WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1957

ENROLLED

 SENATE BILL NO. 88

(By Mr. Martin)

PASSED Feb 14, 1957

In Effect 90 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:


Section 1. Definitions. In this article, unless the context otherwise requires:
(a) An "adult" is a person who has attained the age of twenty-one years.

(b) A "bank" is a bank, trust company, national banking association, savings bank or industrial bank.

(c) A "broker" is a person lawfully engaged in the business of effecting transactions in securities for the account of others. The term includes a bank which effects such transactions. The term also includes a person lawfully engaged in buying and selling securities for his own account, through a broker or otherwise, as a part of a regular business.

(d) "Court" means the circuit court.

(e) "The custodial property" includes:

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

(2) the income from the custodial property; and

(3) the proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment or other disposition of such securities, money and income.
(f) A "custodian" is a person so designated in a manner prescribed in this article.

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

(h) An "issuer" is a person who places or authorizes the placing of his name on a security (other than as a transfer agent) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person.

(i) A "legal representative" of a person is his executor or the administrator, general guardian, guardian, committee, conservator, tutor or curator of his property or estate.

(j) A "member" of a "minor's family" means any of the minor's parents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption.
(k) A "minor" is a person who has not attained the age of twenty-one years.

(l) A "security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

(m) A "transfer agent" is a person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities.
(n) A "trust company" is a bank authorized to exercise trust powers in the state.

Sec. 2. Manner of Making Gift. (a) An adult person may, during his lifetime, make a gift of a security or money to a person who is a minor on the date of the gift:

(1) if the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult person or a trust company, followed, in substance, by the words: "as custodian for __________________________
(name of minor)
under the West Virginia Gifts to Minors Act";

(2) if the subject of the gift is a security not in registered form, by delivering it to an adult person other than the donor or a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian:

"GIFT UNDER THE WEST VIRGINIA GIFTS TO MINORS ACT
I, ____________________________, hereby deliver
(name of donor)
to ____________________________, as custodian
(name of custodian)"
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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".
(b) Any gift made in a manner prescribed in subsection (a) may be made to only one minor and only one person may be the custodian.

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

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

(b) By making a gift in a manner prescribed in this article, the donor incorporates in his gift all the provisions of this article and grants to the custodian, and to any issuer, transfer agent, bank broker or third person dealing
with a person designated as custodian, the respective powers, rights and immunities provided in this article.

Sec. 4. *Duties and Powers of Custodian.* (a) The custodian shall collect, hold, manage, invest and reinvest the custodial property.

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

(c) The court, on the petition of a parent or guardian of the minor or of the minor, if he has attained the age of fourteen years, may order the custodian to pay over to the minor for expenditure by him or to expend so
much of or all the custodial property as is necessary for
the minor's support, maintenance or education.

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

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

(f) The custodian may sell, exchange, convert or other-
wise dispose of custodial property in the manner, at the
time or times, for the price or prices and upon the terms
he deems advisable. He may vote in person or by general
or limited proxy a security which is custodial property.
He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer, a security which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian.

(g) The custodian shall register each security which is custodial property and in registered form in the name of the custodian, followed, in substance, by the words: "as custodian for __________ under the West Virginia Gifts to Minors Act". The custodian shall hold all money which is custodial property in an account with a broker or in a bank in the name of the custodian, followed, in substance, by the words: "as custodian for __________ under the West Virginia Gifts to Minors Act". The custodian shall keep all other custodial property separate and distinct from his
own property in a manner to identify it clearly as custodial property.

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

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

Sec. 5. Custodian's Expenses, Compensation, Bond and Liabilities. (a) A custodian is entitled to reimbursement from the custodial property for his reasonable expenses incurred in the performance of his duties.

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

(c) Unless he is a donor, a custodian may receive from the custodial property compensation for his services determined by
(1) A direction by the donor when the gift is made; or
(2) In lieu of a direction by the donor a sum equal to five percent of the gross income from the custodial property.

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

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

Sec. 6. Exemption of Third Persons From Liability. No issuer, transfer agent, bank, broker or other person acting on the instructions of or otherwise dealing with any person purporting to act as a donor or in the capacity of a custodian is responsible for determining whether the person designated by the purported donor or purporting to act as a custodian has been duly designated or whether any purchase, sale or transfer to or by or any other act
of any person purporting to act in the capacity of custodian is in accordance with or authorized by this article, or is obliged to inquire into the validity or propriety under this article of any instrument or instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, or is bound to see to the application by any person purporting to act in the capacity of a custodian of any money or other property paid or delivered to him.

Sec. 7. Resignation, Death or Removal of Custodian; Bond; Appointment of Successor Custodian. (a) Only an adult member of the minor's family, a guardian of the minor or a trust company is eligible to become successor custodian. A successor custodian has all the rights, powers, duties and immunities of a custodian designated in a manner prescribed by this article.

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

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

(2) causing each security which is custodial property
and in registered form to be registered in the name of the successor custodian followed, in substance, by the words: “as custodian for _____________ under the West Virginia Gifts to Minors Acts”; and

(3) delivering to the successor custodian the instrument of resignation, each security registered in the name of the successor custodian and all other custodial property, together with any additional instruments required for the transfer thereof.

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

(d) If the person designated as custodian is not eligible, renounces or dies before the minor attains the age of twenty-one years, the guardian of the minor shall be successor custodian. If the minor has no guardian, a donor, his legal representative, the legal representative of the custodian, an adult member of the minor’s family, or the minor, if he has attained the age of fourteen years,
may petition the court for the designation of a successor custodian.

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

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

Sec. 8. Accounting by Custodian. (a) The minor, if he has attained the age of fourteen years, or the legal representative of the minor, an adult member of the minor's family, or a donor or his legal representative may petition
the court for an accounting by the custodian or his legal
representative.

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

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

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

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

Sec. 11. Severability. If any provision of this article or
the application thereof to any person or circumstances is
held invalid, the invalidity shall not affect other provi-
sions or applications of the article which can be given
effect without the invalid provision or application, and to
this end the provisions of this article are severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

Takes effect 90 days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

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

[Signature]
Governor

Filed in the Office of the Secretary of State of West Virginia FEB 25, 1957

D. Pitt O'Brien
SECRETARY OF STATE