

First Supplement to Memorandum 84-20

Subject: Study L-618 - Uniform Transfers to Minors Act

Assembly Bill 2492 was introduced to effectuate the Commission's Recommendation Relating to Uniform Transfers to Minors Act. A copy of the bill in its latest amended form is attached. The bill passed the Assembly in this form.

The bill as amended makes the time for termination of the custodianship the time when the minor attains the age of 18 years, except that the donor of an outright gift or a gift by will or trust can specifically provide that the gift is made to a custodian and that the custodianship does not terminate until a specified time after the time the minor attains the age of 18 years but not later than the time the minor attains the age of 21 years.

The question raised in Memorandum 84-20--whether the donor should be permitted specifically to provide that the custodianship continues until a specified time not later than the time the minor attains the age of 25 years--still remains to be decided. See Memorandum 84-20.

This supplement raises another policy issue for Commission consideration. You will note that under the Uniform Act and the latest version of Assembly Bill 2492, the custodianship can continue in existence after the time the minor attains the age of 18 years only in the following cases:

(1) Where the donor makes an outright transfer under Section 3904 ("A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to Section 3909").

(2) Where the custodianship is authorized by the governing will or trust (Section 3905).

The Uniform Act and the latest version of Assembly Bill 2492 do not permit the custodianship to continue after the minor attains the age of 18 years if the transfer is to a custodian nominated under Section 3903 (unless nominated in a will or trust). Thus, for example, a person can provide in an insurance policy or in a pay-on-death provision for a deposit account that, upon the death of the owner of the policy or of the deposit account, the proceeds of the policy or deposit account are to be paid to a designated person as a custodian for a designated minor

under the California Uniform Transfers to Minors Act. But, unlike the case where the nomination is made by a will or trust, the person providing for the custodianship in the case of the insurance proceeds or proceeds of the deposit account cannot provide that the custodianship continues after the minor attains the age of 18 years. Several persons have suggested that this is a significant omission that should be remedied.

The staff suggests that the Commission recommend that Section 3920.5 be amended to read as follows:

3920.5. (a) Subject to the requirements and limitations of this section, the time for transfer to the minor of custodial property transferred under ~~Section 3904~~ or pursuant to Section 3903, 3904, or 3905 may be delayed until a specified time not later than the time the minor attains 21 years of age, which time shall be specified in the transfer pursuant to Section 3909.

(b) To specify a delayed time for transfer to the minor of the custodial property, the words "as custodian for _____ (Name of Minor) under the California Uniform Transfers to Minors Act, such custodianship to continue until the minor attains the age of _____ (Age Not Less Than _____ years" shall be substituted in substance for the 18 Nor More Than 21)

words "as custodian for _____ (Name of Minor) under the California Uniform Transfers to Minors Act" in making the transfer pursuant to Section 3909.

(c) The time for transfer to the minor of custodial property transferred under ~~Section~~ or pursuant to Section 3903 or 3905 may be delayed under this section only if the governing will or trust or nomination provides in substance that the custodianship is to continue until the time the minor attains a specified age, which time may not be later than the time the minor attains 21 years of age, and in that case the governing will or trust or nomination shall determine the time to be specified by the ~~personal representative or trustee~~ in the transfer pursuant to Section 3909.

This amendment would permit the person nominating a custodian to take designated property pursuant to Section 3903 to provide specifically that the custodianship shall continue for the same period of time that the statute would permit the person to continue the custodianship if the nomination were made by a will or trust.

Respectfully submitted,

John H. DeMouilly
Executive Secretary