

Enrolled Senate Bill 277

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CHAPTER

AN ACT

Relating to Oregon Uniform Transfers to Minors Act; creating new provisions; and amending ORS 126.805, 126.809, 126.812, 126.816, 126.819, 126.832, 126.836, 126.839, 126.842, 126.849, 126.857, 126.859, 126.862, 126.866, 126.869, 126.872 and 126.875.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 126.805 is amended to read:

126.805. As used in ORS 126.805 to 126.886, except where the context otherwise requires:

(1) "Adult" means any person who has attained the age of 21 years.

[(2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.]

(2) "Beneficiary" means a person for whose benefit a transfer has been made to a custodian.

(3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the account of the person or for others.

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

(5) "Court" means circuit court.

(6) "Custodial property" includes:

(a) Any interest in property transferred to a custodian under ORS 126.805 to 126.886.

(b) The income from that interest in property.

(7) "Custodian" means the person designated as custodian under ORS 126.812 or a successor or substitute custodian designated under ORS 126.862.

(8) "Financial institution" means a financial institution as defined in ORS 706.008 or a trust company as defined in ORS 706.008.

(9) "Legal representative" means the personal representative or conservator.

(10) "Member of the [minor's] **beneficiary's** family" means the [minor's] **beneficiary's** parent, stepparent, spouse, grandparent, brother, sister, uncle or aunt, whether of the whole blood or the half blood or through legal adoption.

(11) "Minor" means any person who has not attained the age of 21 years.

(12) "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.

(13) "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.

(14) "Transfer" means a transaction that creates custodial property under ORS 126.832.

(15) "Transferor" means a person who makes a transfer under ORS 126.805 to 126.886.

(16) "Trust company" means a trust company as defined in ORS 706.008.

SECTION 2. ORS 126.809 is amended to read:

126.809. (1) ORS 126.805 to 126.886 apply to a transfer that refers to ORS 126.805 to 126.886 in the designation under ORS 126.832 (1) by which the transfer is made if at the time of the transfer, the transferor, the [*minor*] **beneficiary** 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 ORS 126.805 to 126.886 despite a subsequent change in residence of a transferor, the [*minor*] **beneficiary** or the custodian or the removal of custodial property from this state.

(2) A person designated as custodian under ORS 126.805 to 126.886 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*] **beneficiary** or the custodian is a resident of the designated state or the custodial property is located in the designated state.

SECTION 3. ORS 126.812 is amended to read:

126.812. (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*] **beneficiary**) under the Oregon 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 in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payer, 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 ORS 126.832 (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 ORS 126.832. 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 pursuant to ORS 126.832.

SECTION 4. ORS 126.816 is amended to read:

126.816. 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*] **beneficiary** pursuant to ORS 126.832.

SECTION 5. ORS 126.819 is amended to read:

126.819. (1) A personal representative or trustee may make an irrevocable transfer pursuant to ORS 126.832 to a custodian for the benefit of a [*minor*] **beneficiary** as authorized in the governing will or trust.

(2) If the testator or settlor has nominated a custodian under ORS 126.812 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 ORS 126.812, 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 ORS 126.832.

SECTION 6. ORS 126.832 is amended to read:

126.832. (1) Custodial property is created and a transfer is made [*whenever*] **if any of the following occur:**

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

(A) Registered in the name of the transferor, **in the name of** an adult other than the transferor **or the beneficiary**, or **in the name of** a trust company, followed in substance by the words specified in subsection (3) of this section; or

(B) Delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary indorsement to an adult other than the transferor **or the beneficiary**, or **delivered** to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (2) of this section[;].

(b) Money is paid or delivered to a broker or financial institution for credit to an account in the name of the transferor, **in the name of** an adult other than the transferor **or the beneficiary**, or **in the name of** a trust company, followed in substance by the words specified in subsection (3) of this section[;].

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

(A) Registered with the issuer in the name of the transferor, **in the name of** an adult other than the transferor **or the beneficiary**, or **in the name of** a trust company, followed in substance by the words specified in subsection (3) of this section; or

(B) Assigned in a writing delivered to an adult other than the transferor **or the beneficiary**, or **delivered** to a trust company [*whose name in the assignment*], **and the name of the assignee** is followed in substance by the words specified in subsection (3) of this section[;].

(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 payer, issuer or other obligor that the right is transferred to the transferor, **transferred to** an adult other than the transferor **or the beneficiary**, or **transferred to** a trust company, [*whose name in the notification*] **and the name of the transferee** is followed in substance by the words specified in subsection (3) of this section[;].

(e) An interest in real property is recorded in the name of the transferor, **in the name of** an adult other than the transferor **or the beneficiary**, or **in the name of** a trust company, followed in substance by the words specified in subsection (3) of this section[;].

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

(A) Issued in the name of the transferor, **in the name of** an adult other than the transferor **or the beneficiary**, or **in the name of** a trust company, followed in substance by the words specified in subsection (3) of this section; or

(B) Delivered to an adult other than the transferor **or the beneficiary**, or **delivered** to a trust company, **and is** indorsed to that person followed in substance by the words specified in subsection (3) of this section[; *or*].

(g) An interest in any property not described in paragraphs (a) to (f) of this subsection is transferred to an adult other than the transferor **or the beneficiary**, or **is transferred** to a trust company, by a written instrument in substantially the form set forth in subsection (2) of this section.

(2) An instrument in the following form satisfies the requirements of [*paragraph*] **subsection (1)(a)(B)** [*of this subsection and paragraph (g) of this subsection*] **and (g) of this section:**

TRANSFER UNDER THE OREGON
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*] **beneficiary**) under the Oregon Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Delayed Transfer (may be made only if authorized by ORS 126.872): The custodian shall deliver the property to the [minor] **beneficiary** when the [minor] **beneficiary** attains the age of ____ years (not less than 21 nor more than 25).

Dated: _____

(Signature)

_____ (name of custodian) acknowledges receipt of the property described above as custodian for the [minor] **beneficiary** named above under the Oregon Uniform Transfers to Minors Act.

Dated: _____

(Signature of Custodian)

(3) For the purposes of subsection (1) of this section, the following words create custodial property:

(a) "As custodian for _____ (name of [minor] **beneficiary**) under the Oregon Uniform Transfers to Minors Act"; or

(b) If the custodial property is subject to delayed transfer under ORS 126.872, "As custodian for _____ (name of [minor] **beneficiary**) under the Oregon Uniform Transfers to Minors Act until the [minor] **beneficiary** attains the age of ____ years."

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

SECTION 7. ORS 126.836 is amended to read:

126.836. (1) A transfer may be made only for one [minor] **beneficiary** and only one person may be the custodian. All custodial property held under ORS 126.805 to 126.886 by the same custodian for the benefit of the same [minor] **beneficiary** constitutes a single custodianship.

(2) A transfer may be made for the benefit of a beneficiary under ORS 126.805 to 126.886 at any time before the beneficiary attains 25 years of age.

SECTION 8. ORS 126.839 is amended to read:

126.839. (1) The validity of a transfer made in a manner prescribed in ORS 126.805 to 126.886 is not affected by:

(a) Failure of the transferor to comply with ORS 126.832 (4) 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 ORS 126.832 (1); or

(c) Death or incapacity of a person nominated under ORS 126.812 or designated under ORS 126.832 as custodian or the disclaimer of the office by that person.

(2) A transfer made pursuant to ORS 126.832 is irrevocable, and the custodial property is indefeasibly vested in the [minor] **beneficiary**, but the custodian has all the rights, powers, duties and authority provided in ORS 126.805 to 126.886 and neither the [minor] **beneficiary** nor the [minor's] **beneficiary's** legal representative has any right, power, duty or authority with respect to the custodial property except as provided in ORS 126.805 to 126.886.

(3) By making a transfer, the transferor incorporates in the disposition all the provisions of ORS 126.805 to 126.886 and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in ORS 126.805 to 126.886.

SECTION 9. ORS 126.842 is amended to read:

126.842. (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 investor 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] **beneficiary** or the [minor's] **beneficiary'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] **beneficiary** only if the [minor] **beneficiary** or the [minor's] **beneficiary's** estate is the sole beneficiary; or

(b) The life of another person in whom the [minor] **beneficiary** has an insurable interest only to the extent that the [minor] **beneficiary**, the [minor's] **beneficiary'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] **beneficiary**. Custodial property consisting of an undivided interest is so identified if the [minor's] **beneficiary'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] **beneficiary**) under the Oregon 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] **beneficiary's** tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the [minor] **beneficiary** or by the [minor] **beneficiary** if the [minor] **beneficiary** has attained 14 years of age.

SECTION 10. ORS 126.849 is amended to read:

126.849. (1) A custodian may deliver or pay to the [minor] **beneficiary** or expend for the [minor's] **beneficiary's** benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the [minor] **beneficiary**, 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] **beneficiary**; or

(b) Any other income or property of the [minor] **beneficiary** [which] **that** may be applicable or available for that purpose.

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

(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] **beneficiary**.

SECTION 11. ORS 126.857 is amended to read:

126.857. A third 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:

(1) The validity of the purported custodian's designation;

(2) The propriety of, or the authority under ORS 126.805 to 126.886 for, any act of the purported custodian;

(3) The validity or propriety under ORS 126.805 to 126.886 of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

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

SECTION 12. ORS 126.859 is amended to read:

126.859. (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] **beneficiary** 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] **beneficiary** is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the [minor] **beneficiary** is personally at fault.

SECTION 13. ORS 126.862 is amended to read:

126.862. (1) A person nominated under ORS 126.812 or designated under ORS 126.832 as custodian may decline to serve by delivering a valid 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 ORS 126.812, the person who made the nomination may nominate a substitute custodian under ORS 126.812; 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 ORS 126.832 (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 ORS 126.816 **or the beneficiary** 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] **beneficiary** if the [minor] **beneficiary** has attained 14 years of age 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] **beneficiary** has attained 14 years of age, the [minor] **beneficiary** may designate as successor custodian, in the manner prescribed in subsection (2) of this section, an adult member of the [minor's] **beneficiary's** family, a conservator [of] **for** the [minor] **beneficiary** or a trust company. If the [minor] **beneficiary** has not attained 14 years of age or fails to act within 60 days after the ineligibility, death or incapacity, the conservator [of] **for** the [minor] **beneficiary** becomes successor custodian. If the [minor] **beneficiary** 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] **beneficiary's** family or any other interested person may petition the court to designate a successor custodian.

(5) A custodian who declines to serve under subsection (1) of this section or resigns under subsection (3) of this section, 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] **beneficiary's** family, a **beneficiary's** guardian [of the person of the minor], the conservator [of] **for** the [minor] **beneficiary** or the [minor] **beneficiary** if the [minor] **beneficiary** has attained 14 years of

age may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under ORS 126.816 or to require the custodian to give appropriate bond.

SECTION 14. ORS 126.866 is amended to read:

126.866. (1) A [minor] **beneficiary** who has attained 14 years of age, the [minor's] **beneficiary's** guardian [of the person] or legal representative, an adult member of the [minor's] **beneficiary'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 ORS 126.859 to which the [minor] **beneficiary** or the [minor's] **beneficiary'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 ORS 126.805 to 126.886 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 ORS 126.862 (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.

SECTION 15. ORS 126.869 is amended to read:

126.869. Except as provided in ORS 126.872, the custodian shall transfer in an appropriate manner the custodial property to the [minor] **beneficiary** or to the [minor's] **beneficiary's** estate upon the earlier of:

(1) The [minor's] **beneficiary's** attainment of 21 years of age with respect to custodial property transferred under ORS 126.816 or 126.819;

(2) The [minor's] **beneficiary's** attainment of 18 years of age with respect to custodial property transferred under ORS 126.822 or 126.826; or

(3) The [minor's] **beneficiary's** death.

SECTION 16. ORS 126.872 is amended to read:

126.872. (1) Except as provided in this section, a person making a transfer to a custodian under ORS 126.816 or 126.819 may provide for a delayed transfer of the custodial property to the [minor] **beneficiary** at a specific time after the [minor] **beneficiary** attains the age of 21 years and:

(a) Before the [minor] **beneficiary** attains the age of 25 years[.]; or

(b) **The date on which the beneficiary attains the age of 25 years.**

(2) If the person making the transfer to the custodian under ORS 126.816 or 126.819 specifies no time for the transfer of the custodial property to the [minor] **beneficiary**, the **custodian shall transfer the custodial property [will be transferred] to the [minor when] beneficiary on the date that the [minor] beneficiary attains the age of 21 years.**

[2] (3) A personal representative or trustee making a transfer to a custodian under ORS 126.819 may provide for a delayed transfer of the custodial property pursuant to this section only if the governing will or trust directs that the custodial property be transferred [to the minor after the minor attains the age of 21 years and before the minor attains the age of 25 years] **within the time specified by subsection (1) of this section.** The transfer to the custodian must provide that the custodial property be transferred to the [minor] **beneficiary** at the age specified in the governing will or trust.

[3] (4) A transfer to a custodian under ORS 126.816 or 126.819 is not invalid if the transfer provides that the custodial property be transferred to the [minor] **beneficiary** after the [minor] **beneficiary** attains the age of 25 years. If an otherwise valid transfer provides that the custodial property be transferred to the [minor] **beneficiary** after the [minor] **beneficiary** attains the age of 25 years, the custodial property must be transferred to the [minor] **beneficiary** [when] **on the date that the [minor] beneficiary attains the age of 25 years.**

SECTION 17. ORS 126.875 is amended to read:

126.875. The custodian [shall not be] **is not** required to account to the [minor] **beneficiary** or to any other person for the acts and proceedings of the custodian unless the [minor] **beneficiary**,

a parent of the [minor] **beneficiary**, the legal representative of the [minor] **beneficiary** or a successor custodian [shall petition] **petitions** the circuit court for [such] an accounting no later than two years after the [minor] **beneficiary** becomes an adult or attains a lesser age as provided in ORS 126.805 to 126.886 or dies before becoming an adult or attaining that lesser age.

SECTION 18. The amendments to ORS 126.805, 126.809, 126.812, 126.816, 126.819, 126.832, 126.836, 126.839, 126.842, 126.849, 126.857, 126.859, 126.862, 126.866, 126.869, 126.872 and 126.875 by sections 1 to 17 of this 2005 Act apply to all transfers of property under ORS 126.805 to 126.886, whether occurring before, on or after the effective date of this 2005 Act.

Passed by Senate March 23, 2005

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Secretary of Senate

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President of Senate

Passed by House June 8, 2005

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Speaker of House

Received by Governor:

.....M.,....., 2005

Approved:

.....M.,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2005

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Secretary of State