

SENATE BILL No. 302

April 12, 1989, Introduced by Senators BINSFELD, NICHOLS, ARTHURHULTZ, SCHWARZ, GEAKE, CRUCE, SEDERBURG, N. SMITH, CARL, DILLINGHAM, IRWIN and WELBORN and referred to the Committee on Judiciary.

A bill to regulate certain transfers of property to minors; to make uniform the law regulating certain transfers of property to minors; and to repeal certain acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Adult" means an individual who is 18 years of age or
3 older.

4 (b) "Benefit plan" means an employer's plan for the benefit
5 of an employee or partner.

6 (c) "Broker" means a person lawfully engaged in the business
7 of effecting transactions in securities or commodities for the
8 person's own account or for the account of others.

9 (d) "Conservator" means a person appointed or qualified by a
10 court to act as a guardian, limited guardian, or temporary

1 guardian of a minor's property or a person legally authorized to
2 perform substantially the same functions.

3 (e) "Court" means the probate court for the county in which
4 a minor resides.

5 (f) "Custodial property" means any interest in property
6 transferred to a custodian under this act and the income from,
7 and proceeds of, the interest in property.

8 (g) "Custodian" means a person so designated pursuant to
9 section 9 or a successor or substitute custodian designated under
10 section 18.

11 (h) "Financial institution" means a bank, trust company,
12 savings and loan association, or credit union chartered and
13 supervised under state or federal law.

14 (i) "Legal representative" means an individual's personal
15 representative or conservator.

16 (j) "Member of the minor's family" means the minor's parent,
17 stepparent, spouse, grandparent, brother, sister, uncle, or aunt,
18 whether of the whole or half blood or by adoption.

19 (k) "Minor" means an individual who is less than 18 years of
20 age.

21 (l) "Person" means an individual, partnership, corporation,
22 association, or other legal entity.

23 (m) "Personal representative" means an executor, administra-
24 tor, successor personal representative, or special administrator
25 of a decedent's estate or a person legally authorized to perform
26 substantially the same functions.

1 (n) "State" includes any state of the United States, the
2 District of Columbia, the Commonwealth of Puerto Rico, and any
3 territory or possession subject to the legislative authority of
4 the United States.

5 (o) "Transfer" means a transaction that creates custodial
6 property under section 9.

7 (p) "Transferor" means a person who makes a transfer under
8 this act.

9 (q) "Trust company" means a financial institution, corpora-
10 tion, or other legal entity, authorized to exercise general trust
11 powers.

12 Sec. 2. (1) This act applies to a transfer that refers to
13 this act in the designation, under section 9(1), by which the
14 transfer is made if, at the time of the transfer, the transferor,
15 the minor, or the custodian is a resident of this state or the
16 custodial property is located in this state. The custodianship
17 so created remains subject to this act despite a subsequent
18 change in residence of a transferor, the minor, or the custodian,
19 or the removal of custodial property from this state.

20 (2) A person designated as custodian under this act is
21 subject to personal jurisdiction in this state with respect to
22 any matter relating to the custodianship.

23 (3) A transfer that purports to be made and which is valid
24 under the uniform transfers to minors act, the uniform gifts to
25 minors act, or a substantially similar act, of another state is
26 governed by the law of the designated state and may be executed
27 and is enforceable in this state if, at the time of the transfer,

1 the transferor, the minor, or the custodian is a resident of the
2 designated state or the custodial property is located in the des-
3 ignated state.

4 Sec. 3. (1) A person having the right to designate the
5 recipient of property transferable upon the occurrence of a
6 future event may revocably nominate a custodian to receive the
7 property for a minor beneficiary upon the occurrence of the
8 future event by naming the custodian followed in substance by the
9 words: "as custodian for _____ (name of minor)
10 under the state uniform transfers to minors act". The nomination
11 may name 1 or more persons as substitute custodians to whom the
12 property must be transferred, in the order named, if the first
13 nominated custodian dies before the transfer or is unable,
14 declines, or is ineligible to serve. The nomination may be made
15 in a will, a trust, a deed, an instrument exercising a power of
16 appointment, or in a writing designating a beneficiary of con-
17 tractual rights that is registered with or delivered to the
18 payor, issuer, or other obligor of the contractual rights.

19 (2) A custodian nominated under this section shall be a
20 person to whom a transfer of property of that kind may be made
21 under section 9(1).

22 (3) The nomination of a custodian under this section does
23 not create custodial property until the nominating instrument
24 becomes irrevocable or a transfer to the nominated custodian is
25 completed under section 9. Unless the nomination of a custodian
26 has been revoked, upon the occurrence of the future event the

1 custodianship becomes effective and the custodian shall enforce a
2 transfer of the custodial property pursuant to section 9.

3 Sec. 4. A person may make a transfer by irrevocable gift
4 to, or the irrevocable exercise of a power of appointment in
5 favor of, a custodian for the benefit of a minor pursuant to
6 section 9.

7 Sec. 5. (1) A personal representative or trustee may make
8 an irrevocable transfer pursuant to section 9 to a custodian for
9 the benefit of a minor as authorized in the governing will or
10 trust.

11 (2) If the testator or settlor has nominated a custodian
12 under section 3 to receive the custodial property, the transfer
13 shall be made to the custodian.

14 (3) If the testator or settlor has not nominated a custodian
15 under section 3, or all persons so nominated as custodian die
16 before the transfer or are unable, decline, or are ineligible to
17 serve, the personal representative or the trustee, as the case
18 may be, shall designate the custodian from among those eligible
19 to serve as custodian for property of that kind under
20 section 9(1).

21 Sec. 6. (1) Subject to subsection (3), a personal represen-
22 tative or trustee may make an irrevocable transfer to another
23 adult or trust company as custodian for the benefit of a minor
24 pursuant to section 9, in the absence of a will or under a will
25 or trust that does not contain an authorization to make the
26 irrevocable transfer.

1 (2) Subject to subsection (3), a conservator may make an
2 irrevocable transfer to another adult or trust company as
3 custodian for the benefit of the minor pursuant to section 9.

4 (3) A transfer under subsection (1) or (2) may be made only
5 if the personal representative, trustee, or conservator considers
6 the transfer to be in the best interest of the minor; the trans-
7 fer is not prohibited by or inconsistent with provisions of the
8 applicable will, trust agreement, or other governing instrument;
9 and, if the transfer exceeds \$10,000.00 in value, the transfer is
10 authorized by the court.

11 Sec. 7. (1) Subject to subsections (2) and (3), a person
12 not subject to section 5 or 6 who holds property of, or owes a
13 liquidated debt to, a minor not having a conservator may make an
14 irrevocable transfer to a custodian for the benefit of the minor
15 pursuant to section 9.

16 (2) If a person having the right to do so under section 3
17 has nominated a custodian under that section to receive the cus-
18 todial property, the transfer shall be made to that person.

19 (3) If no custodian has been nominated under section 3, or
20 all persons so nominated as custodian die before the transfer or
21 are unable, ineligible, or decline to serve, a transfer under
22 this section may be made to an adult member of the minor's family
23 or to a trust company unless the value of the property exceeds
24 \$10,000.00.

25 Sec. 8. A written acknowledgment of delivery by a custodian
26 constitutes a sufficient receipt and discharge for custodial
27 property transferred to the custodian pursuant to this act.

1 Sec. 9. (1) Custodial property is created and a transfer is
2 made whenever any of the following occurs:

3 (a) An uncertificated security or a certificated security in
4 registered form is either of the following:

5 (i) Registered in the name of the transferor, an adult other
6 than the transferor, or a trust company, followed in substance by
7 the words: "as custodian for _____ (name of
8 minor) under the state uniform transfers to minors act".

9 (ii) Delivered if in certificated form, or any document nec-
10 essary for the transfer of an uncertificated security is deliv-
11 ered, together with any necessary endorsement to an adult other
12 than the transferor or to a trust company as custodian, accom-
13 panied by an instrument in substantially the form set forth in
14 subsection (2).

15 (b) Money is paid or delivered to a broker or financial
16 institution for credit to an account in the name of the transfer-
17 or, an adult other than the transferor, or a trust company, fol-
18 lowed in substance by the words: "as custodian for
19 _____ (name of minor) under the state uniform
20 transfers to minors act".

21 (c) The ownership of a life or endowment insurance policy or
22 annuity contract is either of the following:

23 (i) Registered with the issuer in the name of the transfer-
24 or, an adult other than the transferor, or a trust company, fol-
25 lowed in substance by the words: "as custodian for
26 _____ (name of minor) under the state uniform
27 transfers to minors act".

1 (ii) Assigned in a writing delivered to an adult other than
2 the transferor or to a trust company whose name in the assignment
3 is followed in substance by the words: "as custodian for
4 _____ (name of minor) under the state uniform
5 transfers to minors act".

6 (d) An irrevocable exercise of a power of appointment or an
7 irrevocable present right to future payment under a contract is
8 the subject of a written notification delivered to the payor,
9 issuer, or other obligor that the right is transferred to the
10 transferor, an adult other than the transferor, or a trust com-
11 pany, whose name in the notification is followed in substance by
12 the words: "as custodian for _____ (name of
13 minor) under the state uniform transfers to minors act".

14 (e) An interest in real property is recorded in the name of
15 the transferor, an adult other than the transferor, or a trust
16 company, followed in substance by the words: "as custodian for
17 _____ (name of minor) under the state uniform
18 transfers to minors act".

19 (f) A certificate of title issued by a department or agency
20 of a state or of the United States which evidences title to tan-
21 gible personal property is either of the following:

22 (i) Issued in the name of the transferor, an adult other
23 than the transferor, or a trust company, followed in substance by
24 the words: "as custodian for _____ (name of
25 minor) under the state uniform transfers to minors act".

26 (ii) Delivered to an adult other than the transferor or to a
27 trust company, endorsed to that person followed in substance by

1 the words: "as custodian for _____ (name of
2 minor) under the state uniform transfers to minors act".

3 (g) An interest in any property not described in subdivi-
4 sions (a) through (f) is transferred to an adult other than the
5 transferor or to a trust company by a written instrument in sub-
6 stantially the form set forth in subsection (2).

7 (2) An instrument in the following form satisfies the
8 requirements of subsection (1)(a)(ii) and (1)(g):

9 "TRANSFER UNDER THE STATE UNIFORM TRANSFERS TO MINORS ACT

10 I, _____ (name of transferor or name and rep-
11 resentative capacity, if a fiduciary) hereby transfer to
12 _____ (name of custodian), as custodian for
13 _____ (name of minor) under the state uniform
14 transfers to minors act, the following:
15 (insert a description of the custodial property sufficient to
16 identify it).

17 Dated: _____

18 _____

19 (Signature)

20 _____ (name of custodian) acknowledges receipt of
21 the property described above as custodian for the minor named
22 above under the state uniform transfers to minors act.

23 Dated: _____

24 _____ "

25 (Signature of Custodian)

26 (3) A transferor shall place the custodian in control of the
27 custodial property as soon as practicable.

1 Sec. 10. A transfer may be made only for 1 minor, and only
2 1 person may be the custodian. All custodial property held under
3 this act by the same custodian for the benefit of the same minor
4 constitutes a single custodianship.

5 Sec. 11. (1) The validity of a transfer made in a manner
6 prescribed in this act is not affected by any of the following:

7 (a) Failure of the transferor to comply with section 9(3)
8 concerning control.

9 (b) Designation of an ineligible custodian, except designa-
10 tion of the transferor in the case of property for which the
11 transferor is ineligible to serve as custodian under
12 section 9(1).

13 (c) Death or incapacity of a person nominated under
14 section 3 or designated under section 9 as custodian or the dis-
15 claimer of the office by that person.

16 (2) A transfer made pursuant to section 9 is irrevocable,
17 and the custodial property is indefeasibly vested in the minor,
18 but the custodian has all the rights, powers, duties, and author-
19 ity provided in this act, and neither the minor nor the minor's
20 legal representative has any right, power, duty, or authority
21 with respect to the custodial property except as provided in this
22 act.

23 (3) By making a transfer, the transferor incorporates in the
24 disposition all the provisions of this act and grants to the cus-
25 todian, and to any third person dealing with a person designated
26 as custodian, the respective powers, rights, and immunities
27 provided in this act.

1 Sec. 12. (1) A custodian shall do all of the following:

2 (a) Take control of custodial property.

3 (b) Register or record title to custodial property if
4 appropriate.

5 (c) Collect, hold, manage, invest, and reinvest custodial
6 property.

7 (2) In dealing with custodial property, a custodian shall
8 observe the standard of care that would be observed by a prudent
9 person dealing with property of another. If a custodian has a
10 special skill or expertise or is named custodian on the basis of
11 representations of a special skill or expertise, the custodian
12 shall use that skill or expertise. However, a custodian, in the
13 custodian's discretion and without liability to the minor or the
14 minor's estate, may retain any custodial property received from a
15 transferor.

16 (3) A custodian may invest in or pay premiums on life insur-
17 ance or endowment policies on the life of the minor only if the
18 minor or the minor's estate is the sole beneficiary, or the life
19 of another person in whom the minor has an insurable interest
20 only to the extent that the minor, the minor's estate, or the
21 custodian in the capacity of custodian is the irrevocable
22 beneficiary.

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

1 and is fixed. Custodial property subject to recordation is so
2 identified if it is recorded, and custodial property subject to
3 registration is so identified if it is either registered, or held
4 in an account designated, in the name of the custodian, followed
5 in substance by the words: "as custodian for
6 _____ (name of minor) under the state uniform
7 transfers to minors act".

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

14 Sec. 13. (1) A custodian, acting in a custodial capacity,
15 has all the rights, powers, and authority over custodial property
16 that an unmarried adult owner has over his or her own property,
17 but a custodian may exercise those rights, powers, and authority
18 in that capacity only.

19 (2) This section does not relieve a custodian from liability
20 for breach of section 12.

21 Sec. 14. (1) A custodian may deliver or pay to the minor or
22 expend for the minor's benefit so much of the custodial property
23 as the custodian considers advisable for the use and benefit of
24 the minor, without court order and without regard to the duty or
25 ability of the custodian personally or of any other person to
26 support the minor, or any other income or property of the minor
27 which may be applicable or available for that purpose.

1 (2) On petition of an interested person or the minor if the
2 minor is at least 14 years of age, the court may order the custo-
3 dian to deliver or pay to the minor or expend for the minor's
4 benefit so much of the custodial property as the court considers
5 advisable for the use and benefit of the minor.

6 (3) A delivery, payment, or expenditure under this section
7 is in addition to, not in substitution for, and does not affect
8 any obligation of, a person to support the minor.

9 Sec. 15. (1) A custodian is entitled to reimbursement from
10 custodial property for reasonable expenses incurred in the per-
11 formance of the custodian's duties.

12 (2) Except for a person who is a transferor under section 4,
13 a custodian has a noncumulative election during each calendar
14 year to charge reasonable compensation for services performed
15 during that year.

16 (3) Except as provided in section 18(6), a custodian need
17 not give a bond.

18 Sec. 16. A third person in good faith and without court
19 order may act on the instructions of or otherwise deal with any
20 person purporting to make a transfer or purporting to act in the
21 capacity of a custodian and, in the absence of knowledge, is not
22 responsible for determining any of the following:

23 (a) The validity of the purported custodian's designation.

24 (b) The propriety of, or the authority under this act for,
25 any act of the purported custodian.

1 (c) The validity or propriety under this act of any
2 instrument or instructions executed or given either by the person
3 purporting to make a transfer or by the purported custodian.

4 (d) The propriety of the application of any property of the
5 minor delivered to the purported custodian.

6 Sec. 17. (1) A claim based on a contract entered into by a
7 custodian acting in a custodial capacity, an obligation arising
8 from the ownership or control of custodial property, or a tort
9 committed during the custodianship, may be asserted against the
10 custodial property by proceeding against the custodian in the
11 custodial capacity, whether or not the custodian or the minor is
12 personally liable therefor.

13 (2) A custodian is not personally liable in any of the fol-
14 lowing situations:

15 (a) On a contract properly entered into in the custodial
16 capacity unless the custodian fails to reveal that capacity and
17 fails to identify the custodianship in the contract.

18 (b) For an obligation arising from control of custodial
19 property or for a tort committed during the custodianship unless
20 the custodian is personally at fault.

21 (3) A minor is not personally liable for an obligation aris-
22 ing from ownership of custodial property or for a tort committed
23 during the custodianship unless the minor is personally at
24 fault.

25 Sec. 18. (1) A person nominated under section 3 or desig-
26 nated pursuant to section 9 as custodian may decline to serve by
27 delivering a written disclaimer to the person who made the

1 nomination or to the transferor or the transferor's legal
2 representative. The disclaimer shall describe the custodianship
3 being declined and shall be signed by the disclaimant. If the
4 event giving rise to a transfer has not occurred and no substi-
5 tute custodian able, willing, and eligible to serve was nominated
6 under section 3, the person who made the nomination may nominate
7 a substitute custodian under section 3. If a substitute custo-
8 dian is not nominated, the transferor or the transferor's legal
9 representative shall designate a substitute custodian at the time
10 of the transfer. A substitute custodian shall be nominated or
11 designated from among the persons eligible to serve as custodian
12 for that kind of property under section 9(1). The custodian so
13 designated has the rights of a successor custodian.

14 (2) A custodian at any time may designate a trust company or
15 an adult other than a transferor under section 4 as successor
16 custodian by executing and dating an instrument of designation
17 before a subscribing witness other than the successor. If the
18 instrument of designation does not contain, or is not accompanied
19 by, the resignation of the custodian, the designation of the suc-
20 cessor does not take effect until the custodian resigns, dies,
21 becomes incapacitated, or is removed.

22 (3) A custodian may resign at any time by delivering written
23 notice to the minor if the minor has attained the age of 14 years
24 and to the successor custodian and by delivering the custodial
25 property to the successor custodian.

26 (4) If a custodian is ineligible, dies, or becomes
27 incapacitated without having effectively designated a successor

1 and the minor is at least 14 years of age, the minor may
2 designate as successor custodian, in the manner prescribed in
3 subsection (2), an adult member of the minor's family, a conser-
4 vator of the minor, or a trust company. If the minor is less
5 than 14 years of age or fails to act within 60 days after the
6 ineligibility, death, or incapacity, the conservator of the minor
7 becomes successor custodian. If the minor has no conservator or
8 the conservator declines to act, the transferor, the legal repre-
9 sentative of the transferor or of the custodian, an adult member
10 of the minor's family, or any other interested person may peti-
11 tion the court to designate a successor custodian.

12 (5) A custodian who declines to serve under subsection (1)
13 or resigns under subsection (3), or the legal representative of a
14 deceased or incapacitated custodian, as soon as practicable,
15 shall put the custodial property and records in the possession
16 and control of the successor custodian. The successor custodian
17 by action may enforce the obligation to deliver custodial prop-
18 erty and records and becomes responsible for each item as
19 received.

20 (6) A transferor, the legal representative of a transferor,
21 an adult member of the minor's family, a guardian of the person
22 of the minor, the conservator of the minor, or the minor if the
23 minor is at least 14 years of age, may petition the court to
24 remove the custodian for cause and designate a successor custo-
25 dian other than a transferor under section 4, or to require the
26 custodian to give appropriate bond.

1 Sec. 19. (1) A minor who is at least 14 years of age, the
2 minor's guardian of the person or legal representative, an adult
3 member of the minor's family, a transferor, or a transferor's
4 legal representative may petition the court for either of the
5 following:

6 (a) An accounting by the custodian or the custodian's legal
7 representative.

8 (b) A determination of responsibility, as between the custo-
9 dial property and the custodian personally, for claims against
10 the custodial property, unless the responsibility has been adju-
11 dicated in an action under section 17 to which the minor or the
12 minor's legal representative was a party.

13 (2) A successor custodian may petition the court for an
14 accounting by the predecessor custodian.

15 (3) The court, in a proceeding under this act or in any
16 other proceeding, may require or permit the custodian or the
17 custodian's legal representative to account.

18 (4) If a custodian is removed under section 18(6), the court
19 shall require an accounting and order delivery of the custodial
20 property and records to the successor custodian and the execution
21 of all instruments required for transfer of the custodial
22 property.

23 Sec. 20. The custodian shall transfer in an appropriate
24 manner the custodial property to the minor or to the minor's
25 estate upon the earlier of the following:

26 (a) The minor becoming 18 years of age with respect to
27 custodial property transferred under section 4, 5, 6, or 7.

1 (b) The minor's death.

2 Sec. 21. This act applies to a transfer within the scope of
3 section 2 made after its effective date if either of the follow-
4 ing is true:

5 (a) The transfer purports to have been made under former Act
6 No. 172 of the Public Acts of 1959.

7 (b) The instrument by which the transfer purports to have
8 been made uses in substance the designation "as custodian under
9 the uniform gifts to minors act" or "as custodian under the uni-
10 form transfers to minors act" of any other state, and the appli-
11 cation of this act is necessary to validate the transfer.

12 Sec. 22. (1) Any transfer of custodial property made before
13 the effective date of this act is validated notwithstanding that
14 there was no specific authority in former Act No. 172 of the
15 Public Acts of 1959 for the coverage of custodial property of
16 that kind or for a transfer from that source at the time the
17 transfer was made.

18 (2) This act applies to all transfers made before the effec-
19 tive date of this act in a manner and form prescribed in former
20 Act No. 172 of the Public Acts of 1959, except insofar as the
21 application impairs constitutionally vested rights or extends the
22 duration of custodianships in existence on the effective date of
23 this act.

24 Sec. 23. This act shall be applied and construed to effec-
25 tuate its general purpose to make uniform the law with respect to
26 the subject of this act among states enacting it.

1 Sec. 24. This act may be cited as the "state uniform
2 transfers to minors act".

3 Sec. 25. To the extent that this act, by virtue of
4 section 22(2), does not apply to transfers made in a manner pre-
5 scribed in former Act No. 172 of the Public Acts of 1959, or to
6 the powers, duties, and immunities conferred by transfers in that
7 manner upon custodians and persons dealing with custodians, the
8 repeal of former Act No. 172 of the Public Acts of 1959 does not
9 affect those transfers or those powers, duties, and immunities.

10 Sec. 26. Act No. 172 of the Public Acts of 1959, being sec-
11 tions 554.451 to 554.461 of the Michigan Compiled Laws, is
12 repealed.