

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1971

ENROLLED

SENATE BILL NO. 80

(By Mr. GAINER AND MR. HUBBARD)

PASSED FEBRUARY 5 1971

In Effect NINETY DAYS FROM Passage



STATE OF WEST VIRGINIA
SECRETARY OF STATE
OFFICE OF
FEB 11 9 27 AM '71

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

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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,

one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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

18 gifts made to the minor in a manner prescribed in this
19 article;

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

21 (3) The proceeds, immediate and remote, from the
22 sale, exchange, conversion, investment, reinvestment,
23 surrender or other disposition of such securities, money,
24 life insurance policies, annuity contracts and income.

25 (f) A “custodian” is a person so designated in a manner
26 prescribed in this article; the term includes a successor
27 custodian.

28 (g) A “financial institution” is a bank, a building and
29 loan association, a federal savings and loan association,
30 a savings institution chartered and supervised as a sav-
31 ings and loan or similar institution under federal law
32 or the laws of a state; an “insured financial institu-
33 tion” is one, deposits (including a savings, share, cer-
34 tificate or deposit account) in which are, in whole or
35 in part, insured by the federal deposit insurance cor-
36 poration or by the federal savings and loan insurance
37 corporation.

38 (h) A “guardian” of a minor means the general
39 guardian, guardian, tutor or curator of his property or

40 estate appointed or qualified by a court of this state or
41 another state.

42 (i) An "issuer" is a person who places or authorizes
43 the placing of his name on a security (other than
44 as a transfer agent) to evidence that it represents a
45 share, participation or other interest in his property
46 or in an enterprise or to evidence his duty or under-
47 taking to perform an obligation evidenced by the secur-
48 ity, or who becomes responsible for or in place of any
49 such person.

50 (j) A "legal representative" of a person is his executor
51 or the administrator, general guardian, guardian, com-
52 mittee, conservator, tutor or curator of his property or
53 estate.

54 (k) A "life insurance policy or annuity contract"
55 means a life insurance policy or annuity contract is-
56 sued by an insurance company authorized to do busi-
57 ness in this state on the life of a minor to whom a gift
58 of the policy or contract is made in the manner pre-
59 scribed in this article or on the life of a member of
60 the minor's family.

61 (l) A “member” of a “minor’s family” means
62 any of the minor’s parents, grandparents, broth-
63 ers, sisters, uncles and aunts, whether of the whole
64 blood or the half blood, or by or through legal
65 adoption.

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

68 (n) A “security” includes any note, stock, treasury
69 stock, bond, debenture, evidence of indebtedness, collateral
70 trust certificate, transferable share, voting trust certifi-
71 cate or, in general, any interest or instrument commonly
72 known as a security, or any certificate of interest or partic-
73 ipation in, any temporary or interim certificate, receipt
74 or certificate of deposit for, or any warrant or right to
75 subscribe to or purchase, any of the foregoing. The term
76 does not include a security of which the donor is the
77 issuer. A security is in “registered form” when it speci-
78 fies a person entitled to it or to the rights it evidences
79 and its transfer may be registered upon books maintained
80 for that purpose by or on behalf of the issuer.

81 (o) A “transfer agent” is a person who acts as authenti-

82 cating trustee, transfer agent, registrar or other agent
83 for an issuer in the registration of transfers of its securi-
84 ties or in the issue of new securities or in the cancellation
85 of surrendered securities.

86 (p) A "trust company" is a bank or corporation
87 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

15 by the donor and the person designated as custodian:

16 "GIFT UNDER THE WEST VIRGINIA UNIFORM
17 GIFTS TO MINORS ACT

18 I, _____, hereby deliver to _____

19 (name of donor) (name of custodian)

20 as custodian for _____ under the West Virginia

21 (name of minor)

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

23 (insert an appropriate description of the security or

24 securities delivered sufficient to identify it or them)

25 _____

26 (signature or donor)

27 _____ hereby acknowledges receipt of the

28 (name of custodian)

29 above described security (ies) as custodian for the above

30 minor under the West Virginia Uniform Gifts to Minors

31 Act.

32 Dated: _____

33 (signature of custodian)";

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

35 or delivering it to a broker or a financial institution for

36 credit to an account in the name of the donor, another
37 adult or a trust company, followed, in substance, by the
38 words: "as custodian for under the
39 (name of minor)
40 West Virginia Uniform Gifts to Minors Act";

41 (4) If the subject of the gift is a life insurance policy
42 or annuity contract, by causing the ownership of the
43 policy or contract to be registered with the issuing
44 insurance company in the name of the donor, another
45 adult or a trust company, followed, in substance, by the
46 words: "as custodian for under the
47 (name of minor)
48 West Virginia Uniform Gifts to Minors Act."

49 (b) Any gift made in a manner prescribed in sub-
50 section (a) may be made to only one minor and only
51 one person may be the custodian.

52 (c) A donor who makes a gift to a minor in a manner
53 prescribed in subsection (a) shall promptly do all things
54 within his power to put the subject of the gift in the
55 possession and control of the custodian, but neither the
56 donor's failure to comply with this subsection, nor his

57 designation of an ineligible person as custodian, nor
58 renunciation by the person designated as custodian affects
59 the consummation of the gift.

§36-7-3. Effect of gift.

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

8 (b) By making a gift in a manner prescribed in this
9 article, the donor incorporates in his gift all the provi-
10 sions of this article and grants to the custodian, and to
11 any issuer, transfer agent, bank, financial institution,
12 life insurance company, broker or third person dealing
13 with a person designated as custodian, the respective
14 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
2 and reinvest the custodial property.

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

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

21 (d) To the extent that the custodial property is not
22 so expended, the custodian shall deliver or pay it over
23 to the minor on his attaining the age of twenty-one years

24 or, if the minor dies before attaining the age of twenty-
25 one years, he shall thereupon deliver or pay it over to
26 the estate of the minor.

27 (e) The custodian, notwithstanding statutes restrict-
28 ing investments by fiduciaries, shall invest and reinvest
29 the custodial property as would a prudent man of discre-
30 tion and intelligence who is seeking a reasonable income
31 and the preservation of his capital, except that he may,
32 in his discretion and without liability to the minor or his
33 estate, (i) retain a security given to the minor in a manner
34 prescribed in this article or (ii) hold money so given in an
35 account in the financial institution to which it was paid
36 or delivered by the donor.

37 (f) The custodian may sell, exchange, convert, sur-
38 render or otherwise dispose of custodial property in the
39 manner, at the time or times, for the price or prices and
40 upon the terms he deems advisable. He may vote in
41 person or by general or limited proxy a security which is
42 custodial property. He may consent, directly or through
43 a committee or other agent, to the reorganization, con-
44 solidation, merger, dissolution or liquidation of an issuer,

45 a security which is custodial property, and to the sale,
46 lease, pledge or mortgage of any property by or to such
47 an issuer, and to any other action by such an issuer. He
48 may execute and deliver any and all instruments in
49 writing which he deems advisable to carry out any of his
50 powers as custodian.

51 (g) The custodian shall register each security which
52 is custodial property and in registered form in the name
53 of the custodian, followed, in substance, by the words:
54 "as custodian for under the West Virginia
55 (name of minor)

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

63 Virginia Uniform Gifts to Minors Act." The custodian
64 shall keep all other custodial property separate and dis-

65 tinct from his own property in a manner to identify it
66 clearly as custodial property.

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

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

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

79 (1) In his capacity as custodian, has all the incidents
80 of ownership in the policy or contract to the same extent
81 as if he were the owner, except that the designated
82 beneficiary of any policy or contract on the life of the
83 minor shall be the minor's estate and the designated
84 beneficiary of any policy or contract on the life of a

85 person other than the minor shall be the custodian as
86 custodian for the minor for whom he is acting; and
87 (2) May pay premiums on the policy or contract out
88 of the custodial property.

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

1 No issuer, transfer agent, bank, life insurance company,
2 broker or other person or financial institution acting on
3 the instructions of or otherwise dealing with any person
4 purporting to act as a donor or in the capacity of a cus-
5 todian is responsible for determining whether the person
6 designated as custodian by the purported donor or by
7 the custodian or purporting to act as a custodian has
8 been duly designated or whether any purchase, sale or
9 transfer to or by or any other act of any person pur-
10 porting to act in the capacity of custodian is in accordance
11 with or authorized by this article, or is obliged to in-
12 quire into the validity or propriety under this article of
13 any instrument or instructions executed or given by a
14 person purporting to act as a donor or in the capacity of
15 a custodian, or is bound to see to the application by any
16 person purporting to act in the capacity of a custodian

17 of any money or other property paid or delivered to him.
18 No issuer, transfer agent, bank, life insurance company,
19 broker or other person or financial institution acting on
20 any instrument of designation of a successor custodian,
21 executed as provided in subsection (a) of section seven
22 of this article by a minor to whom a gift has been made
23 in a manner prescribed in this article and who has
24 attained the age of fourteen years, is responsible for
25 determining whether the person designated by the minor
26 as successor custodian has been duly designated, or is
27 obliged to inquire into the validity or propriety under
28 this article of the instrument of designation.

**§36-7-7. Resignation, death or removal of custodian; bonds; ap-
pointment of successor custodian.**

1 (a) Only an adult member of the minor's family, a
2 guardian of the minor or a trust company is eligible
3 to become successor custodian. A custodian may desig-
4 nate his successor by executing and dating an instru-
5 ment of designation before a subscribing witness other
6 than the successor; the instrument of designation may
7 but need not contain the resignation of the custodian.

8 If the custodian does not so designate his successor
9 before he dies or becomes legally incapacitated, and the
10 minor has attained the age of fourteen years, the minor
11 may designate a successor custodian by executing an
12 instrument of designation before a subscribing witness
13 other than the successor. A successor custodian has all
14 the rights, powers, duties and immunities of a custodian
15 designated in a manner prescribed by this article.

16 (b) The designation of a successor custodian as pro-
17 vided in subsection (a) takes effect as to each item of
18 the custodial property when the custodian resigns, dies
19 or becomes legally incapacitated and the custodian or
20 his legal representative:

21 (1) Causes the item, if it is a security in registered
22 form or a life insurance policy or annuity contract, to be
23 registered, with the issuing insurance company in the
24 case of a life insurance policy or annuity contract, in
25 the name of the successor custodian, followed, in sub-
26 stance, by the words: "as custodian for

27

(name of minor)

28 under the West Virginia Uniform Gifts to Minors Act;”
29 and

30 (2) Delivers or causes to be delivered to the successor
31 custodian any other item of the custodial property,
32 together with the instrument of designation of the
33 successor custodian or a true copy thereof and any addi-
34 tional instruments required for the transfer thereof to
35 the successor custodian.

36 (c) A custodian who executes an instrument of desig-
37 nation of his successor containing the custodian’s resig-
38 nation as provided in subsection (a) shall promptly do
39 all things within his power to put each item of the cus-
40 todial property in the possession and control of the suc-
41 cessor custodian named in the instrument. The legal
42 representative of a custodian who dies or becomes legally
43 incapacitated shall promptly do all things within his
44 power to put each item of the custodial property in the
45 possession and control of the successor custodian named
46 in an instrument of designation executed as provided
47 in subsection (a) by the custodian or, if none, by the
48 minor if he has no guardian and has attained the age

49 of fourteen years, or in the possession and control of
50 the guardian of the minor if he has a guardian. If the
51 custodian has executed as provided in subsection (a)
52 more than one instrument of designation, his legal rep-
53 resentative shall treat the instrument dated on an earlier
54 date as having been revoked by the instrument dated
55 on a later date.

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

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

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

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

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

3 Any amendments of this article shall not affect gifts
4 made in a manner prescribed by the former provisions of
5 this article nor the powers, duties or immunities con-

6 ferred by gifts in such manner upon custodians and per-
7 sons dealing with custodians. This article as amended
8 shall henceforth apply, however, to all gifts made in a
9 manner and form prescribed by the former provisions of
10 this article except insofar as such application impairs
11 constitutionally vested rights.

§36-7-11. Severability.

1 If any provision of this article or the application there-
2 of to any person or circumstance is held invalid, such
3 invalidity shall not affect other provisions or applications
4 of this article, and to this end the provisions of this
5 article are severable.

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

Furwell G. Beane
Chairman Senate Committee

Phyllis Rutledge
Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

Thomas Myers
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

George Court
President of the Senate

Sam F. Bassinger
Speaker House of Delegates

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

Archa Shaver Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 2/9/11

Time 4:00 p.m.