

ARTICLE 5

Uniform Gift to Minors Act

DERIVATION TABLE

Showing the sections in former Chapter 7, Title 20 from which the sections in this article were derived.

New

Section Former

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SECTION 63-5-500. Short title.

This article may be cited as the "South Carolina Uniform Gifts to Minors Act".

HISTORY: 2008 Act No. 361, Section 2.

SECTION 63-5-510. Definitions.

In this article, unless the context otherwise requires:

- (1) "Adult" is a person who has attained the age of twenty-one years.
- (2) "Bank" is any bank, trust company, national banking association or industrial bank.
- (3) "Broker" is a person lawfully engaged in the business of effecting transactions in securities for the account of others. The term includes a bank which effects such transactions. The term also includes a person lawfully engaged in buying and selling securities for his own account through a broker or otherwise as a part of a regular business.
- (4) "Court" means the court or branch having jurisdiction.
- (5) "Custodial property" includes:
 - (a) all securities, life insurance policies, annuity contracts, real estate, tangible personal property and money and any other type of property under the supervision of the same custodian for the same minor as a consequence of a gift made to the minor in a manner prescribed in this article;
 - (b) the income from the custodial property;
 - (c) the proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment, surrender or other disposition of such securities, money, life insurance policies, annuity contracts, real estate, tangible personal property and other property.
- (6) "Custodian" is a person so designated in manner prescribed in this article and the term includes a successor custodian.
- (7) "Financial institution" is a bank, a federal savings and loan association, a savings institution chartered and supervised as a savings and loan or similar institution under federal law or the laws of a state, a federal credit union or a credit union chartered and supervised under the laws of a state; a "domestic financial institution" is one chartered and supervised under the laws of this State or chartered and supervised under federal law and having its principal

office in this State; an "insured financial institution" is one in which deposits (including a savings, share, certificate or deposit account) are, in whole or in part, insured by the Federal Deposit Insurance Corporation, by the Federal Savings and Loan Insurance Corporation or by a deposit insurance fund approved by this State.

(8) "Guardian" of a minor means the general guardian, guardian, tutor or curator of his property or estate, appointed or qualified by a court of this State or another state.

(9) "Issuer" is a person who places or authorizes the placing of his name on a security, other than as a transfer agent, to evidence that it represents a share, participation or other interest in his property or in an enterprise, or to evidence his duty or undertaking to perform an obligation evidenced by the security or who becomes responsible for in place of any such person.

(10) "Legal representative" of a person in his executor or the administrator, general guardian, guardian, committee, conservator, tutor or curator of his property or estate.

(11) "Life insurance policy or annuity contract" means a life insurance policy or annuity contract issued by an insurance company on the life of a minor to whom a gift of the policy or contract is made in the manner prescribed in this article or on the life of a member of the minor's family.

(12) "Member of a minor's family" means any of the minor's parents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption.

(13) "Minor" is a person who has not attained the age of twenty-one years, excluding a person under the age of twenty-one who is married or emancipated as decreed by the family court.

(14) "Savings and loan association" is a state-chartered savings and loan association or building and loan association or a federally-chartered savings and loan association.

(15) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting -trust certificate or, in general, any interest or instrument commonly known as a security, any certificate of interest or participation in any temporary or interim certificate, receipt or certificate of deposit for or any warrant or right to subscribe to or purchase any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

(16) "Transfer agent" is a person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities in the cancellation of surrendered securities.

(17) "Trust company" is a bank, corporation or other legal entity authorized to exercise trust powers in this State.

HISTORY: 2008 Act No. 361, Section 2.

SECTION 63-5-520. Manner of making gift.

(A) An adult person may, during his lifetime, make a gift of security, a life insurance policy or annuity contract or money or real estate, tangible personal property or any other property to a person who is a minor on the date of the gift:

(1) If the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult person or a trust company followed in substance by the words: "As custodian for _____ (name of minor) _____ under the Uniform Gifts to Minors Act".

(2) If the subject of the gift is a security not in registered form, by delivering it to an adult other than the donor, a guardian of the minor or a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian:

"GIFT UNDER THE SOUTH CAROLINA UNIFORM GIFTS TO MINORS ACT

_____ (name of donor) _____ hereby delivers to _____ (name of custodian) _____ as custodian for _____ (name of minor) _____ under the South Carolina Uniform Gifts to Minors Act the following security: (insert an appropriate description of the security delivered sufficient to identify it)

(signature of donor)

_____ (name of custodian) _____ hereby acknowledges receipt of the above-described security as custodian for the above minor under the Uniform Gifts to Minors Act.

Dated: _____

(Signature of custodian)"

(3) If the subject of the gift is money, by paying or delivering it to a broker or a domestic financial institution for credit to an account in the name of the donor, another adult or a trust company followed in substance by the words: "as custodian for _____ (name of minor) _____ under the Uniform Gifts to Minors Act".

(4) If the subject of the gift is a life insurance policy or annuity contract, by causing the ownership of the policy or contract to be registered with the issuing insurance company in the name of the donor, another adult or a trust company followed in substance by the words "as custodian for _____ (name of minor) _____ under the Uniform Gifts to Minors Act".

(5) If the subject of the gift is an interest in real estate, by executing and delivering in the appropriate manner a deed, assignment or similar instrument in the name of the donor, another adult or guardian of the minor or a trust company followed in substance by the words: "as custodian for _____ (name of minor) _____ under the Uniform Gifts to Minors Act".

(6) If the subject of the gift is an interest in any property not described in items (1) through (5) above, by causing the ownership of the property to be transferred by any written document in the name of the donor, another adult, a guardian or the minor or a trust company followed in substance by the words: "as custodian for _____ (name of minor) _____ under the Uniform Gifts to Minors Act".

(7) If the gift is by will, by stating in the will that the bequest or devise is made under the South Carolina Uniform Gifts to Minors Act. Unless the testator in his will designates the custodian, who shall be an adult, a guardian of the minor or a trust company, his personal representative shall, subject to any limitations contained within the will, have the power to name as the custodian an adult, a guardian of the minor or a trust company and shall distribute the subject of the gift by transferring it in the manner and form provided in the preceding items of this subsection.

(8) If the gift is preceded by a gift in trust to some other person, by stating in the will or inter vivos trust instrument that it is made under the South Carolina Uniform Gifts to Minors Act. Unless the custodian, who shall be an adult, a guardian of the minor or a trust company, is designated in the will or inter vivos trust instrument, the trustee shall, subject to any limitations contained within the will or inter vivos trust instrument, have the power to name as custodian an adult, a guardian of the minor or a trust company, and shall distribute the subject of the gift by transferring it in the manner and form provided in the preceding items of this subsection.

(B) Any gift made in a manner prescribed in subsection (A) may be made to only one minor and only one person may be the custodian.

(C) A donor who makes a gift to a minor in the manner prescribed in subsection (A) shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian but the donor's failure to comply with this subsection, his designation of an ineligible person as custodian, or renunciation by the person designated as custodian shall not affect the consummation of the gift.

(D) Whether or not a gift of the ownership of a life insurance policy or annuity contract has been made, the owner of such a policy or contract may designate a custodian (or a successor custodian) as the beneficiary of any such policy or contract. When the custodian receives any proceeds of such policy or contract, the proceeds shall at that time become custodian property.

HISTORY: 2008 Act No. 361, Section 2.

SECTION 63-5-530. Effect of gift.

(A) A gift made in a manner prescribed in this article is irrevocable and conveys to the minor indefeasibly vested legal title to the security, life insurance policy, annuity contract, money, real estate or any other property given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in this article.

(B) By making a gift in a manner prescribed in this article, the donor incorporates in his gift, inter vivos trust instrument or will all provisions of this article and grants to the custodian and to any issuer, transfer agent, bank, life insurance company, broker or third person, dealing with a person designated as custodian the respective powers, rights and immunities provided in this article.

HISTORY: 2008 Act No. 361, Section 2.

SECTION 63-5-540. Powers and duties of custodian.

(A) The custodian shall collect, hold, manage, invest and reinvest the custodial property.

(B) The custodian shall pay over to the minor for expenditure by him, or expend for the minor's benefit, so much of or all the custodial property as the custodian deems advisable for the support, maintenance, education and benefit of the minor in the manner, at the same time or times, and to the extent that the custodian in his discretion deems suitable and proper, with or without court order, with or without regard to the duty of himself or of any other person to support the minor or his ability to do so, and with or without regard to any other income or property of the minor which may be applicable or available for any such purpose.

(C) The court, on the petition of a parent or guardian of the minor or of the minor, if he has attained the age of fourteen years, may order the custodian to pay over to the minor for expenditure by him or to expend so much of or all of the custodial property as is necessary for the minor's support, maintenance or education.

(D) To the extent that the custodial property is not so expended, the custodian must deliver or pay over the custodial property to the minor on his attaining the age of twenty-one years or, if the minor dies before attaining the age of twenty-one years, the custodian must then deliver or pay over the custodial property to the estate of the minor. Notwithstanding the requirements of this section, the custodian, in his discretion, may deliver or pay over the custodial property to the payee when the payee attains the age of eighteen.

(E) The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent man of discretion and intelligence who is seeking a reasonable income and the preservation of his capital, except that he may, in his discretion and without liability to the minor or his estate, retain custodial property given to the minor in a manner prescribed in this article or hold money so given in an account in the financial institution to which it was paid or delivered by the donor.

(F) The custodian may sell, exchange, convert, surrender or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms he deems advisable. He may vote in person or by general or limited proxy a security which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer, a security of which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian. With respect to any interest in real estate, he may perform the same acts that any unmarried adult could perform, including, but not limited to, the power to buy, sell, assign, transfer, convey, dedicate, partition, exchange, mortgage, create or redeem ground rents, deeds, grant or exercise options, effect and keep in force fire, rent, liability, casualty, and other insurance; make, execute, acknowledge, and deliver deeds, conveyances, mortgages, releases, leases, including leases for ninety-nine years renewable forever, and leases extending beyond the minority of the minor; collect rents; improve, subdivide, or develop property; construct, alter, demolish or repair property; settle boundary lines and easements; pay taxes; and protect assessments.

(G) The custodian shall register each security which is custodial property and in registered form in the name of the custodian followed in substance by the words: "as custodian for _____ (name of minor) _____ under the Uniform Gifts to Minors Act". The custodian shall hold all money which is custodial property in an account with a broker or in an insured financial institution in the name of the custodian followed in substance by the words: "as custodian for _____ (name of minor) _____ under the Uniform Gifts to Minors Act". The custodian shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property.

(H) The custodian shall keep records of all transactions with respect to the custodial property and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if he has attained the age of fourteen years.

(I) A custodian has, with respect to the custodial property, in addition to the rights and powers provided in this article, all the rights and powers which a guardian has with respect to property not held as custodial property.

(J) If the subject of the gift is a life insurance policy or annuity contract, the custodian:

(1) in his capacity as custodian, has all the incidents of ownership in the policy or contract to the same extent as if he were the owner, except that the designated beneficiary of any policy or contract on the life of the minor shall be the minor's estate and the designated beneficiary of any policy or contract on the life of a person other than the minor shall be the custodian as custodian for the minor for whom he is acting;

(2) may pay premiums on the policy or contract out of the custodial property.

HISTORY: 2008 Act No. 361, Section 2.

SECTION 63-5-550. Custodian expenses, liability.

(A) A custodian is entitled to reimbursement from the custodial property for his reasonable expenses incurred in the performance of his duties.

(B) A custodian may act without compensation for his services.

(C) Unless he is a donor, a custodian may receive from the custodial property reasonable compensation for his services determined by one of the following standards in the order stated:

(1) a direction by the donor when the gift is made;

(2) a statute of this State applicable to custodians;

(3) the statute of this State applicable to guardians and conservators;

(4) an order of the court.

(D) Except as otherwise provided in this article, a custodian shall not be required to give a bond for the performance of his duties.

(E) A custodian not compensated for his services is not liable for losses to the custodial property unless they result from his bad faith, intentional wrongdoing or gross negligence or from his failure to maintain the standard of prudence in investing the custodial property provided in this article.

HISTORY: 2008 Act No. 361, Section 2.

SECTION 63-5-560. Person dealing with custodian immune from liability.

No issuer, transfer agent, bank, life insurance company, broker or other person or financial institution acting on the instructions of or otherwise dealing with any person purporting to act as a donor or in the capacity of a custodian is responsible for determining whether the person designated as custodian by the purported donor or by the custodian or purporting to act as a custodian has been duly designated or whether any purchase, sale or transfer to or by or any other act of any person purporting to act in the capacity of custodian is in accordance with or authorized by this article, or is obliged to inquire into the validity or propriety under this article of any instrument or instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, or is bound to see to the application by any person purporting to act in the capacity of a custodian of any money or other property paid or delivered to him. No issuer, transfer agent, bank, life insurance company, broker or other person or financial institution acting on any instrument of designation of a successor custodian, executed as provided in subsection (A) of Section 63-5-570 by a minor to whom a gift has been made in a manner prescribed in this article and who has attained the age of fourteen years, is responsible for determining whether the person designated by the minor as successor custodian has been duly designated, or is obliged to inquire into the validity or propriety under this article of the instrument of designation.

HISTORY: 2008 Act No. 361, Section 2.

SECTION 63-5-570. Successor custodian, removal.

(A) Only an adult member of the minor's family, a guardian of the minor or a trust company is eligible to become successor custodian. A custodian may designate his successor by executing and dating an instrument of designation before a subscribing witness other than the successor, the instrument of designation may, but need not, contain the resignation of the custodian. If the custodian does not so designate his successor before he dies or becomes legally incapacitated, and the minor has attained the age of fourteen years, the minor may designate a successor custodian by executing an instrument of designation before a subscribing witness other than the successor. A successor custodian has all the rights, powers, duties and immunities of a custodian designated in a manner prescribed by this article.

(B) The designation of a successor custodian as provided in subsection (A) takes effect as to each item of the custodial property when the custodian resigns, dies or becomes legally incapacitated, and the custodian or his legal representative:

(1) Causes the item, if it is a security in registered form, or a life insurance policy or annuity contract, to be registered with the issuing insurance company in the case of a life insurance policy or annuity contract, or an interest in real property in the name of the successor custodian followed in substance by the words: "as custodian for _____ (name of minor) _____ under the Uniform Gifts to Minors Act";

(2) Delivers or causes to be delivered to the successor custodian any other item of the custodial property, together

with the instrument of designation of the successor custodian or a true copy thereof, and any additional instruments required for the transfer thereof to the successor custodian.

(C) A custodian who executes an instrument of designation of his successor containing the custodian's resignation as provided in subsection (A) shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in the instrument. The legal representative of a custodian who dies or becomes legally incapacitated shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in an instrument of designation executed as provided in subsection (A) by the custodian or, if none, by the minor if he has no guardian and has attained the age of fourteen years, or in the possession and control of the guardian of the minor if he has a guardian. If the custodian has executed as provided in subsection (A) more than one instrument of designation, his legal representative shall treat the instrument dated on an earlier date as having been revoked by the instrument dated on a later date.

(D) If a person designated as custodian or as a successor custodian by the custodian as provided in subsection (A) is not eligible, dies, or becomes legally incapacitated before the minor attains the age of eighteen years and if the minor has a guardian, the guardian of the minor is successor custodian. If the minor has no guardian and if no successor custodian who is eligible and has not died or became legally incapacitated has been designated as provided in subsection (A), a donor, his representative, the legal representative of the custodian, or an adult member of the minor's family may petition the court for the designation of a successor custodian. The provisions of this subsection do not affect the power of a personal representative or trustee to appoint a custodian pursuant to items (7) and (8) of subsection (A) of Section 63-5-520, or the power of an owner of a life insurance policy or annuity contract to appoint a successor custodian pursuant to subsection (D) of Section 63-5-520.

(E) A donor, the legal representative of a donor, a successor custodian, an adult member of the minor's family, a guardian of the minor or the minor, if he has attained the age of fourteen years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of his duties.

(F) Upon the filing of a petition as provided in this section, the court shall grant an order, directed to the persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the court finds to be in the best interests of the minor.

HISTORY: 2008 Act No. 361, Section 2.

SECTION 63-5-580. Accounting requirements.

(A) The minor, if he has attained the age of fourteen years, or the legal representative of the minor, an adult member of the minor's family or a donor or his legal representative may petition the court for an accounting by the custodian or his legal representative.

(B) The court, in a proceeding under this article or otherwise, may require or permit the custodian or his legal representative to account and, if the custodian is removed, shall so require and order delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer thereof.

HISTORY: 2008 Act No. 361, Section 2.

SECTION 63-5-590. Construction of article.

(A) This article shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(B) This article shall not be construed as providing an exclusive method for making gifts to minors.

HISTORY: 2008 Act No. 361, Section 2.

SECTION 63-5-600. Gifts prior to article amendment.

No amendment to this article shall be construed to adversely affect any gift legally made under its provisions in effect prior to the amendment.

HISTORY: 2008 Act No. 361, Section 2.