

HB

280

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. HB 280

Revision Date: December 9, 1993  
Title: "An Act adopting the Uniform Custodial Trust Act"  
Sponsor: House Rules Committee  
Requestor: Governor's Office

Department Affected: Department of Law  
BRU: Legal Services  
Component: Operations  
COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)  
Please see the attached analysis. -

Prepared by: Richard I. Pegues, Director  
Division: Administrative Services Division  
Approved by Commissioner: Richard I. Pegues / FOR /  
Agency: Department of Law

Phone: 465-3672  
Date: December 9, 1993  
Date: December 9, 1993

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FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. HB 280

ANALYSIS CONTINUATION:

The Custodial Trust Act is designed to provide a statutory standby inter vivos trust for individuals who typically are not very affluent or sophisticated, and possibly represented by attorneys engaged in general rather than specialized estate practice. The most frequent use of this trust would be in response to the commonly occurring need of elderly individuals to provide for the future management of assets in the event of incapacity.

Although the most frequent use probably will be by elderly persons, it is also available for a parent to establish a custodial trust for an adult child who may be incapacitated; for adult persons in the military, or those leaving the country temporarily, to place their property with another for management without relinquishing beneficial ownership of their property; or for young people who have received property under the Uniform Transfers to Minors Act to continue a custodial trust as adults in order to obtain the benefit and convenience of management services performed by the custodial trustee.

The objective of the statute is to provide a simple trust that is uncomplicated in its creation, administration, and termination. Consequently, the statute should also serve to avoid unnecessary administrative and legal costs and to conserve the corpus of individual trusts. These are transactions involving private persons, and the bill will therefore not have an impact on the Department of Law or state government.

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 280

Revision Date: April 12, 1993  
Title: "An Act adopting the Uniform Custodial Trust Act."  
Sponsor: House Rules Committee  
Requestor: House Rules Committee

Department Affected: Department of Law  
BRU: Legal Services  
Component: Operations  
COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

*Richard I. Pegues*

Prepared by: Richard I. Pegues, Director  
Division: Administrative Services Division

Phone: 465-3672  
Date: April 12, 1993

Approved by Commissioner: Charles E. Cole, Attorney General  
Agency: Department of Law

Date: April 12, 1993

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## FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 280

### ANALYSIS (Continued):

The Custodial Trust Act is designed to provide a statutory standby inter vivos trust for individuals who typically are not very affluent or sophisticated, and possibly represented by attorneys engaged in general rather than specialized estate practice. The most frequent use of this trust would be in response to the commonly occurring need of elderly individuals to provide for the future management of assets in the event of incapacity.

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HB 280  
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**MEMORANDUM**

April 18, 1993

**SUBJECT:** Sectional Summary of HB 280

**TO:** Representative Carl Moses  
Chair  
House Rules Committee

**FROM:** Theresa L. Bannister *TB*  
Legislative Counsel

You have requested a sectional summary of the above described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

**Section 1.** Contains the entire bill. Adds a new chapter, the "Alaska Uniform Custodial Trust Act."

Sec. 13.60.010 authorizes a person to create a custodial trust of property by a written transfer of the property to another person or by a written declaration. Places title to the custodial trust property in the custodial trustee and the beneficial interest in the beneficiary. Prohibits termination of a custodial trust by the transferor except as provided in the section. Terminates the trust on the beneficiary's death. Authorizes a person to augment existing custodial trust property. Authorizes the transferor to designate, or authorize the designation of, a successor custodial trustee in the trust instrument. States that the chapter does not displace or restrict other means of creating trusts.

Sec. 13.60.020. Authorizes a person to create a custodial trust upon the occurrence of a future event. Authorizes the designation of a substitute or successor custodial trustee. Identifies the documents that can be used to make a designation; otherwise, requires the designation to be registered with or delivered to a specified person.

Sec. 13.60.030. States that the obligations of a custodial trustee arise when the trustee accepts the custodial trust property. States how the acceptance may be

evidenced. States that upon acceptance the trustee is subject to the personal jurisdiction of the court with respect to a matter relating to the trust.

Sec. 13.60.040. Unless otherwise directed by an instrument designating a custodial trustee under sec. 13.60.020, authorizes a person holding the property of, or owing a debt to, certain incapacitated individuals to make a transfer to certain persons as custodial trustee for the incapacitated individuals. Transfers over \$20,000 must be authorized by the court. States that a written acknowledgement of delivery signed by the custodial trustee constitutes a sufficient receipt and discharge for the transferred property.

Sec. 13.60.050. States that beneficial interests in a custodial trust created for multiple beneficiaries are separate trusts of equal undivided interests for each beneficiary. Indicates when a right of survivorship exists. Authorizes administration as a single custodial trust for custodial trust property held by the same trustee for the same beneficiary. Requires separate accounting to each beneficiary with regard to custodial trust property held for more than one beneficiary.

Sec. 13.60.060. Establishes the general duties of, and the standard of care to be exercised by, the custodial trustee. States that the exercise of a durable power of attorney for an incapacitated beneficiary is not effective to terminate or direct the administration or distribution of a custodial trust.

Sec. 13.60.070. Establishes the general powers of a custodial trustee. Indicates that the section does not relieve a custodial trustee from liability for a violation of sec. 13.60.060.

Sec. 13.60.080. Establishes how the custodial trustee may use custodial trust property.

Sec. 13.60.090. Determines when the custodial trustee may administer a custodial trust as for an incapacitated beneficiary. Establishes what a custodial trustee may rely on to determine that the beneficiary is incapacitated. Indicates when a custodial trustee for an incapacitated beneficiary can administer the trust as for a beneficiary whose incapacity has ended or changed. On petition of certain persons directs the court to determine whether the beneficiary is incapacitated. Directs a custodial trustee to administer the custodial trust as for an incapacitated beneficiary under other given circumstances if there isn't a determination of incapacity under (b) or (d) of this section. States that the incapacity of a beneficiary doesn't terminate the trust, a successor trustee designation, the trustee's rights or powers, or the immunities of certain third persons.

Sec. 13.60.100. Exempts a third person who deals with a custodial trustee in good faith and without a court order from being held liable for dealing with the custodial trustee in certain circumstances.

Sec. 13.60.110. Authorizes a third person to bring certain claims against the custodial trust property by proceeding against the trustee in a fiduciary capacity. States that a custodial trustee is not personally liable to a third person on certain contracts and for certain obligations. States that a beneficiary is not personally liable to a third person for certain obligations or torts unless certain circumstances exist. States that (b) and (c) of the section do not preclude proceedings to establish the liability of the trustee or beneficiary to the extent the person sued is protected as the insured by liability insurance.

Sec. 13.60.120. Addresses the declination, resignation, incapacity, death, and removal of custodial trustees. Addresses the designation and succession of successor custodial trustees. Addresses the handling of trust property and records in these circumstances.

Sec. 13.60.130. States that, except as otherwise provided in the custodial trust instrument, in an agreement with the beneficiary, or by court order, the custodial trustee is entitled to reimbursement for reasonable expenses, may charge a reasonable compensation for services, and does not need to furnish security.

Sec. 13.60.140. Addresses the reporting and accounting requirement for the custodial trustee. Authorizes certain persons to petition the court for an accounting or approval of final accounts. Authorizes the court to require or permit the custodial trustee or the custodial trustee's legal representative to account. If a custodial trustee is removed, directs the court to require an accounting and to order delivery of the trust property and records to the successor custodial trustee and the execution of certain instruments. Authorizes the court under certain circumstances to issue instructions to the custodial trustee or to review the acts of the trustee or the compensation determined by the custodial trustee for the services of the custodial trustee or others.

Sec. 13.60.150. Indicates when actions against a custodial trustee are barred.

Sec. 13.60.160. Indicates how the custodial trustee is to distribute the custodial trust property when the custodial trust is terminated. Provides for continuation of the trust if the distributee is incapacitated and until certain circumstances occur. Prevents the death of the beneficiary from terminating the custodial trustee's power to discharge certain obligations.

Sec. 13.60.170. Establishes methods and forms for creating custodial trusts.

Sec. 13.60.180. Indicates what law applies to transfers or declarations creating custodial trusts.

Sec. 13.60.190. Directs how the chapter is to be applied and construed.

Theresa L. Bannister  
April 18, 1993  
Page 4

Sec. 13.60.900. Defines the terms used in the chapter.

Sec. 13.60.990. Gives the chapter a short title.

If I may be of further assistance, please advise.

TLB:lmb  
93-127.lmb

THE UNIFORM CUSTODIAL TRUST ACT

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- \* Fact Sheet - Custodial Trust Act
  
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- \* Media Coverage: Jane Bryant Quinn, "Proposed Custodial Trust is cheap, easy way to avoid probate," in Los Angeles Herald Examiner, December, 1987.
  
- \* Media Coverage: "Easy Trusts," in Changing Times, January, 1988.
  
- \* A Tradition of Excellence - A History of the Uniform Law Commissioners
  
- \* Uniform State Laws - How a Uniform Act is Created

A Few Facts About

THE UNIFORM CUSTODIAL TRUST ACT

PURPOSE: To make the benefits of trusts available to people without extensive financial assets.

ORIGIN: Completed by the Uniform Law Commissioners in 1987.

ENDORSED BY: American Bar Association

STATE  
ADOPTIONS: Arkansas  
Hawaii  
Idaho  
Minnesota  
New Mexico  
Rhode Island  
Virginia  
Wisconsin

1993  
INTRODUCTIONS: Massachusetts

For any further information regarding the Uniform Custodial Trust Act, please contact John McCabe or Katie Robinson at 312-915-0195.

(1/15/93)

WHY STATES SHOULD ADOPT THE  
UNIFORM CUSTODIAL TRUST ACT

The Uniform Custodial Trust Act (UCTA), promulgated by the National Conference of Commissioners on Uniform State Laws in 1987, offers everyone a chance to establish a kind of trust that guarantees control of property at a time when a person becomes incapacitated, and that may also be used to pass on property at death without probate. The act is designed to offer a new, very simplified custodial trust, making the benefits of trusts available to people without extensive financial assets.

The UCTA was inspired by the Uniform Transfers to Minors Act, and the highly useful concept of a custodian for property of a minor under the terms of that act. But why should minors be the only beneficiaries of a good idea?

There are many reasons why every state should consider and adopt the Uniform Custodial Trust Act.

INEXPENSIVE

A custodial trust is inexpensive to create. Fees for consultation and drafting will be minimum - and non-existent in many cases. In addition, the UCTA provides an alternative to a costly court-supervised conservator or guardian. It can be used to avoid the costs and delays of probate proceedings at death. Economies can accrue broadly with the use of custodial trusts.

SIMPLE

A custodial trust can be set up by simple language referencing the statute. No elaborate trust document is necessary. Rights and obligation are derived directly from the statute.

CONTROL

Any person who creates a custodial trust retains complete control over it until incapacity or death. The named trustee manages the property in the case of incapacity, but until then, control remains with the beneficiary - the creator of the trust. The beneficiary directs the management of the property, receives income and principal, and can cancel the trust at any time.

## COMPREHENSIVE

Any kind of property, real or personal, tangible or intangible, can be put in a custodial trust. Anybody can be made a beneficiary. Any legally competent person or entity can be appointed as trustee.

The Uniform Custodial Trust Act is simple, inexpensive, comprehensive, and complete. The most frequent users of this trust will most likely be senior citizens who want to provide for the management of assets in the event of future incapacity. It is also available for a parent to establish a custodial trust for an adult child who may be incapacitated. Those leaving the country temporarily can also place their property with another for management without relinquishing permanent control of their property.

The Uniform Custodial Trust Act should be adopted in every state. Although it meshes with the Uniform Probate Code (UPC), it is appropriate in states which have not adopted the UPC.

## UNIFORM CUSTODIAL TRUST ACT

We are perfectly free to be irresponsible with the property that we accumulate. We can dissipate it, abandon it, or ignore it. Most of us choose to be more responsible, however. We tend to accumulate property for the economic security it provides ourselves and our families. It comes as a great shock, therefore, when we find that controlling and protecting it at key moments in our lives is much harder than we imagined. What happens if we become incapacitated? Guardianships and conservatorships are expensive last resorts that mean total loss of control. What happens when we die? Wills and the probate process offer some solace, but probate becomes more onerous and expensive than helpful. Extensive estate planning with its panoply of generation-skipping devices, such as trusts, is expensive and beyond the resources of most people. The search for a better way continues.

The Uniform Law Commissioners' Uniform Custodial Trust Act, promulgated in 1987, offers some needed help. Inter vivos and testamentary, discretionary trusts are too complicated to meet certain needs. But the trust form of ownership, simplified and carefully prescribed in a statute, can meet them - thus the Uniform Custodial Trust Act (UCTA).

A trust is, simply, a legal structure for organizing the ownership and management of property for its preservation on behalf of specified individuals. A trust involves three fundamental participants: a donor who puts property in a trust; a trustee who owns and manages the trust; and beneficiaries who receive the financial benefit of the trust and for whom the property is preserved. A trust arises in a trust agreement or instrument (a document) in which the donor names the trustee and beneficiaries. The donor also establishes the trustee's powers over the property and the beneficiaries' rights to principal and income in the trust instrument. The donor then transfers property to the trustee, who owns it for the benefit of the beneficiaries. The trustee is also a fiduciary, meaning that he or she is subject to special rules and standards of care when managing the trust's assets. All trusts have these characteristics, and a custodial trust is but one of a number of kinds of trusts.

The UCTA allows any person to create a custodial trust by executing a simple statement (it may be a separate document or merely a notation on an existing title document) that the property is being placed in trust under the Act. The trustee's obligations arise upon acceptance of the property. That is all that is necessary to create the trust.

The UCTA permits a kind of springing trust too - a trust that arises upon the happening of a future event. Any person can create such a trust with respect to specific property by executing a simple statement, indicating that the trust will be established upon the happening of the event.

The UCTA also allows anybody obligated to an incapacitated person, without a conservator (a conservator is a court-appointed manager of an incapacitated person's property), to establish a custodial trust into which property satisfying the obligation is placed for the incapacitated person as beneficiary. If the value of the property so placed exceeds \$20,000, however, a transfer into such a trust must be approved by a court.

What distinguishes a custodial trust from other kinds of trusts? To begin with, the UCTA governs all aspects of the trust relationship, including a trustee's powers and obligations. Therefore, elaborate trust documents are not needed. Second, a custodial trust exists at the will of its beneficiaries. Any beneficiary can terminate his or her share of the trust. Third, trust beneficiaries can direct the trustee's payment of income to themselves. Fourth, the beneficiaries can direct the trustee's investment and management of the trust property. Fifth, at a beneficiary's incapacity, the trust continues as a discretionary trust, with the trustee as a full fiduciary. Therefore, no conservator needs to be appointed for the purposes of managing the trust property. Sixth, a beneficiary may direct the trustee by a simple writing to distribute the trust property in any fashion the beneficiary desires at the beneficiary's death. The writing is not a will unless the beneficiary makes it one, and the distribution is a non-probate transfer of the property.

These powers of beneficiaries distinguish a custodial trust from all other trusts. Trustees under the common law are not subject to the direction of beneficiaries. The powers of the beneficiaries in the UCTA suggest why such a trust is called "custodial" and suggest the values of a custodial trust, as well as its limitations.

A trust is custodial because the trustee's powers are limited by the beneficiaries - the trustee is a custodian for the beneficiaries' interests. The trustee is a custodian until such time as a beneficiary becomes incapacitated. The custodial trust is an ideal form of ownership for anyone who wants to make sure property is properly managed before incapacity and protected afterwards. A person with property merely conveys the property to a trustee, naming himself or herself as beneficiary. While there are no questions of capacity, the beneficiary retains significant powers over the property. At incapacity, his or her appointed trustee continues to manage the property and use it for the beneficiary. If incapacity is temporary, the beneficiary reasserts his or her powers when capacity returns. If at any time a beneficiary with capacity desires to terminate the custodial trust, he or she simply terminates it.

Who will use the trust? Older people who want to make sure they control who manages their property when they are incapacitated, are the most likely users of the UCTA. People who go on long trips and who want to assure proper management while they are gone or who want protection if they become incapacitated while traveling can use a custodial trust rather than a power of attorney if it suits their needs. These are examples of people and situations for which the UCTA was created.

At the same time, people who need discretionary trusts for estate planning and tax purposes will continue to turn to traditional trust law. The control provided to beneficiaries in the UCTA and the ability to terminate a custodial trust do not make it suitable for these purposes.

The UCTA fills very particular needs of ordinary people. It should be considered strongly by any state or jurisdiction conscious of the difficulties an ordinary person has in preparing for personal incapacity and death.

## A 100 – YEAR TRADITION OF EXCELLENCE

### *The National Conference Of Commissioners On Uniform State Laws*

In the latter part of the 19th century, about the time a prominent law professor was characterizing state legal systems as "a whimsical diversity of laws," a movement began taking hold for the development of uniform laws among the states.

The Alabama Bar Association took the first formal action to encourage the development of "uniform" laws in 1881. But it was not until August 1889, during the 12th annual meeting of the American Bar Association, that the legal community made a formal resolution to work for "uniformity in the laws" of the then 44 states.

New York was the first state to act. In 1890 it authorized the governor to appoint three commissioners to "examine the subjects of marriage and divorce, insolvency, the form of notarial certificates and other subjects; to ascertain the best means to effect an assimilation and uniformity of the laws of the states; and especially to consider whether it would be wise and practicable for the state of New York to invite other states of the Union to send representatives to a convention to draft uniform laws to be submitted for the approval and adoption of the several states...." A few months later the ABA endorsed the New York action and urged the states, the District of Columbia and territorial legislatures to follow New York's lead.

### *In the Beginning -- Seven States*

Six other states heeded the call and joined New York at the first meeting of the "Conference of State Boards of Commissioners on Promoting Uniformity of Law in the U.S." in Saratoga Springs, New York on August 24, 1892. They were Delaware, Georgia, Massachusetts, Michigan, New Jersey and Pennsylvania.

The new Commissioners wasted no time. They immediately completed and urged states and territories to adopt three acts – Relating to Acknowledgments on Written Instruments, Validating Wills Lawfully Executed Without the State, and Recognizing as Valid Wills Probated in Another State.

They also recommended that states enact laws governing payment of notes, validating contracts and divorce and marriage. With great variance in the marriage consent age, they proposed raising the marrying age to 18 for males and 16 for females.

They also adopted a table of weights and measures, noting "it will probably be a surprise to most people to learn that legal weights of a bushel ... with the exception of wheat alone, vary in all the states."

After this burst of activity, the Conference produced no other proposals until 1896, when the Negotiable Instruments Law was completed. The NIL was the first act adopted by every state and the District of Columbia; it later became the basis for Article 3 of the Uniform Commercial Code.

### *Then There were 33*

By 1900, 31 states and two territories had appointed commissioners on uniform laws. During the first decade of the new century the Uniform Law Commissioners (ULC) concentrated on legislation to facilitate interstate commerce, drafting laws concerning sales, warehousing and transportation. A majority of states adopted all of these pioneering acts before they, as well as the Negotiable Instruments Law, were superseded by the Uniform Commercial Code some 40 years later.

By 1910, only Nevada and the Territory of Alaska had not appointed commissioners. They came aboard by 1912.

In its third decade, the Conference considered and adopted legislative proposals on issues ranging from partnerships to child labor. And in 1915, the organization officially became known as the National Conference of Commissioners on Uniform State Laws.

The ULC responded to problems of the 1920s with proposals in such areas as aviation and public utilities. In the 1930s, Commissioners wrestled with machine gun laws as well as torts and trusts.

### *Fifty-Year Assessment*

As the Conference approached its golden anniversary year, its leadership began a reassessment to determine how the ULC could better serve the federal system. Though the past had been productive, Commissioners decided they could play a more useful role in the future if they attacked major problems with comprehensive legal solutions rather than trying to address them piecemeal.

That decision led to the launching of the mammoth project that produced the Uniform Commercial Code (UCC). The ULC officially took on the task of drafting a comprehensive code to provide guidelines for all commercial transactions in 1940. Work on some of its components had already begun. In 1947 the ULC and the American Law Institute joined in a partnership that put all the components together in a Uniform Commercial Code that was offered to the states for their consideration in 1951. More than a decade of difficult battles for adoption in every state followed. But by 1967, all the states had enacted the Code except for Louisiana, which remains the lone holdout on several code provisions.

The breadth and depth of the UCC are difficult to grasp. It guarantees that commercial transactions in California are subject to the same law as transactions in Maine. A child purchasing penny candy in a neighborhood shop and a manufacturer buying robot welders for his assembly line both complete their transactions within the framework of the UCC. In UCC states, the code encompasses every sale of goods from crude oil to autos, every bank check written, and all commercial paper, stock and bond transactions.

The UCC is not set in stone. In 1987 the first new article since 1951 was approved, establishing law for the billion dollar leasing industry. As the Conference embarks on its second century, it is dealing with major changes in state payment system law, including electronic funds transfers, to bring the Code into the 21st century of finance.

The UCC's success as a comprehensive solution inspired Commissioners to produce and work for enactment of a wide variety of legislative solutions to other basic state problems. These have included: the Uniform Probate Code, Uniform Consumer Credit Code, Uniform Marriage and Divorce Act, Uniform Alcoholism and Intoxication Treatment Act and a package of proposals designed to do for land transactions what the UCC did for transactions in the commercial realm — provide modern law to deal with modern problems.

While forging these major broad projects — primarily from the 1960s to the early 1980s — the ULC also completed legislation needed by the states to deal with more specific problems. Among these proposals were the Child Custody Jurisdiction Act, Anatomical Gift Act, a major revision of the Limited Partnership Act and the Determination of Death Act.

Agendas are made by a Scope and Program Committee. Most recently, commercial and family law have been focal areas for drafting efforts. Among the "products" of the 1980s are two new Articles to the Uniform Commercial Code, a Trade Secrets Act, the Transfers to Minors Act, Premarital Agreement and Marital Property Acts, and acts addressing such topical issues as surrogate mother contracts and rights of the terminally ill.

## *Uniform and Model Acts*

In addition to "Uniform Acts," which every state is urged to adopt, the ULC also drafts "Model Acts" to guide legislatures dealing with issues that need not be treated uniformly. Some models — such as the Model State Administrative Procedure Act — have been adapted for use by most states.

It is important to state treasuries that most ULC proposals fall into the category of "private law" — the body of law based on English common law that governs the basic legal relationships between people. No government body intervenes in "private law" relationships. People conduct their affairs without interference. When a breach of a legally enforceable private obligation occurs, the courts are available to sort out the facts and grant remedies ranging from monetary payments to injunctive relief. For example, the Uniform Residential Landlord and Tenant Act governs the contractual relationship between landlord and tenant. This relationship proceeds unfettered unless a party breaches an obligation — such as a landlord's obligation to maintain fit and safe premises. If such a breach occurs, then the wronged party can seek damages and reparations for losses sustained.

This contrasts with "public law," which usually involves using an executive agency or bureau as a regulatory body. In that case, legislatures enact laws vesting authority in an administrative agency which then carries out the duties of investigator, rulemaker, regulator and enforcer. Because new agencies must be created to enforce public law, it usually costs more money.

## *Why the Conference Works*

Commissioners dedicated to the work of the Conference make it work. They include about 300 law professors, judges and lawyers in the public and private sector. It is their contribution of time and expertise — Commissioners receive no salaries or fees for their work with the Conference — that has earned NCCUSL the media label of "prestigious." In this century, President Woodrow Wilson and U.S. Supreme Court Justices Louis D. Brandeis and William F. Rehnquist served as Commissioners. So did such law school legends as Roscoe Pound of Harvard.

Commissioners are appointed by the 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. The number of Commissioners (most states have at least three) and the method of appointment vary from state to state. While the governor is responsible for appointments in most states, Commissioners are usually considered non-partisan. As a result, many are appointed by the governor of one party and reappointed by the governor of another. Some Commissioners serve the ULC for decades.

## *A Two-Part Job*

Being a Commissioner involves two areas of service. They not only draft proposals but then work within their state for enactment of uniform laws designed to solve problems common to all states.

The ULC's reputation was built on the high quality of its drafts. That results from a procedure structured to bring a unique blend of legal minds to bear on a particular problem. It begins with the choice of a drafting committee whose members are selected to insure that as much expertise and as many viewpoints as possible will be represented at the drafting table.

For example, there were a number of real estate law experts appointed to the committee responsible for preparing preliminary drafts of the land transactions package, which includes the Uniform Land Transactions Act (ULTA), Uniform Simplification of Land Transfers Act (USOLTA), Uniform Condominium Act (UCA), Uniform Planned Community Act (UPCA),

Model Real Estate Cooperative Act (MRECA), and finally the Uniform Common Interest Ownership Act (UCIOA). These drafters included Commissioners who were law school professors as well as practicing lawyers specializing in real estate law. Outside lawyer and non-lawyer experts were invited to provide specialized knowledge to the drafting committee. These advisers represented associations of lenders, builders, sellers, lawyers and consumers. But all decisions were made by Commissioners who represent only the people of their state.

### *The Drafting Ordeal*

Preliminary drafts of the proposals were prepared and circulated to advisers and others interested in the committee's deliberations. That included every Commissioner. Eventually, the committee was ready to present its work at an annual meeting of the Conference for "initial consideration" by every Commissioner.

During the annual meeting Commissioners assemble for a week, spending every day and some nights considering each "tentative draft" prepared by the drafting committees. The drafts are read "line by line" and then discussed, debated and changed. With hundreds of trained eyes probing every concept and word, it's a rare draft that leaves an annual meeting in the same form it comes in. Because the ULC is a confederation of state commissions on uniform laws, close issues are decided by polling state delegations. Regardless of the number of representatives from each state, each state has only one vote.

Shortly after the annual meeting, committees with uncompleted drafts begin incorporating changes made during the meeting and dealing with new problems raised by Commissioners as well as others.

Proposals are subjected to this rigorous procedure for at least two annual meetings before they become eligible for designation as ULC products. The final decision on whether a proposal is ready for promulgation to the states is made near the close of an annual meeting — again on a one-state, one-vote basis. But the procedure can take much longer. Because of the complexities of ULTA, USOLTA, UCA, UPCA, MRECA and UCIOA, more than a decade elapsed before these proposals were adopted by the ULC.

### *The Conference Proposes — The State Disposes*

With the drafting done, a Commissioner's job has only begun. Each is then obligated to return home and work for adoption of the completed proposal in his or her state legislature. Normal resistance to anything new makes this the most difficult part of a Commissioner's responsibility. Remember, it took 14 years before the Uniform Commercial Code was adopted by 49 states.

But the result can be workable, modern state law that helps keep the federal system alive. The work of the ULC simplifies the legal life of businesses and individuals by providing rules and procedures that are consistent from state to state. It also insures that problems can be solved close to home in state courts and agencies rather than lost in overworked federal courts and U.S. departments and agencies.

# STATE LAWS

UNIFORM

## What are they?

Uniform State Laws are the products of a unique organization that has been working for the improvement of state laws since 1892. The National Conference of Commissioners on Uniform State Laws, representing both state government and the legal profession, is a genuine confederation of state interests.

Today there are more than 300 practicing lawyers, judges, law professors and government officials serving as Uniform Law Commissioners (ULC). These state-appointed commissioners, selected for their wide range of legal expertise and experience, provide an immeasurable resource for drafting "uniform" and "model" state laws.

ULC Uniform Acts, Codes and Court Rules — needed where differences in state laws create specific interstate and national problems — have ranged from eliminating jurisdictional child custody disputes to addressing the legalities of electronic transfer of stock ownership.

When uniformity is neither practical nor necessary, ULC Model Acts have provided states with a concisely-structured legislative framework adaptable to their particular needs and problems — in areas such as sentencing and correction reform, and state administrative procedures.

Differences in state laws can deter the free flow of goods, credit and services; restrain full economic growth; and invite federal intervention to compel uniformity. Constitutionally, states have wide latitude for cooperating to solve these problems. ULC is their own cooperative institution for doing so, as well as for contributing to the continuing process of law reform and progress.

## Back in 1892

The "Gay Nineties" rolled in on the railroad tracks that were tying the nation together. And Americans were beginning to swap horses for bicycles and motor cars. This new mobility was the prime factor from which ULC sprang.

The Alabama State Bar Association recognized, as early as 1881, the legal tangles created by wide variations in state laws. But it was not until August, 1889, that the American Bar Association decided at its 12th annual meeting to work for "uniformity of the laws" in the 44 states.

Within a year, the New York legislature authorized the governor to appoint three commissioners to explore the best way to effect uniformity of law to ease problems developing between increasingly interdependent states. The ABA endorsed New York's action. The result was the first meeting of the "Conference of State Boards of Commissioners on Promoting Uniformity of Law in the U.S."

Seven states sent commissioners to that 1892 meeting. By 1900, 32 states and two territories had law commissioners. By 1905, only Nevada and Alaska were holdouts, and they joined the parade in 1911.



National Conference  
of Commissioners  
on Uniform State Laws

576 North St. Clair Street  
Chicago, Illinois 60611  
312 915-0195



UNIFORM  
STATE LAWS

## Cost and Value

States provide nearly all of the funds for ULC, by means of a system of assessments based on population. Most of the money is used to support the work of the drafting committees, and to explain Uniform and Model Acts to legislators, other government officials and specialized and general audiences.

ULC gets maximum results from minimum budgets because its major asset—drafting expertise—is donated. The only compensation received by Uniform Law Commissioners is that of knowing they have provided states with solutions to their legal problems. They receive no salaries or fees for their work as commissioners.

This means that lawyers devote hundreds and even thousands of hours, amounting in some cases to millions of dollars worth of time to the development of ULC proposals. No state could afford the bills for the legal expertise that goes into the drafting of each ULC Uniform or Model Act.

In appraising ULC's value to the states, it is also important to look at its impact on their treasuries. Most ULC proposals rely on "private law," or law governing individual relationships without intervention or regulation by any state agency—except where redress is sought in state courts for breach of a legal obligation. By contrast, "public law" provides for regulation, generally by an executive agency. ULC helps states avoid the costs of creating new regulatory agencies.

## The Hard Job

When drafting is completed on an act, a Uniform Law Commissioner's work has only begun. Commissioners then work for adoption of the proposal by the states. Normal resistance to anything "new" makes this the hardest part of a commissioner's job. But the result can be workable modern state law that helps keep the federal system alive.

# GENESIS of a Law

Anyone can ask ULC to draft a law. But not all requests are pressing enough to claim its time and resources. Determining the need for and feasibility of a proposed new law, then, is an important first step. The decision to draft is preceded by a thorough screening process:

- Initial screening of requests for new drafting projects is done by the Scope and Program Committee. This group evaluates the need, urgency, current state of law in the affected area, and feasibility of enactment before making a recommendation to the Executive Committee to further review the request.

- Executive Committee members look at a request in terms of ULC's financial and member resources as well as the availability of additional expertise and funding to insure success of the draft. If these appear favorable to the project, they appoint a special Drafting Committee.

- Foundation and government grants support some of ULC's drafting efforts, making it possible to expand advisory committee participation, and to retain expert reporter-draftsmen—usually lawyers experienced in the field—for maximum input and assistance to the Drafting Committee.

Drafting proceeds at meetings of this special committee held throughout the year. After basic premises and philosophy are decided, a "first tentative draft" is developed for circulation to experts both within and outside the legal profession,

to draw criticism and suggestions that will shape succeeding drafts.

Uniform and Model Acts are a minimum of two years in preparation, since they must be considered at no less than two annual meetings by all commissioners sitting as a Committee of the Whole.

Before any annual meeting presentation, a Review Committee for each act determines: 1) whether the draft conforms to the assignment; 2) what policy decisions were made by drafters; and 3) whether the draft is ready for scrutiny "line by line" by the entire Conference.

Once ULC as a whole approves an act, its final test is by a vote by states—one vote per state. A majority of states present, and no less than 20 states, must vote approval of an act before it can be officially adopted as a Uniform or a Model Act, Code or Court Rule.

This unique and lengthy process of screening, drafting, revising and polishing is responsible for the fine edge of excellence that marks ULC "products." After receiving the ULC stamp of approval, a Uniform or Model Act is officially promulgated for consideration by the states.

Legislatures are urged to adopt *Uniform Acts* exactly as written, to "promote uniformity in law among the several states."

*Model Acts*, on the other hand, are designed to serve as guideline legislation, which states can borrow from or adapt to suit their individual needs and conditions.

## Commissioners

Each of the 50 states, the District of Columbia and Puerto Rico select lawyers to serve on their uniform state law commissions. Since ULC is a confederation of state commissions, each state sets its own rules for selection. Most have at least three, and the governor usually selects them.

Considered nonpartisan, many commissioners receive their first appointment from a governor of one party, then continue under another party, thus serving for decades.

Famous commissioners include President Woodrow Wilson; Supreme Court Justices Louis D. Brandeis and William J. Rehnquist, and the Harvard Law legend, Roscoe Pound.

## Updating Acts

Exemplifying a Uniform Act, the Uniform Commercial Code (UCC) structures nearly all commercial transactions in every state in the U.S. Another ULC proposal having wide influence is the Model State Administrative Procedure Act (MSAPA). Most states have adopted it, and look to its provisions to guide their state agencies.

Both UCC and MSAPA are successes that states have benefited from. But even the best of laws is outdated by technological and social change. Thus, one of the duties of the ULC leadership is to constantly review past successes, checking their relevance for today.

Several methods insure that needed updating goes on. For the Commercial Code, the problem is solved by a "Permanent Editorial Board" charged with keeping abreast of developments that require changes in the law.

The Model State Administrative Procedure Act, however, required appointment of a new committee to revise quarter-century old rules developed before state governments "bloomed" in the 60s and 70s.

Whether a ULC proposal is brand new, revision, or an amendment, state governors can be sure that it's in step with the

SPONSOR STATEMENT  
UNIFORM CUSTODIAL TRUST ACT

If enacted, HB 280 would adopt the Uniform Custodial Trust Act into Alaska Statute.

The Uniform Custodial Trust Act (UCTA) makes the benefits of trusts available to people without extensive financial assets. It offers everyone a chance to establish a kind of trust that guarantees control of property at a time when a person becomes incapacitated, and that may also be used to pass on property at death without probate. The act is designed to offer a new, very simplified custodial trust.

The UCTA was inspired by the Uniform Transfers to Minors Act, and the highly useful concept of a custodian for property of a minor under the terms of that act.

The UCTA is also endorsed by the American Bar Association

The state of Alaska should consider adoption of the UCTA. Custodial Trusts are inexpensive to create, they can be set up by a simple language reference in statute, the person who creates the trust retains control over it until incapacity or death and the trusts are comprehensive - that is they can contain real or personal property, tangible or intangible.

The most frequent users of this trust will most likely be senior citizens who want to provide for the management of assets in the event of future incapacity. Persons leaving the country temporarily can also place their property with another for management without relinquishing permanent control of their property.

HB 280 is a non-controversial bill and I would appreciate consideration and affirmative action by the committee.

# Alaska State Legislature

Representative Carl E. Moses



CHAIRMAN  
HOUSE RULES COMMITTEE

CHAIRMAN  
HOUSE SPECIAL FISHERIES COMMITTEE

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## MEMORANDUM

DATE: April 20, 1993

TO: Representative Brian Porter  
Chairman, House Judiciary Committee

FROM: Representative Carl E. Moses *CEM*  
Chairman, House Rules Committee

RE: Request for Hearing

I would like to request a committee hearing for HB280 at your earliest convenience. HB 280 would adopt the Uniform Custodial Trust Act.

The Uniform Custodial Trust Act (UCTA) offers everyone a chance to establish a kind of trust that guarantees control of property at a time when a person becomes incapacitated, and that may also be used to pass on property at death without probate. The act is designed to offer a new, very simplified custodial trust, making the benefits of trusts available to people without extensive financial assets.

The state of Alaska should consider adoption of the UCTA. Custodial Trusts are inexpensive to create, they can be set up by a simple language reference in statute, the person who creates the trust retains control over it until incapacity or death and the trusts are comprehensive - that is they can contain real or personal property, tangible or intangible.

This legislation was introduced during the last session of the 17th legislature and CSHB 509(L&C) passed the house. Due to a lack of time, the bill was held up in the Senate.

HB280 is a non-controversial bill and I would appreciate prompt scheduling in the Judiciary committee before close of the first session. If you have questions, please contact Karen Brand of my staff at 3765.

# CHANGING TIMES

## EASY TRUSTS

Now there's an inexpensive and relatively painless way to put your property into a living trust, a legal device that lets you control your assets and appoint a trustee who can manage when you can't (see "Trusts You Can Change at Will," Nov.). The only catch is that your state must adopt the new Uniform Custodial Trust Act.

The UCTA was drafted by the Uniform Law Commissioners, a group of state-appointed lawyers, judges and law professors that drafts laws to solve problems common to all states. It lets you create a trust as easily as setting up a custodial account for a minor under the Uniform Transfers to Minors Act, the inspiration for the new act. You don't even need a written trust agreement. All you have to do is change the name on your bank accounts, for instance, to that of your chosen trustee.

A UCTA trust can cover any kind of property, real or personal, tangible or intangible. You cannot be your own trustee, but you can name a family member, friend or institution to become the owner of your stocks, bank accounts or other assets you designate. As the beneficiary, you have the right to direct the management of the assets, to receive income and principal, and to cancel the

trust whenever you want to. If you become incapable of handling your own affairs, the trustee takes over and manages the trust according to the very broad powers built into the statute. You can also use the trust as a will because you can direct what happens to the assets after your death.

According to Lawrence Bugge, a Madison, Wis., lawyer who headed the drafting committee, both the UCTA trust and a durable power of attorney (which gives the person you name the power to act for you if you are incapacitated) get around the need for a costly, distressing court proceeding to appoint a court-supervised conservator or guardian. But the trust, he says, is better than a durable power because the safeguards against mishandling of your assets, such as periodic accounting and penalties for misappropriation of funds, and the details of the fiduciary relationship between you and the trustee are clearer and more elaborate than those surrounding durable powers.

Older people who want to maintain control over their assets will probably benefit most, but someone who is going abroad temporarily or is a parent of an incapacitated child can set one up, too.

It is too early to tell how much interest there will be in the act; to date, no states have adopted the UCTA. If you are interested in encouraging its adoption in your state, write to your state legislator.

DEC 27 1987



## JANE BRYANT QUINN

### Proposed 'custodial trust' is cheap, easy way to avoid probate

**E**verybody hates probate. A few years ago, Americans rushed to buy books of legal forms by author Norman Dacey, for their do-it-yourself trusts to avoid probate (which is the process of approving the legality of your will at death).

But there were a couple of problems with these trusts.

First, they didn't provide any other important protections — like naming a trustee to manage your money if you become senile.

Second, Dacey trusts simply weren't accepted by many stock-transfer agents, insurance companies and title companies. Sometimes the forms were filled in wrong. Sometimes title in the property hadn't been properly passed to the trustee. Sometimes, even when the paperwork was done right, it looked fishy. Reasonably or not, many agents simply decided it was safer not to transfer property ownership based on a hand-drawn trust.

So Dacey trusts faded. But the need for a similar — and better-recognized — document persisted. And finally, one is on the horizon.

A proposed new "custodial trust" has been created by the National Conference of Commissioners on Uniform State Laws. It still has to be approved by the American Bar Association and then presented to each state for adoption. But if accepted, it will be a cheap and easy way of avoiding probate — and more.

Among the trust's virtues:

- You can set it up yourself, by signing a standard document established by law. There don't have to be any legal fees, although you may want a lawyer to answer questions about the trust.

- It names a trustee to manage your money in case you become mentally incompetent. But until that moment arrives (if it ever does), "you have total control over your assets," said Madison, Wis., attorney Lawrence Bugge, chairman of the committee that drew up the trust. A wife can be her husband's trustee and vice versa. You can cancel the trust any time you want.

- By naming a beneficiary for the trust's assets, you can keep them out of probate.

- You can arrange to have the money managed for the joint lifetimes of yourself and your spouse. The surviving spouse, too, can effectively manage the money or even take it out of trust (as long as he or she is mentally competent).

- The trust sets up tests to determine mental incompetence. Your family won't face the expense and embarrassment of having you declared bonkers in court. (However, if for some reason you *think* that your trust has mistaken your mental condition, you yourself can force the issue into court.)

- You can use a custodial trust to provide money management for an adult child who may be retarded or otherwise incapacitated.

- It's a good device for short-term money management. Says Eugene Scoles of the University of Illinois: "If I'm out of the country for eight months and want some of my property administered for my kids in college, I could use the custodial trust." A durable power of attorney could achieve the same thing. But the power of attorney stops if you die, whereas the custodial trust can continue.

Also, some insurance companies resist the durable power-of-attorney, if it's used to change beneficiaries or cash in a policy, says Richard Wellman of the University of Georgia's law school.

A custodial trust doesn't handle complicated jobs. It can't be used to pass money in trust from one generation to another, or restrict access to assets. It's not a discretionary trust that might work, in some cases, to provide extra money to a person living on Medicaid in a nursing home or mental hospital. For that, you need a lawyer.

I see only one problem with the proposed new trust. Despite all the labor that has gone into it, it truly cannot be made so simple that the average person can understand it. You face some of the same risks you did with a Dacey trust: mistakes in filling in the documents, not getting your property properly transferred to the trustee, and neglecting the trust's tax forms.

I'll be pleased to have a simple trust on the market. ■

# UNIFORM CUSTODIAL TRUST ACT

*Drafted by the*

**NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS**

*and by it*

**APPROVED AND RECOMMENDED FOR ENACTMENT  
IN ALL THE STATES**

*at its*

**ANNUAL CONFERENCE  
MEETING IN ITS NINETY-SIXTH YEAR  
IN NEWPORT BEACH, CALIFORNIA  
JULY 31 - AUGUST 7, 1987**



**WITH PREFATORY NOTE AND COMMENTS**

**Approved by the American Bar Association  
Philadelphia, Pennsylvania, February 9, 1988**

## UNIFORM CUSTODIAL TRUST ACT

The Committee that acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Custodial Trust Act was as follows:

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## UNIFORM CUSTODIAL TRUST ACT

### PREFATORY NOTE

This Uniform Act provides for the creation of a statutory custodial trust for adults to be governed by the provisions of the Act whenever property is delivered to another "as custodial trustee under the (Enacting state) Uniform Custodial Trust Act." The provisions of this Act are based on trust analogies to concepts developed and used in establishing custodianships for minors under the Uniform Transfers to Minors Act (UTMA). The Custodial Trust Act is designed to provide a statutory standby inter vivos trust for individuals who typically are not very affluent or sophisticated, and possibly represented by attorneys engaged in general rather than specialized estate practice. The most frequent use of this trust would be in response to the commonly occurring need of elderly individuals to provide for the future management of assets in the event of incapacity. The statute will also be available for accomplishing distribution of funds by judgment debtors and others to incapacitated persons for whom a conservator has not been appointed. Since this Act allows any person, competent to transfer property, to create custodial trusts for the benefit of themselves or others, with the beneficial interest in custodial trust property in the beneficiary and not in the custodial trustee, its potential for use is extensive. Although the most frequent use probably will be by elderly persons, it is also available for a parent to establish a custodial trust for an adult child who may be incapacitated; for adult persons in the military, or those leaving the country temporarily, to place their property with another for management without relinquishing beneficial ownership of their property; or for young people who have received property under the Uniform Transfers to Minors Act to continue a custodial trust as adults in order to obtain the benefit and convenience of management services performed by the custodial trustee.

This Act follows the approach taken by the Uniform Transfers to Minors Act and allows any kind of property, real or personal, tangible or intangible, to be made the subject of a transfer to a custodial trustee for the benefit of a beneficiary. However, the most typical transaction envisioned would involve a person who would transfer intangible property, such as securities or bank accounts, to a custodial trustee but with retention by the transferor of direction over the property. Later, this direction could be relinquished, or it could be lost upon incapacity. The objective of the statute is to provide a simple trust that is uncomplicated in its creation, administration, and termination. The potential for tax problems is minimized by permitting the beneficiary in most instances to retain control while the beneficiary has capacity to manage the assets effectively. The statute contains an asset specific transfer provision that it is believed will be simple to use and will gain the acceptance of the securities and financial industry. A simple transfer document, examples of which are set forth in the Act, and a receipt from the custodian, also in the Act, would provide for identification of beneficiaries or distributees upon death of the beneficiary. Protection is extended to third parties dealing with the custodian. Although the Act is patterned on the Uniform Transfers to Minors Act and meshes into the Uniform Probate Code, it is appropriate for enactment as well in states which have not adopted either UTMA or the UPC.

An adult beneficiary, who is not incapacitated, may: (1) terminate the custodial trust on demand (Section 2(e)); (2) receive so much of the income or custodial property as he or she may request from time to time (Section 9(a)); and (3) give the custodial trustee binding instructions for investment or management (Section 7(b)). In the absence of direction by the beneficiary, who is not incapacitated, the custodial trustee manages the property subject to the standard of care that would be observed by a prudent person dealing with the property of another and is not limited by other statutory restrictions on investments by fiduciaries (Section 7).

A principal feature of the Custodial Trust under this Act is designed to protect the beneficiary and his or her dependents against the perils of the beneficiary's possible future incapacity without the necessity of a conservatorship. Under Section 10, the incapacity of the beneficiary does not terminate (1) the custodial trust, (2) the designation of a successor custodial trustee, (3) any power or authority of the custodial trustee, or (4) the immunities of third persons relying on actions of the custodial trustee. The custodial trustee continues to manage the property as a discretionary trust under the prudent person standard for the benefit of the incapacitated beneficiary.

Means of monitoring and enforcing the custodial trust include provisions requiring the custodial trustee to keep the beneficiary informed, requiring accounting by the custodial trustee (Section 15), providing for removal of the custodial trustee (Section 13), and the distribution of the assets on termination of the custodial trust (Section 17). The custodial trustee is protected in Section 16 by the statutes of limitation on proceedings against the custodial trustee.

Transactions with the custodial trustee should be executed readily and quickly by third parties because their rights and protections are determined by the Act and a third party acting in good faith has no need to determine the custodial trustee's authority to bind the beneficiary with respect to property and investment matters (Section 11). The Act generally limits the claims of third parties to recourse against the custodial property, with the beneficiary insulated against personal liability unless he or she is personally at fault and the custodial trustee is similarly insulated unless the custodial trustee is personally at fault or failed to disclose the custodial capacity when entering into a contract (Section 12).

As a consequence of the mobility of our population, particularly the mature persons who are most likely to utilize this Act, uniformity of the laws governing custodial trusts is highly desirable, and the Act is designed to avoid conflict of laws problems. A custodial trust created under this Act remains subject to this Act despite a subsequent change in the residence of the transferor, the beneficiary, or the custodial trustee or the removal of the custodial trust property from the state of original location (Section 19).

## UNIFORM CUSTODIAL TRUST ACT

Section	Section
1. Definitions.	13. Declination, Resignation, Incapacity, Death, or Removal of Custodial Trustee; Designation of Successor Custodial Trustee.
2. Custodial Trust; General.	14. Expenses, Compensation, and Bond of Custodial Trustee.
3. Custodial Trustee for Future Payment or Transfer.	15. Reporting and Accounting by Custodial Trustee; Determination of Liability of Custodial Trustee.
4. Form and Effect of Receipt and Acceptance by Custodial Trustee; Jurisdiction.	16. Limitations of Action Against Custodial Trustee.
5. Transfer to Custodial Trustee by Fiduciary or Obligor; Facility of Payment.	17. Distribution on Termination.
6. Multiple Beneficiaries, Separate Custodial Trusts, Survivorship.	18. Methods and Forms for Creating Custodial Trusts.
7. General Duties of Custodial Trustee.	19. Applicable Law.
8. General Powers of Custodial Trustee.	20. Uniformity of Application and Construction.
9. Use of Custodial Trust Property.	21. Short Title.
10. Determination of Incapacity, Effect.	22. Severability.
11. Exemption of Third Person From Liability.	23. Effective Date.
12. Liability to Third Person.	

## CUSTODIAL TRUST ACT

### UNIFORM CUSTODIAL TRUST ACT

#### Section 1. Definitions.

As used in this [Act]:

- (1) "Adult" means an individual who is at least 18 years of age.
- (2) "Beneficiary" means an individual for whom property has been transferred to or held under a declaration of trust by a custodial trustee for the individual's use and benefit under this [Act].
- (3) "Conservator" means a person appointed or qualified by a court to manage the estate of an individual or a person legally authorized to perform substantially the same functions.
- (4) "Court" means the [\_\_\_\_\_] court of this State.
- (5) "Custodial trust property" means an interest in property transferred to or held under a declaration of trust by a custodial trustee under this [Act] and the income from and proceeds of that interest.
- (6) "Custodial trustee" means a person designated as trustee of a custodial trust under this [Act] or a substitute or successor to the person designated.
- (7) "Guardian" means a person appointed or qualified by a court as a guardian of an individual, including a limited guardian, but not a person who is only a guardian ad litem.
- (8) "Incapacitated" means lacking the ability to manage property and business affairs effectively by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, disappearance, minority, or other disabling cause.
- (9) "Legal representative" means a personal representative or conservator.
- (10) "Member of the beneficiary's family" means a beneficiary's spouse, descendant, stepchild, parent, stepparent, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.
- (11) "Person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.
- (12) "Personal representative" means an executor, administrator, or special administrator of a decedent's estate, a person legally authorized to perform substantially the same functions, or a successor to any of them.
- (13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.
- (14) "Transferor" means a person who creates a custodial trust by transfer or declaration.
- (15) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

#### COMMENT

(1) "Adult" is a person 18 years of age for the purpose of custodial trusts. The result of this is that a person 18 years of age will be eligible to be a custodial trustee under this Act, although he or she may not be eligible under UTMA since minor custodianships under UTMA may run to age 21 and the minor could in some cases be older than the custodian. As the Comments under Section 1 of UTMA explain, the age of 21 was retained under that Act because the Internal Revenue Code continues to permit a "minority trust" under Section 2063(c), to continue in effect until age 21 and because it was believed that most transferors creating trusts or custodianships for minors would prefer to retain the property under management for the benefit of the

young person as long as possible. The difference has little or no practical consequence and serves the purpose of each Act.

(3) "Conservator" is defined broadly to permit identification of a person functioning as a conservator.

(4) "Court" means \_\_\_\_\_ court. Here the likelihood is that most states would utilize the same court, e.g., the probate court, that deals with conservators and estates.

(5 and 6) The terms, "custodial trust property" and "custodial trustee," are used throughout to identify clearly the statutory trust property and trustee under this Act. The statutory trust concept is used throughout the Act.

(7) A definition of guardian has been included and is based on the Uniform Probate Code Section 5-103(6).

(8) A definition of incapacitated has been included, for the purpose of this Act, because incapacity of the beneficiary converts the trust from a revocable trust to a discretionary trust. The definition is taken from the Uniform Probate Code Section 5-401(e) relating to the person who is unable to manage property. Compare Uniform Probate Code Section 5-103(7). Note that Section 10(a)(ii) permits a transferor to direct that the trust shall be admini-

tered as one for an incapacitated person. Section 10 deals specifically with the determination of incapacity.

(10) The beneficiary's family is broadly defined to identify persons who may have standing to seek judicial intervention or accounting (Sections 13 and 16).

(11) The definition of a person is taken from the Uniform Probate Code Section 1-201(29).

(12) Personal representative is broadly defined and the definition reflects that in the Uniform Probate Code Section 1-201(30).

### Section 2. Custodial Trust; General.

(a) A person may create a custodial trust of property by a written transfer of the property to another person, evidenced by registration or by other instrument of transfer, executed in any lawful manner, naming as beneficiary, an individual who may be the transferor, in which the transferee is designated, in substance, as custodial trustee under the [Enacting state] Uniform Custodial Trust Act.

(b) A person may create a custodial trust of property by a written declaration, evidenced by registration of the property or by other instrument of declaration executed in any lawful manner, describing the property and naming as beneficiary an individual other than the declarant, in which the declarant as titleholder is designated, in substance, as custodial trustee under the [Enacting state] Uniform Custodial Trust Act. A registration or other declaration of trust for the sole benefit of the declarant is not a custodial trust under this [Act].

(c) Title to custodial trust property is in the custodial trustee and the beneficial interest is in the beneficiary.

(d) Except as provided in subsection (e), a transferor may not terminate a custodial trust.

(e) The beneficiary, if not incapacitated, or the conservator of an incapacitated beneficiary, may terminate a custodial trust by delivering to the custodial trustee a writing signed by the beneficiary or conservator declaring the termination. If not previously terminated, the custodial trust terminates on the death of the beneficiary.

(f) Any person may augment existing custodial trust property by the addition of other property pursuant to this [Act].

(g) The transferor may designate, or authorize the designation of, a successor custodial trustee in the trust instrument.

(h) This [Act] does not displace or restrict other means of creating trusts. A trust whose terms do not conform to this [Act] may be enforceable according to its terms under other law.

### COMMENT

Section 2 is the principal provision authorizing the creation of a custodial trust and utilizes the concept of incorporation by reference when the transferee or titleholder of property is designated as custodial trustee under the Act. Section 2 sets forth the general effect of such a transfer. Section 18 provides forms which satisfy the requirements of this section and identifies customary methods of transferring assets to create a custodial trust.

Section 2(a) provides that a trust may be created by transfer to another for the benefit of the transferor or another. This is expected to be the most common way in which a custodial trust would be created. However, a custodial trust may also be created by declaration of trust by the owner of prop-

erty to hold it for the benefit of another as is provided in Section 2(b). A declaration in trust by the owner of property for the sole benefit of the owner is not contemplated by this Act because such an attempt may be considered ineffective as a trust due to the total identity of the trustee and beneficiary. However, the doctrine of merger would not preclude an effective transfer under this Act for the benefit of the transferor and one or more other beneficiaries. See Section 6.

A custodial trust could be created by the exercise of a valid power of attorney or power of appointment given by the owner of property as one of the transfers "consistent with law."

These alternatives permit the major uses of the

custodial trust to be accomplished expeditiously. For example, an older person, wishing to be relieved of management of property may transfer property to another for benefit of the transferor or of the transferor's spouse or child. The declaration may be used to establish a trust of which the owner is trustee to continue management of the property for benefit of another, such as a spouse or child. The trust may include a provision for distribution of assets remaining at the beneficiary's death directly to a named distributee.

This Act does not preclude the creation of trusts under other existing law, statutory or nonstatutory, but is designed to facilitate the creation of simple trusts incorporating the provisions of this Act. The written transfer or declaration "consistent with law" requires that the formalities of the transfer of particular property necessary under other law will be observed, e.g., if land is involved, the requirements of a proper deed and recording must be satisfied.

Section 2(c) provides for the retention of the beneficial interest in the custodial trust property in the beneficiary and, of course, not in the custodial trustee. The extensive control and benefit in the beneficiary who is not incapacitated maintains the simplicity of the trust and avoids tax complexity. The custodial trustee is given the title to the property and authority to act with regard to the property only as is authorized by the statute. The custodial trustee's powers are enumerated in Section 8.

Section 2(e) gives the adult beneficiary, who is not incapacitated, the power to terminate the custodial trust at any time during his or her lifetime. This power of termination exists in any beneficiary who is not incapacitated whether the beneficiary was or

was not the transferor. A beneficiary may be determined to be incapacitated or the transferor may designate that the trust is to be administered as a trust for an incapacitated beneficiary under Section 10, in which event the beneficiary does not have the power to terminate. However, the designation of incapacity by the transferor can be modified by the trustee or the court by reason of changed circumstances pursuant to Section 10. The Act precludes termination by exercise of a durable power of attorney if the beneficiary is incompetent (Section 7(f)). If the donor prefers not to permit the beneficiary the power to terminate or to designate the beneficiary as incapacitated under Section 10, an individually drafted trust outside the scope of this Act would seem appropriate.

Upon termination of a custodial trust, the custodial trust property must be distributed as provided in Section 17.

A transfer under this Act is irrevocable except to the extent the beneficiary may terminate it. Hence, a transfer to a trustee for benefit of a person other than the transferor is not revocable by the transferor. If a power of revocation were retained by the transferor, that would be a trust outside the scope of this Act and enforceable under general law pursuant to subsection 2(h).

This Act does not provide for protection of the custodial trust assets from the claims of creditors of the beneficiary, whether those are general or governmental creditors. Other laws of the state remain unaffected. In this regard, unusual problems of handicapped persons and the coordination of resources and state or federal services call for special provision and planning outside the scope of this Act.

### Section 3. Custodial Trustee for Future Payment or Transfer.

(a) A person having the right to designate the recipient of property payable or transferable upon a future event may create a custodial trust upon the occurrence of the future event by designating in writing the recipient, followed in substance by: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act."

(b) Persons may be designated as substitute or successor custodial trustees to whom the property must be paid or transferred in the order named if the first designated custodial trustee is unable or unwilling to serve.

(c) A designation under this section may be made in a will, a trust, a deed, a multiple-party account, an insurance policy, an instrument exercising a power of appointment, or a writing designating a beneficiary of contractual rights. Otherwise, to be effective, the designation must be registered with or delivered to the fiduciary, payor, issuer, or obligor of the future right.

### COMMENT

This section permits a future custodial trustee to be designated to receive property for the beneficiary of a custodial trust to be effective upon the occurrence of a future event or transfer. To accommodate changes in circumstances during the passage of time, one or more successors or substi-

tute custodial trustees can also be designated. The designation of the future custodial trustee and the beneficiary can be made in an instrument which is revocable or irrevocable depending upon the nature of the transaction or transfer. Any person designated as a future custodial trustee may decline to

serve before the transfer occurs or may resign under Section 13 after the transfer.

The source of this section is Section 3 of UTMA. The enacting state's rule against perpetuities may limit or affect the creation of a custodial trust

upon the occurrence of a future event, but because the use of a custodial trust usually contemplates dispositions for the benefit of living persons, perpetuity problems should rarely arise.

#### Section 4. Form and Effect of Receipt and Acceptance by Custodial Trustee, Jurisdiction.

(a) Obligations of a custodial trustee, including the obligation to follow directions of the beneficiary, arise under this [Act] upon the custodial trustee's acceptance, express or implied, of the custodial trust property.

(b) The custodial trustee's acceptance may be evidenced by a writing stating in substance:

**(CUSTODIAL TRUSTEE'S RECEIPT AND ACCEPTANCE)**  
I, \_\_\_\_\_ (name of custodial trustee) acknowledge receipt of the custodial trust property described below or in the attached instrument and accept the custodial trust as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act. I undertake to administer and distribute the custodial trust property pursuant to the [Enacting state] Uniform Custodial Trust Act. My obligations as custodial trustee are subject to the directions of the beneficiary unless the beneficiary is designated as, is, or becomes incapacitated. The custodial trust property consists of \_\_\_\_\_  
Dated: \_\_\_\_\_

(Signature of Custodial Trustee)

(c) Upon accepting custodial trust property, a person designated as custodial trustee under this [Act] is subject to personal jurisdiction of the court with respect to any matter relating to the custodial trust.

#### COMMENT

Although a custodial trust is created by a transfer that satisfies Section 2 of the Act, the responsibility and obligations upon the trustee do not arise until the trustee has accepted the transfer. This detailed section is included to call the attention of the parties to the effective receipt and acceptance by the custodial trustee. Once a custodial trustee accepts the transfer of the custodial trust property, the custodial trustee assumes the obligation of a custodial trustee under this Act. The acceptance can be expressed or implied, but it is recommended that

the written acceptance provided for in Section 4(b) be utilized. By the acceptance the custodial trustee submits to the personal jurisdiction of the courts of the enacting state for the purpose of the custodial trust, despite subsequent relocation of the parties or of the custodial trust property. The principal sources of these provisions are Sections 8 and 9 of UTMA and the analogous provisions under the Uniform Probate Code, Sections 3-602, 5-208, 5-307, 7-103.

#### Section 5. Transfer to Custodial Trustee by Fiduciary or Obligor; Facility of Payment.

(a) Unless otherwise directed by an instrument designating a custodial trustee pursuant to Section 3, a person, including a fiduciary other than a custodial trustee, who holds property of or owes a debt to an incapacitated individual not having a conservator may make a transfer to an adult member of the beneficiary's family or to a trust company as custodial trustee for the use and benefit of the incapacitated individual. If the value of the property or the debt exceeds [\$20,000], the transfer is not effective unless authorized by the court.

(b) A written acknowledgment of delivery, signed by a custodial trustee, is a sufficient receipt and discharge for property transferred to the custodial trustee pursuant to this section.

#### COMMENT

This section is in the nature of a facility-of-payment provision that permits persons owing money to an incapacitated individual to discharge a

fixed obligation by a payment to a custodial trustee under this Act. The section does not authorize the custodial trustee to settle claims for disputed

amounts but only to acknowledge an effective receipt of property paid or delivered. It is based primarily on Sections 6 and 7 of UTMA and includes the protections of Section 8 of UTMA as well. It permits a custodial trust to be established as a sub-

stitute for a conservatorship to receive payments due an incapacitated individual. Also, see Section 11, which protects transferors and other third parties dealing with the custodial trustee.

#### Section 6. Multiple Beneficiaries; Separate Custodial Trusts; Survivorship.

(a) Beneficial interests in a custodial trust created for multiple beneficiaries are deemed to be separate custodial trusts of equal undivided interests for each beneficiary. Except in a transfer or declaration for use and benefit of husband and wife, for whom survivorship is presumed, a right of survivorship does not exist unless the instrument creating the custodial trust specifically provides for survivorship (or survivorship is required as to community or marital property).

(b) Custodial trust property held under this [Act] by the same custodial trustee for the use and benefit of the same beneficiary may be administered as a single custodial trust.

(c) A custodial trustee of custodial trust property held for more than one beneficiary shall separately account to each beneficiary pursuant to Sections 7 and 15 for the administration of the custodial trust.

#### COMMENT

This Act, unlike UTMA, does not preclude a custodial trust for more than one beneficiary. Adult persons creating custodial trusts are likely to set up custodial trusts in various forms, e.g., parents may wish to set up a custodial trust for their children or for themselves, then for a spouse, etc. However, the interests of each beneficiary are separate and the custodial trustee is obligated under subsection (c) to account separately to each beneficiary for

administration of the beneficiary's interest in the custodial trust.

Subsection (b) allows a custodial trustee who is administering multiple custodial trusts for the same beneficiary to administer the custodial trusts as a single custodial trust. For example, if multiple trusts are created for an incapacitated beneficiary, the custodial trustee can administer them as a single custodial trust.

#### Section 7. General Duties of Custodial Trustee.

(a) If appropriate, a custodial trustee shall register or record the instrument vesting title to custodial trust property.

(b) If the beneficiary is not incapacitated, a custodial trustee shall follow the directions of the beneficiary in the management, control, investment, or retention of the custodial trust property. In the absence of effective contrary direction by the beneficiary while not incapacitated, the custodial trustee shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other law restricting investments by fiduciaries. However, a custodial trustee, in the custodial trustee's discretion, may retain any custodial trust property received from the transferor. If a custodial trustee has a special skill or expertise or is named custodial trustee on the basis of representation of a special skill or expertise, the custodial trustee shall use that skill or expertise.

(c) Subject to subsection (b), a custodial trustee shall take control of and collect, hold, manage, invest, and reinvest custodial trust property.

(d) A custodial trustee at all times shall keep custodial trust property of which the custodial trustee has control, separate from all other property in a manner sufficient to identify it clearly as custodial trust property of the beneficiary. Custodial trust property, the title to which is subject to recordation, is so identified if an appropriate instrument so identifying the property is recorded, and custodial trust property subject to registration is so identified if it is registered, or held in an account in the name of the custodial trustee, designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act."

(e) A custodial trustee shall keep records of all transactions with respect to custodial trust property, including information necessary for the preparation of tax returns, and shall make

the records and information available at reasonable times to the beneficiary or legal representative of the beneficiary.

(f) The exercise of a durable power of attorney for an incapacitated beneficiary is not effective to terminate or direct the administration or distribution of a custodial trust.

#### COMMENT

Subsection (b) restates and confirms the control by the beneficiary who is not incapacitated. However, the trustee has a reasonable obligation to act when the beneficiary has not directed him. Under Sections 9 and 10, when a beneficiary becomes incapacitated, the custodial trust becomes a discretionary trust and the trustee is subject to the control of the statute and not the beneficiary's direction. The custodial trustee is subject to the usual trustee's standard as taken from Section 7-302

of the Uniform Probate Code. The statute also imposes a slightly higher standard on professional fiduciaries acting under the statute. Otherwise, much of this section is taken from Section 12 of UTMA. Whenever recordable assets, such as land, are in the custodial trust, the trustee would be expected to record title to the asset. The section is entitled "general duties" because there are additional specific duties identified in other sections such as Section 9.

#### Section 8. General Powers of Custodial Trustee.

(a) A custodial trustee, acting in a fiduciary capacity, has all the rights and powers over custodial trust property which an unmarried adult owner has over individually owned property, but a custodial trustee may exercise those rights and powers in a fiduciary capacity only.

(b) This section does not relieve a custodial trustee from liability for a violation of Section 7.

#### COMMENT

This section is taken from Section 13 of UTMA. It grants the trustee very broad powers over the property, subject, however, to the Prudent Person Rule and to the obligations set out in the Act. An alternative approach to subsection (a) that might be

taken by an enacting state is to refer to the existing statutes granting powers to a trustee, such as the Uniform Trustee's Powers Act. For example: (a) A custodial trustee has the powers of a trustee under the Uniform Trustee's Powers Act. ]

#### Section 9. Use of Custodial Trust Property.

(a) A custodial trustee shall pay to the beneficiary or expend for the beneficiary's use and benefit so much or all of the custodial trust property as the beneficiary while not incapacitated may direct from time to time.

(b) If the beneficiary is incapacitated, the custodial trustee shall expend so much or all of the custodial trust property as the custodial trustee considers advisable for the use and benefit of the beneficiary and individuals who were supported by the beneficiary when the beneficiary became incapacitated, or who are legally entitled to support by the beneficiary. Expenditures may be made in the manner, when, and to the extent that the custodial trustee determines suitable and proper, without court order and without regard to other support, income, or property of the beneficiary.

(c) A custodial trustee may establish checking, savings, or other similar accounts of reasonable amounts under which either the custodial trustee or the beneficiary may withdraw funds from, or draw checks against, the accounts. Funds withdrawn from, or checks written against, the account by the beneficiary are distributions of custodial trust property by the custodial trustee to the beneficiary.

#### COMMENT

This section provides that the custodial trustee is obligated to follow the directions of the beneficiary who is not incapacitated in paying over or expending custodial trust property. If the beneficiary is incapacitated, this section imposes duties on the custodial trustee to apply funds for the beneficiary

similar to those imposed on custodians for minors under Section 14 of UTMA. In addition, however, subsection (b) authorizes a custodial trustee to pay over or expend custodial trust property for the use and benefit of the incapacitated beneficiary's dependents who were supported by the beneficiary at the

time the beneficiary became incapacitated or for whom there is a legal obligation to support.

The use-and-benefits standard for the expenditure of custodial property is intended to avoid any implication that the custodial trust property can be used only for the required support of the incapacitated beneficiary.

Subsection (c) allows a custodial trustee to maintain a bank account, of an amount reasonable under the circumstances, with the beneficiary whereby both the beneficiary and the custodial trustee may write checks on the account. This may be used as one method of making money available for the beneficiary's personal needs. Many incapacitated per-

sons, unable to manage business affairs, are still competent to pay personal expenses. This type of arrangement would be important to them. A custodial trustee should maintain, of course, a separate bank account for use in managing the custodial trust property and investments.

An alternative approach might be taken to this section that refers to the distributive powers of a conservator under the laws of the enacting state, in the event that state should prefer that incorporation by reference. For example: [The custodial trustee has the distributive powers of a conservator under the Uniform Probate Code.]

#### Section 10. Determination of Incapacity; Effect.

(a) The custodial trustee shall administer the custodial trust as for an incapacitated beneficiary if (i) the custodial trust was created under Section 5, (ii) the transferor has so directed in the instrument creating the custodial trust, or (iii) the custodial trustee has determined that the beneficiary is incapacitated.

(b) A custodial trustee may determine that the beneficiary is incapacitated in reliance upon (i) previous direction or authority given by the beneficiary while not incapacitated, including direction or authority pursuant to a durable power of attorney, (ii) the certificate of the beneficiary's physician, or (iii) other persuasive evidence.

(c) If a custodial trustee for an incapacitated beneficiary reasonably concludes that the beneficiary's incapacity has ceased, or that circumstances concerning the beneficiary's ability to manage property and business affairs have changed since the creation of a custodial trust directing administration as for an incapacitated beneficiary, the custodial trustee may administer the trust as for a beneficiary who is not incapacitated.

(d) On petition of the beneficiary, the custodial trustee, or other person interested in the custodial trust property or the welfare of the beneficiary, the court shall determine whether the beneficiary is incapacitated.

(e) Absent determination of incapacity of the beneficiary under subsection (b) or (d), a custodial trustee who has reason to believe that the beneficiary is incapacitated shall administer the custodial trust in accordance with the provisions of this [Act] applicable to an incapacitated beneficiary.

(f) Incapacity of a beneficiary does not terminate (i) the custodial trust, (ii) any designation of a successor custodial trustee, (iii) rights or powers of the custodial trustee, or (iv) any immunities of third persons acting on instructions of the custodial trustee.

#### COMMENT

This is one of the more important sections of the Act under which the custodial trustee may determine that the beneficiary is incapacitated so the trust will change from one subject to the control of the beneficiary to a discretionary trust for the beneficiary. Subsection (b) allows the custodial trustee to determine that the beneficiary is incapacitated provided the determination is based upon the certificate of the beneficiary's physician, the prior direction or authority of the beneficiary, or other reasonable evidence. That authority could be evidenced, for example, by a durable power of attorney executed by the beneficiary prior to becoming incapacitated even though that power of attorney is

not otherwise effective to control management or termination of the custodial trust. Such a durable power of attorney could be given to a child, spouse, friend, or other trusted individual. In addition, specific authority is provided in subsection (d) for the beneficiary, the custodial trustee, or other interested person to seek a declaration from the court as to the capacity of the beneficiary for the purposes of this Act. This is important to the custodial trustee, as his duties and responsibilities change on the event of the beneficiary's incapacity.

This section is not a proceeding for the appointment of a conservator, and it is not contemplated that such a declaration would lead to court appoint-

ment of a conservator or guardian unless other factors would warrant such appointment. The existence of a comprehensive and well-managed custodial trust would be one factor that would tend to avoid the necessity for the appointment of a conservator or guardian of the estate.

This section also does not provide a proceeding to attack the legal competence of a transferor in setting up a trust under Section 2. Rather, Section 10

relates to a management matter in a validly established custodial trust.

Subsection (f) provides that the incapacity of the beneficiary does not terminate the custodial trust. If the beneficiary becomes incapacitated, the authority of the custodial trustee continues and the custodial trustee must follow the statutory provisions of the Act relating to managing custodial trusts for incapacitated individuals.

### Section 11. Exemption of Third Person from Liability.

A third person in good faith and without a court order may act on instructions of, or otherwise deal with, a person purporting to make a transfer as, or purporting to act in, the capacity of, a custodial trustee. In the absence of knowledge to the contrary, the third person is not responsible for determining:

- (1) the validity of the purported custodial trustee's designation;
- (2) the propriety of, or the authority under this [Act] for, any action of the purported custodial trustee;
- (3) the validity or propriety of an instrument executed or instruction given pursuant to this [Act] either by the person purporting to make a transfer or declaration or by the purported custodial trustee; or
- (4) the propriety of the application of property vested in the purported custodial trustee.

#### COMMENT

This section is based upon Section 16 of the UTMA and protects third persons who deal in good faith with the custodial trustee.

### Section 12. Liability to Third Person.

(a) A claim based on a contract entered into by a custodial trustee acting in a fiduciary capacity, an obligation arising from the ownership or control of custodial trust property, or a tort committed in the course of administering the custodial trust, may be asserted by a third person against the custodial trust property by proceeding against the custodial trustee in a fiduciary capacity, whether or not the custodial trustee or the beneficiary is personally liable.

(b) A custodial trustee is not personally liable to a third person:

- (1) on a contract properly entered into in a fiduciary capacity unless the custodial trustee fails to reveal that capacity or to identify the custodial trust in the contract; or
- (2) for an obligation arising from control of custodial trust property or for a tort committed in the course of the administration of the custodial trust unless the custodial trustee is personally at fault.

(c) A beneficiary is not personally liable to a third person for an obligation arising from beneficial ownership of custodial trust property or for a tort committed in the course of administration of the custodial trust unless the beneficiary is personally in possession of the custodial trust property giving rise to the liability or is personally at fault.

(d) Subsections (b) and (c) do not preclude actions or proceedings to establish liability of the custodial trustee or beneficiary to the extent the person sued is protected as the insured by liability insurance.

#### COMMENT

This section is patterned after Section 17 of the UTMA and that section in turn was based upon Sections 6-428 and 7-306 of the Uniform Probate Code limiting the liability of conservators and trustees.

See also Restatement of Trusts, 2d Sections 265 and 277. The effect of this section is to limit the claims of third parties to recourse against custodial trust property as both the custodial trustee and the bene-

fiary are protected from personal liability absent personal fault on their part. This section does not alter the obligations between the custodial trustee and the beneficiary arising out of the administration of the estate and the accounting for that administration.

There may be cases in which a custodial trustee or beneficiary may have a right to possession of custo-

dial trust property and may insure against liability arising out of possession or control of the property as a named insured, e.g., under homeowner's or automobile liability insurance. In such a case, the beneficiary should be permitted as a party defendant under subsection (d) but only to the extent of the protection of the liability insurance.

### Section 13. Declination, Resignation, Incapacity, Death, or Removal of Custodial Trustee, Designation of Successor Custodial Trustee.

(a) Before accepting the custodial trust property, a person designated as custodial trustee may decline to serve by notifying the person who made the designation, the transferor, or the transferor's legal representative. If an event giving rise to a transfer has not occurred, the substitute custodial trustee designated under Section 3 becomes the custodial trustee, or, if a substitute custodial trustee has not been designated, the person who made the designation may designate a substitute custodial trustee pursuant to Section 3. In other cases, the transferor or the transferor's legal representative may designate a substitute custodial trustee.

(b) A custodial trustee who has accepted the custodial trust property may resign by (i) delivering written notice to a successor custodial trustee, if any, the beneficiary and, if the beneficiary is incapacitated, to the beneficiary's conservator, if any, and (ii) transferring or registering, or recording an appropriate instrument relating to, the custodial trust property, in the name of, and delivering the records to, the successor custodial trustee identified under subsection (c).

(c) If a custodial trustee or successor custodial trustee is ineligible, resigns, dies, or becomes incapacitated, the successor designated under Section 2(g) or 3 becomes custodial trustee. If there is no effective provision for a successor, the beneficiary, if not incapacitated, may designate a successor custodial trustee. If the beneficiary is incapacitated, or fails to act within 90 days after the ineligibility, resignation, death, or incapacity of the custodial trustee, the beneficiary's conservator becomes successor custodial trustee. If the beneficiary does not have a conservator or the conservator fails to act, the resigning custodial trustee may designate a successor custodial trustee.

(d) If a successor custodial trustee is not designated pursuant to subsection (c), the transferor, the legal representative of the transferor or of the custodial trustee, an adult member of the beneficiary's family, the guardian of the beneficiary, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary, may petition the court to designate a successor custodial trustee.

(e) A custodial trustee who declines to serve or resigns, or the legal representative of a deceased or incapacitated custodial trustee, as soon as practicable, shall put the custodial trust property and records in the possession and control of the successor custodial trustee. The successor custodial trustee may enforce the obligation to deliver custodial trust property and records and becomes responsible for each item as received.

(f) A beneficiary, the beneficiary's conservator, an adult member of the beneficiary's family, a guardian of the person of the beneficiary, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary, may petition the court to remove the custodial trustee for cause and designate a successor custodial trustee, to require the custodial trustee to furnish a bond or other security for the faithful performance of fiduciary duties, or for other appropriate relief.

#### COMMENT

This section follows many of the provisions of Section 18 of UTMA with some substantive changes. It is designed to accommodate in a single section the circumstances in which a custodial trustee would be

replaced by another custodial trustee. Under subsection (b), if the beneficiary is incapacitated, a custodial trustee who resigns must give written notice to both the beneficiary and the beneficiary's

conservator if one exists. Under subsection (c), a beneficiary who is not incapacitated may designate, without limitation, a successor custodial trustee. If, however, the beneficiary fails to act or is incapacitated, the procedure to be followed is very similar to that found in UTMA except that the nonincapacitated beneficiary has 90 days to act and if the beneficiary has no conservator or if the conservator declines to act, the custodial trustee may eventually designate a successor custodial trustee.

Under subsection (f), the beneficiary, whether or

not incapacitated, can petition the court to remove the custodial trustee for cause and to designate a successor trustee, or the court may require the custodial trustee to give bond or other appropriate relief.

This section, unlike Section 18 of UTMA, does not give the custodial trustee the general power to designate a successor custodial trustee but rather limits that power to the situation in which the procedure for designating successor custodial trustees by others has been exhausted.

#### Section 14. Expenses, Compensation, and Bond of Custodial Trustee.

Except as otherwise provided in the instrument creating the custodial trust, in an agreement with the beneficiary, or by court order, a custodial trustee:

- (1) is entitled to reimbursement from custodial trust property for reasonable expenses incurred in the performance of fiduciary services;
- (2) has a noncumulative election, to be made no later than six months after the end of each calendar year, to charge a reasonable compensation for fiduciary services performed during that year; and
- (3) need not furnish a bond or other security for the faithful performance of fiduciary duties.

#### COMMENT

This section follows the pattern of Section 16 of the UTMA except it does subject the arrangements or payment of expenses, compensation, and bond to provisions in the custodial trust instrument or agreement of the beneficiary or court order.

As in UTMA, the provisions with regard to compensation are designed to avoid imputed compensation to the custodian who waives com-

ensation and also to avoid the accumulation of claims for compensation until the termination of the custodial trust. Although the ability to control these matters by the trust instrument or agreement of the beneficiary seems to be implied, as was assumed in UTMA, it is here expressly stated because of the possibility of informal arrangements with persons as trustees.

#### Section 15. Reporting and Accounting by Custodial Trustee; Determination of Liability of Custodial Trustee.

(a) Upon the acceptance of custodial trust property, the custodial trustee shall provide a written statement describing the custodial trust property and shall thereafter provide a written statement of the administration of the custodial trust property (i) once each year, (ii) upon request at reasonable times by the beneficiary or the beneficiary's legal representative, (iii) upon resignation or removal of the custodial trustee, and (iv) upon termination of the custodial trust. The statements must be provided to the beneficiary or to the beneficiary's legal representative, if any. Upon termination of the beneficiary's interest, the custodial trustee shall furnish a current statement to the person to whom the custodial trust property is to be delivered.

(b) A beneficiary, the beneficiary's legal representative, an adult member of the beneficiary's family, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary may petition the court for an accounting by the custodial trustee or the custodial trustee's legal representative.

(c) A successor custodial trustee may petition the court for an accounting by a predecessor custodial trustee.

(d) In an action or proceeding under this [Act] or in any other proceeding, the court may require or permit the custodial trustee or the custodial trustee's legal representative to account. The custodial trustee or the custodial trustee's legal representative may petition the court for approval of final accounts.

(e) If a custodial trustee is removed, the court shall require an accounting and order delivery of the custodial trust property and records to the successor custodial trustee and the execution of all instruments required for transfer of the custodial trust property.

(f) On petition of the custodial trustee or any person who could petition for an accounting, the court, after notice to interested persons, may issue instructions to the custodial trustee or review the propriety of the acts of a custodial trustee or the reasonableness of compensation determined by the custodial trustee for the services of the custodial trustee or others.

#### COMMENT

This section requires that the custodial trustee inform the beneficiary of the initiation of the trust and provide reasonably current reports of the administration of the custodial trust to the beneficiary or the beneficiary's legal representative. Even though some custodial trustees may act informally, it seems appropriate that both the trustee and the beneficiary be expected to exchange complete information concerning the administration of the trust at least once each year. In some cases, more frequent exchanges of information between the custodial trustee and beneficiary would be expected, e.g., when they use a bank account to which both have access. This is particularly true with regard to necessary information for tax reporting by the parties involved. This section assumes the usual minimum components of an account, i.e., assets and

values at the beginning of the accounting period, receipts, and disbursements during the accounting period and assets and their values on hand or available for distribution at the close of the accounting period.

Subsection (a) identifies the necessary reports and accountings for the parties, and subsection (b) identifies a broad group of persons who may petition the court for an accounting by the custodial trustee or the custodial trustee's legal representative. Much of the section is drawn from Section 19 of the UTMA modified to fit the custodial trust.

Subsection (f) recognizes the inherent power of the court to instruct trustees and review their actions. This paragraph is patterned after Uniform Probate Code Section 7-205.

#### Section 16. Limitations of Action Against Custodial Trustee.

(a) Except as provided in subsection (c), unless previously barred by adjudication, consent, or limitation, a claim for relief against a custodial trustee for accounting or breach of duty is barred as to a beneficiary, a person to whom custodial trust property is to be paid or delivered, or the legal representative of an incapacitated or deceased beneficiary or payee:

- (1) who has received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within two years after receipt of the final account or statement; or
- (2) who has not received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within three years after the termination of the custodial trust.

(b) Except as provided in subsection (c), a claim for relief to recover from a custodial trustee for fraud, misrepresentation, or concealment related to the final settlement of the custodial trust or concealment of the existence of the custodial trust, is barred unless an action or proceeding to assert the claim is commenced within five years after the termination of the custodial trust.

(c) A claim for relief is not barred by this section if the claimant:

- (1) is a minor, until the earlier of two years after the claimant becomes an adult or dies;
- (2) is an incapacitated adult, until the earliest of two years after (i) the appointment of a conservator, (ii) the removal of the incapacity, or (iii) the death of the claimant; or
- (3) was an adult, now deceased, who was not incapacitated, until two years after the claimant's death.

#### COMMENT

In an effort to provide as comprehensive a statute as possible to inform the parties of substantially all of their obligations and rights, statutes of limitation are provided in this section. The limitations pro-

vided in this section are derived from the Uniform Probate Code, Sections 106 and 7-307, and from the Missouri Custodial Act.

The nature of the limitations imposed by the section are illustrated by the situation in which a custodial trustee is removed, resigns, or dies. If the former custodial trustee accounts as required under Section 13 on removal or resignation, or the deceased custodial trustee's personal representative accounts, the two-year limitation of subsection (a)(1) applies. Should the former custodial trustee or the personal representative fail to account, then,

**Section 17. Distribution on Termination.**

(a) Upon termination of a custodial trust, the custodial trustee shall transfer the unexpended custodial trust property:

- (1) to the beneficiary, if not incapacitated or deceased;
- (2) to the conservator or other recipient designated by the court for an incapacitated beneficiary; or
- (3) upon the beneficiary's death, in the following order:
  - (i) as last directed in a writing signed by the deceased beneficiary while not incapacitated and received by the custodial trustee during the life of the deceased beneficiary;
  - (ii) to the survivor of multiple beneficiaries if survivorship is provided for pursuant to Section 6;
  - (iii) as designated in the instrument creating the custodial trust; or
  - (iv) to the estate of the deceased beneficiary.

(b) If, when the custodial trust would otherwise terminate, the distributee is incapacitated, the custodial trust continues for the use and benefit of the distributee as beneficiary until the incapacity is removed or the custodial trust is otherwise terminated.

(c) Death of a beneficiary does not terminate the power of the custodial trustee to discharge obligations of the custodial trustee or beneficiary incurred before the termination of the custodial trust.

**COMMENT**

This section controls distribution of the custodial trust property when the custodial trust is terminated under Section 2(e). It is designed to provide for efficient and certain distribution without judicial proceedings. Subsection (a)(3) is an important provision for avoiding complications on distribution and provides that distribution may be controlled first, by the direction of the deceased beneficiary or second, by the custodial trust instrument (see Sections 2, 6 and 18) and, only if no effective prior designation for the payment or distribution of the property on the death of the beneficiary has been made, shall it pass through the beneficiary's estate.

The direction to the custodial trustee by the beneficiary, who is not incapacitated, for distribution on termination of the custodial trust may be in any written form clearly identifying the distributee. For example, the following direction would be adequate under the statute:

I, \_\_\_\_\_ (name of beneficiary) hereby direct

subsection (a)(2) would apply to limit the time in which a proceeding to assert the claim could be commenced. This time would begin to run on the date the trust terminated. Of course, if the claim is one for fraud or concealment, the longer time limitation of subsection (b) would apply. In any event, should the beneficiary become incapacitated or die before the applicable time limitation had expired, the tolling provision of subsection (c) could postpone the time bar until two years after removal of the disability or death.

\_\_\_\_\_(name of trustee) as custodial trustee, to transfer and pay the unexpended balance of the custodial trust property of which I am beneficiary to \_\_\_\_\_ as distributee on the termination of the trust at my death. In the event of the prior death of \_\_\_\_\_ above named as distributee, I designate \_\_\_\_\_ as distributee of the custodial trust property.

Signed \_\_\_\_\_  
(signature)

Beneficiary

Date \_\_\_\_\_

Receipt Acknowledged

\_\_\_\_\_(signature)

Custodial Trustee

Date \_\_\_\_\_

**Section 18. Methods and Forms for Creating Custodial Trusts.**

(a) If a transaction, including a declaration with respect to or a transfer of specific property, otherwise satisfies applicable law, the criteria of Section 2 are satisfied by:

(1) the execution and either delivery to the custodial trustee or recording of an instrument in substantially the following form:

**TRANSFER UNDER THE [ENACTING STATE]  
UNIFORM CUSTODIAL TRUST ACT**

I, \_\_\_\_\_ (name of transferor or name and representative capacity if a fiduciary), transfer to \_\_\_\_\_ (name of trustee other than transferor), as custodial trustee for \_\_\_\_\_ (name of beneficiary) as beneficiary and \_\_\_\_\_ as distributee on termination of the trust in absence of direction by the beneficiary under the [Enacting state] Uniform Custodial Trust Act, the following: (insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: \_\_\_\_\_

(Signature); or

(2) the execution and the recording or giving notice of its execution to the beneficiary of an instrument in substantially the following form:

**DECLARATION OF TRUST UNDER THE [ENACTING STATE]  
UNIFORM CUSTODIAL TRUST ACT**

I, \_\_\_\_\_ (name of owner of property), declare that henceforth I hold as custodial trustee for \_\_\_\_\_ (name of beneficiary other than transferor) as beneficiary and \_\_\_\_\_ as distributee on termination of the trust in absence of direction by the beneficiary under the [Enacting state] Uniform Custodial Trust Act, the following: (insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: \_\_\_\_\_

(Signature)

(b) Customary methods of transferring or evidencing ownership of property may be used to create a custodial trust, including any of the following:

(1) registration of a security in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act";

(2) delivery of a certificated security, or a document necessary for the transfer of an uncertificated security, together with any necessary endorsement, to an adult other than the transferor or to a trust company as custodial trustee, accompanied by an instrument in substantially the form prescribed in subsection (a)(1);

(3) payment of money or transfer of a security held in the name of a broker or a financial institution or its nominee to a broker or financial institution for credit to an account in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act";

(4) registration of ownership of a life or endowment insurance policy or annuity contract with the issuer in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act";

(5) delivery of a written assignment to an adult other than the transferor or to a trust company whose name in the assignment is designated in substance by the words: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act";

(6) irrevocable exercise of a power of appointment, pursuant to its terms, in favor of a trust company, an adult other than the donee of the power, or the donee who holds the power if the beneficiary is other than the donee, whose name in the appointment is designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act";

(7) delivery of a written notification or assignment of a right to future payment under a contract to an obligor which transfers the right under the contract to a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, whose name in the notification or assignment is designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act";

(8) execution, delivery, and recordation of a conveyance of an interest in real property in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act";

(9) issuance of a certificate of title by a state or of the United States which indicates title to tangible personal property:

(i) issued in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act"; or

(ii) delivered to a trust company or an adult other than the transferor or endorsed by the transferor to that person, designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act"; or

(10) execution and delivery of an instrument of gift to a trust company or an adult other than the transferor, designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act."

#### COMMENT

This section largely follows Section 9 of UTMA. It provides instructional detail for forms and methods of transferring assets that satisfy the requirements of the statute. Although many of the customary methods of transferring assets are identified, these methods are not intended to be exclusive since any type of property that can be transferred by any legal means is intended to be within the scope of the statute, provided the requirements

of Section 2 are met. The method of transfer or conveyance appropriate to the asset should be used, e.g., if land is involved, a deed or conveyance that satisfies the local requirements would be appropriate. In the effort to make the statute as self-contained and as fully explanatory as possible, these provisions for implementation are included in the statute rather than being appended or inserted in the Comments.

#### Section 19. Applicable Law.

(a) This [Act] applies to a transfer or declaration creating a custodial trust that refers to this [Act] if, at the time of the transfer or declaration, the transferor, beneficiary, or custodial trustee is a resident of or has its principal place of business in this State or custodial trust property is located in this State. The custodial trust remains subject to this [Act] despite a later change in residence or principal place of business of the transferor, beneficiary, or custodial trustee, or removal of the custodial trust property from this State.

(b) A transfer made pursuant to an act of another state substantially similar to this [Act] is governed by the law of that state and may be enforced in this State.

#### COMMENT

This section is designed to avoid confusion in the event a party or assets are removed from the state.

#### Section 20. Uniformity of Application and Construction.

This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.

#### Section 21. Short Title.

This [Act] may be cited as the "[Name of Enacting State] Uniform Custodial Trust Act."

#### Section 22. Severability.

If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

#### Section 23. Effective Date.

This [Act] takes effect \_\_\_\_\_.

Good Afternoon, Mr. Chairman, members of the committee. For the record, my name is Karen Brand, Staff for Representative Moses. I will be delivering the opening comments on HB280, as Representative Moses is currently in a meeting on the third floor. Then I will be available for questions. Mr. Art Peterson, a local Uniform Law Commissioner, is also here and will also be available for questions.

I would like to start with a definition. A trust is defined as the care and management of property or funds, by a person or a bank, for the benefit of another.

With that in mind, I'll detail the bill before you. If enacted, HB280 will not change existing law, but it would add a new section to adopt the Uniform Custodial Trust Act. The UCTA makes the benefits of trusts available to all Alaskans. There are four benefits of trusts that I'd like to note. **First**, the trust will be inexpensive to create. Currently, you can create a trust, but the time for an attorney to create it from scratch is more than most people <sup>can</sup> want to afford. **Secondly**, the trust will be simple to create. This bill includes a set of guidelines that can easily be filled out by the owner of the trust, or by an attorney with minimal time. **The Third** characteristic is control. Under the UCTA, control of your property remains with you until which time you become incapacitated, and the trust will take over the care and management of your property. **Lastly**, the trust is comprehensive. It covers physical property, financial assets, and intangibles.

Moving on,... the adoption of the UCTA will benefit all Alaskans, young and old, as well as anyone who anticipates incapacity at some time and wants to be assured that their belongings will be properly cared for. The most frequent users of this trust will most likely be senior citizens who want to provide for their assets in the event of

future incapacity. Persons leaving the country temporarily can also place their property with another for management without relinquishing permanent control of the property.

Let me finish up with a bit of history. This UCTA has been adopted in 7 other states, and was introduced in another during 1993. A duplicate of HB280 was introduced during the 17th Legislature. It had bi-partisan support, public testimony, and was voted out of the House Unanimously, 36 to Zero. Due to a lack of time, the bill did not get a vote in the Senate. HB280 is a non-controversial bill, and Representative Moses would appreciate consideration and affirmative action.

I'll entertain questions by committee members.

