

Memorandum 82-45

Subject: Study L-618 - Probate Law (Uniform Gift to Minors Act)

At the March meeting, the Commission suggested that consideration be given to revising the Uniform Gifts to Minors Act (Civil Code §§ 1154-1165) to broaden the class of property subject to the act and to consider other changes that would make the act more useful, both as applied to inter vivos gifts to minors and to bequests to minors. It appears that the Commissioners on Uniform State Laws are currently undertaking a revision of the Uniform Gifts to Minors Act to accomplish similar goals. A copy of a report on this subject is attached hereto as Exhibit 1. The staff recommends that we await the conclusion of this study and continue existing California law relating to bequests to minors for the time being.

Respectfully submitted,

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Revisions to Uniform Gifts to Minors Act Being Considered

[From ABA Probate and Property, Winter 1982, at 11.]

A drafting committee of the National Conference of Commissioners on Uniform State Laws is preparing a revision of the 1966 version of the Uniform Gifts to Minors Act. Among the various changes, the revision would expand the class of property which may be held in a custodian account, permitting retention of or investment in all forms of real and personal property, specifically including mineral rights, general or limited partnership interest, and life insurance or endowment policies on the life of anyone (including the minor-beneficiary) in whom the minor has an insurable interest. Permissible sources of dispositions to a custodial account would also be expanded to include acceptance of testamentary distributions as well as inter vivos gifts and conveyances from trusts. As a third change, consistent with Internal Revenue Code section 2503(c) ("qualified minors trust"), the drafters propose to delay the time for termination of a custodianship to the minor's age 21, and are considering a further suggestion that testators be permitted to create custodianships to last for a minor's life.

Changes to administrative provisions of the 1966 Act include deletion of the specific itemization of custodial powers in favor of adoption by reference of the adopting state's trustee powers statute or the Uniform Trustees' Powers Act. Also proposed is expansion of the custodian's prudence requirement to require those who have, or represent that they have, special skills or expertise to act according to a high duty consistent therewith. In conjunction with both of these changes, the drafters are interested in receiving section members' views as to whether the Act should include its own powers provision and whether the draft should extend the Act's existing exculpation provision to relieve non-professional uncompensated custodians from the need to comply with the prudence standards contained in the Act.

The drafters also invite comment on a number of policy and tax considerations. First, should the Act permit a donor to reserve a Revenue Ruling 79-353 "revolving door" power to remove and replace custodians at will; if so, should the drafters seek a ruling from the I.R.S. as to the consequences of such a power? Second, the draft specifies that

distributions made by a custodian "shall be in addition to and not in substitution for the duty of any person to support the minor." The intent of the drafters is to forestall the alleged generation-skipping tax consequences contained in Proposed Treasury Regulation section 26.2613-4(c)(3) (treating a person as a beneficiary of the account for generation-skipping tax purposes if that person's legal obligation to support the minor may be affected by distributions from the account) and to confront the perception that Code section 2041 general power of appointment exposure may otherwise exist if the minor is the custodian's dependent. See Pennell, "Custodians, Incompetents, Trustees and Others: Taxable Powers of Appointment?," 15 *U. Miami Inst. Est. Plan.* ¶ 1602 (1981). Would this language be effective, and would any other approach be a more desirable or effective response to these concerns? Third, the draft specifies that incidents of ownership of insurance policies held in the account shall be exercisable by the custodian only in a fiduciary capacity, in order to minimize Code section 2042 exposure to a custodian who is also the insured under such a policy. Again the drafters invite comments as to whether this language would be effective, and whether there are better alternatives to this provision. Fourth, should the Act contain special provisions relating to employee benefit plan entitlements of the minor and, if so, what should those provisions be? Fifth, should the Act permit beneficiary designations under insurance policies held in the account to include the minor's spouse and siblings or other family members as well as the minor's estate? Sixth, should the Act contain specific authority to invest in common trust funds? Finally, should the Act specify that, upon termination of an account, no conveyance of realty to the minor (or other distributee) is necessary and that third parties may deal directly with the minor (or other distributee) without liability to the former custodian?