WEST VIRGINIA CODE CHAPTER 36 ARTICLE 7

WV Legislature

§36-7-1. Definitions.

In this article:

(1) "Adult" means an individual who has attained the age of twenty-one years.

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

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

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

(5) "Court" means any circuit court.

(6) "Custodial property" means (i) any interest in property transferred to a custodian under this article and (ii) the income from and proceeds of that interest in property.

(7) "Custodian" means a person so designated under section nine or a successor or substitute custodian designated under section eighteen of this article.

(8) "Financial institution" means a bank, trust company, savings institution or credit union, chartered and supervised under state or federal law.

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

(10) "Member of the minor's family" means the minor's parent, step-parent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) "Minor" means an individual who has not attained the age of twenty-one years.

(12) "Person" means an individual, corporation, organization or other legal entity.

(13) "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.

(14) "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.

(15) "Transfer" means a transaction that creates custodial property under section nine of this article.

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(16) "Transferor" means a person who makes a transfer under this article.

(17) "Trust company" means a financial institution, corporation or other legal entity authorized to exercise general trust powers.

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§36-7-2. Scope and jurisdiction.

(a) This article applies to a transfer that refers to this article in the designation under subsection (a), section nine, by which the transfer is made if at the time of the transfer, the transferor, the minor 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 this article despite a subsequent change in residence of a transferor, the minor or the custodian, or the removal of custodial property from this state.

(b) A person designated as custodian under this article is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(c) 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 or the custodian is a resident of the designated state or the custodial property is located in the designated state.

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§36-7-3. Nomination of custodian.

(a) 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) under the 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 payor, issuer or other obligor of the contractual rights.

(b) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under subsection (a), section nine of this article.

(c) 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 section nine of this article. 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 section nine of this article.

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§36-7-4. Transfer by gift or exercise of power of appointment.

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 pursuant to section nine of this article.

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§36-7-5. Transfer authorized by will or trust.

(a) A personal representative or trustee may make an irrevocable transfer pursuant to section nine of this article to a custodian for the benefit of a minor as authorized in the governing will or trust.

(b) If the testator or settlor has nominated a custodian under section three of this article to receive the custodial property, the transfer must be made to that person.

(c) If the testator or settlor has not nominated a custodian under section three of this article 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 subsection (a), section nine of this article.

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§36-7-6. Other transfer by fiduciary.

(a) Subject to subsection (c), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to section nine of this article in the absence of a will or under a will or trust that does not contain an authorization to do so.

(b) Subject to subsection (c), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to section nine of this article.

(c) A transfer under subsection (a) or (b) may be made only if (i) the personal representative, trustee or conservator considers the transfer to be in the best interest of the minor, (ii) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement or other governing instrument and (iii) the transfer is authorized by the court if it exceeds $10,000 in value.

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§36-7-7. Transfer by obligor.

(a) Subject to subsections (b) and (c) of this section, a person not subject to section five or six of this article who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to section nine of this article.

(b) If a person having the right to do so under section three of this article has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(c) If no custodian has been nominated under section three of this article, or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds $10,000 in value.

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§36-7-8. Receipt for custodial property.

A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this article.

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§36-7-9. Manner of creating custodial property and effecting transfer; designation of initial custodian; control.

(a) Custodial property is created and a transfer is made whenever:

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

(i) Registered in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "As custodian for _____ (name of minor) under the West Virginia Uniform Transfers to Minors Act"; or

(ii) Delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (b).

(2) Money is paid or delivered to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "As custodian for _____ (name of minor) under the West Virginia Uniform Transfers to Minors Act."

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

(i) Registered with the issuer in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "As custodian for _____ (name of minor) under the West Virginia Uniform Transfers to Minors Act"; or

(ii) Assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "As custodian for _____ (name of minor) under the West Virginia Uniform Transfers to Minors Act."

(4) 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 payor, issuer or other obligor that the right is transferred to the transferor, an adult other than the transferor or a trust company, whose name in the notification is followed in substance by the words: "As custodian for _____ (name of minor) under the West Virginia Uniform Transfers to Minors Act."

(5) An interest in real property is recorded in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "As custodian for _____ (name of minor) under the West Virginia Uniform Transfers to Minors Act."

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

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(i) Issued in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "As custodian for _____ (name of minor) under the West Virginia Uniform Transfers to Minors Act"; or

(ii) Delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: "As custodian for _____ (name of minor) under the West Virginia Uniform Transfers to Minors Act"; or

(7) An interest in any property not described in subdivisions (1) through (6) is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (b).

(b) An instrument in the following form satisfies the requirements of paragraph (ii), subdivision (1) and subdivision (7) of subsection (a):

"TRANSFER UNDER THE (NAME OF ENACTING STATE) 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) under the West Virginia Uniform Transfers to Minors Act, the following: (Insert a description of the custodial property sufficient to identify it).

Dated: _____

_____

(Signature)

_____ (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the West Virginia Uniform Transfers to Minors Act.

Dated: _____

_____"

(Signature of Custodian)

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

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§36-7-10. Single custodianship.

A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this article by the same custodian for the benefit of the same minor constitutes a single custodianship.

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§36-7-11. Validity and effect of transfer.

(a) The validity of a transfer made in a manner prescribed in this article is not affected by:

(1) Failure of the transferor to comply with subsection (c), section nine concerning possession and control;

(2) 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 subsection (a), section nine; or

(3) Death or incapacity of a person nominated under section three or designated under section nine as custodian or the disclaimer of the office by that person.

(b) A transfer made pursuant to section nine is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties and authority provided in this article and neither the minor nor the minor's legal representative has any right, power, duty or authority with respect to the custodial property except as provided in this article.

(c) By making a transfer, the transferor incorporates in the disposition all the provisions of this article 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 this article.

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§36-7-12. Care of custodial property.

(a) A custodian shall:

(1) Take control of custodial property;

(2) Register or record title to custodial property if appropriate; and

(3) Collect, hold, manage, invest and reinvest custodial property.

(b) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person 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 or the minor's estate, may retain any custodial property received from a transferor.

(c) A custodian may invest in or pay premiums on life insurance or endowment policies on (i) the life of the minor only if the minor or the minor's estate is the sole beneficiary, or (ii) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(d) 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. Custodial property consisting of an undivided interest is so identified if the minor'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) under the West Virginia Uniform Transfers to Minors Act."

(e) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained the age of fourteen years.

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§36-7-13. Powers of custodian.

(a) A custodian, acting in a custodial capacity, has all the rights, powers and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers and authority in that capacity only.

(b) This section does not relieve a custodian from liability for breach of section twelve of this article.

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§36-7-14. Use of custodial property.

(a) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to (i) the duty or ability of the custodian personally or of any other person to support the minor, or (ii) any other income or property of the minor which may be applicable or available for that purpose.

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

(c) 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.

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§36-7-15. Custodian's expenses, compensation, and bond.

(a) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) Except for one who is a transferor under section four of this article, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(c) Except as provided in subsection (f), section eighteen of this article, a custodian need not give a bond.

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§36-7-16. Exemption of third person from liability.

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 this article for, any act of the purported custodian;

(3) The validity or propriety under this article 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 delivered to the purported custodian.

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§36-7-17. Liability to third persons.

(a) A claim based on (i) a contract entered into by a custodian acting in a custodial capacity, (ii) an obligation arising from the ownership or control of custodial property or (iii) 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 is personally liable therefor.

(b) A custodian is not personally liable:

(1) 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

(2) For an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(c) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

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§36-7-18. Renunciation, resignation, death, or removal of custodian; designation of successor custodian.

(a) A person nominated under section three of this article or designated under section nine of this article 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 section three of this article, the person who made the nomination may nominate a substitute custodian under section three of this article; 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 subsection (a), section nine. The custodian so designated has the rights of a successor custodian.

(b) A custodian at any time may designate a trust company or an adult other than a transferor under section four 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.

(c) A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of fourteen years and to the successor custodian and by delivering the custodial property to the successor custodian.

(d) If a custodian is ineligible, dies or becomes incapacitated without having effectively designated a successor and the minor has attained the age of fourteen years, the minor may designate as successor custodian, in the manner prescribed in subsection (b) of this section an adult member of the minor's family, a conservator of the minor or a trust company. If the minor has not attained the age of fourteen years or fails to act within sixty days after the ineligibility, death or incapacity, the conservator of the minor becomes successor custodian. If the minor 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 family or any other interested person may petition the court to designate a successor custodian.

(e) A custodian who declines to serve under subsection (a) of this section or resigns under subsection (c), 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.

(f) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor or the minor if the minor has attained the age of fourteen years may petition the court to remove the

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custodian for cause and to designate a successor custodian other than a transferor under section four or to require the custodian to give appropriate bond.

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§36-7-19. Accounting by and determination of liability of custodian.

(a) A minor who has attained the age of fourteen years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor or a transferor's legal representative may petition the court (i) for an accounting by the custodian or the custodian's legal representative; or (ii) 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 section seventeen to which the minor or the minor's legal representative was a party.

(b) A successor custodian may petition the court for an accounting by the predecessor custodian.

(c) The court, in a proceeding under this article or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(d) If a custodian is removed under subsection (f), section eighteen of this article, 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.

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§36-7-20. Termination of custodianship.

The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(1) The minor's attainment of twenty-one years of age with respect to custodial property transferred under section four or five of this article;

(2) The minor's attainment of majority under the laws of this state other than this article with respect to custodial property transferred under sections six or seven of this article; or

(3) The minor's death.

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§36-7-21. Applicability.

This article applies to a transfer within the scope of section two made after its effective date if:

(1) The transfer purports to have been made under the West Virginia Uniform Gifts to Minors Act; or

(2) The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of this article is necessary to validate the transfer.

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§36-7-22. Effect on existing custodianships.

(a) Any transfer of custodial property as now defined in this article made before the effective date of this article is validated notwithstanding that there was no specific authority in the West Virginia Uniform Gifts to Minors Act for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(b) This article applies to all transfers made before the effective date of this article in a manner and form prescribed in the West Virginia Uniform Gifts to Minors Act, except insofar as the application impairs Constitutionally vested rights or extends the duration of custodianships in existence on the effective date of this article.

(c) Sections one and twenty with respect to the age of a minor for whom custodial property is held under this article do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of eighteen after June 9, 1972 and before July 1, 1986.

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§36-7-23. Uniformity of application and construction.

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

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§36-7-24. Short title.

This article may be cited as the "West Virginia Uniform Transfers to Minors Act."

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