

HOUSE BILL No. 5643

March 10, 1998, Introduced by Reps. Baird and Richner and referred to the Committee on Commerce.

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 acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan uniform transfers to minors act".

3 Sec. 2. For the purposes of this act, the words and phrases
4 defined in sections 3 to 5 have the meanings ascribed to them in
5 those sections.

6 Sec. 3. (1) "Adult" means an individual who is 18 years of
7 age or older.

8 (2) "Benefit plan" means an employer's plan for the benefit
9 of an employee or partner.

1 (3) "Broker" means a person lawfully engaged in the business
2 of effecting transactions in securities or commodity contracts
3 for the person's own account or for the account of others.

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

9 (5) "Court" means the probate court for the county in which
10 a minor resides.

11 (6) "Custodial property" means an interest in property
12 transferred to a custodian under this act and the income from,
13 and proceeds of, that interest in property.

14 (7) "Custodian" means a person so designated pursuant to
15 section 13 or a successor or substitute custodian designated
16 under section 7, 23, or 24.

17 Sec. 4. (1) "Financial institution" means a bank, trust
18 company, savings and loan association, or credit union chartered
19 and supervised under state or federal law.

20 (2) "Legal representative" means an individual's personal
21 representative or conservator.

22 (3) "Member of the minor's family" means the minor's parent,
23 stepparent, spouse, grandparent, brother, sister, uncle, or aunt,
24 whether of the whole or half blood or by adoption.

25 (4) "Minor" means an individual who is less than 18 years of
26 age.

1 (5) "Person" means an individual, partnership, corporation,
2 limited liability company, association, or other legal entity.

3 (6) "Personal representative" means a personal representa-
4 tive, independent personal representative, or special fiduciary
5 of a decedent's estate or a person legally authorized to perform
6 substantially the same functions.

7 Sec. 5. (1) "State" includes a state of the United States,
8 the District of Columbia, the Commonwealth of Puerto Rico, and
9 any territory or possession subject to the legislative authority
10 of the United States.

11 (2) "Transfer" means a transaction that creates custodial
12 property under section 13.

13 (3) "Transferor" means a person who makes a transfer under
14 this act.

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

18 Sec. 6. (1) This act applies to a transfer that refers to
19 this act in the designation by which the transfer is made as pro-
20 vided in section 13 if, at the time of the transfer, the trans-
21 feror, the minor, or the custodian is a resident of this state or
22 the custodial property is located in this state. The custodian-
23 ship so created remains subject to this act despite a subsequent
24 change in residence of the transferor, the minor, or the custodi-
25 an, or the removal of custodial property from this state.

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

4 (3) A transfer that purports to be made and that is valid
5 under the uniform transfers to minors act, the uniform gifts to
6 minors act, or a substantially similar act of another state is
7 governed by the law of the designated state and may be executed
8 and is enforceable in this state if, at the time of the transfer,
9 the transferor, the minor, or the custodian is a resident of the
10 designated state or the custodial property is located in the des-
11 igned state.

12 Sec. 7. (1) A person having the right to designate the
13 recipient of property transferable upon the occurrence of a
14 future event may revocably nominate a custodian to receive the
15 property for a minor beneficiary upon the occurrence of the
16 future event by naming the custodian followed in substance by the
17 words: "as custodian for _____ (name of minor)
18 under the Michigan uniform transfers to minors act". The nomina-
19 tion may name 1 or more persons as substitute custodians to whom
20 the property must be transferred, in the order named, if the
21 first nominated custodian dies before the transfer or is unable,
22 declines, or is ineligible to serve. The nomination may be made
23 in a will, trust, deed, instrument exercising a power of appoint-
24 ment, or writing designating a beneficiary of contractual rights
25 that is registered with or delivered to the payor, issuer, or
26 other obligor of the contractual rights.

1 (2) A custodian nominated under this section shall be a
2 person to whom a transfer of property of that kind may be made
3 under section 13.

4 (3) The nomination of a custodian under this section does
5 not create custodial property until the nominating instrument
6 becomes irrevocable or a transfer to the nominated custodian is
7 completed under section 13. Unless the nomination of a custodian
8 has been revoked, upon the occurrence of the future event the
9 custodianship becomes effective and the custodian shall enforce a
10 transfer of the custodial property pursuant to section 13.

11 Sec. 8. A person may make a transfer by irrevocable gift
12 to, or the irrevocable exercise of a power of appointment in
13 favor of, a custodian for the benefit of a minor pursuant to
14 section 13.

15 Sec. 9. (1) A personal representative or trustee may make
16 an irrevocable transfer pursuant to section 13 to a custodian for
17 the benefit of a minor as authorized in the governing will or
18 trust. If the testator or grantor has nominated a custodian
19 under section 7 to receive the custodial property, the transfer
20 shall be made to the custodian.

21 (2) If the testator or grantor has not nominated a custodian
22 under section 7, or all persons so nominated as custodian die
23 before the transfer or are unable, decline, or are ineligible to
24 serve, the personal representative or the trustee shall designate
25 the custodian from among those eligible to serve as custodian for
26 property of that kind under section 13.

1 Sec. 10. (1) Subject to subsection (3), a personal
2 representative or trustee may make an irrevocable transfer to
3 another adult or trust company as custodian for the benefit of a
4 minor pursuant to section 13 in the absence of a will or under a
5 will or trust that does not contain an authorization to make the
6 irrevocable transfer.

7 (2) Subject to subsection (3), a conservator may make an
8 irrevocable transfer to another adult or trust company as custo-
9 dian for the benefit of the minor pursuant to section 13.

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

17 Sec. 11. (1) Subject to subsections (2) and (3), a person
18 not subject to section 9 or 10 who holds property of, or owes a
19 liquidated debt to, a minor not having a conservator may make an
20 irrevocable transfer to a custodian for the benefit of the minor
21 pursuant to section 13.

22 (2) If a person having the right to do so under section 7
23 has nominated a custodian under that section to receive the cus-
24 todial property, the transfer shall be made to that person.

25 (3) If no custodian has been nominated under section 7, or
26 all persons so nominated as custodian die before the transfer or
27 are unable, decline, or are ineligible to serve, a transfer under

1 this section may be made to an adult member of the minor's family
2 or to a trust company. If the value of the property exceeds
3 \$10,000.00, a transfer under this subsection shall only be made
4 if authorized by the court.

5 Sec. 12. A written acknowledgment of delivery by a custo-
6 dian constitutes a sufficient receipt and discharge for custodial
7 property transferred to the custodian pursuant to this act.

8 Sec. 13. (1) Custodial property is created and a transfer
9 is made whenever an action described in subsections (2) to (8) is
10 taken.

11 (2) A certificated or uncertificated security in registered
12 form is either of the following:

13 (a) Registered in the name of the transferor, an adult other
14 than the transferor, or a trust company, followed in substance by
15 the words: "as custodian for _____ (name of
16 minor) under the Michigan uniform transfers to minors act".

17 (b) Delivered if in certificated form, or any document nec-
18 essary for the transfer of an uncertificated security is deliv-
19 ered, together with any necessary endorsement to an adult other
20 than the transferor or to a trust company as custodian, accom-
21 panied by an instrument in substantially the form set forth in
22 section 14.

23 (3) Money is paid or delivered to a broker or financial
24 institution for credit to an account in the name of the transfer-
25 or, an adult other than the transferor, or a trust company, fol-
26 lowed in substance by the words: "as custodian for

1 _____ (name of minor) under the Michigan uniform
2 transfers to minors act".

3 (4) The ownership of a life or endowment insurance policy or
4 annuity contract is either of the following:

5 (a) Registered with the issuer in the name of the transfer-
6 or, an adult other than the transferor, or a trust company, fol-
7 lowed in substance by the words: "as custodian for
8 _____ (name of minor) under the Michigan uniform
9 transfers to minors act".

10 (b) Assigned in a writing delivered to an adult other than
11 the transferor or to a trust company whose name in the assignment
12 is followed in substance by the words: "as custodian for
13 _____ (name of minor) under the Michigan uniform
14 transfers to minors act".

15 (5) An irrevocable exercise of a power of appointment or an
16 irrevocable present right to future payment under a contract is
17 the subject of a written notification delivered to the payor,
18 issuer, or other obligor that the right is transferred to the
19 transferor, an adult other than the transferor, or a trust com-
20 pany, whose name in the notification is followed in substance by
21 the words: "as custodian for _____ (name of
22 minor) under the Michigan uniform transfers to minors act".

23 (6) An interest in real property is recorded in the name of
24 the transferor, an adult other than the transferor, or a trust
25 company, followed in substance by the words: "as custodian for
26 _____ (name of minor) under the Michigan uniform
27 transfers to minors act".

1 (7) A certificate of title issued by a department or agency
 2 of a state or of the United States that evidences title to tangi-
 3 ble personal property is either of the following:

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

8 (b) Delivered to an adult other than the transferor or to a
 9 trust company, endorsed to that person followed in substance by
 10 the words: "as custodian for _____ (name of
 11 minor) under the Michigan uniform transfers to minors act".

12 (8) An interest in any property not described in subsections
 13 (2) to (7) is transferred to an adult other than the transferor
 14 or to a trust company by a written instrument in substantially
 15 the form set forth in section 14.

16 Sec. 14. An instrument in substantially the following form
 17 satisfies the requirements of section 13(2)(b) and 13(8):

18 "TRANSFER UNDER THE MICHIGAN UNIFORM TRANSFERS TO MINORS ACT

19 I, _____ (name of transferor or name and rep-
 20 resentative capacity, if a fiduciary) transfer to
 21 _____ (name of custodian), as custodian for
 22 _____ (name of minor) under the Michigan uniform
 23 transfers to minors act, the following:

24 (insert a description of the custodial property sufficient to
 25 identify it).

26 Dated: _____

27 _____

(Signature)

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

Dated: _____

_____ "

(Signature of Custodian)

Sec. 15. (1) A transferor shall place the custodian in con-
trol of the custodial property as soon as practicable.

(2) A transfer shall be made only for 1 minor, and only 1
person shall be the custodian. Custodial property held under
this act by the same custodian for the benefit of the same minor
constitutes a single custodianship.

Sec. 16. (1) The validity of a transfer made in a manner
prescribed in this act is not affected by any of the following:

(a) Failure of the transferor to comply with section 15 con-
cerning control.

(b) Designation of an ineligible custodian, except the
transfer is invalidated by designation of a transferor for prop-
erty for which the transferor is ineligible to serve as custodian
under section 13.

(c) Death or incapacity of a person nominated under
section 7 or designated under section 13 as custodian or the dec-
laration of the office by that person.

(2) A transfer made pursuant to section 13 is irrevocable,
and the custodial property is indefeasibly vested in the minor,
but the custodian has the rights, powers, duties, and authority

1 provided in this act, and neither the minor nor the minor's legal
2 representative has any right, power, duty, or authority with
3 respect to the custodial property except as provided in this
4 act.

5 (3) By making a transfer, the transferor incorporates in the
6 disposition the provisions of this act and grants to the custodi-
7 an, and to any third person dealing with a person designated as
8 custodian, the respective powers, rights, and immunities provided
9 in this act.

10 Sec. 17. (1) A custodian shall do all of the following:

11 (a) Take control of custodial property.

12 (b) Register or record title to custodial property if
13 appropriate.

14 (c) Collect, hold, manage, invest, and reinvest custodial
15 property.

16 (2) In dealing with custodial property, a custodian shall
17 observe the standard of care that would be observed by a prudent
18 person dealing with property of another. If a custodian has a
19 special skill or expertise or is named custodian on the basis of
20 representations of a special skill or expertise, the custodian
21 shall use that skill or expertise. However, in the custodian's
22 discretion and without liability to the minor or the minor's
23 estate, a custodian may retain any custodial property received
24 from a transferor.

25 (3) A custodian may invest in or pay premiums on life insur-
26 ance or endowment policies on the life of the minor only if the
27 minor or the minor's estate is the sole beneficiary, or the life

1 of another person in whom the minor has an insurable interest
2 only to the extent that the minor, the minor's estate, or the
3 custodian in the capacity of custodian is the irrevocable
4 beneficiary.

5 (4) A custodian at all times shall keep custodial property
6 separate and distinct from other property in a manner sufficient
7 to identify it clearly as custodial property of the minor.
8 Custodial property consisting of an undivided interest is so
9 identified if the minor's interest is held as a tenant in common
10 and is fixed. Custodial property subject to recordation is so
11 identified if it is recorded. Custodial property subject to reg-
12 istration is so identified if it is either registered or held in
13 an account designated in the name of the custodian, followed in
14 substance by the words: "as custodian for _____
15 (name of minor) under the Michigan uniform transfers to minors
16 act".

17 (5) A custodian shall keep a record of each transaction with
18 respect to custodial property, including information necessary
19 for the preparation of the minor's tax return, and shall make the
20 records available for inspection at reasonable intervals by a
21 parent or legal representative of the minor or by the minor if
22 the minor is at least 14 years of age.

23 Sec. 18. A custodian, acting in a custodial capacity, has
24 the rights, powers, and authority over custodial property that an
25 unmarried adult owner has over his or her own property, but a
26 custodian may exercise those rights, powers, and authority in

1 that capacity only. This section does not relieve a custodian
2 from liability for breach of section 17.

3 Sec. 19. (1) A custodian may deliver or pay to the minor or
4 expend for the minor's benefit so much of the custodial property
5 as the custodian considers advisable for the use and benefit of
6 the minor without court order, without regard to the duty or
7 ability of the custodian personally or of any other person to
8 support the minor, and without regard to other income or property
9 of the minor that may be applicable or available for that
10 purpose.

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

16 (3) A delivery, payment, or expenditure under this section
17 is in addition to, is not in substitution for, and does not
18 affect an obligation of a person to support the minor.

19 Sec. 20. (1) A custodian is entitled to reimbursement from
20 custodial property for reasonable expenses incurred in the per-
21 formance of the custodian's duties. Except for a person who is a
22 transferor under section 8, a custodian has a noncumulative elec-
23 tion during each calendar year to charge reasonable compensation
24 for services performed during that year.

25 (2) Except as provided in section 24, a custodian need not
26 give a bond.

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

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

7 (b) The propriety of, or the authority under this act for,
8 an act of the purported custodian.

9 (c) The validity or propriety under this act of an instru-
10 ment executed or given either by the person purporting to make a
11 transfer or by the purported custodian.

12 (d) The propriety of the application of property of the
13 minor delivered to the purported custodian.

14 Sec. 22. (1) A claim based on a contract entered into by a
15 custodian acting in a custodial capacity, an obligation arising
16 from the ownership or control of custodial property, or a tort
17 committed during the custodianship may be asserted against the
18 custodial property by proceeding against the custodian in the
19 custodial capacity, whether or not the custodian or the minor is
20 personally liable for the contract, obligation, or tort.

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

23 (a) On a contract properly entered into in the custodial
24 capacity unless the custodian fails to reveal that capacity and
25 fails to identify the custodianship in the contract.

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

4 (3) A minor is not personally liable for an obligation arising
5 from ownership of custodial property or for a tort committed
6 during the custodianship unless the minor is personally at
7 fault.

8 Sec. 23. (1) A person nominated under section 7 or designated
9 pursuant to section 13 as custodian may decline to serve by
10 delivering a written declination to the person who made the nomination
11 or to the transferor or the transferor's legal
12 representative. The declination shall describe the custodianship
13 being declined and shall be signed by the person declining.

14 (2) If the event giving rise to a transfer has not occurred
15 and no substitute custodian able, willing, and eligible to serve
16 was nominated under section 7, the person who made the nomination
17 may nominate a substitute custodian under section 7. If a substitute
18 custodian is not nominated, the transferor or the
19 transferor's legal representative shall designate a substitute
20 custodian at the time of the transfer. A substitute custodian
21 shall be nominated or designated from among the persons eligible
22 to serve as custodian for that kind of property under
23 section 13. The custodian so designated has the rights of a successor
24 custodian.

25 (3) A custodian at any time may designate a trust company or
26 an adult other than a transferor under section 8 as successor
27 custodian by executing and dating an instrument of designation

1 before a subscribing witness other than the successor. If the
2 instrument of designation does not contain, or is not accompanied
3 by, the resignation of the custodian, the designation of the suc-
4 cessor does not take effect until the custodian resigns, dies,
5 becomes incapacitated, or is removed.

6 Sec. 24. (1) A custodian may resign at any time by deliver-
7 ing written notice to the minor if the minor has attained the age
8 of 14 years and to the successor custodian and by delivering the
9 custodial property to the successor custodian.

10 (2) If a custodian is ineligible, dies, or becomes incapaci-
11 tated without having effectively designated a successor and the
12 minor is not less than 14 years of age, the minor may designate
13 as successor custodian, in the manner prescribed in
14 section 23(3), an adult member of the minor's family, a conserva-
15 tor of the minor, or a trust company. If the minor is less than
16 14 years of age or fails to act within 60 days after the ineligi-
17 bility, death, or incapacity, the conservator of the minor
18 becomes successor custodian. If the minor has no conservator or
19 the conservator declines to act, the transferor, the legal repre-
20 sentative of the transferor or of the custodian, an adult member
21 of the minor's family, or another interested person may petition
22 the court to designate a successor custodian.

23 (3) A custodian who declines to serve or resigns, or the
24 legal representative of a deceased or incapacitated custodian, as
25 soon as practicable, shall put the custodial property and records
26 in the possession and control of the successor custodian. The
27 successor custodian may bring an action to enforce the obligation

1 to deliver custodial property and records and becomes responsible
2 for each item as received.

3 (4) A transferor, the legal representative of a transferor,
4 an adult member of the minor's family, the conservator of the
5 minor, or the minor if the minor is not less than 14 years of age
6 may petition the court to remove the custodian for cause and des-
7 ignate a successor custodian other than a transferor under
8 section 8, or to require the custodian to give appropriate bond.

9 Sec. 25. (1) A minor who is not less than 14 years of age,
10 the minor's legal representative, an adult member of the minor's
11 family, a transferor, or a transferor's legal representative may
12 petition the court for either of the following:

13 (a) An accounting by the custodian or the custodian's legal
14 representative.

15 (b) A determination of responsibility, as between the custo-
16 dial property and the custodian personally, for claims against
17 the custodial property, unless the responsibility has been adju-
18 dicated in an action under section 22 to which the minor or the
19 minor's legal representative was a party.

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

22 (3) In a proceeding under this act or in any other proceed-
23 ing, the court may require or permit a custodian or the
24 custodian's legal representative to account.

25 (4) If a custodian is removed under section 24, the court
26 shall require an accounting and order delivery of the custodial
27 property and records to the successor custodian and the execution

1 of all instruments required for transfer of the custodial
2 property.

3 Sec. 26. Except as provided in section 27, the custodian
4 shall transfer in an appropriate manner the custodial property to
5 the minor or to the minor's estate upon the earlier of the
6 following:

7 (a) The minor becoming 18 years of age with respect to cus-
8 todial property transferred under section 8, 9, 10, or 11.

9 (b) The minor's death.

10 Sec. 27. (1) Transfer of custodial property to the minor
11 that is transferred to the custodian under section 8 or 9 may be
12 delayed as provided in this section until a specified time after
13 the minor is 18 years of age. The time of transfer to the minor
14 shall be specified in the transfer executed under section 13 by
15 using the words "as custodian for (name of minor) until age _____
16 under the Michigan uniform transfers to minors act".

17 (2) Transfer to the minor of custodial property transferred
18 to the custodian under section 8 shall not be delayed later than
19 the minor's twenty-first birthday. Transfer to the minor of cus-
20 todial property transferred to the custodian under section 9
21 shall not be delayed unless the governing will or trust provides
22 in substance that the custodianship continues until the minor is
23 a specified age, not later than the minor's twenty-first birthday
24 and that the will or trust determines the time to be specified in
25 the transfer.

1 Sec. 28. This act applies to a transfer described in
2 section 6 made after the effective date of this act if either of
3 the following is true:

4 (a) The transfer purports to have been made under former
5 1959 PA 172.

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

11 Sec. 29. (1) Transfer of custodial property made before the
12 effective date of this act is validated notwithstanding that
13 there was no specific authority in former 1959 PA 172 for the
14 coverage of custodial property of that kind or for a transfer
15 from that source at the time the transfer was made.

16 (2) This act applies to a transfer made before the effective
17 date of this act in a manner and form prescribed in former 1959
18 PA 172, except insofar as the application impairs constitution-
19 ally vested rights or extends the duration of custodianships in
20 existence on the effective date of this act.

21 (3) With respect to the age of a minor for whom custodial
22 property is held under this act, sections 3, 4, and 26 do not
23 apply to custodial property held in a custodianship that termi-
24 nated because the minor becomes 18 years of age after December
25 31, 1971, and before the effective date of this act.

1 Sec. 30. This act shall be applied and construed to
2 effectuate its general purpose to make uniform the law with
3 respect to the subject of this act among states enacting it.

4 Sec. 31. To the extent that this act by virtue of
5 section 29(2) does not apply to a transfer made in a manner pre-
6 scribed in former 1959 PA 172, or to the powers, duties, and
7 immunities conferred by a transfer in that manner upon a custo-
8 dian or a person dealing with a custodian, the repeal of former
9 the Michigan uniform gifts to minors act, 1959 PA 172 does not
10 affect that transfer or those powers, duties, and immunities.

11 Sec. 32. The Michigan uniform gifts to minors act, 1959 PA
12 172, MCL 554.451 to 554.461, is repealed.