

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 865

H.P. 642 House of Representatives, March 20, 1987
Reference to the Committee on Judiciary suggested and
ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative MARSANO of Belfast.
Cosponsored by Representative STEVENS of Bangor and
Senator BLACK of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

AN ACT Relating to the Maine Uniform
Transfers to Minors Act.

Be it enacted by the People of the State of Maine as
follows:

Sec. 1. 33 MRSA c. 19, as amended, is repealed.

Sec. 2. 33 MRSA c. 33 is enacted to read:

CHAPTER 33

MAINE UNIFORM TRANSFERS TO MINORS ACT

§1651. Short title

This chapter shall be known and may be cited as
the "Maine Uniform Transfers to Minors Act."

1 §1652. Definitions

2 As used in this Act, unless the context otherwise
3 indicates, the following terms have the following
4 meanings.

5 1. Adult. "Adult" means an individual who has
6 attained 21 years of age.

7 2. Benefit plan. "Benefit plan" means an em-
8 ployer's plan for the benefit of an employee or part-
9 ner.

10 3. Broker. "Broker" means a person lawfully en-
11 gaged in the business of effecting transactions in
12 securities or commodities for the person's own ac-
13 count or for the account of others.

14 4. Conservator. "Conservator" means a person
15 appointed or qualified by a court to act as general,
16 limited or temporary guardian of a minor's property
17 or a person legally authorized to perform substan-
18 tially the same functions.

19 5. Court. "Court" means the Probate Court.

20 6. Custodial property. "Custodial property"
21 means any interest in property transferred to a cus-
22 todian under this Act and the income from and pro-
23 ceeds of that interest in property.

24 7. Custodian. "Custodian" means a person so
25 designated under section 1660 or a successor or sub-
26 stitute custodian designated under section 1669.

27 8. Financial institution. "Financial institu-
28 tion" means a bank, trust company, savings institu-
29 tion or credit union, chartered and supervised under
30 state or federal law.

31 9. Legal representative. "Legal representative"
32 means an individual's personal representative or con-
33 servator.

34 10. Member of the minor's family. "Member of
35 the minor's family" means the minor's parent,
36 step-parent, spouse, grandparent, brother, sister,

1 uncle or aunt whether of whole or 1/2 blood or by
2 adoption.

3 11. Minor.. "Minor" means an individual who has
4 not attained 21 years of age.

5 12. Person. "Person" means an individual, cor-
6 poration, organization or other legal entity.

7 13. Personal representative. "Personal repre-
8 sentative" means an executor, administrator, succes-
9 sor personal representative or special administrator
10 of a decedent's estate or a person legally authorized
11 to perform substantially the same functions.

12 14. State. "State" includes any state of the
13 United States, the District of Columbia, the Common-
14 wealth of Puerto Rico and any territory or possession
15 subject to the legislative authority of the United
16 States.

17 15. Transfer. "Transfer" means a transaction
18 that creates custodial property under section 1660.

19 16. Transferor. "Transferor" means a person who
20 makes a transfer under this Act.

21 17. Trust company. "Trust company" means a fi-
22 nanacial institution, corporation or other legal enti-
23 ty authorized to exercise general trust powers.

24 §1653. Scope and jurisdiction

25 1. Residence; location of property. This Act
26 applies to a transfer that refers to this Act in the
27 designation under section 1660, subsection 1, by
28 which the transfer is made if, at the time of the
29 transfer, the transferor, the minor or the custodian
30 is a resident of this State or the custodial property
31 is located in this State. The custodianship so cre-
32 ated remains subject to this Act despite a subsequent
33 change in residence of a transferor, the minor or the
34 custodian or the removal of custodial property from
35 this State.

36 2. Personal jurisdiction. A person designated
37 as custodian under this Act is subject to personal

1 jurisdiction in this State with respect to any matter
2 relating to the custodianship.

3 3. Transfer made in another state. A transfer
4 that purports to be made and which is valid under the
5 Maine Uniform Transfers to Minors Act, the Uniform
6 Gifts to Minors Act or a substantially similar Act of
7 another state is governed by the law of the desig-
8 nated state and may be executed and is enforceable in
9 this State if, at the time of the transfer, the
10 transferor, the minor or the custodian is a resident
11 of the designated state or the custodial property is
12 located in the designated state.

13 §1654. Nomination of custodian

14 1. Revocable nomination. A person having the
15 right to designate the recipient of property
16 transferrable upon the occurrence of a future event
17 may revocably nominate a custodian to receive the
18 property for a minor beneficiary upon the occurrence
19 of the event by naming the custodian followed in sub-
20 stance by the words "as custodian for
21 (name of minor) under the Maine Uni-
22 form Transfers to Minors Act." The nomination may
23 name one or more persons as substitute custodians to
24 whom the property must be transferred, in the order
25 named, if the first nominated custodian dies before
26 the transfer or is unable, declines or is ineligible
27 to serve. The nomination may be made in a will, a
28 trust, a deed, an instrument exercising a power of
29 appointment or in a writing designating a beneficiary
30 of contractual rights which is registered with or de-
31 livered to the payor, issuer or other obligor of the
32 contractual rights.

33 2. Who may serve. A custodian nominated under
34 this section shall be a person to whom a transfer of
35 property of that kind may be made under section 1660,
36 subsection 1.

37 3. Effect of nomination. The nomination of a
38 custodian under this section does not create custodi-
39 al property until the nominating instrument becomes
40 irrevocable or a transfer to the nominated custodian
41 is completed under section 1660. Unless the nomina-
42 tion of a custodian has been revoked, upon the occur-

1 rence of the future event, the custodianship becomes
2 effective and the custodian shall enforce a transfer
3 of the custodial property pursuant to section 1660.

4 §1655. Transfer by gift or exercise of power of ap-
5 pointment

6 A person may make a transfer by irrevocable gift
7 to, or the irrevocable exercise of a power of ap-
8 pointment in favor of, a custodian for the benefit of
9 a minor pursuant to section 1660.

10 §1656. Transfer authorized by will or trust

11 1. Authorized transfer. A personal representa-
12 tive or trustee may make an irrevocable transfer pur-
13 suant to section 1660 to a custodian for the benefit
14 of a minor as authorized in the governing will or
15 trust.

16 2. Authorized custodian. If the testator or
17 settlor has nominated a custodian under section 1654
18 to receive the custodial property, the transfer shall
19 be made to that person.

20 3. Designate a custodian. If the testator or
21 settlor has not nominated a custodian under section
22 1654, or all persons nominated as custodian die be-
23 fore the transfer or are unable, decline or are inel-
24 igible to serve, the personal representative or the
25 trustee, as the case may be, shall designate the cus-
26 todian from among those eligible to serve as custodi-
27 an for property of that kind under section 1660, sub-
28 section 1.

29 §1657. Other transfer by fiduciary

30 1. Transfer by personal representative or trust-
31 ee. Subject to subsection 3, a personal representa-
32 tive or trustee may make an irrevocable transfer to
33 another adult or trust company as custodian for the
34 benefit of a minor pursuant to section 1660, in the
35 absence of a will or under a will or trust that does
36 not contain an authorization to do so.

37 2. Transfer by conservator. Subject to subsec-
38 tion 3, a conservator may make an irrevocable trans-

1 fer to another adult or trust company as custodian
2 for the benefit of the minor pursuant to section
3 1660.

4 3. Requirements of transfer. A transfer under
5 subsection 1 or 2 may be made only if the personal
6 representative, trustee or conservator considers the
7 transfer to be in the best interest of the minor; the
8 transfer is not prohibited by or inconsistent with
9 provisions of the applicable will, trust agreement or
10 other governing instrument; and the transfer is au-
11 thorized by the court if it exceeds \$10,000 in value.

12 §1658. Transfer by obligor

13 1. Irrevocable transfer. Subject to subsections
14 2 and 3, a person not subject to section 1656 or 1657
15 who holds property of or owes a liquidated debt to a
16 minor not having a conservator may make an irrevoca-
17 ble transfer to a custodian for the benefit of the
18 minor pursuant to section 1660.

19 2. Transfer to nominated custodian. If a person
20 having the right to do so under section 1654 has nom-
21 inated a custodian under that section to receive the
22 custodial property, the transfer shall be paid to
23 that person.

24 3. Transfer in absence of custodian. If no cus-
25 todian has been nominated under section 1654, or all
26 persons so nominated as custodian die before the
27 transfer or are unable, decline or are ineligible to
28 serve, a transfer under this section may be made to
29 an adult member of the minor's family or to a trust
30 company unless the property exceeds \$10,000 in value.

31 §1659. Receipt for custodial property

32 A written acknowledgement of delivery by a custo-
33 dian constitutes a sufficient receipt and discharge
34 for custodial property transferred to the custodian
35 pursuant to this Act.

36 §1660. Manner of creating custodial property and ef-
37 fecting transfer; designation of initial cus-
38 todian; control

1 1. Creation and transfer. Custodial property is
2 created and a transfer is made whenever:

3 A. An uncertificated security or a certificated
4 security in registered form is either:

5 (1) Registered in the name of the transfer-
6 or, an adult other than the transferor or a
7 trust company, followed in substance by the
8 words "as custodian for
9 (name of minor) under the Maine Uniform
10 Transfers to Minors Act;" or

11 (2) Delivered if in certificated form, or
12 any document necessary for the transfer of
13 an uncertificated security is delivered, to-
14 gether with any necessary endorsement to an
15 adult other than the transferor or to a
16 trust company as custodian, accompanied by
17 an instrument in substantially the form set
18 forth in subsection 2;

19 B. Money is paid or delivered to a broker or fi-
20 ancial institution for credit to an account in
21 the name of the transferor, an adult other than
22 the transferor or a trust company, followed in
23 substance by the words "as custodian for
24 (name of minor) under the Maine
25 Uniform Transfers to Minors Act;"

26 C. The ownership of a life or endowment insur-
27 ance policy or annuity contract is either:

28 (1) Registered with the issuer in the name
29 of the transferor, an adult other than the
30 transferor or a trust company, followed in
31 substance by the words "as custodian for
32 (name of minor) under the
33 Maine Uniform Transfers to Minors Act;" or

34 (2) Assigned in a writing delivered to an
35 adult other than the transferor or to a
36 trust company whose name in the assignment
37 is followed in substance by the words "as
38 custodian for (name of mi-
39 nor) under the Maine Uniform Transfers to
40 Minors Act;"

1 D. An irrevocable exercise of a power of ap-
2 pointment or an irrevocable present right to fu-
3 ture payment under a contract is the subject of a
4 written notification delivered to the payor, is-
5 su-er or other obligor that the right is trans-
6 ferred to the transferor, an adult other than the
7 transferor or a trust company, whose name in the
8 notification is followed in substance by the
9 words "as custodian for _____ (name of
10 minor) under the Maine Uniform Transfers to Mi-
11 nor's Act;"

12 E. An interest in real property is recorded in
13 the name of the transferor, an adult other than
14 the transferor or a trust company, followed in
15 substance by the words "as custodian for
16 _____ (name of minor) under the Maine
17 Uniform Transfers to Minors Act;"

18 F. A certificate of title issued by a department
19 or agency of a state or of the United States
20 which evidences title to tangible personal prop-
21 erty is either:

22 (1) Issued in the name of the transferor,
23 an adult other than the transferor or a
24 trust company, followed in substance by the
25 words "as custodian for
26 (name of minor) under the Maine Uniform
27 Transfers to Minors Act;" or

28 (2) Delivered to an adult other than the
29 transferor or to a trust company, endorsed
30 to that person, followed in substance by the
31 words "as custodian for
32 (name of minor) under the Maine Uniform
33 Transfers to Minors Act;" or

34 G. An interest in any property not described in
35 paragraphs A to F is transferred to an adult oth-
36 er than the transferor or to a trust company by a
37 written instrument in substantially the form set
38 forth in subsection 2.

39 2. Transfer instrument. An instrument in the
40 following form satisfies the requirements of para-
41 graph A, subparagraph (1); and paragraph G, subpara-
42 graph (1):

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TRANSFER UNDER THE MAINE UNIFORM TRANSFERS
TO MINORS ACT

I, _____ (name of transferor or name
and representative capacity if a fiduciary) hereby
transfer to _____ (name of custodian), as
custodian for _____ (name of minor) under
the Maine Uniform Transfers to Minors Act, the fol-
lowing: (insert a description of the custodial prop-
erty sufficient to identify it).

Dated: _____

(Signature)

_____ (name of custodian) acknowledges
receipt of the property described above as custodian
for the minor name above under the Maine Uniform
Transfers to Minors Act.

Dated: _____

(Signature of Custodian)

3. Control of property. A transferor shall
place the custodian in control of the custodial prop-
erty as soon as practicable.

§1661. Single custodianship

A transfer may be made only for one minor and on-
ly one person may be the custodian. All custodial
property held under this Act by the same custodian
for the benefit of the same minor constitutes a sin-
gle custodianship.

§1662. Validity and effect of transfer

1. Validity not affected. The validity of a
transfer made in a manner prescribed in this Act is
not affected by:

A. Failure of the transferor to comply with sec-
tion 1660, subsection 3, concerning possession
and control;

1 B. Designation of an ineligible custodian, ex-
2 cept designation of the transferor in the case of
3 property for which the transferor is ineligible
4 to serve as custodian under section 1660, subsec-
5 tion 1; or

6 C. Death or incapacity of a person nominated un-
7 der section 1654, or designated under section
8 1660, as custodian or the disclaimer of the of-
9 fice by that person.

10 2. Transfer irrevocable. A transfer made pursu-
11 ant to section 1660 is irrevocable and the custodial
12 property is indefeasibly vested in the minor, but the
13 custodian has all the rights, powers, duties and au-
14 thority provided in this Act, and neither the the mi-
15 nor nor the minor's legal representative has any
16 right, power, duty or authority with respect to the
17 custodial property, except as provided in this Act.

18 3. Grant of power. By making a transfer, the
19 transferor incorporates in the disposition all the
20 provisions of this Act, and grants to the custodian
21 and to any 3rd person dealing with a person desig-
22 nated as custodian, the respective powers, rights and
23 immunities provided by this Act.

24 §1663. Care of custodial property

25 1. Duties. A custodian shall:

26 A. Take control of custodial property;

27 B. Register or record title to custodial proper-
28 ty if appropriate; and

29 C. Collect, hold, manage, invest and reinvest
30 custodial property.

31 2. Standard of care. In dealing with custodial
32 property, a custodian shall observe the standard of
33 care that would be observed by a prudent person deal-
34 ing with property of another and is not limited by
35 any other law restricting investments by fiduciaries.
36 If a custodian has a special skill or expertise or is
37 named custodian on the basis of representations of a
38 special skill or expertise, the custodian shall use

1 that skill or expertise. A custodian, in the custo-
2 dian's discretion and without liability to the minor
3 or the minor's estate, may retain any custodial prop-
4 erty received from a transferor.

5 3. Insurance investment. A custodian may invest
6 in or pay premiums on life insurance or endowment po-
7 licies on the life of the minor only if the minor or
8 the minor's estate is the sole beneficiary; or the
9 life of another person in whom the minor has an in-
10 surable interest only to the extent that the minor,
11 the minor's estate or the custodian in the capacity
12 of custodian is the irrevocable beneficiary.

13 4. Identification of custodial property. A cus-
14 todian at all times shall keep custodial property
15 separate and distinct from all other property in a
16 manner sufficient to identify it clearly as custodial
17 property of the minor. Custodial property consisting
18 of an undivided interest is so identified if the
19 minor's interest is held as a tenant in common and is
20 fixed. Custodial property subject to recordation is
21 so identified if it is recorded and custodial proper-
22 ty subject to registration is so identified if it is
23 either registered or held in an account designated,
24 in the name of the custodian, followed in substance
25 by the words "as a custodian for
26 (name of minor) under the Maine Uniform Transfers to
27 Minors Act."

28 5. Records. A custodian shall keep records of
29 all transactions with respect to custodial property,
30 including information necessary for the preparation
31 of the minor's tax returns and shall make them avail-
32 able for inspection at reasonable intervals by a par-
33 ent or legal representative of the minor or by the
34 minor, if the minor has attained 14 years of age.

35 §1664. Powers of custodian

36 1. Custodial capacity. A custodian, acting in a
37 custodial capacity, has all the rights, powers and
38 authority over custodial property that unmarried
39 adult owners have over their own property, but a cus-
40 todian may exercise those rights, powers and authori-
41 ty in that capacity only.

1 2. Liability. This section does not relieve a
2 custodian from liability for breach of section 1663.

3 §1665. Use of custodial property

4 1. Standard for expenditure of property. A cus-
5 todian may deliver or pay to the minor or expend for
6 the minor's benefit as much of the custodial property
7 as the custodian considers advisable for the use and
8 benefit of the minor, without court order and without
9 regard to the duty or ability of the custodian per-
10 sonally or of any other person to support the minor;
11 or any other income or property of the minor which
12 may be applicable or available for the purpose.

13 2. Court may order expenditure. On petition of
14 an interested person or the minor, if the minor has
15 attained 14 years of age, the court may order the
16 custodian to deliver or pay to the minor or expend
17 for the minor's benefit as much of the custodial
18 property as the court considers advisable for the use
19 and benefit of the minor.

20 3. Support of minor. A delivery, payment or ex-
21 penditure under this section is in addition to, not
22 in substitution for, and does not affect any obliga-
23 tion of a person to support the minor.

24 §1666. Custodian's expenses, compensation and bond

25 1. Reimbursement. A custodian is entitled to
26 reimbursement from custodial property for reasonable
27 expenses incurred in the performance of the custodi-
28 an's duties.

29 2. Compensation. Except for one who is a trans-
30 feror under section 1655, a custodian has a noncumu-
31 lative election during each calendar year to charge
32 reasonable compensation for services performed during
33 that year.

34 3. Bond. Except as provided in section 1669,
35 subsection 6, a custodian need not give a bond.

36 §1667. Exemption of 3rd person from liability

1 A 3rd person in good faith and without court order
2 may act on the instructions of or otherwise deal
3 with any person purporting to make a transfer or pur-
4 porting to act in the capacity of a custodian and, in
5 the absence of knowledge, is not responsible for de-
6 termining:

7 1. Designation. The validity of the purported
8 custodian's designation;

9 2. Authority to act. The propriety of, or the
10 authority under this Act for, any act of the pur-
11 ported custodian;

12 3. Validity of instruments. The validity or
13 propriety under this Act of any instrument or in-
14 structions executed or given either by the person
15 purporting to make a transfer or by the purported
16 custodian; or

17 4. Application of property. The propriety of
18 the application of any property of the minor deliv-
19 ered to the purported custodian.

20 §1668. Liability to 3rd person

21 1. Claim against property. A claim based on a
22 contract entered into by a custodian acting in a cus-
23 todial capacity, an obligation arising from the own-
24 ership or control of custodial property, or a tort
25 committed during the custodianship may be asserted
26 against the custodial property by proceeding against
27 the custodian in the custodial capacity, whether or
28 not the custodian or the minor is personally liable
29 therefor.

30 2. Restrictions on custodian liability. A cus-
31 todian is not personally liable:

32 A. On a contract properly entered into in the
33 custodial capacity unless the custodian fails to
34 reveal that capacity and to identify the
35 custodianship in the contract; or

36 B. For an obligation arising from control of
37 custodial property or for a tort committed during
38 the custodianship unless the custodian is person-
39 ally at fault.

1 3. Restrictions on liability of minor. A minor
2 is not personally liable for an obligation arising
3 from ownership of custodial property or for a tort
4 committed during the custodianship unless the minor
5 is personally at fault.

6 §1669. Renunciation, resignation, death or removal
7 of custodian; designation of successor custo-
8 dian

9 1. Disclaimer; nomination of substitute custodi-
10 an. A person nominated under section 1654 or desig-
11 nated under section 1660 as custodian may decline to
12 serve by delivering a valid disclaimer, under Title
13 18-A, section 2-801, to the person who made the nomi-
14 nation to or the transferor or the transferor's legal
15 representative. If the event giving rise to a trans-
16 fer has not occurred and no substitute custodian
17 able, willing and eligible to serve was nominated un-
18 der section 1654, the person who made the nomination
19 may nominate a substitute custodian under section
20 1654; otherwise the transferor or the transferor's
21 legal representative shall designate a substitute
22 custodian at the time of the transfer, in either case
23 from among the persons eligible to serve as custodian
24 for that kind of property under section 1660, subsec-
25 tion 1. The custodian so designated has the rights
26 of a successor custodian.

27 2. Instrument of designation. A custodian at
28 any time may designate a trust company or an adult
29 other than a transferor under section 1655 as succes-
30 sor custodian by executing and dating an instrument
31 of designation before a subscribing witness other
32 than the successor. If the instrument of designation
33 does not contain or is not accompanied by the resig-
34 nation of the custodian, the designation of the suc-
35 cessor does not take effect until the custodian re-
36 signs, dies, becomes incapacitated or is removed.

37 3. Notice of resignation. A custodian may re-
38 sign at any time by delivering written notice of resig-
39 nation to the minor, if the minor has attained 14
40 years of age, and to the successor custodian and by
41 delivering the custodial property to the successor
42 custodian.

1 4. Failure to designate successor. If a custo-
2 dian is ineligible, dies or becomes incapacitated
3 without having effectively designated a successor and
4 the minor has attained 14 years of age, the minor may
5 designate as successor custodian, in the manner pre-
6 scribed in subsection 2, an adult member of the
7 minor's family, a conservator of the minor or a trust
8 company. If the minor has not attained 14 years of
9 age or fails to act within 60 days after the ineligi-
10 bility, death or incapacity, the conservator of the
11 minor becomes successor custodian. If the minor has
12 no conservator or the conservator declines to act,
13 the transferor, the legal representative of the
14 transferor or of the custodian, an adult member of
15 the minor's family or any other interested person may
16 petition the court to designate a successor custodi-
17 an.

18 5. Control of property and records. A custodian
19 who declines to serve under subsection 1 or resigns
20 under subsection 3 or the legal representative of a
21 deceased or incapacitated custodian, as soon as prac-
22 ticable, shall put the custodial property and records
23 in the possession and control of the successor custo-
24 dian. The successor custodian by action may enforce
25 the obligation to deliver custodial property and
26 records and becomes responsible for each item as re-
27 ceived.

28 6. Removal of custodian. A transferor, the le-
29 gal representative of a transferor, an adult member
30 of the minor's family, a guardian of the person of
31 the minor, the conservator of the minor or the minor,
32 if the minor as attained 14 years of age, may peti-
33 tion the court to remove the custodian for cause and
34 to designate a successor custodian, other than a
35 transferor under section 1655, or to require the cus-
36 todian to give appropriate bond.

37 §1670. Accounting by and determination of liability
38 of custodian

39 1. Petition for accounting. A minor who has at-
40 tained 14 years of age, the minor's guardian of the
41 person or legal representative, an adult member of
42 the minor's family, a transferor or a transferor's
43 legal representative may petition the court for an

1 accounting by the custodian or the custodian's legal
2 representative; or for a determination of responsi-
3 bility, as between the custodial property and the
4 custodian personally, for claims against the custodi-
5 al property unless the responsibility has been adju-
6 dicated in an action under section 1668 to which the
7 minor or the minor's legal representative was a par-
8 ty.

9 2. Accounting by predecessor custodian. A suc-
10 cessor custodian may petition the court for an ac-
11 counting by the predecessor custodian.

12 3. Court proceeding. The court, in a proceeding
13 under this Act or in any other proceeding, may re-
14 quire or permit the custodian or the custodian's le-
15 gal representative to account.

16 4. Court to require accounting of removed custo-
17 dian. If a custodian is removed under section 1669,
18 subsection 1, the court shall require an accounting
19 and order delivery of the custodial property and
20 records to the successor custodian and the execution
21 of all instruments required for transfer of the cus-
22 todial property.

23 §1671. Termination of custodianship

24 The custodian shall transfer in an appropriate
25 manner the custodial property to the minor or to the
26 minor's estate upon the earlier of:

27 1. Twenty-one years of age. The minor's attain-
28 ment of 21 years of age with respect to custodial
29 property transferred under section 1655 or 1656;

30 2. Attainment of majority. The minor's attain-
31 ment of majority under the laws of this State other
32 than this Act with respect to custodial property
33 transferred under section 1657 or 1658; or

34 3. Death. The minor's death.

35 §1672. Applicability

36 This Act applies to a transfer within the scope
37 of section 1653 made after its effective date if:

1 1. Reference to prior Act. The transfer pur-
2 ports to have been made the under the Uniform Gifts
3 to Minors Act of this State; or

4 2. Reference to Uniform Gifts to Minors Act of
5 any other state. The instrument by which the trans-
6 fer purports to have been made uses in substance the
7 designation "as custodian under the Uniform Gifts to
8 Minors Act" or "as custodian under the Uniform Trans-
9 fers to Minors Act" of any other state and the appli-
10 cation of this Act is necessary to validate the
11 transfer.

12 §1673. Effect on existing custodianships

13 1. Transfers validated. Any transfer of custo-
14 dial property as defined in this Act made before the
15 effective date of this Act is validated notwithstanding
16 that there was no specific authority in chapter
17 19 for the coverage of custodial property of that
18 kind or for a transfer from that source at the time
19 the transfer was made.

20 2. Application. This Act applies to all trans-
21 fers made before the effective date of this Act in a
22 manner and form prescribed in chapter 19, except in-
23 sofar as the application impairs constitutionally
24 vested rights or extends the duration of
25 custodianships in existence on the effective date of
26 this Act.

27 3. Terminated custodianship. Sections 1652 and
28 1671 with respect to the age of a minor for whom cus-
29 todial property is held under this Act do not apply
30 to custodial property held in a custodianship that
31 terminated because of the minor's attainment of 18
32 years of age after September 1, 1984, and before the
33 effective date of this Act.

34 §1674. Uniformity of application and construction

35 This Act shall be applied and construed to effec-
36 tuate its general purpose to make uniform the law
37 with respect to the subject of this Act among states
38 enacting it.

1 STATEMENT OF FACT

2 This bill revises and restates the Uniform Gifts
3 to Minors Act, one of the National Conference of Com-
4 missioners on Uniform State Laws' most successful
5 products, some version of which has been enacted in
6 every American jurisdiction.

7 The original version of the Uniform Gifts to Mi-
8 nors Act was adopted by the conference in 1956, and
9 closely followed a model "Act concerning Gifts of Se-
10 curities to Minors" which was sponsored by the New
11 York Stock Exchange and the Association of Stock Ex-
12 change Firms and which had been adopted in 14 states.
13 The 1956 version of the Uniform Gifts to Minors Act
14 broadened the model Act to cover gifts of money as
15 well as securities, but made few other changes.

16 In 1965 and 1966, the conference revised the Uni-
17 form Gifts to Minors Act to expand the types of fi-
18 nancial institutions which might serve as depositories
19 of custodial funds, to facilitate the designa-
20 tion of successor custodians, and to add life insur-
21 ance policies and annuity contracts to the types of
22 property, cash and securities that might be made the
23 subject of a gift under the Act.

24 Not all states adopted the 1966 revisions. Elev-
25 en jurisdictions retained their versions of the 1956
26 Act. More importantly, many states since 1966 have
27 substantially revised their versions of the Uniform
28 Gifts to Minors Act to expand the kinds of property
29 that may be made the subject of a gift under the Act,
30 and a few states permit transfers to custodians from
31 other sources, such as trusts and estates, as well as
32 lifetime gifts. As a result, a great deal of
33 nonuniformity has arisen among the states. Uniformity
34 in this area is important, for the conference has
35 cited the Uniform Gift to Minors Act as an example of
36 an Act designed to avoid conflicts of law when the
37 laws of more than one state may apply to a transac-
38 tion or a series of transactions.

39 This Act follows the expansive approach taken by
40 several states and allows any kind of property, real
41 or personal, tangible or intangible, to be made the

1 subject of a transfer to a custodian for the benefit
2 of a minor, the Maine Revised Statutes, Title 33,
3 section 1652, subsection 6. In addition, it permits
4 such transfers not only by lifetime outright gifts,
5 Title 33, section 1655, but also from trusts, estates
6 and guardianships, whether or not specifically autho-
7 rized in the governing instrument, Title 33, sections
8 1656 and 1657, and from other 3rd parties indebted to
9 a minor who does not have a conservator, such as par-
10 ties against whom a minor has a tort claim or judg-
11 ment, and depository institutions holding deposits or
12 insurance companies issuing policies payable on death
13 to a minor, Title 33, section 1658. For this reason,
14 and to distinguish the enactment of this chapter from
15 the 1956 and 1966 versions of the Uniform Gifts to
16 Minors Act, the title of the Act has been changed to
17 refer to "transfers" rather than "gifts," a much nar-
18 rower term.

19 As so expanded, the Act might be considered a
20 statutory form of trust or guardianship that contin-
21 ues until the minor reaches 21 years. Note, however,
22 that, unlike a trust, a custodianship is not a sepa-
23 rate legal entity or taxpayer. Under Title 33, sec-
24 tion 1662, subsection 2, the custodial property is
25 indefeasibly vested in the minor, not the custodian,
26 and thus any income received is attributable to and
27 reportable by the minor, whether or not actually dis-
28 tributed to the minor.

29 The expansion of the Act to permit transfers of
30 any kind of property to a custodian creates a signif-
31 icant problem of potential personal liability for the
32 minor or the custodian arising from the ownership of
33 property, such as real estate, automobiles, general
34 partnership interests and business proprietorships.
35 This problem did not exist under the Uniform Gifts to
36 Minors Act under which custodial property was limited
37 to bank deposits, securities and insurance. In re-
38 sponse, Title 33, section 1668, generally limits the
39 claims of 3rd parties to recourse against the custo-
40 dial property, with the minor insulated against per-
41 sonal liability unless he is personally at fault.
42 The custodian is similarly insulated unless he is
43 personally at fault or fails to disclose his custodi-
44 al capacity in entering into a contract.

