

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						
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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. -

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

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

PREPARER TO PROVIDE
For further information

GVERNOR'S LEGISLATIVE OFFICE
governor's Legislative Office

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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.

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.

THE UNIFORM CUSTODIAL TRUST ACT

CONTENTS

- * Fact Sheet - Custodial Trust Act

- * Why states should adopt the Custodial Trust Act

- * Summary of the Custodial Trust Act

- * 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.