

Memorandum Urging Approval

NYSBA #21-GOV

July 11, 2014

S. 7137
A. 9055

By: Senator Bonacic
By: M of A Buchwald
Senate Committee: Judiciary
Assembly Committee: Judiciary
Effective Date: Immediately

AN ACT to amend the surrogate's court procedure act, in relation to custodians acting under the uniform transfers to minors act

In its current form, Surrogate's Court Procedure Act (SCPA) §1724 specifically references the Uniform Gifts to Minors Act (UGMA) sections of the Estate Powers and Trusts Law (EPTL). *See* repealed sections EPTL §7-4.1 to 7-4.9. UGMA was repealed (1997 N.Y. Laws 535) and replaced by Uniform Transfers to Minors Act (UTMA) (1996 N.Y. Laws 304). *See* EPTL §7-6.1 to 7-6.26

When UTMA was first enacted, UGMA was left intact because UTMA directed that UGMA would continue to apply to transfers made before December 31, 1996. However, that overlap proved to be unwieldy for practitioners. UGMA was repealed the following year and UTMA was made applicable to existing UGMA accounts. *See* EPTL §7-6.22. Despite this change, SCPA §1724 still remains with the reference to the now repealed sections of the EPTL.

Arguably, the purpose of SCPA §1724 is largely superceded by EPTL §7-6.2, which details and defines the scope and jurisdiction of UTMA. However, it is preferable not to repeal SCPA §1724.

As a general (and historical) matter, SCPA contains most of the procedural and jurisdictional provisions of estate law. Article 17 of the SCPA contains procedural statutory authority related to guardians and custodians. Practitioners searching for the jurisdictional authority for UTMA may begin their search with SCPA. Regardless, it is confusing and incorrect to have a statute which references a now repealed section of the EPTL.

Based on the foregoing, the New York State Bar Association urges **APPROVAL** this legislation, which was developed as an affirmative legislative proposal of its Trusts and Estates Law Section.