

ACT 201

H. B. 237.

A Bill for an Act Relating to the Uniform Gifts to Minors Act and Amending Chapter 338A, Revised Laws of Hawaii 1955, as Amended.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Statutory material to be deleted is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring, and may renumber the sections of this Act.*

SECTION 2. Section 338A-1, Revised Laws of Hawaii 1955, as amended, is hereby amended in the following respects:

a. By amending subsection (e) thereof to read as follows:

“(e) The ‘custodial property’ includes:

“(1) all securities, life insurance policies, annuity contracts 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 chapter;

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

* Edited accordingly.

“(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.”

b. By amending subsection (f) thereof to read as follows:

“(f) A ‘custodian’ is a person so designated in a manner prescribed in this chapter; the term includes a successor custodian.”

c. By adding a new subsection immediately following subsection (f) thereof, to be designated subsection (g) and to read as follows:

“(g) A ‘financial institution’ is a bank, 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 or a federal credit union or a credit union chartered and supervised under the laws of a state; ‘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.”

d. By redesignating subsection (g) thereof as subsection (h) and amending the same to read as follows:

“(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.”

e. By redesignating subsections (h) and (i) thereof as subsections (i) and (j), respectively.

f. By adding a new subsection immediately following the redesignated subsection (j), to be designated subsection (k) and to read as follows:

“(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 act or on the life of a member of the minor’s family.”

g. By redesignating subsections (j) to (n), inclusive, thereof, as subsections (l) to (p), respectively.

SECTION 3. Section 338A-2 is hereby amended in the following respects:

a. By amending that portion of the first sentence to the colon to read as follows:

“(a) An adult person may, during his lifetime, make a gift of a security, a life insurance policy or annuity contract or money to a person who is a minor on the date of the gift.”

b. By amending paragraph (3) in subsection (a) to read as follows:

“(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 person or a trust company, followed, in substance, by the words: ‘as custodian for

(name of minor)

under the Hawaii Uniform Gifts to Minors Act.’ ”

c. By adding to subsection (a) a new paragraph, to be numbered (4) and to read as follows:

“(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 person or a trust company, followed, in substance, by the words: ‘as custodian for.....under the Hawaii Uniform Gifts to Minors Act.’”

(name of minor)

SECTION 4. Section 338A-3 is hereby amended to read as follows:

“§ 338A-3. Effect of gift. (a) A gift made in a manner prescribed in this chapter 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 chapter.

“(b) By making a gift in a manner prescribed in this chapter, the donor incorporates in his gift all the provisions of this chapter 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 chapter.”

SECTION 5. Section 338A-4 is hereby amended in the following respects:

a. By amending subsection (e) thereof to read as follows:

“(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 prescribed in this chapter or hold money so given in an account in the financial institution to which it was paid or delivered by the donor.”

b. By amending the first sentence in subsection (f) thereof to read as follows:

“(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.”

c. By amending the second sentence in subsection (g) thereof to read as follows:

“The custodian shall hold all money which is custodial property in an account with a broker or in an insured financial institution in the name of the custodian, followed in substance by the words:

‘as custodian for
(name of minor)

under the Hawaii Uniform Gifts to Minors Act.’”

d. By adding a new subsection immediately following subsection (i) thereof, to be designated subsection (j) and to read as follows:

“(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.”

SECTION 6. Section 338A-6 is hereby amended to read as follows:

“§ 338A-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 chapter or is obliged to inquire into the validity or propriety under this chapter 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 338A-7 by a minor to whom a gift has been made in a manner prescribed in this chapter 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 chapter of the instrument of designation.”

SECTION 7. Section 338A-7 is hereby amended to read as follows:

“§ 338A-7. **Resignation, death or removal of custodian; bond; designation 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 cus-

todian 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 chapter.

“(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 under the Hawaii Uniform
(name of minor)

Gifts to Minors Act’; and

“(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 representative 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 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. If the minor has attained the age of twenty years, the minor may designate the 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.”

SECTION 8. This Act shall take effect upon its approval.

(Approved June 4, 1967.)