

2009 HOUSE JUDICIARY

HB 1232

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1232

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/21/09

Recorder Job Number: 7397

Committee Clerk Signature *D. Penrose*

Minutes:

Chairman DeKrey: We will open the hearing on HB 1232.

Marilyn Foss, General Counsel, ND Bankers Association: Support, explained the bill (attachment).

Chairman DeKrey: What happens when the custodians don't agree on how it should be done? Who has priority?

Marilyn Foss: The UTMA does have a number of provisions for addressing abusive activity by a custodian and that would certainly apply in this situation. I guess what happens when parents don't agree.

Rep. Delmore: What happens if the parents divorce? This is only documentation for one state.

Marilyn Foss: If people get divorced and this is an issue, I suspect it would be an issue that is resolved by the judicial decision in a divorce. That would be my answer also to if people are attempting to abuse the power as custodian. If it is an issue, it results in going to court.

Rep. Dahl: Do you know why it was set up like that in the beginning, with just 1 person.

Marilyn Foss: I researched that issue and I don't know. There isn't any information available in what I read to say.

Rep. Klemin: Did you go to the Uniform Laws Commission site.

Marilyn Foss: I went to the UTMA Custodial Site, and it didn't discuss it.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1232

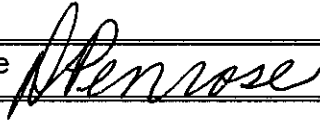
House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/27/09

Recorder Job Number: 7950

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will take a look at HB 1232. What are the committee's wishes? This is the bill where it changes it from one custodian to joint custodians for their children's accounts.

Rep. Klemin: The question here was why the Uniform Law would provide for a single custodianship. The answer is we don't know. I went back and looked this up. Prior to the Uniform Transfers to Minors Act, which is what we are dealing with here; we had the Uniform Gifts to Minors Act. That was replaced in about 1985 with the UTMA. The comments to the official act by the Uniform Law Commission, there are comments talking about the custodian but they don't have the issue of apparently joint custodians, the issue did not come up at the time they adopted them.

Rep. Wolf: I move a Do Pass.

Rep. Dahl: Second.

13 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Rep. Dahl

Date: 1/27/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1232

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ DP ☐ DNP ☐ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Walf Seconded By Rep. Dahl

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------|-----|----|-----------------|-----|----|
| Ch. DeKrey | ✓ | | Rep. Delmore | ✓ | |
| Rep. Klemin | ✓ | | Rep. Griffin | ✓ | |
| Rep. Boehning | ✓ | | Rep. Vig | ✓ | |
| Rep. Dahl | ✓ | | Rep. Wolf | ✓ | |
| Rep. Hatlestad | ✓ | | Rep. Zaiser | ✓ | |
| Rep. Kingsbury | ✓ | | | | |
| Rep. Koppelman | ✓ | | | | |
| Rep. Kretschmar | ✓ | | | | |
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Total (Yes) 13 No 0

Absent 0

Floor Carrier: Rep. Dahl

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 28, 2009 7:27 a.m.

Module No: HR-17-1054
Carrier: Dahl
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1232: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1232 was placed on the
Eleventh order on the calendar.

2009 SENATE JUDICIARY

HB 1232

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1232

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/10/09

Recorder Job Number: 10577

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Relates to custodianships for property of minors.

Rick Clayburgh – President and CEO of the ND Bankers Association – Introduces the bill for the Bankers Association.

Sharon Karsky – VP Northland Financial – Offers written testimony for Marilyn Foss, General Counsel for the ND Bankers Association. She explains the Uniform Transfer to Minor Act currently in place allows one custodian to serve for custodial property. The request in the bill is to allow two persons to serve as joint custodians. Now only one person is allowed and she says that does cause some problems. Many times both parents want to be custodians. Marilyn's testimony says she contacted other states that have joint custodian and they have had no problems.

Jack McDonald – Independent Banks of ND. In support of this bill. This would make the joint custodial issues much clearer.

Senator Nething – Asks, do we see the Uniform Minor's Act used a lot?

McDonald – Responds, yes, many times your required to set up the trust, often times in insurance proceeds or in court cases where there is awards to the family. Sometimes even when children win prizes.

Senator Nelson – Asks, do you have to use it if you're gifting money to a child so it doesn't go to the parents.

McDonald – Replies, yes and often in land sales.

Close the hearing on 1232

Senator Nelson moves a do pass

Senator Schneider seconds

Vote – 6-0

Senator Schneider will carry

Date: 3/10
Roll Call Vote #: 1
1232

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Nelson Seconded By Schneider

| Senators | Yes | No | Senators | Yes | No |
|---------------------------------|-----|----|---------------------|-----|----|
| Sen. Dave Nething – Chairman | X | | Sen. Tom Fiebiger | X | |
| Sen. Curtis Olafson – V. Chair. | X | | Sen. Carolyn Nelson | X | |
| Sen. Stanley W. Lyson | X | | Sen. Mac Schneider | X | |
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Total (Yes) 6 (N) 0

Absent _____

Floor Assignment Sen. Schneider

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 10, 2009 1:37 p.m.

Module No: SR-43-4470
Carrier: Schneider
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1232: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1232 was placed on the
Fourteenth order on the calendar.

2009 TESTIMONY

HB 1232

TESTIMONY OF MARILYN FOSS
IN FAVOR OF HOUSE BILL 1232

Chairman DeKrey, members of the Judiciary Committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association. This bill has been introduced at NDBA's request.

This bill amends North Dakota's version of the Uniform Transfers To Minors Act to allow up to two persons to serve as joint custodians of custodial property. Current law allows only one person to perform this function. This limitation can be inconvenient and inefficient and also can cause hard feelings because it doesn't allow both parents to be custodians of property that is transferred to their child. We often receive calls from our bankers who are trying to explain things to unhappy parents. We aren't able to explain the reasons for the limitation and our banks, likewise can't explain it to their customers. They aren't able to

Allowing parents to serve as joint custodians will make it much easier for them to administer a UTMA, since either will have the ability to act when the other is unavailable to do so. Also, a joint custodianship will be particularly helpful in situations where one of the parents dies, since the surviving parent can continue to serve and the child can avoid the costly and unnecessary legal process of appointing a successor custodian that would otherwise apply. But, this change is entirely voluntary. The person making a transfer to a child is not required to appoint joint custodian.

A couple of years ago Virginia adopted this change. I checked with the VBA to find out how it has been received there. I was told there have been no problems and that the banks and their customers are pleased with the change.

We think this simple change will provide our citizens with greater flexibility and will reduce the questions and complaints we receive about UTMA accounts. Accordingly, we urge a Do Pass for the bill.

TESTIMONY OF MARILYN FOSS
IN FAVOR OF HOUSE BILL 1232

Chairman Nething, members of the Judiciary Committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association. This bill has been introduced at NDBA's request.

This bill amends North Dakota's version of the Uniform Transfers to Minors Act to allow up to two persons to serve as joint custodians of custodial property. Current law allows only one person to perform this function. Comments to this uniform law do not discuss the rationale for allowing only one person to be designated as custodian. However, the limitation can be inconvenient and inefficient and also can cause hard feelings because it doesn't allow both parents to be custodians of property that is transferred to their child. We often receive calls from our bankers who are trying to explain things to unhappy parents. We aren't able to explain the reasons for the restriction and our banks, likewise, can't explain it to their customers.

Allowing parents to serve as joint custodians will make it much easier for them to administer a UTMA, since either will have the ability to act when the other is unavailable to do so. Also, a joint custodianship will be particularly helpful in situations where one of the parents dies, since the surviving parent can continue to serve and the child can avoid the costly and unnecessary legal process of appointing a successor custodian that would otherwise apply. But, this change is entirely voluntary. The person making a transfer to a child is not required to appoint joint custodians.

I did check and found that this same change has been adopted in several other states. One of those is Virginia. I checked with the VBA to find out how it has been received there. I was told there have been no problems and that the banks and their customers are pleased with the change. So far as I can tell, the other states that have adopted the change also seem to be pleased with it.

I also mentioned the bill to a friend of mine whose law practice is limited to domestic relations. She was very pleased to hear the bankers have proposed to change this because she felt it would help reduce hard feelings in a divorce if both parents can be joint custodians on a UTMA account. Any dispute between the joint custodians would continue to be resolved in court.

We think this simple change will provide our citizens with greater flexibility and will reduce the questions and complaints we receive about UTMA accounts. Accordingly, we urge a Do Pass for the bill.