WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1971

ENROLLED

SENATE BILL NO. 80

(By Mr. GAUNER and Mr. HUBBARD)

PASSED FEBRUARY 5, 1971

In Effect... NINETY DAYS FROM... Passage

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 2-11-71
ENROLLED

Senate Bill No. 80
(By Mr. Gainer and Mr. Hubbard)

[Passed February 5, 1971; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, three, four, six, seven, ten and eleven, article seven, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia uniform gifts to minors act, the inclusion of life insurance policies and annuity contracts as possible subjects of gifts to minors, definition of terms, designation of custodians of gifts to minors, and redesignating article as West Virginia uniform gifts to minors act.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, six, seven, ten and eleven, article seven, chapter thirty-six of the code of West Virginia,
ARTICLE 7. WEST VIRGINIA UNIFORM GIFTS TO MINORS ACT.

§36-7-1. Definitions.

1 In this article, unless the context otherwise requires:

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

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

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

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

14 (e) "The custodial property" includes:

15 (1) All securities, life insurance policies, annuity con-
16 tracts and money under the supervision of the same custo-
17 dian 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, surrender or other disposition of such securities, money, life insurance policies, annuity contracts and income.

(f) A "custodian" is a person so designated in a manner prescribed in this article; the term includes a successor custodian.

(g) A "financial institution" is a bank, a building and loan association, a federal savings and loan association, a savings institution chartered and supervised as a savings and loan or similar institution under federal law or the laws of a state; an "insured financial institution" is one, deposits (including a savings, share, certificate or deposit account) in which are, in whole or in part, insured by the federal deposit insurance corporation or by the federal savings and loan insurance corporation.

(h) A "guardian" of a minor means the general guardian, guardian, tutor or curator of his property or
estate appointed or qualified by a court of this state or another state.

(i) 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.

(j) 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.

(k) A "life insurance policy or annuity contract" means a life insurance policy or annuity contract issued by an insurance company authorized to do business in this state on the life of a minor to whom a gift of the policy or contract is made in the manner prescribed in this article or on the life of a member of the minor's family.
(l) 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.

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

(n) 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.

(o) A "transfer agent" is a person who acts as authenti-
eating trustee, transfer agent, registrar or other agent
for an issuer in the registration of transfers of its securi-
ties or in the issue of new securities or in the cancellation
of surrendered securities.
(p) A "trust company" is a bank or corporation
authorized to exercise trust powers in this state.

§36-7-2. Manner of making gift.

1 (a) An adult person may, during his lifetime, make
2 a gift of a security, a life insurance policy or annuity
3 contract or money to a person who is a minor on the
4 date of the gift:
5 (1) If the subject of the gift is a security in registered
6 form, by registering it in the name of the donor, another
7 adult person or a trust company, followed, in substance,
8 by the words: "as custodian for ___________________ under
9 (name of minor)
10 the West Virginia Uniform Gifts to Minors Act";
11 (2) If the subject of the gift is a security not in reg-
12 istered form, by delivering it to an adult other than
13 the donor or to a trust company, accompanied by a state-
14 ment of gift in the following form, in substance, signed
by the donor and the person designated as custodian:

"GIFT UNDER THE WEST VIRGINIA UNIFORM GIFTS TO MINORS ACT

I, ..........................................., hereby deliver to..............................................

(name of donor)                         (name of custodian)

as custodian for........................................under the West Virginia

(name of minor)

Uniform Gifts to Minors Act, the following security (ies):

(insert an appropriate description of the security or securities delivered sufficient to identify it or them)

.................................................................

(signature or donor)

...............................................................hereby acknowledges receipt of the

(name of custodian)

above described security (ies) as custodian for the above

minor under the West Virginia Uniform Gifts to Minors

Act.

Dated:.................................................................

(signature of custodian)"

(3) If the subject of the gift is money, by paying

or delivering it to a broker or a financial institution for
credit to an account in the name of the donor, another adult or a trust company, followed, in substance, by the words: “as custodian for ___________________ under the West Virginia Uniform Gifts to Minors Act”;

(4) If the subject of the gift is a life insurance policy or annuity contract, by causing the ownership of the policy or contract to be registered with the issuing insurance company in the name of the donor, another adult or a trust company, followed, in substance, by the words: “as custodian for ___________________ under the West Virginia Uniform 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
§36-7-3. Effect of gift.

1 (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, life insurance policy, annuity contract 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.

8 (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, financial institution, life insurance company, broker or third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in this article.

§36-7-4. Duties and powers of custodian.

1 (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, (i) retain a security given to the minor in a manner prescribed in this article or (ii) hold money so given in an account in the financial institution to which it was paid or delivered by the donor.

(f) The custodian may sell, exchange, convert, surrender or otherwise 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
(name of minor)

Uniform Gifts to Minors Act.” Subject to the provisions of
subdivision (ii), subsection (e) of this section, the cus-
todian shall hold all money which is custodial property in
an account with a broker or in an insured financial institu-
tion in the name of the custodian, followed, in substance, by
the words: “as custodian for ...................... under the West
(name of minor)

Virginia Uniform Gifts to Minors Act.” The custodian
shall keep all other custodial property separate and dis-
tinct 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.

(j) If the subject of the gift is a life insurance policy or annuity contract, the custodian:

(1) In his capacity as custodian, has all the incidents of ownership in the policy or contract to the same extent as if he were the owner, except that the designated beneficiary of any policy or contract on the life of the minor shall be the minor's estate and the designated beneficiary of any policy or contract on the life of a
person other than the minor shall be the custodian as custodian for the minor for whom he is acting; and (2) May pay premiums on the policy or contract out of the custodial property.

§36-7-6. Exemption of third persons from liability.

No issuer, transfer agent, bank, life insurance company, broker or other person or financial institution 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 as custodian by the purported donor or by the custodian 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.

No issuer, transfer agent, bank, life insurance company, broker or other person or financial institution acting on any instrument of designation of a successor custodian, executed as provided in subsection (a) of section seven of this article by a minor to whom a gift has been made in a manner prescribed in this article and who has attained the age of fourteen years, is responsible for determining whether the person designated by the minor as successor custodian has been duly designated, or is obliged to inquire into the validity or propriety under this article of the instrument of designation.

§36-7-7. Resignation, death or removal of custodian; bonds; 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 custodian may designate his successor by executing and dating an instrument of designation before a subscribing witness other than the successor; the instrument of designation may but need not contain the resignation of the custodian.
If the custodian does not so designate his successor before he dies or becomes legally incapacitated, and the minor has attained the age of fourteen years, the minor may designate a successor custodian by executing an instrument of designation before a subscribing witness other than the successor. A successor custodian has all the rights, powers, duties and immunities of a custodian designated in a manner prescribed by this article.

(b) The designation of a successor custodian as provided in subsection (a) takes effect as to each item of the custodial property when the custodian resigns, dies or becomes legally incapacitated and the custodian or his legal representative:

(1) Causes the item, if it is a security in registered form or a life insurance policy or annuity contract, to be registered, with the issuing insurance company in the case of a life insurance policy or annuity contract, in the name of the successor custodian, followed, in substance, by the words: "as custodian for ____________________________

(name of minor)
under the West Virginia Uniform Gifts to Minors Act;"

(2) Delivers or causes to be delivered to the successor custodian any other item of the custodial property, together with the instrument of designation of the successor custodian or a true copy thereof and any additional instruments required for the transfer thereof to the successor custodian.

c) A custodian who executes an instrument of designation of his successor containing the custodian’s resignation as provided in subsection (a) shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in the instrument. The legal representative of a custodian who dies or becomes legally incapacitated shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in an instrument of designation executed as provided in subsection (a) by the custodian or, if none, by the minor if he has no guardian and has attained the age
of fourteen years, or in the possession and control of
the guardian of the minor if he has a guardian. If the
custodian has executed as provided in subsection (a)
more than one instrument of designation, his legal rep-
resentative shall treat the instrument dated on an earlier
date as having been revoked by the instrument dated
on a later date.

(d) If a person designated as custodian or as successor
custodian by the custodian as provided in subsection
(a) is not eligible, dies or becomes legally incapacitated
before the minor attains the age of twenty-one years
and if the minor has a guardian, the guardian of the
minor shall be successor custodian. If the minor has
no guardian and if no successor custodian who is eligible
and has not died or become legally incapacitated has
been designated as provided in subsection (a), a donor,
his legal representative, the legal representative of the
custodian or an adult member of the minor's family may
petition the court for the designation of a successor
custodian.
(e) A donor, the legal representative of a donor, a successor custodian, 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.

§36-7-10. Short title; application of amendments.

1 This article may be cited as the “West Virginia Uniform Gifts to Minors Act.”

2 Any amendments of this article shall not affect gifts made in a manner prescribed by the former provisions of this article nor the powers, duties or immunities con-
ferred by gifts in such manner upon custodians and persons dealing with custodians. This article as amended shall henceforth apply, however, to all gifts made in a manner and form prescribed by the former provisions of this article except insofar as such application impairs constitutionally vested rights.

§36-7-11. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this article, 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.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 9th day of February, 1971.

Governor
PRESENTED TO THE
GOVERNOR

Date  2/9/11
Time  4:00 p.m.