

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 679

(Senator Giannetti)

Judicial Proceedings

Judiciary

Maryland Uniform Transfers to Minors Act - Qualified Minor's Trust - Joint Custodians

This bill amends the Maryland Uniform Transfer to Minors Act to allow two persons to be designated as custodians of custodial property transferred for the benefit of the same minor. The two persons act as joint custodians and, unless otherwise specified in any document creating the custodianship, each joint custodian has the full power and authority to act alone as a custodian. If either custodian resigns, dies, becomes incapacitated, or is removed, the remaining custodian may serve as the sole custodian without appointing a successor joint custodian. The bill also repeals restrictions on a custodian's ability to transfer custodial property to a qualified minor's trust without a court order. The bill specifies that it applies to any such custodial account existing on or after the bill's October 1, 2006 effective date.

Fiscal Summary

State Effect: None. The bill does not directly affect State operations or finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: The Maryland Uniform Transfer to Minors Act (UTMA) allows property to be irrevocably transferred to a custodian for the benefit of a minor until the minor reaches the age of 18 or 21, depending on who the property was transferred from. Upon transfer to a custodian, the custodial property is vested in the minor, yet the minor's or the minor's legal representative's rights, powers, duties, and authority are limited to those

provided in the Act. The custodian, in turn, has rights, powers, duties, and authority with respect to the custodial property provided under the Act, including control and management of the property. A transfer may only be made for one minor and only one person may serve as the custodian with respect to a transfer.

A custodian may transfer custodial property to a qualified minor's trust without a court order, except that custodial property created by a testamentary instrument (a will) may not be transferred unless expressly authorized by the instrument and in the case of a living transferor, the instrument that created the custodial property must grant authority to the custodian to transfer property to a qualified minor's trust. It is these restrictions that are repealed by this bill. A qualified minor's trust is a trust created for the sole benefit of a minor for the minor's lifetime that meets the requirements of § 2503(c) of the Internal Revenue Code and applicable regulations.

Section 2503(c) of the Internal Revenue Code exempts from the federal gift tax gifts in trust for the benefit of a minor if the trust's assets can be distributed to or for the benefit of a minor and the assets pass to the minor upon attaining the age of 21 years or to the minor's estate in the case of the minor's death before reaching age 21.

Background: The UTMA has been adopted in 49 states. It was drafted in 1983 by the National Conference of Commissioners on Uniform State Laws to improve upon the existing Uniform Gifts to Minors Act. It provides a relatively convenient and simple way to transfer property to a minor and satisfy tax law requirements for the transfer of property. The Maryland UTMA was enacted by Chapter 638 of 1989. The provisions under the Maryland UTMA relating to qualified minor's trusts were added by Chapter 455 of 2005.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Register of Wills, Department of Legislative Services

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ncs/jr

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