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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 13.46.085. NATIVE CORPORATIONS; CUSTODIANS.

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

Sec. 13.46.090. SINGLE CUSTODIANSHIP.

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

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

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

Sec. 13.46.100. VALIDITY AND EFFECT OF TRANSFER.

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

The balance of this section generally tracks Section 3 of the 1966 version of the UGMA with a number of necessary, and perhaps significant, changes required by the new kinds of property subject to custodianships. The 1966 version of the UGMA provides that a transfer made under its terms "conveys to the minor indefeasibly vested legal title to the [custodial property]." Because equitable interests in property may be the subject of a transfer under the AkUTMA, the reference to "legal title" has been deleted, but no change concerning the effect or finality of the transfer is intended.

However, subsection (b) qualifies the rights of the minor in the property, by making them subject to "the rights, power, duties and authority" of the custodian under the AkUTMA, a concept that may have been implicit and intended in the 1966 version of the UGMA, but not expressed. The concept is important because of the kinds of property, particularly real estate, now subject to custodianship. If the minor is married, it would be possible for homestead, dower, or community property rights to attach to real estate (or other property) acquired after marriage by the minor through a transfer to a custodianship for his benefit. The quoted language qualifying the minor's interest in the property is intended to override these rights insofar as they may conflict with the custodian's ability and authority to manage, sell, or transfer the property while it is custodial property. Upon termination of the custodianship and transfer of the custodial property to the former minor, the custodial property would then become subject to such spousal rights for the first time.

For a list of the immunities enjoyed by third persons under subsection (c), see sec. 13.46.150 and the Commentary to sec. 13.46.150.

Because custodianship under the AkUTMA can extend beyond the age of majority in many states (and can in this bill), or beyond emancipation of a minor through marriage or otherwise, the Drafting Committee of the UTMA considered the addition of a spendthrift clause to this section. The idea was rejected because neither the 1966 version of the UGMA nor its predecessors had such a provision, because spendthrift protection would extend only until 21 in any event and judgments against the minor would then be enforceable, and because the spendthrift qualification on the interest of the minor in the property may be inconsistent with the

theory of the UTMA to convey the property indefeasibly to the minor.

Sec. 13.46.110. CARE OF CUSTODIAL PROPERTY.

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

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

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

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

Subsection (e) follows Section 4(h) of the 1966 version of the UGMA, but adds the requirement that income tax information be maintained and made available for preparation of the minor's tax returns. Because the custodianship is not a separate legal entity or taxpayer, the minor's tax identification number should be used to identify all custodial property accounts.

Sec. 13.46.120. POWERS OF CUSTODIAN.

Subsection (a) replaces the specific list of custodian's powers contained in Section 4(f) of the 1966 version of the UGMA which related only to securities, money, and insurance, then the only permitted kinds of custodial property. It was determined not to expand the list to try to deal with all forms of property now covered by the AkUTMA and to specify all powers that might be appropriate for each kind of property, or to refer to an existing body of state law, such as the Trustee's Powers Act, since such powers would not be uniform. Instead, this provision grants the custodian the very broad and general powers of an unmarried adult owner of the property, subject to the prudent person rule and to the duties of segregation and record keeping specified in sec. 13.46.110. This approach permits the AkUTMA to be self-contained and more readily understandable by volunteer, non-professional fiduciaries, who most often serve as custodians. It is intended that the authority granted includes the powers most often suggested for custodians, such as the power to borrow, whether at interest or interest free, the power to invest in common trust funds, and the power to enter contracts that extend beyond the termination of the custodianship.

Subsection (a) further specifies that the custodian's powers or incidents of ownership in custodial property such as insurance policies may be exercised only in the capacity as custodian. This provision is intended to prevent the exercise of those powers for the direct or indirect benefit of the custodian, so as to avoid as nearly as possible the result that a custodian who dies while holding an insurance policy on his own life for the benefit of a minor will have the policy taxed in his estate. See, Section 2042, Internal Revenue Code; but compare Terriberry v. U.S., 517 F.2d 286 (5th Cir. 1975), and Rose v. U.S., 511 F.2d 259 (5th Cir. 1975).

Sec. 13.46.130. USE OF CUSTODIAL PROPERTY.

Subsections (a) and (b) track subsections (b) and (c) of Section 4 of the 1966 version of the UGMA, but with two significant changes. The standard for expenditure of custodial property has been amended to read "for the use and benefit of the minor," rather than "for the support, maintenance, education and benefit of the minor" as specified under the 1966 version of the UGMA. This change is intended to avoid the implication that the custodial property can be used only for the required support of the minor.

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

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

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

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

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

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

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

This section deletes as surplusage the bracketed optional standards contained in the 1966 version of the UGMA for determining "reasonable compensation" which included, "in the order stated," a direction by the donor, statutes governing compensation of custodians or guardians, or court order. While compensation of custodians becomes a more likely occurrence and a more important issue under the AkUTMA because property requiring increased management may now be subject to custodianship, compensation can still be determined by

agreement, by reference to a statute or by court order, without the need to so state in the AkUTMA.

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

Sec. 13.46.150 carries forward, but shortens and simplifies, Section 6 of the 1966 version of the UGMA with no substantive change intended. The 1966 version of the UGMA permitted a 14 year old minor to appoint a successor custodian and specifically provided that third parties were entitled to rely on the appointment. Because this section refers to any custodian, and "custodian" is defined to include successor custodians (Sec. 13.46.990(7)), a successor custodian appointed by the minor is included among those upon whom third parties may rely.

Similarly, because this section protects any third "persons," it is not necessary to specify here or in sec. 13.46.100(c) that it extends to any "issuer, transfer agent, bank, life insurance company, broker, or other person or financial institution," as did the 1966 version of the UGMA. See the definition of "person" in AS 01.10.060.

This section excludes from its protection persons with "knowledge" of the irregularity of a transaction, a concept not expressed but probably implied in Section 6 of the 1966 version of the UGMA. See, e.g., State ex rel. Paden v. Currel, 597 S.W.2d 167 (Mo. App. 1980) disapproving the pledge of custodial property to secure a personal loan to the custodian.

Similarly, this section does not alter the requirements for bona fide purchaser or holder in due course status under other law for persons who acquire from a custodian custodial property subject to recordation or registration.

Sec. 13.46.160. LIABILITY TO THIRD PERSONS.

This section has no counterpart in the 1966 version of the UGMA and is based upon Section 5-429 of the Uniform Probate Code (AS 13.26.305), relating to limitations on the liability of conservators. Because some forms of custodial property now permitted under the AkUTMA can give rise to liabilities as well as benefits (e.g., general partnership interests, interests in real estate or business proprietorships, automobiles, etc.) the Drafting Committee for the Uniform

Transfers to Minors Act believed it is necessary to protect the minor and other assets the minor might have or acquire from such liabilities, since the minor is unable to disclaim a transfer to a custodian for his benefit. Similar protection for the custodian is necessary so as not to discourage nonprofessional or uncompensated persons from accepting the office. Therefore this section generally limits the claims of third parties to recourse against the custodial property, as third parties dealing with a trust are generally limited to recourse against the trust corpus.

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

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

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

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

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

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

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

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

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

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

Sec. 13.46.190. TERMINATION OF CUSTODIANSHIP.

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

- (1) the minor reaches 21, if the property was transferred to the minor under secs. 13.46.030 or 13.46.040, unless the term is changed under sec. 13.46.195 to a later date;

- (2) the minor reaches 18, if the property was transferred to the minor under sec. 13.46.050 or 13.46.060;
- (3) the date specified in the transfer made under sec. 13.46.080 is reached, if the time has been changed under sec. 13.46.195; or
- (4) the minor's death.

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

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

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

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

Subsection (c) contains optional language which the donor-transferor may use to allow a minor the option of terminating the custodianship during a six month period beginning on the minor's 21st birthday. In order to exercise this

option, a minor must provide written notice of the minor's intention to terminate to the custodian within 6 months of the minor's 21st birthday. This option has been provided so that a transferor may transfer property by irrevocable gift, under sec. 13.46.030, into a custodianship in a manner consistent with Section 2503(c) of the Internal Revenue Code and the Internal Revenue Service's position as put forth in Rev.Rul. 74-43.

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

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

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

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

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

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

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

Sec. 13.46.200. APPLICABILITY.

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

Sec. 13.46.210. EFFECT ON EXISTING CUSTODIANSHIPS.

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

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

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

governed termination. The dates used are the dates when the age of majority was changed in the state.

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

Sec. 13.46.220. UNIFORMITY OF APPLICATION.

No commentary.

Sec. 13.46.990. DEFINITIONS.

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

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

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

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

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

or temporary, and includes a committee, tutor, or curator of the minor's property.

"Custodial Property" The definition of "custodial property" has been generalized and expanded to encompass every conceivable legal or equitable interest in property of any kind, including real estate and tangible or intangible personal property. The term is intended, for example, to include joint interests with right of survivorship, beneficial interest in land trusts, as well as all other intangible interests in property. Contingent or expectancy interests such as the designation as a beneficiary under insurance policies or benefit plans become "custodial property" only if the designation is irrevocable, or when it becomes so, but the AkUTMA specifically authorizes the "nomination" of a future custodian as beneficiary of such interests (see sec. 13.46.020). Proceeds of custodial property, both immediate and remote, are themselves custodial property, as is the case under UGMA.

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

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

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

"Transfer" The new definition of "transfer" is necessary to reflect the application of the AkUTMA not only to gifts, but

also to distributions from trusts and estates, obligors of the minor, and transfers of the minor's own assets to a custodianship by the legal representative of a minor, all of which are now permitted by the AkUTMA.

"Transferor" The new definition of "transferor" is required because the term includes not only the maker of a gift, i.e., a donor in the usual sense, but also fiduciaries and obligors who control or own property that is the subject of the transfer. Nothing in the AkUTMA requires that a transferor be an "adult." If permitted under other law of the state relating to emancipation or competence to make a will, gift, or other transfer, a minor may make an effective transfer of property to a custodian for his benefit or for the benefit of another minor.

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

Sec. 13.46.999. SHORT TITLE.

No commentary.

Section 2. Makes a technical citation change necessitated by the new chapter.

Sections 3 and 4. Amends Uniform Anatomical Gift Act (AS 13.50) by deleting witness requirement when donor signs donation document. Section 4 conforms another section to this change.

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

Section 6. Makes the Act effective January 1, 1990.

TBC:gc:mi
wkg8/048

LAW OFFICES OF
ROBIN O. BRENA, INC.

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March 17, 1989

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

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

Dear Sirs:

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

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

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

Representative Max Gruenberg
March 17, 1989
Page 2

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

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

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

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

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

Representative Max Gruenberg
March 17, 1989
Page 3

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

LAW OFFICE OF ROBIN O. BRENA, INC.

By: Robin O. Brena
Robin O. Brena

ROB:bg

State of Alaska

Committees

CO-CHAIR, HOUSE JUDICIARY
VICE CHAIR, HOUSE LABOR AND COMMERCE
HOUSE HEALTH, EDUCATION
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Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

March 13, 1989

MEMORANDUM

TO: Members of the House HESS Committee

FROM: Representative Max Gruenberg 

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

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

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

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

The bill will also add a technical amendment to the Uniform Anatomical Gifts Act, easing restrictions on organ donations.

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

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

STATE OF ALASKA
THE LEGISLATURE

HOUSE OF REPRESENTATIVES
LEGISLATIVE COUNSEL
1000 EAST BROADWAY
ANCHORAGE, ALASKA 99514
307-261-1000

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 31, 1989

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

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

1. SUMMARY OF CONTENTS.

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

Section 2 makes a technical change.

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

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

Section 6 makes the Act effective January 1, 1990.

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

Representative Max Gruenberg
Page 2
January 31, 1989

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

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

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

If I may be of further assistance, please advise.

TLB:gc
WKG6/062

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 13, 1989

Mark T. Handley, Esq.
House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mark,

I understand that Representative Gruenberg is proposing an amendment to House Bill 165 which would rectify an unintended result of last year's legislation on distribution of a victim's estate (SE 320).

I have read your proposed language and can offer the Governor's support of it, providing that the words "extraordinary and" are deleted. I have been advised that Representative Gruenberg agrees to that deletion.

Thank you for consulting with the Governor's office on this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert A. Evans".

Robert A. Evans
Deputy Chief of Staff/
Legislative Liaison

A M E N D M E N T

OFFERED IN THE HOUSE

BY GRUENBERG

TO: HB 165

Page 1, following line 9:

Insert a new bill section to read:

"* Section 1. AS 13.11.305 is amended by adding a new subsection to read:

(h) In the case of an unintentional felonious killing, a court may set aside the application of (a), (b), (c), or (d) of this section if the court makes special findings of fact and conclusions of law that the application of the subsection would result in a manifest injustice and that the subsection should not be applied."

Page 1, line 10:

Delete "* Section 1."

Insert "* Sec. 2."

Renumber the following bill sections accordingly.

COMMENTARY TO THE

PROPOSED

Alaska Uniform Transfers to Minors Act

November 1987

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

Preface

The Uniform Transfers to Minors Act (UTMA) revises and restates the Uniform Gifts to Minors Act (UGMA), one of the National Conference of Commissioners on Uniform State Laws most successful products, some version of which has been enacted in every American jurisdiction.

The original version of UGMA was adopted by the Conference in 1956 and closely followed a model "Act concerning Gifts of Securities to Minors" which was sponsored by the New York Stock Exchange and the Association of Stock Exchange Firms and which had been adopted in 14 states. The 1956 version of the UGMA broadened the model act to cover gifts of money as well as securities but made few other changes.

In 1956 and 1966 the Conference revised the UGMA to expand the types of financial institutions which could serve as depositories of custodial funds, to facilitate the designation of successor custodians, and to add life insurance policies and annuity contracts to the types of property (cash and securities) that could be made the subject of a gift under the UGMA.

Alaska adopted the 1966 version of the UGMA in 1967 (AS 45.60). Many states which adopted the 1956 or 1966 version of the UGMA, have substantially revised their versions of the UGMA to expand the kinds of property that may be made the subject of a gift under the UGMA. A few states permit transfers to custodians from other sources, such as trusts and estates, as well as from lifetime gifts. Some states also permit the transferor to have an option to extend the date the custodial property may be distributed to the minor. As a result, a great deal of non-uniformity has arisen among the states. Uniformity in this area is important, for the Conference has cited the UGMA as an example of an act designed to avoid conflicts of law when the laws of more than one state may apply to a transaction or a series of transactions.

The Alaska Uniform Transfers to Minors act (AkUTMA) follows the expansive approach taken by several states and allows any kind of property, real or personal, tangible or intangible, to be made the subject of a transfer to a custodian for the benefit of a minor (sec. 13.46.990(6)). In addition, it permits such transfers not only by lifetime outright gifts (sec. 13.46.030), but also from trusts, estates, and guardianships, whether or not specifically authorized in the governing instrument (secs. 13.46.040 and 13.46.050), and from other third parties indebted to a minor who does not have a conservator, such as parties against

whom a minor has a tort claim or judgment, and depository institutions holding deposits or insurance companies issuing policies payable on death to a minor (sec. 13.46.060). For this reason, and to distinguish the enactment of this statute from the 1956 and 1966 versions of the UGMA, the title of this Act has been changed to refer to "Transfers" rather than to "Gifts," a much narrower term. Moreover, the AkUTMA permits the transferor or the minor to have an option to extend beyond the age of minority the date the custodial property may be distributed to the minor (sec. 13.46.195).

As so expanded, the AkUTMA might be considered a statutory form of trust or guardianship that may terminate at age 18 or, if the transferor or minor so elects, may be terminated at any age prior to age 25. Note, however, that unlike a trust, a custodianship is not a separate legal entity or taxpayer. Under sec. 13.46.100(b), the custodial property is indefeasibly vested in the minor, not the custodian, and thus any income received is attributable to and reportable by the minor, whether or not actually distributed to the minor.

The expansion of the AkUTMA to permit transfers of any kind of property to a custodian creates a significant problem of potential personal liability for the minor or the custodian arising from the ownership of property such as real estate, automobiles, general partnership interests, and business proprietorships. This problem did not exist under the UGMA under which custodial property was limited to bank deposits, securities, and insurance. In response, sec. 13.46.160 generally limits the claims of third parties to recourse against the custodial property, with the minor insulated against personal liability unless he is personally at fault. The custodian is similarly insulated unless he is personally at fault or fails to disclose his custodial capacity upon entering into a contract.

Nevertheless, the AkUTMA should be used with caution with respect to property such as real estate or general partnership interests from which liabilities as well as benefits may arise. Many of the possible risks can and should be insured against, and the custodian has the power under sec. 13.46.120(a) to purchase such insurance, at least when other custodial assets are sufficient to do so. If the assets are not sufficient, there is doubt that a custodian will act, or there are significant uninsurable risks, a transferor should consider a trust with spendthrift provisions, such as a minority trust under Section 2503(c), Internal Revenue Code, rather than a custodianship, to make a gift of such property to a minor.

Finally, the AkUTMA restates and rearranges rather than amends, the 1966 version of the UGMA. The addition of other forms of property and other forms of dispositions made adherence to the format and language of the prior act very unwieldy. In addition, the 1966 version of the UGMA closely followed the language of the earlier model act, which had already been adopted in several states, even though it did not conform to Conference style. It is hoped that this re-writing and revision of the UGMA will improve its clarity while also expanding its coverage.

ALASKA UNIFORM TRANSFERS TO MINORS ACT

Sec. 13.46.010. SCOPE AND JURISDICTION.

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

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

Subsection (c) recognizes that residents of Alaska may elect to have the law of another state apply to a transfer. That choice is valid if a nexus with the chosen state exists at the time of the transfer. If personal jurisdiction can be obtained in Alaska under other law apart from the AkUTMA, the custodianship may be enforced in Alaska courts, which are directed to apply the law of the state elected by the transferor.

If the choice of law under subsection (a) or (c) is ineffective because of the absence of the required nexus, the transfer may still be effective under the UTMA of another state with which a nexus does exist. See sec. 13.46.200.

Sec. 13.46.020. NOMINATION OF CUSTODIAN.

This section is new and permits a future custodian for a minor to be nominated to receive a distribution under a will or trust, or as a beneficiary of a power of appointment, or of contractual rights such as a life or endowment insurance policy, annuity contract, P.O.D. account, benefit plan, or similar future payment right. Nomination of a future custodian does not constitute a "transfer" under the AkUTMA and does not create custodial property. If it did, the nomination and beneficiary designation would have to be permanent, since a "transfer" is irrevocable and indefeasibly vests ownership of the intertest in the minor under sec. 13.46.-100(b).

Instead, this section permits a revocable beneficiary designation that takes effect only when the donor dies, or when a

lifetime transfer to the custodian for the minor beneficiary occurs, such as a distribution under an inter vivos trust. However, an unrevoked nomination under this section is binding on a personal representative or trustee (see sec. 13.46.040(b)) and on insurance companies and other obligors who contract to pay in the future (see sec. 13.46.060(b)).

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

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

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

To emphasize the different kinds of transfers that create presently effective custodianships under the AkUTMA, they are separately described in secs. 13.46.030, 13.46.040, 13.46.050, and 13.46.060. This section in part corresponds to Section 2(a) of the 1966 version of the UGMA and covers the traditional lifetime gift that was the only kind of transfer authorized by the 1966 version of the UGMA. It also covers an irrevocable exercise of a power of appointment in favor of a custodian, as distinguished from the exercise of a power in a revocable instrument that results only in the nomination of a future custodian under sec. 13.46.020.

Sec. 13.46.040. TRANSFER AUTHORIZED BY WILL OR TRUST.

This section is new and has no counterpart in the UGMA. It is based on nonuniform provisions adopted by Connecticut, Illinois, Wisconsin, and other states to validate distributions from trusts and estates to a custodian for a minor beneficiary, when the use of a custodian is expressly authorized by the governing instrument. It also covers the designation of the custodian whenever the settlor or testator fails to make a nomination, or the future custodian nominated under sec. 13.46.020 (and any alternate named) fails to qualify.

Sec. 13.46.050. OTHER TRANSFER BY FIDUCIARY.

This section is new and has no counterpart in the UGMA. It covers a new concept, already authorized by the law of some

states through nonuniform amendments to the UGMA to permit custodianships to be used as guardianships or conservator substitutes, even though not specifically authorized by the person whose property is the subject of the transfer. It also permits the legal representative of the minor, such as a conservator or guardian, to transfer the minor's own property to a new or existing custodianship for the purposes of convenience or economies of administration.

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

The custodianship created under this section without express authority in the governing instrument will terminate upon the minor's attainment of the statutory age of majority in Alaska, i.e., at the same age a conservatorship of the minor would end. See sec. 13.46.190 and the Commentary to sec. 13.46.190.

Sec. 13.46.060. TRANSFER BY OBLIGOR.

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

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

Sec. 13.46.070. RECEIPT FOR CUSTODIAL PROPERTY.

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

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

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

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

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

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

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

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

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

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

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

The form of transfer document recommended and set out in subsection (b) contains an acceptance that must be executed by the custodian to make the disposition effective. While such a form of written acceptance is not specifically

required in the case of registered securities under (a)(1), money under (a)(2), insurance contracts or interests under (a)(3) or (a)(4), real estate under (a)(5), or titled personal property under (a)(6), it is certainly the better and recommended practice to obtain the acknowledgment, consent, and acceptance of the designated custodian on the instrument of transfer, or otherwise.

A transferor may create a custodianship by naming himself as custodian, except for transfers of securities under (a)(1)(B), insurance and annuity contracts under (a)(3)(B), and titled personally under (a)(6)(B), which are made without registering them in the name of the custodian, and transfers of the residual class of property covered by (a)(7). In all of these cases a transfer of possession and control to a third party is necessary to establish donative intent and consummation of the transfer, and designation of the transferor as custodian renders the transfer invalid under sec. 13.46.100(a)(2).

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

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

Subsection (c) tracks in substance Section 2(c) of the 1966 version of the UGMA. However, it replaces the requirement

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

Sec. 13.46.085. NATIVE CORPORATIONS; CUSTODIANS.

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

Sec. 13.46.090. SINGLE CUSTODIANSHIP.

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

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

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

Sec. 13.46.100. VALIDITY AND EFFECT OF TRANSFER.

Subsection (a) generally tracks Section 2(c) of the 1966 version of the UGMA, except that the transferor's des-

ignation of himself as custodian of property for which he is not eligible to serve under sec. 13.46.080(a) makes the transfer ineffective. See Commentary to sec. 13.46.080.

The balance of this section generally tracks Section 3 of the 1966 version of the UGMA with a number of necessary, and perhaps significant, changes required by the new kinds of property subject to custodianships. The 1966 version of the UGMA provides that a transfer made under its terms "conveys to the minor indefeasibly vested legal title to the [custodial property]." Because equitable interests in property may be the subject of a transfer under the AkUTMA, the reference to "legal title" has been deleted, but no change concerning the effect or finality of the transfer is intended.

However, subsection (b) qualifies the rights of the minor in the property, by making them subject to "the rights, power, duties and authority" of the custodian under the AkUTMA, a concept that may have been implicit and intended in the 1966 version of the UGMA, but not expressed. The concept is important because of the kinds of property, particularly real estate, now subject to custodianship. If the minor is married, it would be possible for homestead, dower, or community property rights to attach to real estate (or other property) acquired after marriage by the minor through a transfer to a custodianship for his benefit. The quoted language qualifying the minor's interest in the property is intended to override these rights insofar as they may conflict with the custodian's ability and authority to manage, sell, or transfer the property while it is custodial property. Upon termination of the custodianship and transfer of the custodial property to the former minor, the custodial property would then become subject to such spousal rights for the first time.

For a list of the immunities enjoyed by third persons under subsection (c), see sec. 13.46.150 and the Commentary to sec. 13.46.150.

Because of custodianship under the AkUTMA can extend beyond the age of majority in many states, or beyond emancipation of a minor through marriage or otherwise, the Drafting Committee of the UTMA considered the addition of a spendthrift clause to this section. The idea was rejected because neither the 1966 version of the UGMA nor its predecessors had such a provision, because spendthrift protection would extend only until 21 in any event and judgments against the minor would then be enforceable, and because the spendthrift qualification on the interest of the minor in the property may be inconsistent with the theory of the UTMA to convey the property indefeasibly to the minor.

Subsection (d), (e), and (f) are derived from California amendments to the UTMA but are not included in the UTMA. These subsections are included in the AkUTMA to make clear that (1) a person serving as guardian of the estate of the minor (conservator) may also serve as custodian and in this case the custodial property does not become a part of the guardianship estate; and (2) property may be transferred from a guardianship estate to the person who serves as guardian to be held by that person as custodian, and in such case the property is no longer a part of the guardianship estate but instead is governed solely by the AkUTMA. (17 Cal.L.Rev.Comm.Reports 61 (1984)).

Sec. 13.46.110. CARE OF CUSTODIAL PROPERTY.

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

Subsection (b) restates and makes somewhat stricter the "prudent person" fiduciary standard for the custodian, since it is now cast in terms of a prudent person "dealing with property of another" rather than one "who is seeking reasonable income and the preservation of his capital," as under the 1966 version of the UGMA. The rule also adds a slightly higher standard for professional fiduciaries. The rule parallels section 7-302 of the Uniform Probate Code (AS 13.36.075) in order to refer to the existing and growing body of law interpreting that standard. The 1966 version of the UGMA permitted a custodian to retain any security or bank account received, without the obligation to diversify investment. This subsection extends that rule to any property received.

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

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

interest to a custodian, and the custodian is authorized under subsection (b) to retain a joint tenancy interest so received.

Subsection (e) follows Section 4(h) of the 1966 version of the UGMA, but adds the requirement that income tax information be maintained and made available for preparation of the minor's tax returns. Because the custodianship is not a separate legal entity or taxpayer, the minor's tax identification number should be used to identify all custodial property accounts.

Sec. 13.46.120. POWERS OF CUSTODIAN.

Subsection (a) replaces the specific list of custodian's powers contained in Section 4(f) of the 1966 version of the UGMA which related only to securities, money, and insurance, then the only permitted kinds of custodial property. It was determined not to expand the list to try to deal with all forms of property now covered by the AkUTMA and to specify all powers that might be appropriate for each kind of property, or to refer to an existing body of state law, such as the Trustee's Powers Act, since such powers would not be uniform. Instead, this provision grants the custodian the very broad and general powers of an unmarried adult owner of the property, subject to the prudent person rule and to the duties of segregation and record keeping specified in sec. 13.46.110. This approach permits the AkUTMA to be self-contained and more readily understandable by volunteer, nonprofessional fiduciaries, who most often serve as custodians. It is intended that the authority granted includes the powers most often suggested for custodians, such as the power to borrow, whether at interest or interest free, the power to invest in common trust funds, and the power to enter contracts that extend beyond the termination of the custodianship.

Subsection (a) further specifies that the custodian's powers or incidents of ownership in custodial property such as insurance policies may be exercised only in the capacity as custodian. This provision is intended to prevent the exercise of those powers for the direct or indirect benefit of the custodian, so as to avoid as nearly as possible the result that a custodian who dies while holding an insurance policy on his own life for the benefit of a minor will have the policy taxed in his estate. See, Section 2042, Internal Revenue Code; but compare Terriberry v. U.S., 517 F.2d 286 (5th Cir. 1975), and Rose v. U.S., 511 F.2d 259 (5th Cir. 1975).

Sec. 13.46.130. USE OF CUSTODIAL PROPERTY.

Subsections (a) and (b) track subsections (b) and (c) of Section 4 of the 1966 version of the UGMA, but with two significant changes. The standard for expenditure of custodial property has been amended to read "for the use and benefit of the minor," rather than "for the support, maintenance, education and benefit of the minor" as specified under the 1966 version of the UGMA. This change is intended to avoid the implication that the custodial property can be used only for the required support of the minor.

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

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

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

An "interested person" entitled to seek court ordered distributions under subsection (b) would include not only the

parent or conservator or guardian of the minor and a transferor or a transferor's legal representative, but also a public agency or official with custody of the minor and a third party to whom the minor owes legally enforceable debts.

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

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

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

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

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

Sec. 13.46.150 carries forward, but shortens and simplifies, Section 6 of the 1966 version of the UGMA with no substantive change intended. The 1966 version of the UGMA permitted a 14 year old minor to appoint a successor custodian and specifically provided that third parties were entitled to rely on the appointment. Because this section refers to any custodian, and "custodian" is defined to include successor custodians (Sec. 13.46.990(7)), a successor custodian appointed by the minor is included among those upon whom third parties may rely.

Similarly, because this section protects any third "persons," it is not necessary to specify here or in sec.

13.46.100(c) that it extends to any "issuer, transfer agent, bank, life insurance company, broker, or other person or financial institution," as did the 1966 version of the UGMA. See the definition of "person" in AS 01.10.060.

This section excludes from its protection persons with "knowledge" of the irregularity of a transaction, a concept not expressed but probably implied in Section 6 of the 1966 version of the UGMA. See, e.g., State ex rel. Paden v. Currel, 597 S.W.2d 167 (Mo. App. 1980) disapproving the pledge of custodial property to secure a personal loan to the custodian.

Similarly, this section does not alter the requirements for bona fide purchaser or holder in due course status under other law for persons who acquire from a custodian custodial property subject to recordation or registration.

Sec. 13.46.160. LIABILITY TO THIRD PERSONS.

This section has no counterpart in the 1966 version of the UGMA and is based upon Section 5-429 of the Uniform Probate Code (AS 13.26.305), relating to limitations on the liability of conservators. Because some forms of custodial property now permitted under the AkUTMA can give rise to liabilities as well as benefits (e.g., general partnership interests, interests in real estate or business proprietorships, automobiles, etc.) the Drafting Committee for the Uniform Transfers to Minors Act believed it is necessary to protect the minor and other assets the minor might have or acquire from such liabilities, since the minor is unable to disclaim a transfer to a custodian for his benefit. Similar protection for the custodian is necessary so as not to discourage nonprofessional or uncompensated persons from accepting the office. Therefore this section generally limits the claims of third parties to recourse against the custodial property, as third parties dealing with a trust are generally limited to recourse against the trust corpus.

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

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

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

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

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

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

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

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

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

This section does not contain a separate statute of limitations precluding petitions for accounting after termination of the custodianship. Because custodianships can be created without the knowledge of the minor, a person might learn of a custodian's failure to turn over custodial property long after reaching majority, and should not be precluded from asserting his rights in the case of such fraud. In addition, the 1966 version of the UGMA has no such preclusion

and seems to have worked well. Other law, such as general statutes of limitation and the doctrine of laches, should serve adequately to protect former custodians from harassment.

Sec. 13.46.190. TERMINATION OF CUSTODIANSHIP.

This section tracks Section 4(d) of the 1966 version of the UGMA and provides that custodianships created by fiduciaries without express authority from the donor of the property under sec. 13.46.050 and by obligors of the minor under sec. 13.46.060 terminate upon the minor's attaining age 18, since these custodianships are substitutes for conservatorships that would otherwise terminate at that time. All other custodianships terminate at the time the minor attains 18 years of age unless the time of transfer of the custodial property is delayed under sec. 13.46.195 to a time after the time the minor attains the age of 18 years. Because property in a single custodianship may be distributable at different times, separate accounting for custodial property by source may be required. See Commentary to sec. 13.46.090.

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

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

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

The custodian is required to transfer the property to the minor when the minor attains the age of 18 years unless the

transfer under sec. 13.46.080 specifies a later time. See sec. 13.46.190.

Subsection (c) contains optional language which the donor-transferor may use to allow a minor the option of terminating the custodianship during a six month period beginning on the minor's 21st birthday. In order to exercise this option, a minor must provide written notice of the minor's intention to terminate to the custodian within 6 months of the minor's 21st birthday. This option has been provided so that a transferor may transfer property by irrevocable gift, under sec. 13.46.030, into a custodianship in a manner consistent with Section 2503(c) of the Internal Revenue Code and the Internal Revenue Service's position as put forth in Rev.Rul. 74-43.

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

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

Subsection (d) permits the custodianship to continue until not later than the time the minor attains the age of 25 years where the transfer is made under a provision in a will or trust that provides that the custodianship is to continue until the specified age, not later than the time the beneficiary attains the age of 25. A custodianship may be established under a provision in a will or trust that provides that the custodianship is to continue until a specified age after age 18 even though the beneficiary has attained an age older than 18 but younger than the specified age at which the custodianship is to terminate. See sec. 13.46.990(11).

Subsection (e) permits the custodianship to continue until the time the minor attains the age of 25 years where the custodial property is transferred under sec. 13.46.030 if the transfer specifies that the custodianship is to continue until the specified age.

This section does not provide for continuance beyond age 18 of a custodianship created under secs. 13.46.010, 13.46.050,

13.46.060, 13.46.100, 13.46.110 or 13.46.120. These custodianships terminate at age 18 because they are substitutes for a guardianship that otherwise would terminate at that time (see sec. 13.46.150). And, in the cases where this section permits the custodianship to continue after the minor attains the age of 18 years, if the transfer under sec. 13.46.080 does not specify any age, the custodianship terminates when the minor attains 18 years of age. See (f) of this section.

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

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

Sec. 13.46.200. APPLICABILITY.

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

Sec. 13.46.210. EFFECT ON EXISTING CUSTODIANSHIPS.

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

All states have previously enacted some version of the UGMA, and it will be more orderly to subject gifts or other transfers under the UGMA to the procedures of the UTMA rather than to keep both the UGMA and UTMA in force, presumably for 18 or 21 years until all custodianships created under prior law have terminated. Subsection (b) is intended to apply the AkUTMA to prior gifts and existing custodianships

insofar as it is constitutionally permissible to do so. However, prior custodianships will continue to terminate at the age prescribed by the Act under which the gift or transfer was made.

Subsection (c) is also new and is based upon Section 45-109b of the Connecticut Act. This subsection is intended for adoption in those states that reduced the age of majority to 18, but which adopt the recommended return to 21 as the age at which custodianships terminate. Its purpose is to avoid resurrecting custodianships for persons not yet 21 which terminated during the period that the age of 18 governed termination.

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

Sec. 13.46.220. UNIFORMITY OF APPLICATION.

No commentary.

Sec. 13.46.990. DEFINITIONS.

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

The definitions of "domestic financial institution" and "insured financial institution" have been eliminated because few, if any, states limit deposits by custodians to local institutions, and the prudent person rule of sec. 13.46.110(b) of the AkUTMA may dictate the use of insured institutions as depositories, without having to so specify.

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

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

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

"Custodial Property" The definition of "custodial property" has been generalized and expanded to encompass every conceivable legal or equitable interest in property of any kind, including real estate and tangible or intangible personal property. The term is intended, for example, to include joint interests with right of survivorship, beneficial interest in land trusts, as well as all other intangible interests in property. Contingent or expectancy interests such as the designation as a beneficiary under insurance policies or benefit plans become "custodial property" only if the designation is irrevocable, or when it becomes so, but the AkUTMA specifically authorizes the "nomination" of a future custodian as beneficiary of such interests (see sec. 13.46.02C). Proceeds of custodial property, both immediate and remote, are themselves custodial property, as is the case under UGMA.

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

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

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

"Transfer" The new definition of "transfer" is necessary to reflect the application of the AkUTMA not only to gifts, but

also to distributions from trusts and estates, obligors of the minor, and transfers of the minor's own assets to a custodianship by the legal representative of a minor, all of which are now permitted by the AkUTMA.

"Transferor" The new definition of "transferor" is required because the term includes not only the maker of a gift, i.e., a donor in the usual sense, but also fiduciaries and obligors who control or own property that is the subject of the transfer. Nothing in the AkUTMA requires that a transferor be an "adult." If permitted under other law of the state relating to emancipation or competence to make a will, gift, or other transfer, a minor may make an effective transfer of property to a custodian for his benefit or for the benefit of another minor.

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

Sec. 13.46.999. SHORT TITLE.

No commentary.

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A M E N D M E N T

OFFERED IN THE HOUSE

BY GRUENBERG

TO: CS HB 165 (HESS)

Page 4, line 18, after "exceeds" delete "\$25,000" and insert "\$5,000"

Comment: This is in accord with the Oregon amendment to UTMA, which limits transfers of guardianship authority, which may be made without a court order, to transfers under \$5,000. The Uniform Act sets it at \$10,000. The bill currently sets the limit at \$25,000. Illinois sets it at \$50,000.

A M E N D M E N T #1

OFFERED IN THE HOUSE

BY GRUENBERG

TO CS HB 165 (HESS)

Page 4, line 18, after "exceeds" delete "\$25,000" and insert "\$10,000"

(c) If no custodian has been nominated under Section 3, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds [\$10,000] in value.

LTMA Re. Amendment #2 COMMENT

This section is new and, like SECTION 6, permits a custodianship to be established as a substitute for a conservator to receive payments due a minor from sources other than estates, trusts, and existing guardianships covered by SECTIONS 5 and 6. For example, a tort judgment debtor of a minor, a bank holding a joint or P.O.D. account of which a minor is the surviving payee, or an insurance company holding life insurance policy or benefit plan proceeds payable to a minor may create a custodianship under this section.

Use of this section is mandatory when a future custodian has been nominated under SECTION 3 as a named beneficiary of an insurance

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

Action in Adopting Jurisdictions

Variations from Official Text:

Alabama. In subsec. (a), adds the following at end thereof: "provided, however, that transfers from obligors to a custodian under this section must not exceed \$10,000 in aggregated value at the time of transfer."

In subsec. (c), omits "unless the property exceeds [\$10,000] in value"

Illinois. Subsec. (a) reads: "(a) Subject to subsections (b) and (c), a person not subject to Section 5, 6 or 7 who holds property of or owes a liquidated debt to a minor not having a guardian may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to Section 10"

In subsec. (c), substitutes "\$50,000" for "\$10,000"

Iowa. Adds subsection which reads: "A person making a distribution under this section is relieved of all accountability with respect to the property once the property has been distributed."

Adds another subsection which reads: "This section does not apply to any amounts due a minor for services rendered by the minor."

Louisiana. In subsec. (a), substitutes "tutor" for "conservator"

Library References

Infants \Rightarrow 28
C.J.S. Infants $\S\S$ 134, 143

§ 8. Receipt for Custodial Property

A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this [Act].

COMMENT

This section discharges transferors from further responsibility for custodial property delivered to and received for by the custodian. See also SECTION 16 which protects transferors and other third parties dealing with custodians. Because a discharge or release for a donative trans-

fer is not necessary, this section had no counterpart in the 1966 Act.

This section does not authorize an existing custodian, or a custodian to whom an obligor makes a transfer under SECTION 7, to settle or release a claim of the minor against a third

party. Only a conservator, guardian ad litem or other person authorized under other law to act for the minor may release such a claim.

Action in Adopting Juris

Variations from Official Text:

Alabama. Adds following sentence: "An acknowledgment of delivery by a custodian, who believes in good faith that the transfer does not exceed the limitations on value prescribed in sections 35-5A-7(c) and 35-5A-8(c), is a sufficient receipt and discharge in accordance with this section, even though the values may subsequently be determined to exceed the value limitations."

District of Columbia. Substitutes "transferred under this act" for "transferred to the custodian pursuant to this [Act]"

Library Reference

Infants \Rightarrow 28
C.J.S. Infants $\S\S$ 135, 143

§ 9. Manner of Creating Custodial Property and Initial Custodian; Control

(a) Custodial property is created and a transfer is

(1) an uncertificated security or a certificated \Rightarrow

(i) registered in the name of the transferor, an trust company, followed in substance by the words: "(name of minor) under the [Name of E Minors Act"; or

(ii) delivered if in certificated form, or any do an uncertificated security is delivered, together an adult other than the transferor or to a trust by an instrument in substantially the form set

(2) money is paid or delivered to a broker or account in the name of the transferor, an adult company, followed in substance by the words: "as (name of minor) under the [Name of Enacting Stat-

(3) the ownership of a life or endowment inst either:

(i) registered with the issuer in the name of th transferor, or a trust company, followed in subst _____ (name of minor) under form Transfers to Minors Act"; or

(ii) assigned in a writing delivered to an adu trust company whose name in the assignment is: "as custodian for _____ (name of m State) Uniform Transfers to Minors Act";

(4) an irrevocable exercise of a power of appoin to future payment under a contract is the subject the payor, issuer, or other obligor that the right adult other than the transferor, or a trust compa followed in substance by the words: "as custo minor) under the [Name of Enacting State] I

(5) an interest in real property is recorded in other than the transferor, or a trust company, foll custodian for _____ (name of m State) Uniform Transfers to Minors Act";

(6) a certificate of title issued by a department States which evidences title to tangible personal (i) issued in the name of the transferor, an trust company, followed in substance by

A M E N D M E N T #2

OFFERED IN THE HOUSE

BY GRUENBERG

TO CS HB 165 (HESS)

Page 10, line 8, after "shall" insert "act in the best interest of the minor, shall"

substitution for, and does not affect any obligation of a person to support the minor.

COMMENT

Subsections (a) and (b) track subsections (b) and (c) of Section 4 of the 1966 Act, but with two significant changes. The standard for expenditure of custodial property has been amended to read "for the use and benefit of the minor," rather than "for the support, maintenance, education and benefit of the minor" as specified under the 1966 Act. This change is intended to avoid the implication that the custodial property can be used only for the required support of the minor.

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

Action in Adopting Jurisdictions

Variations from Official Text:

California. Adds subsection as follows:

"In lieu of the powers and duties described in subdivision (a), a transferor who is also the custodian may elect to govern his or her custodial powers and duties under this subdivision. If such election is made, the custodian shall not pay over to the minor for expenditure by the minor, and

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

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

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

shall not expend for the minor's use or benefit, any part of the custodial property for any purpose prior to the time specified in Section 3920, except by order of the court upon a showing that the expenditure is necessary for the support, maintenance, or education of the minor. When the powers and duties of the custodian are governed by this subdivision, the transferor-custodian shall file with the clerk of the court a declaration in substantially the following form:

"Declaration Under the California Uniform Transfers to Minors Act

"I, _____
(Name of Transferor-Custodian)

"Dated: _____ 19____
(Signature of Transferor-Custodian)"

as custodian for _____ under the
(Name of Minor)

California Uniform Transfers to Minors Act, hereby irrevocably elect to be governed under subdivision (d) of Section 3914 of the Probate Code in my custodial capacity over the following described property

Nevada. In subsec. (b), substitutes "the court considers advisable for his use and benefit" for "the court considers advisable for the use and benefit of the minor"

New Jersey. In subsec. (b), substitutes "application" for "petition"

(Description of Custodial Property)

"I declare under penalty of perjury that the foregoing is true and correct.

Wyoming. In subsec. (a), inserts "or all" following "so much".

Library References

Infants 28
C.J.S. Infants §§ 135, 143

§ 15. Custodian's Expenses, Compensation, and Bond

(a) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) Except for one who is a transferor under Section 4, a custodian has a non-cumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(c) Except as provided in Section 18(f), a custodian need not give a bond.

COMMENT

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

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

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

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

Action in Adopting Jurisdictions

Variations from Official Text:

Arkansas. In subsec. (c), substitutes "shall not be required to give" for "need not give"

Illinois. Adds a subsec. (d) which reads "(d) A custodian not compensated for his services is not liable for losses to the custodial property unless they result from his bad faith, intentional wrongdoing or gross negligence or from his failure to maintain the standard of prudence in investing the custodial property provided in this Act."

Massachusetts. In subsec. (c), adds "for the faithful performance of his duties" following "bond".

Nevada. Section reads:

"1. A custodian is entitled to reimbursement from the custodial property for his reasonable expenses incurred in the performance of his duties.

"2. Unless he is a transferor under NRS 167.023, a custodian may elect to receive from the custodial property during each calendar year reasonable compensation for his services performed during that year.

"3. Except as otherwise provided in this chapter, a custodian need not give a bond for the performance of his duties."

North Carolina. In subsec. (a), substitutes "pay from and to be reimbursed" for "reimbursement".

North Dakota. In subsec. (b), substitutes "under section 47-24.1-12" for "under Section 4" (note: the reference in the North Dakota text translates to section 12 of the Uniform Act).

Wyoming. Subsec. (c) reads "(c) A custodian is not required to give a bond for the performance of the custodian's duties, except as provided in W.S. 34-13-131(f)".

Library References

Infants 28
C.J.S. Infants §§ 135, 143

§ 16. Exemption of Third Person from Liability

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

- (1) the validity of the purported custodian's designation;
- (2) the propriety of, or the authority under this [Act] for, any act of the purported custodian;
- (3) the validity or propriety under this [Act] of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

Original sponsor: Judiciary Committee

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BIL. NO. 165 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL.

6 *Title Amended to cover all felonious killings. Change from last year*

7 For an Act entitled: "An Act relating to the disposition of property,
8 including anatomical parts of the body; and providing
9 for an effective date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 13.11.305 is amended by adding a new subsection to

12 read:

Government is unable to justify the problems created by changes in the felonious killing statutes last year. Amended to include...

13 (h) In the case of an unintentional felonious killing, a court
14 may set aside the application of (a), (b), (c), or (d) of this section
15 if the court makes special findings of fact and conclusions of law
16 that the application of the subsection would result in a manifest
17 injustice and that the subsection should not be applied.

18 * Sec. 2. AS 13 is amended by adding a new chapter to read:

19 CHAPTER 46. ALASKA UNIFORM TRANSFERS TO MINORS ACT.

20 Sec. 13.46.010. SCOPE AND JURISDICTION. (a) This chapter
21 applies to a transfer that refers to this chapter in the designation
22 under AS 13.46.080(a) by which the transfer is made, if at the time of
23 the transfer, the transferor, the minor, or the custodian is a resi-
24 dent of this state or the custodial property is located in this state.
25 The custodianship so created remains subject to this chapter despite a
26 subsequent change in residence of a transferor, the minor, or the
27 custodian, or the removal of custodial property from this state.

28 (b) A person designated as custodian under this chapter is
29 subject to personal jurisdiction in this state with respect to a
matter relating to the custodianship.

1 (c) A transfer that purports to be made and that is valid under
2 the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act,
3 or a substantially similar act of another state is governed by the law
4 of the designated state. *language was deleted that did not conform to Uniform Act. Change from led to*

5 Sec. 13.46.020. NOMINATION OF CUSTODIAN. (a) A person having
6 the right to designate the recipient of property transferable upon the
7 occurrence of a future event may revocably nominate a custodian to
8 receive the property for a minor beneficiary upon the occurrence of
9 the event by naming the custodian followed in substance by the words:
10 "as custodian for _____ (name of minor) under the
11 Alaska Uniform Transfers to Minors Act." The nomination may name one
12 or more persons as substitute custodians to whom the property must be
13 transferred, in the order named, if the first nominated custodian dies
14 before the transfer or is unable, declines, or is ineligible to serve.
15 The nomination may be made in a will, a trust, a deed, an instrument
16 exercising a power of appointment, or a writing designating a benefi-
17 ciary of contractual rights that is registered with or delivered to
18 the payor, issuer, or other obligor of the contractual rights.

19 (b) A custodian nominated under this section must be a person to
20 whom a transfer of property of that kind may be made under AS 13.46.-
21 080(a).

22 (c) The nomination of a custodian under this section does not
23 create custodial property until the nominating instrument becomes
24 irrevocable or a transfer to the nominated custodian is completed
25 under AS 13.46.080. Unless the nomination of a custodian has been
26 revoked, upon the occurrence of the future event the custodianship
27 becomes effective and the custodian shall enforce a transfer of the
28 custodial property under AS 13.46.080.

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

1 APPOINTMENT. A person may make a transfer by irrevocable gift to, or
2 the irrevocable exercise of a power of appointment in favor of, a
3 custodian for the benefit of a minor under AS 13.46.080.

4 Sec. 13.46.040. TRANSFER AUTHORIZED BY WILL OR TRUST. (a) A
5 personal representative or trustee may make an irrevocable transfer
6 under AS 13.46.080 to a custodian for the benefit of a minor as au-
7 thorized in the governing will or trust.

8 (b) If the testator or settlor has nominated a custodian under
9 AS 13.46.020 to receive the custodial property, the transfer must be
10 made to that person.

11 (c) If the testator or settlor has not nominated a custodian
12 under AS 13.46.020, or all persons so nominated as custodian die
13 before the transfer or are unable, decline, or are ineligible to
14 serve, the personal representative or the trustee, as the case may be,
15 shall designate the custodian from among those eligible to serve as
16 custodian for property of that kind under AS 13.46.080(a).

17 Sec. 13.46.050. OTHER TRANSFER BY FIDUCIARY. (a) Subject to
18 (c) of this section, a personal representative or trustee may make an
19 irrevocable transfer to another adult or trust company as custodian
20 for the benefit of a minor under AS 13.46.080, in the absence of a
21 will or under a will or trust that does not contain an authorization
22 to do so.

23 (b) Subject to (c) of this section, a conservator may make an
24 irrevocable transfer to another adult or trust company as custodian
25 for the benefit of the minor under AS 13.46.080.

26 (c) A transfer under (a) or (b) of this section may be made only
27 if

28 (1) the personal representative, trustee, or conservator
29 considers the transfer to be in the best interest of the minor;

(2) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust, agreement, or other governing instrument; and

(3) the transfer is authorized by the court if it exceeds \$25,000 in value. *Change from Uniform Act which sets limit at \$100,000. 1,000*

Sec. 13.46.060. TRANSFER BY OBLIGOR. (a) Subject to (b) and (c) of this section, a person not subject to AS 13.46.040 or 13.46.050 who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor under AS 13.46.080.

(b) If a person having the right to do so under AS 13.46.020 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(c) If a custodian has not been nominated under AS 13.46.020, or all persons nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to ^{Responsible} ~~an~~ adult member of the minor's family or to a trust company unless the property exceeds \$25,000 in value.

Sec. 13.46.070. RECEIPT FOR CUSTODIAL PROPERTY. A written receipt by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian under this chapter. *Language was changed to avoid conflict with Uniform Acknowledgments Act (changed last year)*

Sec. 13.46.080. MANNER OF CREATING CUSTODIAL PROPERTY AND EFFECTING TRANSFER; DESIGNATION OF INITIAL CUSTODIAN; CONTROL. (a) Custodial property is created and a transfer is made when

(1) an uncertificated security or a certificated security in registered form is either

(A) registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in

1 substance by the words: "as custodian for _____
2 (name of minor) under the Alaska Uniform Transfers to Minors
3 Act"; or

4 (B) delivered if in certificated form, or a document
5 necessary for the transfer of an uncertificated security is
6 delivered, together with any necessary endorsement to an adult
7 other than the transferor or to a trust company as custodian,
8 accompanied by an instrument in substantially the form set out in
9 (b) of this section;

10 (2) money is paid or delivered to a broker or financial
11 institution for credit to an account in the name of the transferor, an
12 adult other than the transferor, or a trust company, followed in
13 substance by the words: "as custodian for _____ (name
14 of minor) under the Alaska Uniform Transfers to Minors Act";

15 (3) the ownership of a life or endowment insurance policy
16 or annuity contract is either

17 (A) registered with the issuer in the name of the
18 transferor, an adult other than the transferor, or a trust com-
19 pany, followed in substance by the words: "as custodian for
20 _____ (name of minor) under the Alaska Uniform
21 Transfers to Minors Act"; or

22 (B) assigned in a writing delivered to an adult other
23 than the transferor or to a trust company whose name in the
24 assignment is followed in substance by the words: "as custodian
25 for _____ (name of minor) under the Alaska Uniform
26 Transfers to Minors Act";

27 (4) an irrevocable exercise of a power of appointment or an
28 irrevocable present right to future payment under a contract is the
29 subject of a written notification delivered to the payor, issuer, or

1 other obligor that the right is transferred to the transferor, an
2 adult other than the transferor, or a trust company, whose name in the
3 notification is followed in substance by the words: "as custodian for
4 _____ (name of minor) under the Alaska Uniform Trans-
5 fers to Minors Act";

6 (5) an interest in real property is recorded in the name of
7 the transferor, an adult other than the transferor, or a trust com-
8 pany, followed in substance by the words: "as custodian for _____
9 _____ (name of minor) under the Alaska Uniform Transfers to
10 Minors Act";

11 (6) a certificate of title issued by a department or agency
12 of a state or of the United States that evidences title to tangible
13 personal property is either

14 (A) issued in the name of the transferor, an adult
15 other than the transferor, or a trust company, followed in sub-
16 stance by the words: "as custodian for _____
17 (name of minor) under the Alaska Uniform Transfers to Minors
18 Act"; or

19 (B) delivered to an adult other than the transferor or
20 to a trust company, endorsed to that person followed in substance
21 by the words: "as custodian for _____ (name of
22 minor) under the Alaska Uniform Transfers to Minors Act"; or

23 (7) an interest in property not described in (1) - (6) of
24 this subsection is transferred to an adult other than the transferor
25 or to a trust company by a written instrument in substantially the
26 form set out in (b) of this section.

27 (b) An instrument in the following form satisfies the require-
28 ments of (a)(1)(B) and (a)(7) of this section:

29 "TRANSFER UNDER THE ALASKA UNIFORM

1 TRANSFERS TO MINORS ACT

2 I, _____ (name of transferor or name and
3 representative capacity if a fiduciary) hereby transfer to
4 _____ (name of custodian), as custodian
5 for _____ (name of minor) under the Alaska
6 Uniform Transfers to Minors Act, the following: (insert a
7 description of the custodial property sufficient to identify
8 it).

9 Dated: _____

10 _____
11 (Signature)

language was changed to avoid conflict with Uniform Acknowledgment Act. Change in last year.
12 _____ (name of custodian) has received

13 the property described above as custodian for the
14 minor named above under the Alaska Uniform Transfers to
15 Minors Act.

16 Dated: _____

17 _____"

18 (Signature of Custodian)

19 (c) A transferor shall place the custodian in control of the
20 custodial property as soon as practicable.

21 *This section is existing law in the Uniform Gifts to Minors Act. It is not part of the Uniform Act.*
22 Sec. 13.46.085. NATIVE CORPORATIONS; CUSTODIANS. (a) Stock or

23 membership in a corporation organized under the law of this state
24 under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 -
Citation was add. Change in last year.
25 1629(e)) that a minor is entitled to receive under that Act shall be
26 issued by the corporation to a custodian.

27 (b) The custodian shall be determined under the order of priori-
28 ty set out below. The appointment becomes effective upon the corpora-
29 tion's receipt of the custodian's written consent to the appointment.
The order of priority is:

- 1 (1) the legal guardian, if any, of the minor;
- 2 (2) a parent, if any, of the minor, as selected by the
- 3 parents;
- 4 (3) an adult member of the minor's family; in this para-
- 5 graph "member of the minor's family" has the meaning given in AS 13.-
- 6 46.990, and may also include members of the family with whom the minor
- 7 has customarily lived.

8 (c) For good cause, a district court or the superior court may
9 vary the order of priority set out in (b) of this section or appoint
10 another suitable person as custodian. *Such person may be appointed by the court upon application of the minor or any person having a legal interest in the property of the minor.*

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

13 (1) in AS 13.46.190, a transfer to the minor's estate
14 includes delivery to the heirs by intestate succession or custodians
15 for the heirs;

16 (2) under AS 13.46.150, a third person is responsible for
17 determining whether stock is inalienable under the Act;

18 (3) the custodian shall give an appropriate receipt for
19 property received for the minor;

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

22 (5) the form of registration or title shall be "as custo-
23 dian for _____ (name of minor) under the Alaska
24 Native Claims Settlement Act";

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

28 (7) custodial property includes securities, money, and
29 other real and personal property under supervision as a consequence of

1 the Act.

2 (e) In this section, "Act" means the Alaska Native Claims
3 Settlement Act (43 U.S.C. 1601 - 1629(e)) *Cit: changed as update. Change from last year*

4 Sec. 13.46.090. SINGLE CUSTODIANSHIP. A transfer may be made
5 only for one minor, and only one person may be the custodian. All
6 custodial property held under this chapter by the same custodian for
7 the benefit of the same minor constitutes a single custodianship.

8 Sec. 13.46.100. VALIDITY AND EFFECT OF TRANSFER. (a) The
9 validity of a transfer made in a manner prescribed in this chapter is
10 not affected by

11 (1) failure of the transferor to comply with AS 13.46.-
12 080(c) concerning possession and control;

13 (2) designation of an ineligible custodian, except desig-
14 nation of the transferor in the case of property for which the trans-
15 feror is ineligible to serve as custodian under AS 13.46.080(a); or

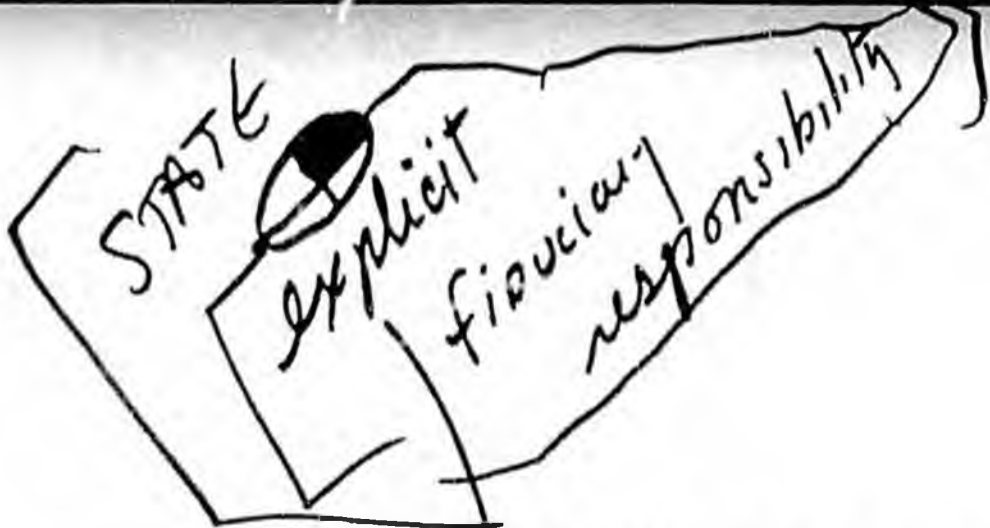
16 (3) death or incapacity of a person nominated under AS 13.-
17 46.020 or designated under AS 13.46.080 as custodian or the disclaimer
18 of the office by that person.

19 (b) A transfer made under AS 13.46.080 is irrevocable, and the
20 custodial property is indefeasibly vested in the minor, but the custo-
21 dian has all the rights, powers, duties, and authority provided in
22 this chapter, and neither the minor nor the minor's legal representa-
23 tive has any right, power, duty, or authority with respect to the
24 custodial property except as provided in this chapter.

25 (c) By making a transfer, the transferor incorporates in the
26 disposition all the provisions of this chapter and grants to the
27 custodian, and to a third person dealing with a person designated as
28 custodian, the respective powers, rights, and immunities provided in
29 this chapter.

Language deleted that did not conform to the Uniform Act

90
see?



1 Sec. 13.46.110. CARE OF CUSTODIAL PROPERTY. (a) A custodian
2 shall

- 3 (1) take control of custodial property;
- 4 (2) register or record title to custodial property if
5 appropriate; and
- 6 (3) collect, hold, manage, invest, and reinvest custodial
7 property.

8 (b) In dealing with custodial property, a custodian shall ob-
9 serve the standard of care that would be observed by a prudent person
10 dealing with property of another and is not limited by any other
11 statute restricting investments by fiduciaries. If a custodian has a
12 special skill or expertise or is named custodian on the basis of
13 representations of a special skill or expertise, the custodian shall
14 use that skill or expertise. However, a custodian, in the custodian's
15 discretion and without liability to the minor or the minor's estate,
16 may retain custodial property received from a transferor.

17 (c) A custodian may invest in or pay premiums on life insurance
18 or endowment policies on

- 19 (1) the life of the minor only if the minor or the minor's
20 estate is the sole beneficiary; or
- 21 (2) the life of another person in whom the minor has an
22 insurable interest only to the extent that the minor, the minor's
23 estate, or the custodian in the capacity of custodian, is the irrevoc-
24 cable beneficiary.

25 (d) A custodian at all times shall keep custodial property
26 separate and distinct from all other property in a manner sufficient
27 to identify it clearly as custodial property of the minor. Custodial
28 property consisting of an undivided interest is so identified if the
29 minor's interest is held as a tenant in common and is fixed.

1 Custodial property subject to recordation is so identified if it is
2 recorded, and custodial property subject to registration is so identi-
3 fied if it is either registered, or held in an account designated, in
4 the name of the custodian, followed in substance by the words: "as a
5 custodian for _____ (name of minor) under the
6 Alaska Uniform Transfers to Minors Act."

7 (e) A custodian shall keep records of all transactions with
8 respect to custodial property, including information necessary for the
9 preparation of the minor's tax returns, and shall make them available
10 for inspection at reasonable intervals by a parent or legal represen-
11 tative of the minor or by the minor if the minor has attained the age
12 of 14 years.

13 Sec. 13.46.120. POWERS OF CUSTODIAN. (a) A custodian, acting
14 in a custodial capacity, has all the rights, powers, and authority
15 over custodial property that unmarried adult owners have over their
16 own property, but a custodian may exercise those rights, powers, and
17 authority in that capacity only.

18 (b) This section does not relieve a custodian from liability for
19 breach of AS 13.46.110.

20 Sec. 13.46.130. USE OF CUSTODIAL PROPERTY. (a) A custodian may
21 deliver or pay to the minor or expend for the minor's benefit as much
22 of the custodial property as the custodian considers advisable for the
23 use and benefit of the minor, without court order and without regard
24 to

25 (1) the duty or ability of the custodian personally or of
26 another person to support the minor; or

27 (2) other income or property of the minor that may be
28 applicable or available for that purpose.

29 (b) On petition of an interested person or the minor if the

1 minor has attained the age of 14 years, the court may order the custo-
2 dian to deliver or pay to the minor or expend for the minor's benefit
3 as much of the custodial property as the court considers advisable for
4 the use and benefit of the minor.

5 (c) A delivery, payment, or expenditure under this section is in
6 addition to, not in substitution for, and does not affect an obliga-
7 tion of a person to support the minor.

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

9 (a) A custodian is entitled to reimbursement from custodial property
10 for reasonable expenses incurred in the performance of the custodian's
11 duties.

12 (b) Except for one who is a transferor under AS 13.46.030, a
13 custodian has a noncumulative election during each calendar year to
14 charge reasonable compensation for services performed during that
15 year. *NOT to exceed.*

16 (c) Except as provided in AS 13.46.170(f), a custodian is not
17 required to give a bond.

18 Sec. 13.46.150. EXEMPTION OF THIRD PERSON FROM LIABILITY. A
19 third person in good faith and without court order may act on the
20 instructions of or otherwise deal with a person purporting to make a
21 transfer or purporting to act in the capacity of a custodian and, in
22 the absence of knowledge, is not responsible for determining

23 (1) the validity of the purported custodian's designation;

24 (2) the propriety of, or the authority under this chapter
25 for, an act of the purported custodian;

26 (3) the validity or propriety under this chapter of an
27 instrument or instructions executed or given either by the person
28 purporting to make a transfer or by the purported custodian; or

29 (4) the propriety of the application of property of the

1 minor delivered to the purported custodian.

2 Sec. 13.46.160. LIABILITY TO THIRD PERSONS. (a) A claim based
3 on (1) a contract entered into by a custodian acting in a custodial
4 capacity, (2) an obligation arising from the ownership or control of
5 custodial property, or (3) a tort committed during the custodianship,
6 may be asserted against the custodial property by proceeding against
7 the custodian in the custodial capacity, whether or not the custodian
8 or the minor is personally liable. *language deleted did not contribute to the purpose of*

9 (b) A custodian is not personally liable

10 (1) on a contract properly entered into in the custodial
11 capacity unless the custodian fails to reveal that capacity and to
12 identify the custodianship in the contract; or

13 (2) for an obligation arising from control of custodial
14 property or for a tort committed during the custodianship unless the
15 custodian is personally at fault.

16 (c) A minor is not personally liable for an obligation arising
17 from ownership of custodial property or for a tort committed during
18 the custodianship unless the minor is personally at fault.

19 *This language is not part of the bill as drafted*
20 Sec. 13.46.170. RENUNCIATION, RESIGNATION, DEATH, OR REMOVAL OF
21 CUSTODIAN; DESIGNATION OF SUCCESSOR CUSTODIAN. (a) A person nomi-
22 nated under AS 13.46.020 or designated under AS 13.46.080 as custodian
23 may decline to serve by delivering a valid disclaimer to the person
24 who made the nomination or to the transferor or the transferor's legal
25 representative. If the event giving rise to a transfer has not oc-
26 curred and a substitute custodian able, willing, and eligible to serve
27 was not nominated under AS 13.46.020, the person who made the nomina-
28 tion may nominate a substitute custodian under AS 13.46.020; otherwise
29 the transferor or the transferor's legal representative shall design-
ate a substitute custodian at the time of the transfer, in either

1 case from among the persons eligible to serve as custodian for that
2 kind of property under AS 13.46.080(a). The custodian so designated
3 has the rights of a successor custodian.

4 (b) A custodian at any time may designate a trust company or an
5 adult other than a transferor under AS 13.46.030 as successor custo-
6 dian by executing and dating an instrument of designation before a
7 subscribing witness other than the successor. If the instrument of
8 designation does not contain or is not accompanied by the resignation
9 of the custodian, the designation of the successor does not take
10 effect until the custodian resigns, dies, becomes incapacitated, or is
11 removed.

12 (c) A custodian may resign at any time by delivering written
13 notice to the minor if the minor has attained the age of 14 years and
14 to the successor custodian and by delivering the custodial property to
15 the successor custodian.

16 (d) If a custodian is ineligible, dies, or becomes incapacitated
17 without having effectively designated a successor and the minor has
18 attained the age of 14 years, the minor may designate as successor
19 custodian, in the manner prescribed in (b) of this section, an adult
20 member of the minor's family, a conservator of the minor, or a trust
21 company. If the minor has not attained the age of 14 years or fails
22 to act within 60 days after the ineligibility, death, or incapacity,
23 the conservator of the minor becomes successor custodian. If the
24 minor has no conservator or the conservator declines to act, the
25 transferor, the legal representative of the transferor or of the
26 custodian, an adult member of the minor's family, or another inter-
27 ested person may petition the court to designate a successor custo-
28 dian.

29 (e) A custodian who declines to serve under (a) of this section

1 or resigns under (c) of this section, or the legal representative of a
2 deceased or incapacitated custodian, as soon as practicable, shall put
3 the custodial property and records in the possession and control of
4 the successor custodian. The successor custodian by action may en-
5 force the obligation to deliver custodial property and records and
6 becomes responsible for each item as received.

7 (f) A transferor, the legal representative of a transferor, an
8 adult member of the minor's family, a guardian of the person of the
9 minor, the conservator of the minor, or the minor if the minor has
10 attained the age of 14 years may petition the court to remove the
11 custodian for cause and to designate a successor custodian other than
12 a transferor under AS 13.46.030 or to require the custodian to give
13 appropriate bond.

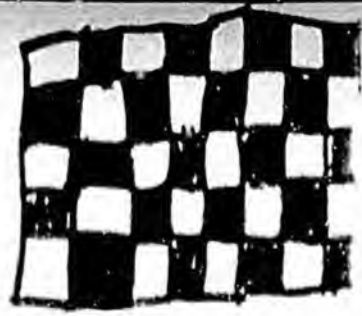
14 Sec. 13.46.180. ACCOUNTING BY AND DETERMINATION OF LIABILITY OF
15 CUSTODIAN. (a) A minor who has attained the age of 14 years, the
16 minor's guardian of the person or legal representative, an adult
17 member of the minor's family, a transferor, or a transferor's legal
18 representative may petition the court for

19 (1) an accounting by the custodian or the custodian's legal
20 representative; or

21 (2) a determination of responsibility, as between the
22 custodial property and the custodian personally for claims against
23 the custodial property unless the responsibility has been adjudicated
24 in an action under AS 13.46.160 to which the minor or the minor's
25 legal representative was a party.

26 (b) A successor custodian may petition the court for an account-
27 ing by the predecessor custodian.

28 (c) The court, in a proceeding under this chapter or in another
29 proceeding, may require or permit the custodian or the custodian's



1 legal representative to account.

2 (d) If a custodian is removed under AS 13.46.170(f), the court
3 shall require an accounting and order delivery of the custodial prop-
4 erty and records to the successor custodian and the execution of all
5 instruments required for transfer of the custodial property.

6 *This section Substantially Amended to make it closer to the Uniform Act.*

6 Sec. 13.46.190. TERMINATION OF CUSTODIANSHIP. The custodian
7 shall transfer in an appropriate manner the custodial property to the
8 minor or to the minor's estate upon the earlier of the

9 (1) minor's attainment of 21 years of age with respect to
10 property transferred under AS 13.46.030 or 13.46.040 unless the time
11 of transfer of the custodial property to the minor is changed under
12 AS 13.46.195;

13 (2) minor's attainment of 18 years of age with respect to
14 property transferred under AS 13.46.050 or 13.46.060;

15 (3) time specified in the transfer under AS 13.46.080 if
16 the time of transfer of the custodial property to the minor is changed
17 under AS 13.46.195; or

18 (4) minor's death.

19 *This section is new Part of the Uniform Act. It is being brought forward.*

19 Sec. 13.46.195. CHANGING THE TIME FOR TRANSFER OF CUSTODIAL
20 PROPERTY. (a) Subject to the requirements and limitations of this
21 section, the time for transfer to the minor of custodial property
22 transferred under AS 13.46.030 or 13.46.040 may be changed to a spec-
23 ified time other than the time the minor attains the age of 21 years.
24 That time shall be specified in the transfer under AS 13.46.080.

25 (b) To specify a changed time for transfer to the minor of the
26 custodial property under AS 13.46.030 except for the transfer by
27 irrevocable gift, or under AS 13.46.040, the words "as custodian for
28 _____ (name of minor) until age _____ (age for
29 delivery of property to minor) under the Alaska Uniform Transfers to

1 Minors Act" shall be substituted in substance for the words "as custo-
2 dian for _____ (name of minor) under the Alaska
3 Uniform Transfers to Minors Act" in making the transfer under AS 13.-
4 46.080.

5 (c) To specify a changed time for transfer to the minor of the
6 custodial property under AS 13.46.030 by irrevocable gift, the words
7 "as custodian for _____ (name of minor) until age _____
8 (age for delivery of property to minor) under the Alaska Uniform
9 Transfers to Minors Act" or "as custodian for _____ (name of
10 minor) until age _____ (age for delivery of property to minor)
11 under the Alaska Uniform Transfers to Minors Act, subject to the
12 minor's right to compel immediate distribution of the property by
13 giving written notice to the custodian during the six-month period
14 beginning on the minor's 21st birthday" shall be substituted in sub-
15 stance for the words "as custodian for _____ (name of
16 minor) under the Alaska Uniform Transfers to Minors Act" in making the
17 transfer under AS 13.46.080.

18 (d) The time for transfer to the minor of custodial property
19 transferred under AS 13.46.040 may be changed under this section if
20 the governing will or trust or nomination provides in substance that
21 the custodianship is to continue until the time the minor attains a
22 specified age. That time may not be earlier than the time the minor
23 attains 18 years of age or later than the time the minor attains 25
24 years of age, and in that case the governing will or trust or nomina-
25 tion shall determine the time to be specified in the transfer under
26 AS 13.46.080.

27 (e) The time for transfer to the minor of custodial property
28 transferred under AS 13.46.030 may be changed under this section if
29 the transfer under AS 13.46.080 provides in substance that the

1 custodianship is to continue until the time the minor attains a
2 specified age. That time may not be earlier than the time the minor
3 attains 18 years of age or later than the time the minor attains 25
4 years of age.

5 (f) If the transfer under AS 13.46.080 does not specify an age,
6 the time for the transfer of the custodial property to the minor under
7 AS 13.46.190 is the time when the minor attains 21 years of age.

8 (g) If the transfer under AS 13.46.080 provides in substance
9 that the duration of the custodianship is for a time longer than the
10 maximum time permitted by this section for that type of transfer, the
11 custodianship may continue until the minor attains the maximum age
12 permitted by this section for that type of transfer.

13 Sec. 13.46.200. APPLICABILITY. This chapter applies to a trans-
14 fer within the scope of AS 13.46.010 made after December 31, 1989, if
15 the *Post update*

16 (1) transfer purports to have been made under the Alaska
17 Uniform Gifts to Minors Act; or

18 (2) instrument by which the transfer purports to have been
19 made uses in substance the designation "as custodian under the Uniform
20 Gifts to Minors Act" or "as custodian under the Uniform Transfers to
21 Minors Act" of another state, and the application of this chapter is
22 necessary to validate the transfer.

23 Sec. 13.46.210. EFFECT ON EXISTING CUSTODIANSHIPS. (a) A
24 transfer of custodial property as defined in this chapter made before
25 January 1, 1990, is validated notwithstanding that there was not
26 specific authority in the Alaska Uniform Gifts to Minors Act for the
27 coverage of custodial property of that kind or for a transfer from
28 that source at the time the transfer was made.

29 (b) This chapter applies to all transfers that were made before

1 January 1, 1990, and that were made in a manner and form prescribed in
2 the Alaska Uniform Gifts to Minors Act, except insofar as the applica-
3 tion impairs constitutionally vested rights or extends the duration of
4 custodianships in existence on January 1, 1990.

5 (c) AS 13.46.190, 13.46.195, and 13.46.195, with respect to the
6 age of a minor for whom custodial property is held under this chapter,
7 do not apply to custodial property held in a custodianship that ter-
8 minated because of the minor's attainment of the age of

9 (1) 19 after June 12, 1967, and before September 17, 1980;

10 or

11 (2) 18 after September 16, 1980, and before January 1,
12 1990.

13 (d) To the extent that this chapter, by virtue of (b) of this
14 section, does not apply to transfers made in a manner prescribed under
15 former AS 45.60 (Alaska Uniform Gifts to Minors Act) or to the powers,
16 duties, and immunities conferred by transfers in that manner upon
17 custodians and persons dealing with custodians, the repeal of AS 45.60
18 (Alaska Uniform Gifts to Minors Act) does not affect those transfers
19 or those powers, duties, and immunities.

20 Sec. 13.46.220. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
21 This chapter shall be applied and construed to effectuate its general
22 purpose to make uniform the law with respect to the subject of this
23 chapter among states enacting it.

24 Sec. 13.46.990. DEFINITIONS. In this chapter

25 (1) "adult" means an individual who has attained the age of
26 18 years;

27 (2) "benefit plan" means an employer's plan for the benefit
28 of an employee or partner;

29 (3) "broker" means a person lawfully engaged in the

1 business of effecting transactions in securities or commodities for
2 the person's own account or for the account of others;

3 (4) "conservator" means a person appointed or qualified by
4 a court to act as general, limited, or temporary guardian of a minor's
5 property or a person legally authorized to perform substantially the
6 same functions;

7 (5) "court" means the superior court;

8 (6) "custodial property" means

9 (A) an interest in property transferred to a custodian
10 under this chapter; and

11 (B) the income from and proceeds of that interest in
12 property;

13 (7) "custodian" means a person designated under AS 13.-
14 46.080 or a successor or substitute custodian designated under AS 13.-
15 46.170;

16 (8) "financial institution" means a bank, trust company,
17 savings institution, or credit union, chartered and supervised under
18 state or federal law;

19 (9) "legal representative" means an individual's personal
20 representative or conservator;

21 (10) "member of the minor's family" means the minor's par-
22 ent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt,
23 whether of the whole or half blood or by adoption;

24 (11) "minor" means an individual who has not attained the
25 age of 18 years, except that when used in reference to the beneficiary
26 for whose benefit custodial property is held or to be held, "minor"
27 means an individual who has not attained the age at which the custo-
28 dian is required under AS 13.46.190 and 13.46.195 to transfer the
29 custodial property to the beneficiary;

1 (12) "personal representative" means an executor, adminis-
2 trator, successor personal representative, or special administrator of
3 a decedent's estate or a person legally authorized to perform substan-
4 tially the same functions;

5 (13) "state" includes a state of the United States, the
6 District of Columbia, the Commonwealth of Puerto Rico, and any terri-
7 tory or possession subject to the legislative authority of the United
8 States;

9 (14) "transfer" means a transaction that creates custodial
10 property under AS 13.46.080;

11 (15) "transferor" means a person who makes a transfer under
12 this chapter;

13 (16) "trust company" means a financial institution, corpora-
14 tion, or other legal entity, authorized to exercise general trust
15 powers.

16 Sec. 13.46.999. SHORT TITLE. This chapter may be cited as the
17 Alaska Uniform Transfers to Minors Act.

18 * Sec. 3. AS 13.06.050(45) is amended to read:

19 (45) "trust" includes any express trust, private or charit-
20 able, with additions to it, wherever and however created; it also
21 includes a trust created or determined by judgment or decree under
22 which the trust is to be administered in the manner of an express
23 trust; "trust" excludes other constructive trusts, and it excludes
24 resulting trusts, conservatorships, personal representatives, trust
25 accounts as defined in AS 13.31, custodial arrangements under AS 13.46
26 [AS 45.60], business trusts providing for certificates to be issued to
27 beneficiaries, common trust funds, voting trusts, security arrange-
28 ments, liquidation trusts, and trusts for the primary purpose of
29 paying debts, dividends, interest, salaries, wages, profits, pensions,

1 or employee benefits of any kind, and any arrangement under which a
2 person is nominee or escrowee for another;

3 * Sec. 4. AS 13.50.030(b) is amended to read:

4 (b) A gift of all or a part of the body under AS 13.50.010(a)
5 may be made by a document other than a will. The gift takes effect
6 upon the death of the donor. The document, which may be a card de-
7 signed to be carried on the person, shall be signed by the donor [IN
8 THE PRESENCE OF TWO WITNESSES WHO SHALL SIGN THE DOCUMENT IN THE
9 DONOR'S PRESENCE]. If the donor cannot sign, the document may be
10 signed for the donor at the donor's direction and in the donor's
11 presence in the presence of two witnesses who must sign the document
12 in the donor's presence. Delivery of the document of gift during the
13 donor's lifetime is not necessary to make the gift valid.

14 * Sec. 5. AS 18.65.311(a) is amended to read:

15 (a) The department shall provide, at the time that an identi-
16 fication card is issued, a form for a document by which the card
17 holder may make an anatomical gift under AS 13.50 (Uniform Anatomical
18 Gifts Act). The document (1) may not be larger than an identification
19 card, (2) must contain sufficient space for the signature of two
20 witnesses to the donor's act if the donor cannot sign [OF EXECUTION OF
21 THE DOCUMENT], and (3) must provide a means by which the donor may
22 cancel the gift. If the document making an anatomical gift is executed
23 by the applicant, it shall be sealed in plastic and attached to the
24 identification card. A symbol indicating the existence of the anatom-
25 ical gift document must be displayed in the lower right-hand corner on
26 the face of the identification card.

27 * Sec. 6. AS 45.60.011, 45.60.016, 45.60.021, 45.60.031, 45.60.041,
28 45.60.051, 45.60.061, 45.60.071, 45.60.081, 45.60.091, and 45.60.101 are
29 repealed.

1 * Sec. 7. This Act takes effect January 1, 1990.
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HB

166

(FILE 1)

Alaska State Legislature



House of Representatives
House Judiciary Committee

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

April 12, 1990

Mr. Richard L. Harren
Attorney at Law
P.O. Box 874692
Wasilla, AK 99687

Dear Mr. Harren:

Thank you very much for your thoughtful letter in response to my question to Michael Schneider. I appreciate your taking the time to explain in layman's terms the various ramifications of my question.

I will have your letter included in the committee members' files.

Sincerely,

A handwritten signature in cursive script that reads "Peter Goll".

Peter Goll

RICHARD L. HARREN

ATTORNEY AT LAW

PO Box 874692

WASILLA, ALASKA 99687

LAKEVIEW PROFESSIONAL BUILDING
SUITE 204
851 E. WESTPOINT DRIVE

RICHARD L. HARREN
376-2355
AREA CODE 907

April 4, 1990

RECEIVED APR 9 1990

Representative Peter Goll
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Representative Goll:

Thank you for the opportunity to testify before the House Judiciary Committee last Wednesday. I appreciate the time you are taking to study these critical issues.

During the testimony of Michael Schneider you asked a question to the effect of, "What would be the harm of having two separate lawsuits for each claim, one by the claimant for all damages other than medical expenses, and, one by his medical insurance company to be reimbursed for the medical expenses it has paid?" Since Mr. Schneider fielded that question, several thoughts occurred to me which I would like to pass on to you.

There are some cases where no problem would be created by having two lawsuits instead of one. Those cases are ones in which very few disputed facts. However, there is a vast gray area where the majority of cases fall because the issues are not cut and dried.

For example, the following questions of fact would be relevant in both lawsuits:

1. To what degree was the victim contributorily negligent and responsible for all or part of his or her own damages?
2. Which medical costs were reasonable and necessary as a result of the defendant's negligence and which expenses were unnecessary, unreasonable or necessitated by other events?
3. Was the victim's problem the result of some pre-existing physical condition, and, if so, where did the treatment for the pre-existing condition resume once the aggravation in question is resolved (back injuries are particularly difficult in this area)?

Representative Peter Goll
Alaska State Legislature
April 4, 1990
Page 2

The vast majority of cases which I've handled have issues in one or all of these areas. It is through compromise and negotiations that these issues are generally resolved short of trial.

The dangers of having two causes of action is primarily the burden on the victim of having to cooperate with two separate attorneys in two separate lawsuits. Because the insurance company's right to recover is through the victim, the victim will be forced to testify and answer questions not only in his own action for damages but also in the insurance company's action for subrogation. In the course of carrying out these obligations, the victim's time will be increased.

Having two actions will also require that the two law offices work closely together in order to avoid prejudicing each other's case. There could conceivably be cases in which one law firm would be tempted or persuaded to develop evidence in a fashion which would act against the interest of the other attorney.

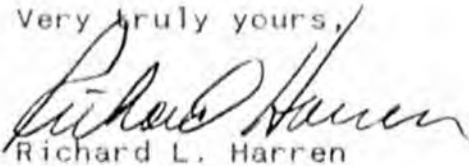
Sometimes the insurance company paying for a victim's medical expenses only pays for one, two or three years. This is the case in automobile insurance medical payments policies. If I am in an accident State Farm will pay my medical expenses for three years from the date of accident. However, if I am severely injured I may have medical expenses paid by State Farm, medical expenses paid by my major medical health insurance carrier, and expenses paid by myself such as deductibles. In some cases there could be three or more separate insurance companies pursuing their own private causes of action. Each company would have to hire its' own attorney and bear many of the costs which are consolidated under the present law.

Under the present law insurance companies and claimant's attorneys work together to reimburse health insurance providers. The victim's attorney is clearly representing the victim while respecting the lien which the health insurer asserts. I don't think that the victim's attorney will be able to work as easily with the insurance company if the insurance company had its' own independent right of action against the wrongdoer. An attorney cannot represent parties with conflicting interests. In the vast majority of cases the insurance company would therefore need to hire its' own attorney to monitor the lawsuit and protect its' interests. At the present time the medical health care insurer is able to rely on the victim's attorney to satisfy any lien which they properly assert to recover the medical benefits they provide.

Representative Peter Goll
Alaska State Legislature
April 4, 1990
Page 3

I hope that my response to your question has been of some assistance. If I can be of any further benefit to you by virtue of my perspective as a claimant or victim's attorney, please do not hesitate to call me.

Very truly yours,



Richard L. Harren

cc: Max Gruenberg, Jr.
Co-Chair, House Judiciary Committee

rh



Alaska Action Trust

P.O. Box 102323 • Anchorage, Alaska 99510
Office: 540 L Street, Suite 102 • Anchorage
(907) 258-4040

SECTIONAL ANALYSIS OF H.B. 166 (L&C) March 15, 1990

The following is an overview of H.B. 166 (L&C) which seeks to substantially modify the present civil justice system in an attempt to reduce the high costs of insurance in certain categories of insureds and to effect the right of full recovery for a number of personal injury victims. These changes would seek to further modify the existing tort law of this state which has undergone substantial modification as a result of comprehensive legislative changes made in 1986 and the elimination of joint and several liability by referendum in 1988.

S E C T I O N 1

Findings and Purpose. The initial stated purpose of the Act is to further enact reforms that create more equitable distribution of costs and risks. There is no showing factually that the present tort system does not adequately match loss with compensation; that future medical malpractice victims can be more adequately provided for by legislative change in how and when they receive payment; that there are portions of medical negligence awards that are not needed to compensate victims; or that a statute of repose which would eliminate the rights of recovery of victims in design and construction cases, simply as the result of the passage of time, is appropriate.

S E C T I O N 2

A.S. 09.10.055(a). This section would provide for a statute of repose eliminating all tort actions for personal injury, property damage or death as the result of deficiency in the construction, design, planning, or supervision of a structure against the person responsible for such conduct unless brought within a period of 15 years of the date of substantial completion and would permit the bringing of an action only against the present possessor of the land on which the structure is located, providing his independent negligence could be established. Such a statute of repose would be unconscionable and against public interest. Major structures such as auditoriums, schools, and places of public gathering have usual design criteria and

useful lives that may extend to as much as 75 or 100 years. Major engineering and/or design flaws in such structures often are not evidenced until there is considerable passage of time and climatic and/or environmental conditions are experienced which subject the structure to stresses that would approach design and engineering safety factors. To pass a law that would preclude suing an architect or an engineer, merely because of the passage of time, when a roof of an auditorium collapses under the weight of snow, killing hundreds of people, when the roof was not designed to withstand such loading, would be bad public policy. For a structure to collapse like a stack of cards in an earthquake as recently evidenced in San Francisco, and the persons responsible for the design or construction to not be held accountable to compensate a large group of injured citizens from seeking appropriate redress for injuries and/or death through our courts is not in the public interest. Further, there is no showing that such a statute of repose would materially reduce insurance costs. Such a statute is fraught with constitutional problems.

S E C T I O N 3

A.S. 09.10.055(d). This provision permits the injured party to sue the person in actual possession or control of the improvement to the realty, i.e., the building or structure in question beyond the period of 15 years as provided in Section 2 if his independent negligence could be established. It also continues to hold that the person who designed, planned, or supervised the construction of a facility for transportation or storage of hazardous materials still may be held liable or accountable.

S E C T I O N 4

A.S. 09.10.055(e). This provision defines hazardous materials and persons.

S E C T I O N 5

A.S. 09.10.065. This provision establishes a new statute of limitations applying to medical negligence injuries which have been inflicted upon children. The existing law provides that a child has two years from the date of reaching the age of majority in which to initiate the action. In most of the jurisdictions in the U.S. it is believed that because of a child's incompetence to manage its affairs during minority, the child should have two years from the date that the child reaches majority in order to make a decision as to whether a medical negligence claim should be initiated. This section changes the applicable law by shortening the period in which a minor may bring an action for negligent injury.