

1987 Senate Bill 113

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1987 Wisconsin Act 191

AN ACT to amend 853.60 (2) (b) 3, 853.61 (2) (b) 3, 880.04 (3) and 880.75 (1) (b), (c), (e) and (g); and to repeal and recreate subchapter III of chapter 880 of the statutes, relating to creating the uniform transfers to minors act.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 853.60 (2) (b) 3 of the statutes is amended to read:

853.60 (2) (b) 3. A custodian, serving on behalf of the minor under the uniform gifts to minors act or uniform transfers to minors act of any state.

SECTION 2. 853.61 (2) (b) 3 of the statutes is amended to read:

853.61 (2) (b) 3. The trustee may, upon termination of the trust, distribute assets to a custodian for a minor beneficiary under the uniform gifts to minors act or uniform transfers to minors act of any state. The trustee is free of liability and is discharged from any further accountability for distributing assets in compliance with this section.

SECTION 3. 880.04 (3) of the statutes is amended to read:

880.04 (3) (title) UNIFORM GIFTS AND TRANSFERS TO MINORS. If a minor, except for his or her incapacity, is entitled to possession of personal property of any value, any court wherein an action or proceeding involving the property is pending may, without requiring the appointment of a guardian, order payment to a custodian for the minor designated by the court under ss. 880.61 to ~~880.71~~ 880.72 or ~~to a custodian~~ under the uniform gifts to minors act or uniform transfers to minors act of any other state.

SECTION 4. Subchapter III of chapter 880 of the statutes is repealed and recreated to read:

CHAPTER 880

SUBCHAPTER III

UNIFORM TRANSFERS TO MINORS ACT

880.61 Definitions. In ss. 880.61 to 880.72:

(1) "Adult" means an individual who has attained the age of 21 years.

(2) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or

commodities for that person's account or for the account of others.

(3) "Conservator" means a person appointed or qualified by a court to act as general, limited or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

(4) "Court" means the circuit court.

(5) "Custodial property" means any interest in property transferred to a custodian under ss. 880.61 to 880.72 and the income from and proceeds of that interest in property.

(6) "Custodian" means a person so designated under s. 880.65 or a successor or substitute custodian designated under s. 880.695.

(7) "Financial institution" means a bank, trust company, savings and loan association or other savings institution, or credit union, chartered and supervised under state or federal law.

(8) "Legal representative" means an individual's personal representative or conservator.

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

(10) "Minor" means an individual who has not attained the age of 21 years.

(11) "Personal representative" means an executor, administrator, successor personal representative or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(12) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession subject to the legislative authority of the United States.

(13) "Transfer" means a transaction that creates custodial property under s. 880.65.

(14) "Transferor" means a person who makes a transfer under ss. 880.61 to 880.72.

(15) "Trust company" means a financial institution, corporation or other legal entity, authorized to exercise general trust powers.

880.615 Scope and jurisdiction. (1) Sections 880.61 to 880.72 apply to a transfer that refers to ss. 880.61 to 880.72 in the designation under s. 880.65 (1) by which the transfer is made if at the time of the transfer the transferor, the minor or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to ss. 880.61 to 880.72 despite a subsequent change in residence of a transferor, the minor or the custodian, or the removal of custodial property from this state.

(2) A person designated as custodian under s. 880.65 to 880.695 is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

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

880.62 Nomination of custodian. (1) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian, followed in substance by the words: "as custodian for (name of minor) under the Wisconsin Uniform Transfers to Minors Act". The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment or a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer or other obligor of the contractual rights.

(2) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under s. 880.65 (1).

(3) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under s. 880.65. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property under s. 880.65.

880.625 Transfer by gift or exercise of power of appointment. A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor under s. 880.65.

880.63 Transfer authorized by will or trust. (1) A personal representative or trustee may make an irrevocable transfer under s. 880.65 to a custodian for the benefit of a minor as authorized in the governing will or trust.

(2) If the testator or settlor has nominated a custodian under s. 880.62 to receive the custodial property, the transfer must be made to that person.

(3) If the testator or settlor has not nominated a custodian under s. 880.62, or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under s. 880.65 (1).

880.635 Other transfer by fiduciary. (1) Subject to sub. (3), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor under s. 880.65 in the absence of a will or under a will or trust that does not contain an authorization to do so.

(2) Subject to sub. (3), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor under s. 880.65.

(3) A transfer under sub. (1) or (2) may be made only if:

(a) The personal representative, trustee or conservator considers the transfer to be in the best interest of the minor;

(b) The transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement or other governing instrument; and

(c) The transfer is authorized by the court if it exceeds \$10,000 in value.

880.64 Transfer by obligor. (1) Subject to subs. (2) and (3), a person not subject to s. 880.63 or 880.635 who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor under s. 880.65.

(2) If a person having the right to do so under s. 880.62 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(3) If no custodian has been nominated under s. 880.62, or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds \$10,000 in value.

880.645 Receipt for custodial property. A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian under ss. 880.61 to 880.72.

880.65 Manner of creating custodial property and effecting transfer; designation of initial custodian; control. (1) Custodial property is created and a transfer is made whenever:

(a) An uncertificated security or a certificated security in registered form is either:

1. Registered in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "as custodian for (name of minor) under the Wisconsin Uniform Transfers to Minors Act"; or

2. Delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in sub. (2);

(b) Money is paid or delivered, or a security held in the name of a broker, financial institution or its nominee is transferred, to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "as custodian for (name of minor) under the Wisconsin Uniform Transfers to Minors Act";

(c) The ownership of a life or endowment insurance policy or annuity contract is either:

1. Registered with the issuer in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "as custodian for (name of minor) under the Wisconsin Uniform Transfers to Minors Act"; or

2. Assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for (name of minor) under the Wisconsin Uniform Transfers to Minors Act";

(d) An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer or other obligor that the right is transferred to the transferor, an adult other than the transferor or a trust company, whose name in the notification is followed in substance by the words: "as custodian for (name of minor) under the Wisconsin Uniform Transfers to Minors Act";

(e) An interest in real property is recorded in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "as custodian for (name of minor) under the Wisconsin Uniform Transfers to Minors Act";

(f) A certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

1. Issued in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "as custodian for (name of minor) under the Wisconsin Uniform Transfers to Minors Act"; or

2. Delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: "as custodian for (name of minor) under the Wisconsin Uniform Transfers to Minors Act"; or

(g) An interest in any property not described in pars. (a) to (f) is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in sub. (2).

(2) An instrument in the following form satisfies the requirements of sub. (1) (a) 2 and (g):

TRANSFER UNDER THE WISCONSIN 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 Wisconsin Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Dated:

....

(Signature)

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

Dated:

....

(Signature of Custodian)

(3) A transferor shall place the custodian in control of the custodial property as soon as practicable.

880.655 Single custodianship. A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under ss. 880.61 to 880.72 by the same custodian for the benefit of the same minor constitutes a single custodianship.

880.66 Validity and effect of transfer. (1) The validity of a transfer made in a manner prescribed in ss. 880.61 to 880.72 is not affected by:

(a) Failure of the transferor to comply with s. 880.65 (3) concerning possession and control;

(b) Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under s. 880.65 (1); or

(c) Death or incapacity of a person nominated under s. 880.62 or designated under s. 880.65 as custodian or the disclaimer of the office by that person.

(2) A transfer made under s. 880.65 is irrevocable, and the custodial property is indefeasibly vested in the

minor, but the custodian has all the rights, powers, duties and authority provided in ss. 880.61 to 880.72, and neither the minor nor the minor's legal representative has any right, power, duty or authority with respect to the custodial property except as provided in ss. 880.61 to 880.72.

(3) By making a transfer, the transferor incorporates in the disposition all of the provisions of ss. 880.61 to 880.72 and grants to the custodian, and to any 3rd person dealing with a person designated as custodian, the respective powers, rights and immunities provided in ss. 880.61 to 880.72.

880.665 Care of custodial property. (1) A custodian shall:

- (a) Take control of custodial property;
- (b) Register or record title to custodial property if appropriate; and
- (c) Collect, hold, manage, invest and reinvest custodial property.

(2) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(3) A custodian may invest in or pay premiums on life insurance or endowment policies on:

- (a) The life of the minor only if the minor or the minor's estate is the sole beneficiary; or
- (b) The life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(4) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: "as a custodian for (name of minor) under the Wisconsin Uniform Transfers to Minors Act".

(5) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained the age of 14 years.

880.67 Powers of custodian. (1) A custodian, acting in a custodial capacity, has all the rights, powers and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers and authority in that capacity only.

(2) This section does not relieve a custodian from liability for breach of s. 880.665.

880.675 Use of custodial property. (1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to:

- (a) The duty or ability of the custodian personally or of any other person to support the minor; or
- (b) Any other income or property of the minor which may be applicable or available for that purpose.

(2) On petition of an interested person or the minor if the minor has attained the age of 14 years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

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

880.68 Custodian's expenses, compensation and bond. (1) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(2) Except for a person who is a transferor under s. 880.625, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(3) Except as provided in s. 880.695 (6), a custodian need not give a bond.

880.685 Exemption of 3rd person from liability. A 3rd person, in good faith and without court order, may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining any of the following:

- (1) The validity of the purported custodian's designation.
- (2) The propriety of, or the authority under ss. 880.61 to 880.72 for, any act of the purported custodian.

(3) The validity or propriety under ss. 880.61 to 880.72 of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian.

(4) The propriety of the application of any property of the minor delivered to the purported custodian.

880.69 Liability to 3rd persons. (1) A claim based on a contract entered into by a custodian acting in a

custodial capacity, an obligation arising from the ownership or control of custodial property or a tort committed during the custodianship may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor.

(2) A custodian is not personally liable:

(a) On a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or

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

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

880.695 Renunciation, resignation, death or removal of custodian; designation of successor custodian. (1) A person nominated under s. 880.62 or designated under s. 880.65 as custodian may decline to serve by delivering a valid disclaimer under s. 701.27, in the case of a nontestamentary disclaimer, or under s. 853.40 if other than a nontestamentary disclaimer, to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing and eligible to serve was nominated under s. 880.62, the person who made the nomination may nominate a substitute custodian under s. 880.62; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under s. 880.65 (1). The custodian so designated has the rights of a successor custodian.

(2) A custodian at any time may designate a trust company or an adult other than a transferor under s. 880.625 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated or is removed.

(3) A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of 14 years and to the successor custodian and by delivering the custodial property to the successor custodian.

(4) If a custodian is ineligible, dies or becomes incapacitated without having effectively designated a successor and the minor has attained the age of 14 years, the minor may designate as successor custodian, in the manner prescribed in sub. (2), an adult member of the minor's family, a conservator of the minor or a trust

company. If the minor has not attained the age of 14 years or fails to act within 60 days after the ineligibility, death or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family or any other interested person may petition the court to designate a successor custodian.

(5) A custodian who declines to serve under sub. (1) or resigns under sub. (3), or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian, by action, may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(6) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor or the minor if the minor has attained the age of 14 years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under s. 880.625 or to require the custodian to give appropriate bond.

880.70 Accounting by and determination of liability of custodian. (1) A minor who has attained the age of 14 years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor or a transferor's legal representative may petition the court:

(a) For an accounting by the custodian or the custodian's legal representative; or

(b) For a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under s. 880.69 to which the minor or the minor's legal representative was a party.

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

(3) The court, in a proceeding under ss. 880.61 to 880.72 or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(4) If a custodian is removed under s. 880.695 (6), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

880.705 Termination of custodianship. The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(1) The minor's attainment of 21 years of age with respect to custodial property transferred under s. 880.625 or 880.63;

(2) The minor's attainment of 18 years of age with respect to custodial property transferred under s. 880.635 or 880.64; or

(3) The minor's death.

880.71 Applicability. Sections 880.61 to 880.72 apply to a transfer within the scope of s. 880.615 made after the effective date of this section [revisor inserts date], if:

(1) The transfer purports to have been made under ss. 880.61 to 880.71, 1985 stats.; or

(2) The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of ss. 880.61 to 880.72 is necessary to validate the transfer.

880.715 Effect on existing custodianships. (1) Any transfer of custodial property as defined in ss. 880.61 to 880.72 made before the effective date of this subsection [revisor inserts date], is validated notwithstanding that there was no specific authority in ss. 880.61 to 880.71, 1985 stats., for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(2) Sections 880.61 to 880.72 apply to all transfers made before the effective date of this subsection [revisor inserts date], in a manner and form prescribed in ss. 880.61 to 880.71, 1985 stats., except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on the effective date of this subsection [revisor inserts date].

(3) Sections 880.61 to 880.705 with respect to the age of a minor for whom custodial property is held under ss. 880.61 to 880.72 do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of 18 after March 23, 1972 and before the effective date of this subsection [revisor inserts date].

(4) To the extent that ss. 880.61 to 880.72, by virtue of sub. (2), do not apply to transfers made in a manner prescribed in ss. 880.61 to 880.71, 1985 stats., or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of ss. 880.61 to 880.71, 1985 stats., does not affect those transfers, powers, duties and immunities.

880.72 Uniformity of application and construction. Sections 880.61 to 880.72 shall be applied and construed to effectuate their general purpose to make uniform the law with respect to the subject of ss. 880.61 to 880.72 among states enacting it.

SECTION 5. 880.75 (1) (b), (c), (e) and (g) of the statutes are amended to read:

880.75 (1) (b) "Broker" means ~~the same as defined in s. 880.61~~ 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 or her own account, through a broker or otherwise, as a part of a regular business.

(c) "Issuer" means ~~the same as defined in s. 880.61~~ a person who places or authorizes the placing of his or her name on a security, other than as a transfer agent, to evidence that it represents a share, participation or other interest in his or her property or in an enterprise or to evidence his or her duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person.

(e) "Security" means ~~the same as defined in s. 880.61~~ 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, or 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.

(g) "Transfer agent" means ~~the same as defined in s. 880.61~~ 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 or in the cancellation of surrendered securities.