter.

(b) By making a gift in a manner prescribed in this chapter, the donor incorporates in the gift all the provisions of this chapter and grants to the custodian, and to an issuer, transfer agent, bank, broker or third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in this chapter. (§ 1 ch 20 SLA 1967)

Sec. 45.60.030. [Repealed, § 1 ch 20 SLA 1967.]

Sec. 45.60.031. Duties and powers of custodian. (a) The custodian shall collect, hold, manage, invest and reinvest the custodial property.

(b) The custodian shall pay over to the minor for expenditure by the minor, or expend for the minor's benefit, so much of or all the custodial property as the custodian considers advisable for the support, maintenance, education and benefit of the minor in the manner, at the time or times, and to the extent that the custodian in the exercise of discretion considers suitable and proper, with or without court order, with or without regard to the duty of the custodian or of any other person to support the minor or the ability to do so, and with or without regard to other income or property of the minor which may be applicable or available for that purpose.

(c) The court, on the petition of a parent or guardian of the minor or of the minor, if the minor has attained the age of 14 years, may order the custodian to pay over to the minor for expenditure by the minor or to expend so much of or all the custodial property as is necessary for the minor's support, maintenance or education.

(d) To the extent that the custodial property is not so expended the custodian shall deliver or pay it over to the minor on the minor's attaining the age of 18 years or, if the minor dies before attaining the age of 18 years, the custodian shall deliver or pay it over to the estate of the minor.

(e) The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent man of discretion and intelligence who is seeking a reasonable income and the preservation of capital, except that the custodian may, in the exercise of discretion and without liability to the minor or the estate of the minor, retain a security given to the minor in a manner prescribed in this chapter.

(f) The custodian may sell, exchange, convert, surrender or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms the custodian considers advisable. The custodian may vote in person or by general or limited proxy a security which is custodial property. The custodian may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer, a security which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to an issuer, and to any other action by an issuer. The custodian may execute and deliver any and all instruments in writing which the custodian considers advisable to carry out the powers as custodian.

(g) The custodian shall register each security which is custodial property and in registered form in the name of the custodian, followed, in substance, by the words: "as custodian for (name of minor) under the Alaska Uniform Gifts to Minors Act." The custodian shall hold all money which is custodial property in an account with a broker or in an insured financial institution in the name of the custodian, followed, in substance, by the words: "as custodian for (name of minor) under the Alaska Uniform Gifts to Minors Act." The custodian shall keep all other custodial property separate and distinct from the custodian's property in a manner to identify it clearly as custodial property.

(h) The custodian shall keep records of all transactions with respect to the custodial property and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if the minor has attained the age of 14 years.

(i) A custodian has and holds as powers in trust, with respect to the custodial property, in addition to the rights and powers provided in

this chapter, all the rights and powers which a guardian has with respect to property not held as custodial property.

(j) If the subject of the gift is a life insurance policy or annuity contract, the custodian

(1) has, in the capacity as custodian, all the incidents of ownership in the policy or contract to the extent as if the custodian were the owner, except that the designated beneficiary of a policy or contract on the life of the minor shall be the minor's estate and the designated beneficiary of a policy or contract on the life of a person other than the minor shall be the custodian as custodian for the minor for whom the custodian is acting; and

(2) may pay premiums on the policy or contract out of the custodial property. (§ 1 ch 20 SLA 1967; am § 51 ch 94 SLA 1980)

Sec. 45.60.040. [Repealed, § 1 ch 20 SLA 1967.]

Sec. 45.60.041. Custodian's expenses, compensation, bond and liabilities. (a) A custodian is entitled to reimbursement from the custodial property for the reasonable expenses incurred in the performance of the duties of custodian.

(b) A custodian may act without compensation for services.

(c) Unless the custodian is a donor, a custodian may receive from the custodial property reasonable compensation for services determined by one of the following standards in the order stated:

- (1) a direction by the donor when the gift is made;
- (2) a statute of this state applicable to custodians;
- (3) the statute of this state applicable to guardians;
- (4) an order of the court.

(d) Except as otherwise provided in this chapter, a custodian may not be required to give a bond for the performance of the duties of custodian.

(e) A custodian not compensated for services is not liable for losses to the custodial property unless they result from bad faith, intentional wrongdoing or gross negligence or from failure to maintain the standard of prudence in investing the custodial property provided in this chapter. (§ 1 ch 20 SLA 1967)

Sec. 45.60.050. [Repealed, § 1 ch 20 SLA 1967.]

Sec. 45.60.051. Exemption of third persons from liability. An issuer, transfer agent, bank, life insurance company, broker or other person or financial institution acting on the instruction of or otherwise dealing with a person purporting to act as a donor or in the capacity of a custodian is not responsible for determining whether the

person designated as custodian by the purported donor or by the custodian or purporting to act as custodian has been duly designated or whether a purchase, sale or transfer to or by or any other act of a person purporting to act in the capacity of custodian is in accordance with or authorized by this chapter, nor is obliged to inquire into the validity or propriety under this chapter of an instrument or instruction executed or given by a person purporting to act as a donor or in the capacity of a custodian, nor is bound to see to the application by a person purporting to act in the capacity of a custodian of money or other property paid or delivered to that person. An issuer, transfer agent, bank, life insurance company, broker or other person or financial institution acting on an instrument of designation of a successor custodian, executed as provided in AS 45.60.061(a) by a minor to whom a gift has been made in a manner prescribed in this chapter and who has attained the age of 14 years, is not responsible for determining whether the person designated by the minor as successor custodian has been duly designated, nor is obliged to inquire into the validity or propriety under this chapter of the instrument of designation. (§ 1 ch 20 SLA 1967)

Sec. 45.60.060. [Repealed, § 1 ch 20 SLA 1967.]

Sec. 45.60.061. Resignation, death or removal of custodian. (a) Only an adult member of the minor's family, a guardian of the minor or a trust company is eligible to become successor custodian. A custodian may designate a successor by executing and dating an instrument of designation before a subscribing witness other than the successor. The instrument of designation may but need not contain the resignation of the custodian. If the custodian does not so designate a successor before the custodian dies or becomes legally incapacitated and the minor has attained the age of 14 years, the minor may designate a successor custodian by executing an instrument of designation before a subscribing witness other than the successor. A successor custodian has all rights, powers, duties and immunities of a custodian designated in a manner prescribed by this chapter.

(b) The designation of a successor custodian as provided in (a) of this section takes effect as to each item of the custodial property when the custodian resigns, dies or becomes legally incapacitated and the custodian or the legal representative of the custodian

(1) causes the item, if it is a security in registered form or a life insurance policy or annuity contract, to be registered, with the issuing insurance company in the case of a life insurance policy or annuity contract, in the name of the successor custodian, followed in substance, by the words: "as custodian for (name of minor) under the Alaska Uniform Gifts to Minors Act"; and

(2) delivers or causes to be delivered to the successor custodian any other item of the custodial property, together with the instrument of designation of the successor custodian or a true copy of it and any additional instruments required for the transfer to the successor custodian.

(c) A custodian who executes an instrument of designation of a successor containing the custodian's resignation as provided in (a) of this section shall promptly do all things within the power of the custodian to put each item of the custodial property in the possession and control of the successor custodian named in the instrument. The legal representative of a custodian who dies or becomes legally incapacitated shall promptly do all things within the power of the representative to put each item of the custodial property in the possession and control of the successor custodian named in an instrument of designation executed as provided in (a) of this section by the custodian or, if none, by the minor if the minor has no guardian and has attained the age of 14 years, or in the possession and control of the guardian of the minor if the minor has a guardian. If the custodian has executed as provided in (a) of this section more than one instrument of designation, the legal representative of the custodian shall treat the instrument dated on an earlier date as having been revoked by the instrument dated on a later date.

(d) If a person designated as custodian or as successor custodian as provided in (a) of this section is not eligible, dies or becomes legally incapacitated before the minor attains the age of 18 years and if the minor has a guardian, the guardian of the minor shall be successor custodian. If the minor has no guardian and if no successor custodian who is eligible and has not died or become legally incapacitated has been designated as provided in (a) of this section, a donor, the legal representative of the donor, the legal representative of the custodian or an adult member of the minor's family may petition the court for the designation of a successor custodian.

(e) A donor, the legal representative of a donor, a successor custodian, an adult member of the minor's family, a guardian of the minor or the minor, if the minor has attained the age of 14 years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of the custodian's duties.

(f) Upon the filing of a petition as provided in this section, the court shall grant an order, directed to the persons and returnable on notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and grant relief as the court finds to be in the best interests of the minor. (§ 1 ch 20 SLA 1967; am § 52 ch 94 SLA 1980)

Sec. 45.60.070. [Repealed, § 1 ch 20 SLA 1967.]

Sec. 45.60.071. Accounting by custodian. (a) The minor, if the minor has attained the age of 14 years, or the legal representative of the minor, an adult member of the minor's family, or a donor of the legal representative of the donor may petition the court for an accounting by the custodian or the legal representative of the custodian.

(b) The court, in a proceeding under this chapter or otherwise, may require or permit the custodian or the legal representative of the custodian to account and, if the custodian is removed, shall so require and order delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer. (§ 1 ch 20 SLA 1967)

Sec. 45.60.080. [Repealed, § 1 ch 20 SLA 1967.]

Sec. 45.60.081. Construction. (a) This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(b) This chapter may not be construed as providing an exclusive method for making gifts to minors. (§ 1 ch 20 SLA 1967)

Sec. 45.60.090. [Repealed, § 1 ch 20 SLA 1967.]

Sec. 45.60.091. Definitions. In this chapter

(1) "adult" means a person who has attained the age of 18 years;

(2) "bank" means a bank, trust company, national banking association, savings bank, industrial bank or savings association;

(3) "broker" means a person lawfully engaged in the business of effecting transactions in securities for the account of others; the term includes a bank which effects such transactions; the term also includes a person lawfully engaged in buying and selling securities for the person's own account, through a broker or otherwise, as a part of a regular business;

(4) "court" means the superior court;

(5) "custodial property" means

(A) all securities, life insurance policies, annuity contracts and money under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in this chapter;

(B) the income from the custodial property; or

(C) the proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment, surrender or other disposition of such securities, money, life insurance policies, annuity contracts and income;

(6) "custodian" means a person so designated in a manner prescribed in this chapter; the term includes a successor custodian;

(7) "financial institution" means a bank, a federal savings and loan association, a savings institution chartered and supervised as a savings and loan or similar institution under federal law or the laws of a state; an "insured financial institution" is one, deposits (including a savings, share certificate or deposit account) in which are, in whole or in part, insured by the federal deposit insurance corporation, by the federal savings and loan insurance corporation, or by a fund approved by the state;

(8) "guardian" of a minor means the general guardian, guardian, tutor or curator of the minor's property or estate appointed or qualified by a court of this state or another state;

(9) "issuer" means a person who places or authorizes the placing of the issuer's name on a security (other than as a transfer agent) to evidence that it represents a share, participation or other interest in the issuer's property or in an enterprise or to evidence the issuer's duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person;

(10) "legal representative" of a person means the executor or the administrator, general guardian, guardian, committee, conservator, tutor or curator of the property or estate of the person;

(11) "life insurance policy or annuity contract" means a life insurance policy or annuity contract, issued by an insurance company on the life of a minor to whom a gift of the policy or contract is made in the manner prescribed in this chapter or on the life of a member of the minor's family;

(12) "member" of a "minor's family" means any of the minor's parents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption;

(13) "minor" means a person who has not attained the age of 18 years;

(14) "security" means a note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing; the term does not include a security of which the donor is the issuer; a security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer;

(15) "transfer agent" means a person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities;

(16) "trust company" means a bank, corporation or other legal entity authorized to exercise trust powers. (§ 1 ch 20 SLA 1967; am §§ 53, 54 ch 94 SLA 1980)

Sec. 45.60.100. [Repealed, § 1 ch 20 SLA 1967.]

Sec. 45.60.101. Short title. This chapter may be cited as the Alaska Uniform Gifts to Minors Act. (§ 1 ch 20 SLA 1967)

Sec. 45.60.110. [Repealed, § 1 ch 20 SLA 1967.]

Sec. 45.60.120. [Repealed, § 1 ch 20 SLA 1967.]

Chapter 65. Handicrafts.

Section	Section
10. Identification seal for handicrafts	40. Permits to issue identification seals
20. Commissioner to administer chapter	50. Affixing seals to handicraft
30. Design of identification seals and accompanying documents	60. Penalties
	70. Definitions

Sec. 45.65.010. Identification seal for handicrafts. A person who makes an authentic article of handicraft in the state may obtain an identification seal as specified in AS 45.65.030 to identify the article. The identification seal may be affixed only to authentic articles of handicraft made in the state. (§ 1 ch 40 SLA 1961; am § 1 ch 153 SLA 1962; am § 1 ch 125 SLA 1978)

Collateral references. — 74 Am. Jur. 2d, Trademarks and Trade Names, § 1 et seq.

Sec. 45.65.020. Commissioner to administer chapter. The commissioner of commerce and economic development is responsible for the administration of this chapter, including (1) subject to AS 45.65.030, the design, method of affixing, preparation, issuance, and control of identification seals and documents; (2) the issuance of permits to agents to distribute the seals and documents; (3) the supervision of the use of the seals and documents; and (4) the enforcement of the civil and criminal provisions of this chapter. (§ 2 ch 40 SLA 1961; am § 1 ch 83 SLA 1977; am § 2 ch 125 SLA 1978)

Sec. 45.65.030. Design of identification seals and accompanying documents. (a) The official Native handicraft symbol is the silver hand symbol. It shall bear the words: "Authentic Native Handicraft from Alaska", and include a blank line for the artist's name and the place of origin of the article. If space permits on the seal, or, if not, in an accompanying document, it shall also state: "This silver hand symbol is your guarantee that this is a genuine article, made in Alaska, hand-crafted and finished by an Alaskan Native artist or craftsman. Where possible, only Alaskan materials have been used to create this article, and to a great extent only traditional Native methods have been used."

(b) The official non-Native resident handicraft symbol is an outline of the state in silver. It shall bear in black letters the words: "Authentic handicraft from Alaska", and include a blank line for the artist's name and the place of origin of the article. If space permits on the seal, or, if not, in an accompanying document, it shall also state: "This symbol is your guarantee this is a genuine article, made in Alaska, hand-crafted by an Alaska resident artist or craftsman. Where possible, only Alaskan materials have been used to create this article." (§ 3 ch 40 SLA 1961; am § 2 ch 83 SLA 1977; am § 3 ch 125 SLA 1978)

Sec. 45.65.040. Permits to issue identification seals. A resident of the state may apply to the commissioner for a permit as agent to issue identification seals and documents in the state. The commissioner may examine or investigate an applicant to determine whether the applicant has sufficient knowledge of the handicrafts, customs, and populace of the area in which the applicant resides to identify authentic articles of handicraft, and may issue permits to qualified applicants. Permits shall be issued without charge. The permit may limit the authority of the agent to a certain geographical area or to a particular type of handicraft. The commissioner shall prescribe the form of the application and permit, the period for which the permit is valid, and the procedure for renewal of the permit. (§ 4 ch 40 SLA 1961; am § 2 ch 153 SLA 1962; am § 3 ch 83 SLA 1977; am § 4 ch 125 SLA 1978)

Sec. 45.65.050. Affixing seals to handicraft. A maker of handicraft may present the article of handicraft to an agent for an identification seal and accompanying document, if necessary, as specified in AS 45.65.030. The agent shall, without charge, inspect and determine whether the article is an authentic article of Native or non-Native resident handicraft made in Alaska. If the agent determines it is authentic, the agent shall, without charge, affix the seal and present