

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #: HB 283

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Berman

117 Y's 0 N's

COMPANION CS/SB 630
BILLS:

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

HB 283 passed the House on April 24, 2015, and subsequently passed the Senate on April 27, 2015. The bill amends the Uniform Gifts to Minors Act.

The Uniform Gifts to Minors Act creates a simple legal custodianship, in an adult or appropriate institution, of property that would otherwise transfer directly to a minor. The purpose of the custodianship is to avoid the expense and complexity required by a formal trust or a legal guardianship to manage property of a minor. The Act requires full distribution of the custodial property to the minor upon reaching the age of 21.

This bill amends the Uniform Gifts to Minors Act to provide a mechanism to extend control over 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, or a personal representative or trustee pursuant to the terms of a trust or will, until the minor reaches the age of 25. The minor may opt out of such extended control within a specified period after reaching the age of 21.

This bill does not appear to have a fiscal impact on state or local governments. The bill may have a minimal indeterminate positive fiscal impact on the private sector to the extent that it can benefit individuals in their exercise of lawful federal tax avoidance.

The bill was approved by the Governor on June 11, 2015, ch. 2015-140, L.O.F., and will become effective on July 1, 2015.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background - Uniform Gifts to Minors Act

Transfers of property to minors create significant problems. To begin with, most transferors do not wish to place valuable property under the control of an inexperienced person. The probability of mismanagement, or no management whatsoever, is a significant concern to those who make such transfers. Somehow, control of the property must be retained in competent hands. Further, third parties often will not deal with minors, even if they are technically competent to manage their own affairs. Minors can disaffirm contracts, and third parties do business with them only with some risk. Yet, certain transfers to minors are very advantageous, particularly for the purposes of estate planning.¹

A trust, in which control and management reside with a trustee, offers one solution. But trusts are complex and expensive to create and manage. For smaller property transfers, they are not a satisfactory alternative. The Uniform Gifts to Minors Act creates a custodianship, in an adult or appropriate institution, of property that would otherwise transfer directly to the minor. The custodianship remains until the minor becomes 21 (or, in some instances, age 18). The custodial relationship is created by executing a rather simple document, the form of which is provided in the Act itself. The minor does not obtain control of the property. The custodian has certain statutory authority to deal with it on the minor's behalf, third parties have no occasion to be uncertain about dealing with the custodian, and the transfer is a complete and irrevocable transfer to the minor satisfying the requirements of tax law.²

In 1985, Florida codified the Uniform Gifts to Minors Act at ch. 710, F.S.

Background - Federal Estate & Gift Taxes

The federal estate tax is a tax on the value of one's estate after application of certain exclusions. The gift tax is a portion of the estate tax that imposes an estate-tax equivalent tax on donors who make certain lifetime gifts. Without the gift tax, the estate tax would in many cases be easily avoided through use of gifts to heirs.

A significant exclusion to the gift tax is the minimum dollar threshold. A gift that falls under the value of the exclusion is not subject to the gift tax. The current gift tax exemption amount is \$14,000 per annum.³ Thus, a common, simple and legal form of estate tax avoidance is the use of lifetime gifts to heirs where those gifts fall below the exemption amount.

The gift tax exclusion is only available if the gift is of a present interest. The federal tax code provides that no part of a gift to a minor (defined as an individual under age 21) is a gift of a future interest if certain conditions are met.⁴ Tax regulations interpreting the section provide that a gift will still be a present interest if the "donee, upon reaching age 21, has the right to extend the term of the trust."⁵ A 1974 Revenue Ruling supports the creation of an "opt-out" window at age 21 which, if not exercised by the donee, allows for an automatic extension of the restrictions on the gift to age 25.⁶

¹ Transfers to Minors Act Summary, at <http://www.uniformlaws.org/ActSummary.aspx?title=Transfers to Minors Act> (last accessed May 5, 2015).

² *Id.*

³ IRS Publication 559 (2013), p. 25.

⁴ 26 U.S.C. § 2503(c)

⁵ Regulation 25.2503-4(b)(2)

⁶ Rev.Rul. 74-43, found that: "a gift to a minor in trust, with the provision that the beneficiary has, upon reaching age 21, either (1) a continuing right to compel immediate distribution of the trust corpus by giving written notice to the trustee, or to permit the trust to continue by its own terms, or (2) a right during a limited period to compel immediate distribution of the trust corpus by given written notice to the trustee which if not exercised will permit the trust to continue by its own terms,

Effect of the Bill

The Uniform Gifts to Minors Act requires full distribution of most gifts to a minor upon reaching the age of 21.⁷ This bill amends the Uniform Gifts to Minors Act to provide a mechanism to extend control over such gifts to age 25 provided that the minor is given a brief opportunity at age 21 to opt out of such control.

This bill amends s. 710.123, F.S., to create the terms by which control over a gift may be extended to age 25. The terms of the custodianship must provide that it ends when the minor reaches age 25. The extension beyond the 21st birthday may only be accomplished if the custodian of the gift delivers a written notice within a 60 day period (between 30 days before the birthday and 30 days after) around the minor's 21st birthday. The notice must inform the minor that the minor may elect to terminate the custodianship and thereby receive full, immediate distribution of the gift. The minor must request termination of the custodianship no later than 30 days after receipt of the notice or 30 days after the 21st birthday, whichever is later. If the minor does not act, the custodianship will continue until age 25.

The bill also amends s. 710.105, F.S., to provide that a transfer by irrevocable gift from a revocable trust is treated as a transfer made directly by the grantor of the trust. The effect of this language is to provide that a revocable trust will be able to make a gift to a minor that can be restricted up to age 25 under s. 710.123(1), F.S. Without the language, it is arguable that such a gift would be considered one by a fiduciary (governed by s. 710.107, F.S.) that would have to be distributed at age 18 pursuant to s. 710.123(2), F.S.

The bill also provides that a financial institution acting as custodian under the Uniform Gifts to Minors Act is not liable should the institution distribute the gift at age 21.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

will not be considered to be the gift of a future interest as the gift satisfies the requirements of section 2503(c) of the Code."

⁷ A gift from certain fiduciaries, s. 710.107, F.S., or from an obligor of the minor, s. 710.108, F.S., must be distributed at age 18 pursuant to s. 710.123(2), F.S. This bill does not affect such gifts or the duty to distribute them upon attaining age 18.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

The bill appears to have a minimal indeterminate positive fiscal impact on the private sector to the extent that it can benefit individuals in their exercise of lawful federal tax avoidance.