

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 630

INTRODUCER: Senator Joyner

SUBJECT: Transfers to Minors

DATE: March 2, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>BI</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 630 amends the Uniform Transfers to Minors Act to enable a person to make a gift to a minor which may be held by a custodian until the minor reaches the age of 25, and not 21, as provided under current law. However, the bill requires that the minor have at least 30 days to compel the distribution of the custodial property on or about the minor’s 21st birthday. The extended time periods apply to gifts or property held by a custodian which were directly transferred or given to the custodian by the donor, a holder of a power of appointment,¹ or a personal representative or trustee pursuant to the terms of a trust or will. This bill does not apply to custodianships funded by fiduciaries or obligors which must be distributed to a minor at the age of 18.

II. Present Situation:

The Florida Uniform Transfers to Minors Act was enacted in 1985. It is a state adaptation of the Uniform Transfers to Minors Act developed by the Uniform Law Commission in 1983.²

The Florida Uniform Transfers to Minors Act provides a simple, inexpensive mechanism for an adult to give gifts to a minor without the minor assuming control of the gifts until he or she reaches majority. The act provides for a custodianship in which an adult maintains control of property irrevocably granted which will eventually transfer directly to the minor. The custodian holds record title to the asset for the benefit of the minor.

¹ “A power of appointment is the legal authority to make another person the outright owner of the property left by a decedent. A donor gives the power to a donee so that person may choose the beneficiaries of his trust or will.” Legal Information Institute, Cornell Law School (last visited February 25, 2015) https://www.law.cornell.edu/wex/power_of_appointment.

² The National Conference of Commissioners on Uniform State Laws, *Transfers to Minors Act Summary*, <http://uniformlaws.org/ActSummary.aspx?title=Transfers%20to%20Minors%20Act> (last visited February 20, 2015). According to the National Conference’s website, the uniform act has been enacted in 48 states, the District of Columbia, the U.S. Virgin Islands, and is currently pending before one other state legislature. The National Conference of Commissioners on Uniform State Laws, *Legislative Fact Sheet – Transfers to Minors Act*, <http://uniformlaws.org/LegislativeFactSheet.aspx?title=Transfers%20to%20Minors%20Act> (last visited February 20, 2015).

A custodianship, which is sometimes referred to as a “poor man’s trust” is less expensive to operate than a trust because it does not create significant administrative fees and costs that diminish the value of the gift. Additionally, a custodianship is beneficial because the property is retained by a more mature and competent individual as opposed to an inexperienced minor. Any type of property, whether it is real or personal, tangible or intangible, may be transferred to a custodian for the minor’s benefit. The act covers outright gifts and other transfers, including the payment of debts owed to a minor, and transfers of property from estates or trusts.³

Under current law, the duration of a custodianship is based upon who made the gift or the express directions of the donor. The duration of a custodianship extends until the minor reaches age 21 if a gift or transfer was given to a custodian directly by the donor, a person authorized by a will to give gifts to third persons, or a personal representative or trustee acting in accordance with the terms of a trust providing for the custodianship.⁴ The duration of a custodianship extends until a minor reaches 18 years of age if the custodianship property is from a will or trust that does not expressly provide for a custodianship or the custodianship holds property from a debt owed to the minor or a benefit plan.⁵

III. Effect of Proposed Changes:

Under Florida’s Uniform Transfers to Minors Act (UTMA), all gifts to minors must be fully distributed to the minor when he or she reaches 18 or 21 years of age. This bill allows certain custodianships to extend to the minor’s 25th birthday if the minor has at least 30 days when he or she turns 21 years of age to claim all of the assets in the custodianship. This extension applies to a custodianship created by donor, a holder of a power of appointment, or a fiduciary acting pursuant to an authorization in a will or a trust.⁶ This bill does not apply to custodianships funded by fiduciaries or obligors which must be distributed to a minor at the age of 18.⁷

The bill amends s. 710.123, F.S., to establish provisions under which a custodianship may be extended to the age of 25. The document creating the custodianship must specify in its terms that it is creating a custodianship that terminates when the minor reaches the age of 25. If the transferor creates the custodianship to terminate when the minor reaches the age of 25, the minor has an absolute right to compel an immediate distribution of the property upon reaching the age of 21. The transferor, however, may limit the minor’s withdrawal rights to a designated time period after the minor reaches 21 years of age. To effectively make this limitation, the custodian must provide the minor with written notice of his or her withdrawal rights. The written notice must be delivered at least 30 days before, and no later than 30 days after, the minor’s 21st

³ The National Conference of Commissioners on Uniform State Laws, *Why States Should Adopt UTMA* <http://www.uniformlaws.org/Narrative.aspx?title=Why%20States%20Should%20Adopt%20UTMA> (last visited February 20, 2015).

⁴ Sections 710.105 and 710.106, F.S.

⁵ Sections 710.107 and 710.108, F.S.

⁶ See section 1 of the bill and existing ss. 710.105 and 710.106, F.S.

⁷ See section 1 of the bill and existing ss. 710.107 and 710.108, F.S. Under existing s. 710.107, F.S., a custodianship terminates when the minor reaches 18 years of age if it is funded from a will or trust that does not expressly provide for the creation of a custodianship.

birthday. The termination rights may not expire before the later of 30 days after the 21st birthday or 30 days after the custodian delivers the notice.

The bill amends s. 710.105, F.S., to provide that a transfer by irrevocable gift from a revocable trust is treated, for all purposes, as a transfer made directly by the grantor of the trust. The purpose of this change is to provide that a revocable trust will be permitted to make a gift to a minor that can be placed in a custodianship until the minor is 25 years old under s. 710.123(1), F.S. A plausible argument can be made that, if the revocable trust documents are silent about the intent to create a custodianship, then the gift would need to be distributed to the minor on his or her 18th birthday. The bill, by treating the gift as if it were directly from the grantor, ensures that such gifts can be held by a custodian until the minor's 25th birthday.

Gifts to create UTMA accounts are treated by the IRS as gifts to trusts. Gifts to trusts do not normally qualify for the gift tax annual exclusion, which is currently \$14,000 per donee, per year.⁸ However, the IRS allows gifts to an UTMA account that terminates at 21 to qualify for the gift tax annual exclusion, but will not allow a gift to an UTMA account that terminates at age 25 to qualify.⁹ Therefore, to conform with other IRS requirements that allow gifts to trusts to qualify for the annual exclusion if the trust beneficiary has a right, for a limited time, to withdraw the gift made to the trust, the minor must also have a right for a limited time to withdraw a contribution to an age of 25.¹⁰

Because financial institutions might not be aware that a custodianship does not terminate until a minor reaches the age of 25, they are shielded from liability under the provisions of this bill, if funds are distributed when the minor reaches the age of 21.¹¹

The extension proposed by this bill does not authorize the extension of a custodianship for someone who has already reached the age of 21 years at the time for creation of the custodianship.

According to the Real Property, Probate and Trust Law Section of The Florida Bar, seven other states have amended their state version of the Uniform Transfer to Minors Act to allow a custodian, under certain circumstances, to hold assets for a minor until he or she reaches the age of 25.¹²

The bill takes effect July 1, 2015.

⁸ Department of the Treasury, Internal Revenue Service, *IRS Publication 559: Survivors, Executors, and Administrators*, 25 (January 31, 2014).

⁹ 26 U.S.C. s. 2503(c)(1) and (2).

¹⁰ To qualify for the gift tax exclusion, the gift must be of a present interest. Treas. Reg. s. 25.2503-4(b)(2) stands for the proposition that the gift will be of a present interest if the minor has the right to extend the trust. IRS Revenue Ruling 74-43 states that if the minor has a limited period within which to compel distribution, the gift will be a present interest. *See also* 26 U.S.C. s. 2503(c).

¹¹ The Real Property, Probate, & Trust Law Section of The Florida Bar, *White Paper: Proposed Amendments to Florida Uniform Transfers to Minors Act, Ch. 710, Florida Statutes* (2015) (on file with the Senate committee on Judiciary).

¹² *Id.* Those states are Alaska, California, Nevada, Oregon, Pennsylvania, Tennessee, and Washington.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

This bill does not appear to affect the spending, revenues, or tax authority of cities or counties. As such, the bill does not appear to be a mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This bill might have a positive, yet indeterminate, fiscal impact in the private sector by allowing people who establish custodianships to legally reduce or avoid some federal taxes.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 710.102, 710.105, and 710.123.

This bill reenacts the following sections of the Florida Statutes: 710.117 and 710.121.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
