

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1957

ENROLLED

SENATE BILL NO. 88

(By Mr. Martin)

PASSED Feb 14, 1957

In Effect 90 days from Passage



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Senate Bill No. 88

(By MR. MARTIN)

[Passed February 14, 1957; in effect ninety days from passage.]

AN ACT to amend chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seven, relating to gifts of securities and money to minors.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article seven, to read as follows:

Article 7. Gifts to Minors Act.

Section 1. *Definitions.* In this article, unless the context otherwise requires:

3 (a) An "adult" is a person who has attained the age of
4 twenty-one years.

5 (b) A "bank" is a bank, trust company, national bank-
6 ing association, savings bank or industrial bank.

7 (c) A "broker" is a person lawfully engaged in the
8 business of effecting transactions in securities for the ac-
9 count of others. The term includes a bank which effects
10 such transactions. The term also includes a person law-
11 fully engaged in buying and selling securities for his own
12 account, through a broker or otherwise, as a part of a
13 regular business.

14 (d) "Court" means the circuit court.

15 (e) "The custodial property" includes:

16 (1) all securities and money under the supervision of
17 the same custodian for the same minor as a consequence
18 of a gift or gifts made to the minor in a manner prescribed
19 in this article;

20 (2) the income from the custodial property; and

21 (3) the proceeds, immediate and remote, from the sale,
22 exchange, conversion, investment, reinvestment or other
23 disposition of such securities, money and income.

24 (f) A "custodian" is a person so designated in a man-
25 ner prescribed in this article.

26 (g) A "guardian" of a minor includes the general
27 guardian, guardian, tutor or curator of his property, estate
28 or person.

29 (h) An "issuer" is a person who places or authorizes
30 the placing of his name on a security (other than as a
31 transfer agent) to evidence that it represents a share, par-
32 ticipation or other interest in his property or in an enter-
33 prise or to evidence his duty or undertaking to perform
34 an obligation evidenced by the security, or who becomes
35 responsible for or in place of any such person.

36 (i) A "legal representative" of a person is his executor
37 or the administrator, general guardian, guardian, com-
38 mittee, conservator, tutor or curator of his property or
39 estate.

40 (j) A "member" of a "minor's family" means any of
41 the minor's parents, grandparents, brothers, sisters, uncles
42 and aunts, whether of the whole blood or the half blood,
43 or by or through legal adoption.

44 (k) A "minor" is a person who has not attained the age
45 of twenty-one years.

46 (l) A "security" includes any note, stock, treasury
47 stock, bond, debenture, evidence of indebtedness, collat-
48 eral trust certificate, transferable share, voting trust cer-
49 tificate or, in general, any interest or instrument com-
50 monly known as a security, or any certificate of interest
51 or participation in, any temporary or interim certificate,
52 receipt or certificate of deposit for, or any warrant or
53 right to subscribe to or purchase, any of the foregoing.
54 The term does not include a security of which the donor
55 is the issuer. A security is in "registered form" when it
56 specifies a person entitled to it or to the rights it evidences
57 and its transfer may be registered upon books maintained
58 for that purpose by or on behalf of the issuer.

59 (m) A "transfer agent" is a person who acts as authen-
60 ticating trustee, transfer agent, registrar or other agent
61 for an issuer in the registration of transfers of its securi-
62 ties or in the issue of new securities or in the cancellation
63 of surrendered securities.

64 (n) A "trust company" is a bank authorized to exer-
65 cise trust powers in the state.

Sec. 2. *Manner of Making Gift.* (a) An adult person

2 may, during his lifetime, make a gift of a security or
3 money to a person who is a minor on the date of the gift:

4 (1) if the subject of the gift is a security in registered
5 form, by registering it in the name of the donor, another
6 adult person or a trust company, followed, in substance,
7 by the words: "as custodian for"

8

(name of minor)

9 under the West Virginia Gifts to Minors Act";

10 (2) if the subject of the gift is a security not in regis-
11 tered form, by delivering it to an adult person other than
12 the donor or a trust company, accompanied by a state-
13 ment of gift in the following form, in substance, signed by
14 the donor and the person designated as custodian:

15 "GIFT UNDER THE WEST VIRGINIA GIFTS TO
16 MINORS ACT

17 I, _____, hereby deliver

18 (name of donor)

19 to _____, as custodian

20 (name of custodian)

21 for under the West
22 (name of minor)

23 Virginia Gifts to Minors Act, the following security(ies):
24 (insert an appropriate description of the security or se-
25 curities delivered sufficient to identify it or them)

26 _____
27 (signature of donor)

28 _____ hereby acknowledges
29 (name of custodian)

30 receipt of the above described security(ies) as custodian
31 for the above minor under the West Virginia Gifts to
32 Minors Act.

33 Dated: _____
34 (signature of custodian) ”

35 (3) If the subject of the gift is money, by paying or
36 delivering it to a broker or a bank for credit to an account
37 in the name of the donor, another adult person or a bank
38 with trust powers, followed, in substance, by the words:

39 “as custodian for _____
40 (name of minor)

41 under the West Virginia Gifts to Minors Act”.

42 (b) Any gift made in a manner prescribed in subsection
43 (a) may be made to only one minor and only one person
44 may be the custodian.

45 (c) A donor who makes a gift to a minor in a manner
46 prescribed in subsection (a) shall promptly do all things
47 within his power to put the subject of the gift in the
48 possession and control of the custodian, but neither the
49 donor's failure to comply with this subsection, nor his
50 designation of an ineligible person as custodian, nor re-
51 nunciation by the person designated as custodian affects
52 the consummation of the gift.

Sec. 3. *Effect of Gift.* (a) A gift made in a manner
2 prescribed in this article is irrevocable and conveys to the
3 minor indefeasibly vested legal title to the security or
4 money given, but no guardian of the minor has any right,
5 power, duty or authority with respect to the custodial
6 property except as provided in this article.

7 (b) By making a gift in a manner prescribed in this
8 article, the donor incorporates in his gift all the provisions
9 of this article and grants to the custodian, and to any
10 issuer, transfer agent, bank broker or third person dealing

11 with a person designated as custodian, the respective
12 powers, rights and immunities provided in this article.

Sec. 4. *Duties and Powers of Custodian.* (a) The cus-
2 todian shall collect, hold, manage, invest and reinvest
3 the custodial property.

4 (b) The custodian shall pay over to the minor for
5 expenditure by him, or expend for the minor's benefit, so
6 much of or all the custodial property as the custodian
7 deems advisable for the support, maintenance, education
8 and benefit of the minor in the manner, at the time or
9 times, and to the extent that the custodian in his discre-
10 tion deems suitable and proper, with or without court
11 order, with or without regard to the duty of himself or
12 of any other person to support the minor or his ability to
13 do so, and with or without regard to any other income
14 or property of the minor which may be applicable or
15 available for any such purpose.

16 (c) The court, on the petition of a parent or guardian
17 of the minor or of the minor, if he has attained the age
18 of fourteen years, may order the custodian to pay over
19 to the minor for expenditure by him or to expend so

20 much of or all the custodial property as is necessary for
21 the minor's support, maintenance or education.

22 (d) To the extent that the custodial property is not
23 so expended, the custodian shall deliver or pay it over to
24 the minor on his attaining the age of twenty-one years or,
25 if the minor dies before attaining the age of twenty-one
26 years, he shall thereupon deliver or pay it over to the
27 estate of the minor.

28 (e) The custodian, notwithstanding statutes restricting
29 investments by fiduciaries, shall invest and reinvest the
30 custodial property as would a prudent man of discretion
31 and intelligence who is seeking a reasonable income and
32 the preservation of his capital, except that he may, in his
33 discretion and without liability to the minor or his estate,
34 retain a security given to the minor in a manner pre-
35 scribed in this article.

36 (f) The custodian may sell, exchange, convert or other-
37 wise dispose of custodial property in the manner, at the
38 time or times, for the price or prices and upon the terms
39 he deems advisable. He may vote in person or by general
40 or limited proxy a security which is custodial property.

41 He may consent, directly or through a committee or other
42 agent, to the reorganization, consolidation, merger, dis-
43 solution or liquidation of an issuer, a security which is
44 custodial property, and to the sale, lease, pledge or mort-
45 gage of any property by or to such an issuer, and to any
46 other action by such an issuer. He may execute and de-
47 liver any and all instruments in writing which he deems
48 advisable to carry out any of his powers as custodian.

49 (g) The custodian shall register each security which
50 is custodial property and in registered form in the name
51 of the custodian, followed, in substance, by the words:

52 "as custodian for _____ under the West
53 (name of minor)

54 Virginia Gifts to Minors Act". The custodian shall hold
55 all money which is custodial property in an account with
56 a broker or in a bank in the name of the custodian, fol-
57 lowed, in substance, by the words: "as custodian for

58 _____ under the West Vir-
59 (name of minor)

60 ginia Gifts to Minors Act". The custodian shall keep all
61 other custodial property separate and distinct from his

62 own property in a manner to identify it clearly as custo-
63 dial property.

64 (h) The custodian shall keep records of all transactions
65 with respect to the custodial property and make them
66 available for inspection at reasonable intervals by a par-
67 ent or legal representative of the minor or by the minor,
68 if he has attained the age of fourteen years.

69 (i) A custodian has and holds as powers in trust, with
70 respect to the custodial property, in addition to the rights
71 and powers provided in this article, all the rights and
72 powers which a guardian has with respect to property
73 not held as custodial property.

Sec. 5. Custodian's Expenses, Compensation, Bond and

2 *Liabilities.* (a) A custodian is entitled to reimbursement
3 from the custodial property for his reasonable expenses
4 incurred in the performance of his duties.

5 (b) A custodian may act without compensation for
6 his services.

7 (c) Unless he is a donor, a custodian may receive from
8 the custodial property compensation for his services de-
9 termined by

10 (1) A direction by the donor when the gift is made; or

11 (2) In lieu of a direction by the donor a sum equal to
12 five percent of the gross income from the custodial prop-
13 erty.

14 (d) Except as otherwise provided in this article, a
15 custodian shall not be required to give a bond for the
16 performance of his duties.

17 (e) A custodian not compensated for his services is
18 not liable for losses to the custodial property unless they
19 result from his bad faith, intentional wrongdoing or gross
20 negligence or from his failure to maintain the standard of
21 prudence in investing the custodial property provided in
22 this article.

Sec. 6. *Exemption of Third Persons From Liability.* No
2 issuer, transfer agent, bank, broker or other person acting
3 on the instructions of or otherwise dealing with any per-
4 son purporting to act as a donor or in the capacity of a
5 custodian is responsible for determining whether the
6 person designated by the purported donor or purporting
7 to act as a custodian has been duly designated or whether
8 any purchase, sale or transfer to or by or any other act

9 of any person purporting to act in the capacity of cus-
10 todian is in accordance with or authorized by this article,
11 or is obliged to inquire into the validity or propriety under
12 this article of any instrument or instructions executed or
13 given by a person purporting to act as a donor or in the
14 capacity of a custodian, or is bound to see to the applica-
15 tion by any person purporting to act in the capacity of a
16 custodian of any money or other property paid or de-
17 livered to him.

Sec. 7. Resignation, Death or Removal of Custodian;

2 *Bond; Appointment of Successor Custodian.* (a) Only an
3 adult member of the minor's family, a guardian of the
4 minor or a trust company is eligible to become successor
5 custodian. A successor custodian has all the rights, powers,
6 duties and immunities of a custodian designated in a man-
7 ner prescribed by this article.

8 (b) A custodian, other than the donor, may resign and
9 designate his successor by:

10 (1) executing an instrument of resignation designating
11 the successor custodian; and

12 (2) causing each security which is custodial property

13 and in registered form to be registered in the name of the
14 successor custodian followed, in substance, by the words:

15 "as custodian for.....under the
16 (name of minor)

17 West Virginia Gifts to Minors Acts"; and

18 (3) delivering to the successor custodian the instru-
19 ment of resignation, each security registered in the name
20 of the successor custodian and all other custodial property,
21 together with any additional instruments required for
22 the transfer thereof.

23 (c) A custodian, whether or not a donor, may petition
24 the court for permission to resign and for the designation
25 of a successor custodian.

26 (d) If the person designated as custodian is not eligible,
27 renounces or dies before the minor attains the age of
28 twenty-one years, the guardian of the minor shall be
29 successor custodian. If the minor has no guardian, a don-
30 or, his legal representative, the legal representative of
31 the custodian, an adult member of the minor's family, or
32 the minor, if he has attained the age of fourteen years,

33 may petition the court for the designation of a successor
34 custodian.

35 (e) A donor, the legal representative of a donor, an
36 adult member of the minor's family, a guardian of the
37 minor or the minor, if he has attained the age of fourteen
38 years, may petition the court that, for cause shown in the
39 petition, the custodian be removed and a successor custo-
40 dian be designated or, in the alternative, that the custo-
41 dian be required to give bond for the performance of
42 his duties.

43 (f) Upon the filing of a petition as provided in this
44 section, the court shall grant an order, directed to the
45 persons and returnable on such notice as the court may
46 require, to show cause why the relief prayed for in the
47 petition should not be granted and, in due course, grant
48 such relief as the court finds to be in the best interests
49 of the minor.

Sec. 8. *Accounting by Custodian.* (a) The minor, if he
2 has attained the age of fourteen years, or the legal repre-
3 sentative of the minor, an adult member of the minor's
4 family, or a donor or his legal representative may petition

5 the court for an accounting by the custodian or his legal
6 representative.

7 (b) The court, in a proceeding under this article or
8 otherwise, may require or permit the custodian or his
9 legal representative to account and, if the custodian is re-
10 moved, shall so require and order delivery of all custodial
11 property to the successor custodian and the execution of
12 all instruments required for the transfer thereof.

Sec. 9. *Construction.* (a) This article shall be so con-
2 strued as to effectuate its general purpose to make uni-
3 form the law of those states which enact it.

4 (b) This article shall not be construed as providing an
5 exclusive method for making gifts to minors.

Sec. 10. *Short Title.* This article may be cited as the
2 "West Virginia Gifts to Minors Act".

Sec. 11. *Severability.* If any provision of this article or
2 the application thereof to any person or circumstances is
3 held invalid, the invalidity shall not affect other provi-
4 sions or applications of the article which can be given
5 effect without the invalid provision or application, and to
6 this end the provisions of this article are severable.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

E. McRobert
Chairman Senate Committee

Joseph G. Gilmer
Chairman House Committee

Originated in the Senate.

Takes effect 90 days from passage.

Howard Meyer
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

James J. Bean
President of the Senate

W. S. Starnes
Speaker House of Delegates

The within approved this the 23rd day of February, 1957.

W. A. Rorer
Governor



Filed in the Office of the Secretary of State
of West Virginia **FEB 25 1957**
D. PITT O'BRIEN
SECRETARY OF STATE