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THE UNIFORM GIFTS TO MINORS ACT IN NEW YORK AND OTHER JURISDICTIONS—TAX CONSEQUENCES, POSSIBLE ABUSES, AND RECOMMENDATIONS

Lawrence Newman†

The movement to permit gifts of securities and money to minors was initiated in a speech made by Mr. G. Keith Funston, President of the New York Stock Exchange, before the National Association of Securities Administrators, on September 29, 1954. Mr. Funston stated that the Exchange had conducted consumer surveys which indicated that approximately forty per cent of share-owning parents with incomes above \$7,500 per year had considered buying stock for their children, but that a majority of this group had not carried out their intention because "a gift of stock to a child was just too complicated legally." The conclusion reached was that there was "a real need for a simple method to allow a parent to make a gift of securities to a child." A draft of a proposed custodian statute prepared by the New York Stock Exchange was submitted to each of the persons present at the meeting as a "completely new approach" to the problem, and it was suggested that after a final draft was approved, the Association of Stock Exchange Firms would assist in seeking enactment of a uniform statute in all states.

The advantages of the proposed statute were summarized by Mr. Funston as follows:

I really think this new device has a lot of merit. From the parent's point of view it is simple and convenient. All he has to do is tell the broker to register the securities in the way the statute requires. From the broker's viewpoint it is equally suitable. And most important of all, from the point of view of public policy, it does not reduce in any way the protection afforded our children. It applies only to gifts. All it does is make it easier for a giver to obtain the flexibility which he can now obtain only by a complex legal document. It enables all parents to make gifts of securities, no matter how small, to their children, with the same ease that they can now give a savings account or government bonds to them.¹

The basic custodian statute device for permitting gifts to minors is now in effect in every state in the United States.

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¹ Remarks by G. Keith Funston, President, New York Stock Exchange, before the National Ass'n of Securities Administrators, at the Hotel Roosevelt, New York, N.Y., Sept. 29, 1954.

DEVELOPMENT OF THE NEW YORK STATUTE AND COMPARISON
WITH THE LAW OF OTHER JURISDICTIONS*Present New York Law*

On July 1, 1959, the Uniform Gifts to Minors Act became effective in New York.² This statute provides a simple procedure by which an adult may make a gift of securities or money to a minor, with the power of management reserved in a custodian.³ If a gift is money or a security in registered form, the donor, an adult member of the minor's family, a guardian of the minor, or a trust company is permitted to act as custodian.⁴ If the gift is a bearer security, the custodian may be either an adult member of the minor's family other than the donor, a guardian of the minor, or a trust company.⁵ Legal title to the property is indefeasibly vested in the minor, subject to a power in trust exercisable by the adult custodian.⁶ The function of the custodian is to collect and manage the custodial property and pay over to the minor, or expend for his benefit, so much or all of the property as the custodian deems advisable for the support, maintenance, education, and benefit of the minor.⁷ To the extent that the custodial property is not expended for the minor, the custodian must pay it over to the minor on the minor's attaining the age of twenty-one years, or, if the minor dies before reaching twenty-one years of age, to the estate of the minor.⁸ Though the custodian is entitled to reimbursement from the custodial property for his reasonable expenses,⁹ only a trust company or a guardian of the property of a minor is permitted to receive compensation for services as custodian.¹⁰ However, a custodian who is not compensated for his services is liable only for losses resulting from bad faith, intentional wrongdoing, or gross negligence, or from his failure to invest in accordance with the required standards of prudence.¹¹ The compensated custodian is subject to the same liabilities as a guardian of the estate of a minor,¹² except that a custodian who maintains the standards of prudence provided in the statute with respect to investing the custodial property is not liable for resulting losses to the property.¹³ Thus, the provisions of the statute

² N.Y. Pers. Prop. Law §§ 265-71.

³ *Ibid.*

⁴ N.Y. Pers. Prop. Law § 265.

⁵ *Ibid.*

⁶ N.Y. Pers. Prop. Law §§ 265-a, 266(9).

⁷ N.Y. Pers. Prop. Law §§ 266(1)-(2).

⁸ N.Y. Pers. Prop. Law § 266(4).

⁹ N.Y. Pers. Prop. Law § 266-a(1).

¹⁰ N.Y. Pers. Prop. Law §§ 266-a(2)-(3).

¹¹ N.Y. Pers. Prop. Law § 266-a(5).

¹² N.Y. Pers. Prop. Law § 266-a(6).

¹³ *Ibid.*

permit the custodian to retain any securities originally given,¹⁴ but require that reinvestments be made only in such securities as would be purchased by a prudent man of discretion and intelligence who is seeking a reasonable income and the preservation of his capital.¹⁵ The custodian is directed to maintain adequate records of all transactions involving the minor's property and to keep the minor's property separate from his own property in such a manner as will identify it clearly as custodial property.¹⁶ Successor custodians are limited to adult members of the minor's family, a guardian of the minor, or a trust company.¹⁷ The original custodian may resign and designate his successor or may petition the court for permission to resign and for the designation of a successor custodian.¹⁸ If the person designated as the original custodian is not eligible, renounces, or dies before the minor reaches the age of twenty-one years, the guardian of the minor becomes the successor custodian;¹⁹ if the minor has no guardian, the successor custodian is appointed by the court.²⁰ Removal of the original custodian may be requested by a donor, the legal representative of a donor, an adult member of the minor's family, a guardian of the minor, or the minor himself if he or she is over fourteen years of age.²¹ The court, in such a proceeding, may remove the custodian and designate a successor custodian, or, alternatively, may require the custodian to post a bond to insure the faithful performance of his duties.²² Any successor custodian designated by the court may be required to post a bond for the faithful performance of his duties.²³ An accounting by the custodian or his legal representative may be requested by the minor if he is over fourteen years of age, the legal representatives of the minor, an adult member of the minor's family, or the donor or his legal representative.²⁴ The statute provides third persons, such as transfer agents, banks, or brokers with an exemption from liability.²⁵ Third parties are under no responsibility to determine whether the custodian has been duly designated or whether transactions

¹⁴ N.Y. Pers. Prop. Law § 266(5).

¹⁵ *Ibid.*

¹⁶ N.Y. Pers. Prop. Law §§ 266(7)-(8).

¹⁷ N.Y. Pers. Prop. Law § 267(1).

¹⁸ N.Y. Pers. Prop. Law §§ 267(2)-(3).

¹⁹ N.Y. Pers. Prop. Law § 267(4).

²⁰ *Ibid.*

²¹ N.Y. Pers. Prop. Law § 267(5).

²² *Ibid.*

²³ N.Y. Pers. Prop. Law § 267(7).

²⁴ N.Y. Pers. Prop. Law § 268(1). On petition of a parent or guardian of the minor, or of the minor if he is over fourteen years of age, the court has the power to order the custodian to pay over to the minor so much of the custodial property as is necessary for the minor's support, maintenance, or education. N.Y. Pers. Prop. Law § 266(3).

²⁵ N.Y. Pers. Prop. Law § 266-b.

involving the custodian are authorized by the statute;²⁶ nor does a third party bear any responsibility for the proper application of property delivered to the custodian.²⁷

Legislative History of the New York Statute

On February 16, 1955, a bill was introduced in the New York Legislature²⁸ which had as its purposes:

- (1) To simplify the making of gifts of stock to minors.
- (2) To provide a standard and orderly method in lieu of the uncertain practices that now are frequently followed—practices which have neither legal sanction nor adequate protection for donor or infant donee.
- (3) To satisfy the provisions of the Internal Revenue Code relating to the annual gift tax exclusion.²⁹

The Senate bill was amended with respect to the successor custodian provisions but was not reported out of committee.³⁰ The Assembly bill, as amended, passed the Assembly and went to the Senate Judiciary Committee but did not receive approval.³¹ The Association of the Bar of the City of New York's Committee on State Legislation [hereafter referred to as The Bar Association Committee] disapproved the bill because:

- (1) it created a new type of legal relationship without setting out in sufficient detail the applicable powers, duties and liabilities of the custodian. Thus, for example, under the proposed bill, after the expiration of one year from the time the property was paid over to the minor, any duty of the custodian to account ceased to exist;
- (2) everyone concerned with a gift of securities to a minor was given complete protection, except the minor;
- (3) unresolved conflict of laws questions existed; and
- (4) the gift tax annual exclusion advantage had been minimized through the adoption of a simple form of trust under the 1954 Internal Revenue Code.³²

On January 11, 1956, a bill was proposed to the Senate designed to overcome the defects which had prevented passage in 1955.³³ The powers of the custodian were more clearly defined as that of a holder of a power in trust and it was provided that an accounting by the custodian could

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ (1955) Sen. Int. No. 2169, Pr. No. 2309 (Mr. Mitchell), (1955) Assem. Int. No. 2414, Pr. No. 2513 (Mr. Brook).

²⁹ Memorandum, dated Feb. 18, 1955, submitted by the N.Y. Stock Exchange on (1955) Sen. Int. No. 2169, Pr. No. 2309 (Mr. Mitchell), (1955) Assem. Int. No. 2414, Pr. No. 2513 (Mr. Brook).

³⁰ (1955) Sen. Int. No. 2169, Pr. No. 3454 (Mr. Mitchell).

³¹ (1955) Assem. Int. No. 2414, Pr. No. 3858 (Mr. Brook).

³² The Bar Ass'n Comm., Bull. No. 6, March 14, 1955, Memo. No. 104, p. 351.

³³ (1956) Sen. Int. No. 376, Pr. No. 376 (Mr. Mitchell).

be required at any time. This bill, as amended, was reported out of committee,³⁴ was substituted for by the Assembly bill³⁵ as amended,³⁶ and was enacted as chapter 35 of the Laws of 1956. The Bar Association Committee had approved the bill, stating that it would encourage the making of gifts to infants which they might not otherwise receive and would, at the same time, safeguard the interests of the infants.³⁷

Two amendments introduced in 1958 sought to incorporate into the New York statute the major features of the Uniform Gifts to Minors Act by permitting gifts of money in addition to securities and by expanding the class of eligible original and successor custodians to include trust companies.³⁸ The Senate bill, introduced on January 8, 1958,³⁹ and amended on January 20⁴⁰ and February 3,⁴¹ passed the Senate but was not reported out of committee by the Assembly. The companion Assembly bill,⁴² as amended,⁴³ died in committee. The Bar Association Committee disapproved the bill because it was considered inherently inconsistent and ambiguous and did not adequately protect the minor.⁴⁴ The Committee objected to the lack of a specific requirement that the custodian continue to hold custodial monies originally donated or monies derived from the sale of custodial securities in his name as custodian in an account with a bank or broker. Further, the provision that a trust company could serve as original or successor custodian was rendered illusory because of the retention in the bill of the prohibition against compensation of custodians who were not also guardians. On February 4, 1958, a second amendment was introduced. Neither the Senate bill⁴⁵ nor the companion Assembly bill⁴⁶ was reported out of committee, though they had the approval of The Bar Association Committee.⁴⁷

In 1959, four amendments⁴⁸ were introduced. On January 13, 1959,

³⁴ (1956) Sen. Int. No. 376, Pr. No. 1862 (Mr. Mitchell).

³⁵ (1956) Assem. Int. No. 292, Pr. No. 292 (Mr. Brook).

³⁶ (1956) Assem. Int. No. 292, Pr. No. 1920 (Mr. Brook).

³⁷ The Bar Ass'n Comm., Bull. No. 4, Feb. 20, 1956, Memo. No. 51, p. 153.

³⁸ (1958) Sen. Int. No. 122, Pr. No. 2214 (Mr. Greenberg), (1958) Assem. Int. No. 120, Pr. No. 2808 (Mr. Bonom); (1958) Sen. Int. No. 2286, Pr. No. 2400 (Mr. Barrett), (1958) Assem. Int. No. 2946, Pr. No. 3052 (Mr. Douglas).

³⁹ (1958) Sen. Int. No. 122, Pr. No. 122 (Mr. Greenberg).

⁴⁰ (1958) Sen. Int. No. 122, Pr. No. 1271 (Mr. Greenberg).

⁴¹ (1958) Sen. Int. No. 122, Pr. No. 2214 (Mr. Greenberg).

⁴² (1958) Assem. Int. No. 120, Pr. No. 120 (Mr. Bonom).

⁴³ (1958) Assem. Int. No. 120, Pr. No. 2808 (Mr. Bonom).

⁴⁴ The Bar Ass'n Comm., Bull. No. 1, Jan. 20, 1958, Memo. No. 1, p. 1.

⁴⁵ (1958) Sen. Int. No. 2286, Pr. No. 2400 (Mr. Barrett).

⁴⁶ (1958) Assem. Int. No. 2946, Pr. No. 3052 (Mr. Douglas).

⁴⁷ The Bar Ass'n Comm., Bull. No. 5, March 3, 1958, Memo. No. 93, p. 297.

⁴⁸ (1959) Sen. Int. No. 800, Pr. No. 2483 (Mr. Greenberg), (1959) Assem. Int. No. 1047, Pr. No. 3293 (Mr. Bonom); (1959) Sen. Int. No. 2239, Pr. No. 4898 (Mr. Mitchell), (1959) Assem. Int. No. 2574, Pr. No. 4594 (Mr. Preller); (1959) Sen. Int. No. 2934, Pr. No. 3079 (Mr. Conklin), (1959) Assem. Int. No. 3049, Pr. No. 3096 (Mr. Goddard), (1959) Assem. Int. No. 3892, Pr. No. 4037 (Mr. Goddard); (1959) Sen. Int. No. 3281, Pr. No. 3476 (Mr. Hughes), (1959) Assem. Int. No. 4084, Pr. No. 4254 (Mr. Chase).

a Senate bill⁴⁹ and a companion Assembly bill⁵⁰ were introduced, again designed to have the Uniform Gifts to Minors Act adopted in New York. Both the Senate and the Assembly bills were amended but neither was passed.⁵¹ The Bar Association Committee had disapproved the bill because it did not clearly specify the method by which a gift of money to a minor could be made.⁵² The second amendment was introduced in the Assembly on February 3, 1959⁵³ and in the Senate on February 4, 1959.⁵⁴ This attempt to enact the Uniform Gifts to Minors Act was successful, and after amendments to both the original Senate and Assembly bills,⁵⁵ the Senate bill became law as chapter 233 of the Laws of 1959. The Bar Association Committee had approved the bill, noting that the Uniform Gifts to Minors Act was in effect in over thirty jurisdictions.⁵⁶ The third amendment was introduced as an Assembly bill on February 3, 1959,⁵⁷ again as an Assembly bill on February 17, 1959,⁵⁸ and as a Senate bill on February 16, 1959.⁵⁹ This amendment would have permitted the custodian to hold custodial property in the savings shares or savings accounts of savings and loan associations which had their principal office in New York. The amendment was approved by The Bar Association Committee⁶⁰ but was vetoed by the Governor on the ground that its purpose had been accomplished by the enactment of chapter 233 of the Laws of 1959.⁶¹ The fourth amendment was designed to permit gifts of life insurance to minors, but neither the Senate nor the Assembly bill was passed.⁶²

In 1960, an amendment was again introduced to permit gifts of life insurance policies or annuity contracts to minors.⁶³ The form of both the Senate and Assembly bills was disapproved by The Bar Association Committee which noted that of forty-two states which had enacted the Uniform Gifts to Minors Act, only Illinois, North Carolina, and Wisconsin

⁴⁹ (1959) Sen. Int. No. 800, Pr. No. 800 (Mr. Greenberg).

⁵⁰ (1959) Assem. Int. No. 1047, Pr. No. 1048 (Mr. Bonom).

⁵¹ (1959) Sen. Int. No. 800, Pr. No. 2483 (Mr. Greenberg), (1959) Assem. Int. No. 1047, Pr. No. 3293 (Mr. Bonom).

⁵² The Bar Ass'n Comm., Bull. No. 1, Feb. 2, 1959, Memo. No. 17, p. 57.

⁵³ (1959) Assem. Int. No. 2574, Pr. No. 2611 (Mr. Preller).

⁵⁴ (1959) Sen. Int. No. 2239, Pr. No. 2310 (Mr. Mitchell).

⁵⁵ (1959) Sen. Int. No. 2239, Pr. No. 4898 (Mr. Mitchell), (1959) Assem. Int. No. 2574, Pr. No. 4594 (Mr. Preller).

⁵⁶ The Bar Ass'n Comm., Bull. No. 4, Feb. 23, 1959, Memo. No. 65, p. 217.

⁵⁷ (1959) Assem. Int. No. 3049, Pr. No. 3096 (Mr. Goddard).

⁵⁸ (1959) Assem. Int. No. 3892, Pr. No. 4037 (Mr. Goddard).

⁵⁹ (1959) Sen. Int. No. 2934, Pr. No. 3079 (Mr. Conklin).

⁶⁰ The Bar Ass'n Comm., Bull. No. 6, March 9, 1959, Memo. No. 110, p. 383.

⁶¹ 1959 N.Y. Legislative Annual 556.

⁶² (1959) Sen. Int. No. 3281, Pr. No. 3476 (Mr. Hughes), (1959) Assem. Int. No. 4084, Pr. No. 4254 (Mr. Chase).

⁶³ (1960) Sen. Int. No. 1710, Pr. No. 1736 (Mr. Hughes), (1960) Assem. Int. No. 2189, Pr. No. 2210 (Mr. Chase).

sin permitted gifts to minors of life insurance policies or annuity contracts.⁶⁴ The bill was vetoed by the Governor because unresolved questions remained concerning the custodian's right to manage insurance, his ability to pay premiums, to exercise options, and to collect proceeds, and because a departure from the Uniform Act so soon after its adoption appeared unwarranted.⁶⁵

No amendments were proposed in either 1961 or 1962.⁶⁶ In 1963, an amendment to permit gifts of life insurance policies or annuity contracts to minors was again introduced, but was not enacted.⁶⁷

The Law of Other Jurisdictions

By January 1, 1963, the Uniform Gifts to Minors Act had been adopted by the District of Columbia and by forty-five states.⁶⁸ Three states retained the original "Model Act Concerning Gifts of Securities to Minors" in form, but extended its application to gifts of money as well as securities.⁶⁹ Two states have retained the Model Act in substance and have limited its use to gifts of securities to minors.⁷⁰

Though securities and money are the property generally referred to

⁶⁴ The Bar Ass'n Comm., Bull. No. 4, Feb. 22, 1960, Memo. No. 45, p. 197.

⁶⁵ 1960 N.Y. Legislative Annual 655.

⁶⁶ 1961, 1962 N.Y. Legislative Index.

⁶⁷ (1963) Sen. Int. No. 1088, Pr. No. 1088 (Mr. Mac Kell), (1963) Assem. Int. No. 1588, Pr. No. 1588 (Mr. Brennan).

⁶⁸ D.C. Code Ann. §§ 21-225 to -234 (Supp. II, 1963); Ala. Code tit. 47, §§ 154(1)-(10) (Supp. 1961); Ariz. Rev. Stat. Ann. §§ 44-2071 to -2080 (Supp. 1963); Ark. Stat. §§ 50-901 to -910 (Supp. 1961); Cal. Civ. Code §§ 1154-65, as amended, Cal. Civ. Code §§ 1155-58, 1160 (Supp. 1963); Colo. Rev. Stat. Ann. §§ 125-9-1 to -11 (Supp. 1961); Conn. Gen. Stat. Rev. §§ 45-101 to -109 (1958); Del. Code Ann. tit. 12, §§ 4501-10 (Supp. 1962); Fla. Stat. §§ 710.01-.10 (Supp. 1962); Hawaii Rev. Laws §§ 338A-1 to -10 (Supp. 1961); Idaho Code Ann. §§ 68-801 to -810 (Supp. 1963); Ill. Rev. Stat. ch. 3, §§ 531-40 (1961); Ind. Ann. Stat. §§ 31-801 to -810 (Supp. 1963); Iowa Code §§ 565 A.1-.11 (Supp. 1962); Kan. Gen. Stat. Ann. §§ 38-901 to -911 (Supp. 1962); Ky. Rev. Stat. §§ 385.010-.100 (1962); Me. Rev. Stat. Ann. ch. 158-A, §§ 1-10 (Supp. 1961); Md. Ann. Code art. 16, §§ 213-22 (1957), as amended, Md. Ann. Code art. 16, § 213 (Supp. 1963); Mass. Gen. Laws Ann. ch. 201A, §§ 1-11 (Supp. 1962); Mich. Comp. Laws §§ 554.451-.461 (Supp. 1961), as amended, Mich. Pub. Acts 1962, Nos. 31, 63; Minn. Stat. §§ 527.01-.11 (1961); Miss. Code Ann. §§ 672-101 to -113 (Supp. 1962); Mo. Rev. Stat. §§ 404.010-.100 (Supp. 1962); Mont. Rev. Codes Ann. §§ 67-1801 to -1811 (1947); Neb. Rev. Stat. §§ 38-1001 to -1010 (1960); Nev. Rev. Stat. §§ 167.010-.100 (1961); N.H. Rev. Stat. Ann. §§ 463-A:1 to :10 (Supp. 1961); N.M. Stat. Ann. §§ 48-20-1 to -10 (Supp. 1961); N.Y. Pers. Prop. Law §§ 265-71; N.C. Gen. Stat. §§ 33-68 to -77 (Supp. 1961); N.D. Cent. Code §§ 47-24-01 to -10 (1960); Ohio Rev. Code Ann. §§ 1339.31-.39 (Page 1962); Okla. Stat. tit. 60, §§ 401-10 (1961); Pa. Stat. Ann. tit. 20, §§ 3601-11 (Supp. 1962); R.I. Gen. Laws Ann. §§ 18-7-1 to -11 (Supp. 1962); S.C. Code §§ 62-401 to -411 (1962); S.D. Code §§ 43.0701-.0710 (Supp. 1960); Tenn. Code Ann. §§ 35-801 to -810 (Supp. 1963); Tex. Rev. Civ. Stat. art. 5923-101, §§ 1-10 (1962); Utah Code Ann. §§ 75-15-1 to -10 (Supp. 1963); Vt. Stat. Ann. tit. 14, §§ 3201-09 (1959); Va. Code Ann. §§ 31-26 to -36 (Supp. 1962); Wash. Rev. Code §§ 21.24.010-.100 (1961); W. Va. Code Ann. §§ 3581(23)-(33) (1961); Wis. Stat. §§ 319.62-.71 (1961); Wyo. Stat. Ann. §§ 34-127 to -136 (1957).

⁶⁹ Ga. Code §§ 48-301 to -313 (Supp. 1961); La. Rev. Stat. §§ 9:735-.742 (Supp. 1962); Ore. Rev. Stat. §§ 126.805-.880 (1961).

⁷⁰ Alaska Comp. Laws Ann. §§ 22-8-1 to -12 (1958); N.J. Rev. Stat. §§ 46:38-1 to -12 (Supp. 1962). Alaska, Georgia, Louisiana, New Jersey, and Oregon are hereinafter referred to as "Model Act states." The other 45 states and the District of Columbia are hereinafter referred to as "Uniform Act states."

in these custodian statutes, the District of Columbia and eight states also permit gifts of life insurance and annuity contracts.⁷¹

Where the gift is money or a security in registered form, ten states permit the donor, an adult member of the minor's family, a guardian of the minor, or a trust company to act as custodian.⁷² The District of Columbia and twenty-six states permit a donor to choose as the original custodian, himself, another adult, or a trust company.⁷³ Nine states permit the donor to appoint as original custodian, himself, another adult person, a guardian of the minor, or a trust company.⁷⁴ Five states permit the donor to designate himself, any adult member of the minor's family, or a guardian of the minor to act as custodian.⁷⁵

When the gift is a bearer security, ten states permit a guardian of the minor, a trust company, or an adult member of the minor's family other than the donor to act as custodian.⁷⁶ The District of Columbia and

⁷¹ D.C. Code Ann. § 21-226 (Supp. II, 1963) ("money, life insurance, or annuity contract."); Ill. Rev. Stat. ch. 3, § 532 (1961) ("a life or endowment insurance policy, or an annuity contract"); Ky. Rev. Stat. § 385.020 (1962) ("life insurance"); Mass. Gen. Laws Ann. ch. 201A, § 2 (Supp. 1962) ("a life or endowment insurance policy, an annuity contract"); Mich. Comp. Laws § 554.452 (Supp. 1961), as amended, Mich. Pub. Acts 1962, No. 31 ("life insurance"); N.H. Rev. Stat. Ann. § 463-A:2 (Supp. 1961) ("life insurance, endowment or annuity contract"); N.C. Gen. Stat. § 33-69 (Supp. 1961) ("life insurance"); Ohio Rev. Code Ann. § 1339.32 (Page 1962) ("life or endowment insurance policy, or an annuity contract"); Wis. Stat. § 319.62 (1961) ("life insurance"). One state limits the value of gifts to any one minor to \$3000 in one year and to \$30,000 in aggregate value. Wash. Rev. Code § 21.24.020(4) (1961) ("The donor may not . . . make gifts of custodial property (a) exceeding three thousand dollars in aggregate value to any one minor in any one year, or (b) exceeding thirty thousand dollars in aggregate value to any one minor.")

⁷² Uniform Gifts to Minors Act [hereinafter cited UGMA] § 2(a)(1); Ariz. Rev. Stat. Ann. § 44-2072 (Supp. 1963); Fla. Stat. § 710.03 (1962); La. Rev. Stat. § 9:736 (Supp. 1961); Minn. Stat. § 527.02 (1961); Miss. Code Ann. § 672-102 (Supp. 1962); Mont. Rev. Codes Ann. § 67-1802 (1947); N.H. Rev. Stat. Ann. § 463-A:2 (Supp. 1961); N.Y. Pers. Prop. Law § 265; Okla. Stat. tit. 60, § 402 (1961); Wis. Stat. § 319.62 (1961).

⁷³ D.C. Code Ann. § 21-226 (Supp. II, 1963); Ala. Code tit. 47, § 154(2) (Supp. 1961); Ark. Stat. § 50-902 (Supp. 1961); Cal. Civ. Code § 1156 (Supp. 1963); Colo. Rev. Stat. Ann. § 125-9-3 (Supp. 1961); Conn. Gen. Stat. Rev. § 45-102 (1958); Del. Code Ann. tit. 12, § 4502 (Supp. 1962); Hawaii Rev. Laws § 338A-2 (Supp. 1961); Idaho Code Ann. § 68-802 (Supp. 1963); Ill. Rev. Stat. ch. 3, § 532 (1961); Ind. Ann. Stat. § 31-802 (Supp. 1963); Iowa Code § 565A.2 (Supp. 1962); Kan. Gen. Stat. Ann. § 38-902 (Supp. 1962); Me. Rev. Stat. Ann. ch. 158-A, § 2 (Supp. 1961); Mass. Gen. Laws Ann. ch. 201A, § 2 (Supp. 1962); Nev. Rev. Stat. § 167.030 (1961); N.D. Cent. Code § 47-24-02 (1960) (securities only, not money; for gifts of money, North Dakota adds adult members of the minor's family and guardians); Ohio Rev. Code Ann. § 1339.32 (Page 1962); Pa. Stat. Ann. tit. 20, § 3603 (Supp. 1962) (for gifts of money, Pennsylvania adds adult members of the minor's family and guardians); R.I. Gen. Laws Ann. § 18-7-3 (Supp. 1962); S.C. Code § 62-403 (1962); S.D. Code § 43.0702 (Supp. 1960); Tex. Rev. Civ. Stat. art. 5923-101, § 2 (1962); Utah Code Ann. § 75-15-3 (Supp. 1963); Va. Code Ann. § 31-27 (Supp. 1962); Wash. Rev. Code § 21.24.020 (1961); W. Va. Code Ann. § 3581(24) (1961).

⁷⁴ Ky. Rev. Stat. § 385.020 (1962); Md. Ann. Code art. 16, § 214 (1957); Mich. Comp. Laws § 554.452 (Supp. 1961); Neb. Rev. Stat. § 38-1002 (1960); N.M. Stat. Ann. § 48-20-2 (Supp. 1961); N.C. Gen. Stat. § 33-69 (Supp. 1961); Tenn. Code Ann. § 35-803 (Supp. 1963); Vt. Stat. Ann. tit. 14, § 3202 (1959); Wyo. Stat. Ann. § 34-129 (1957). (The first eight of these states expressly include an adult member of the minor's family.)

⁷⁵ Alaska Comp. Laws Ann. § 22-8-1 (1958); Ga. Code § 48-301 (Supp. 1961); Mo. Rev. Stat. § 404.020 (Supp. 1962); N.J. Rev. Stat. § 46:38-1 (Supp. 1962); Ore. Rev. Stat. § 126.810 (1961).

⁷⁶ UGMA § 2(a)(2); Ariz. Rev. Stat. Ann. § 44-2072 (Supp. 1963); Fla. Stat. § 710.03

twenty-six states allow a trust company or any adult person other than the donor to be custodian.⁷⁷ Eight states authorize the appointment, as custodian, of a guardian of the minor, a trust company, or any adult other than the donor.⁷⁸ One state permits a guardian of the minor or a trust company to act as custodian.⁷⁹ Five states permit the custodian to be a guardian of the minor or any adult member of the minor's family other than the donor.⁸⁰

The minor is vested with legal title under all of the custodian statutes.⁸¹ It is the function of the custodian under these statutes to collect

(Supp. 1962); La. Rev. Stat. § 9:736 (Supp. 1962); Minn. Stat. § 527.02 (1961); Miss. Code Ann. § 672-102 (Supp. 1962); Mont. Rev. Codes Ann. § 67-1802 (1947); N.H. Rev. Stat. Ann. § 463-A:2 (Supp. 1961); N.Y. Pers. Prop. Law § 265 (New York omits "adult person other than donor"); Okla. Stat. tit. 60, § 402 (1961); Wis. Stat. § 319.62 (1961).

⁷⁷ D.C. Code Ann. § 21-226 (Supp. II, 1963); Ala. Code tit. 47, § 154(2) (Supp. 1961); Ark. Stat. § 50-902 (Supp. 1961); Cal. Civ. Code § 1156 (Supp. 1963); Colo. Rev. Stat. Ann. § 125-9-3 (Supp. 1961); Conn. Gen. Stat. Rev. § 45-102 (1958); Del. Code Ann. tit. 12, § 4502 (Supp. 1962); Hawaii Rev. Laws § 338A-2 (Supp. 1961); Idaho Code Ann. § 68-802 (Supp. 1963); Ill. Rev. Stat. ch. 3, § 532 (1916); Ind. Ann. Stat. § 31-802 (Supp. 1963); Iowa Code § 565A.2 (Supp. 1962); Kan. Gen. Stat. Ann. § 38-902 (Supp. 1962); Me. Rev. Stat. Ann. ch. 158-A, § 2 (Supp. 1961); Mass. Gen. Laws Ann. ch. 201A, § 2 (Supp. 1962); Nev. Rev. Stat. § 167.030 (1961); N.D. Cent. Code § 47-24-02 (1960); Ohio Rev. Code Ann. § 1339.32 (Page 1962); R.I. Gen. Laws Ann. § 18-7-3 (Supp. 1962); S.C. Code § 62-403 (1962); S.D. Code § 43.0702 (Supp. 1960); Tex. Rev. Civ. Stat. art. 5923-101, § 2 (1962); Utah Code Ann. § 75-15-3 (Supp. 1963); Vt. Stat. Ann. tit. 14, § 3202 (1959); Va. Code Ann. § 31-27 (Supp. 1962); Wash. Rev. Code § 21.24.020 (1961); W. Va. Code Ann. § 3581(24) (1961).

⁷⁸ Ky. Rev. Stat. § 385.020 (1962); Md. Ann. Code art. 16, § 214 (1957); Mich. Comp. Laws § 554.452 (Supp. 1961); Neb. Rev. Stat. § 38-1002 (1960); N.M. Stat. Ann. § 48-20-2 (Supp. 1961); N.C. Gen. Stat. § 33-69 (Supp. 1961); Tenn. Code Ann. § 35-803 (Supp. 1963); Wyo. Stat. Ann. § 34-129 (1957). (The first seven of these states expressly include an adult member of the minor's family other than the donor.)

⁷⁹ Pa. Stat. Ann. tit. 20, § 3603 (Supp. 1962).

⁸⁰ Alaska Comp. Laws Ann. § 22-8-1 (1958); Ga. Code § 48-301 (Supp. 1961); Mo. Rev. Stat. § 404.020 (Supp. 1962); N.J. Rev. Stat. § 46:38-1 (Supp. 1962); Ore. Rev. Stat. § 126.810 (1961).

⁸¹ UGMA § 3(a); Model Act Concerning Gifts of Securities to Minors [hereinafter cited Model Act] § 2; D.C. Code Ann. § 21-227 (Supp. II, 1963); Ala. Code tit. 47, § 154(3) (Supp. 1961); Alaska Comp. Laws Ann. § 22-8-2 (1958); Ariz. Rev. Stat. Ann. § 44-2073 (Supp. 1963); Ark. Stat. § 50-903 (Supp. 1961); Cal. Civ. Code § 1157 (Supp. 1963); Colo. Rev. Stat. Ann. § 125-9-4 (Supp. 1961); Conn. Gen. Stat. Rev. § 45-103 (1958); Del. Code Ann. tit. 12, § 4503 (Supp. 1962); Fla. Stat. § 710.04 (Supp. 1962); Ga. Code § 48-302 (Supp. 1961); Hawaii Rev. Laws § 338A-3 (Supp. 1961); Idaho Code Ann. § 68-803 (Supp. 1963); Ill. Rev. Stat. ch. 3, § 533 (1961); Ind. Ann. Stat. § 31-803 (Supp. 1963); Iowa Code § 565A.3 (Supp. 1962); Kan. Gen. Stat. Ann. § 38-903 (Supp. 1962); Ky. Rev. Stat. § 385.030 (1962); La. Rev. Stat. § 9:737 (Supp. 1962); Me. Rev. Stat. Ann. ch. 158-A, § 3 (Supp. 1961); Md. Ann. Code art. 16, § 215 (1957); Mass. Gen. Laws Ann. ch. 201A, § 3 (Supp. 1962); Mich. Comp. Laws § 554.453 (Supp. 1961); Minn. Stat. § 527.03 (1961); Miss. Code Ann. § 672-103 (Supp. 1962); Mo. Rev. Stat. § 404.030 (Supp. 1962); Mont. Rev. Codes Ann. § 67-1803 (1947); Neb. Rev. Stat. § 38-1003 (1960); Nev. Rev. Stat. § 167-040 (1961); N.H. Rev. Stat. Ann. § 463-A:3 (Supp. 1961); N.J. Rev. Stat. § 46:38-2 (Supp. 1955); N.M. Stat. Ann. § 48-20-3 (Supp. 1961); N.Y. Pers. Prop. Law § 265-a(1); N.C. Gen. Stat. § 33-70 (Supp. 1961); N.D. Cent. Code § 47-24-03 (1960); Ohio Rev. Code Ann. § 1339.33 (Page 1962); Okla. Stat. tit. 60, § 403 (1961); Ore. Rev. Stat. § 126.815 (1961); Pa. Stat. Ann. tit. 20, § 3604 (Supp. 1962); R.I. Gen. Laws Ann. § 18-7-4 (Supp. 1962); S.C. Code § 62-404 (1962); S.D. Code § 43.0703 (Supp. 1960); Tenn. Code Ann. § 35-804 (Supp. 1963); Tex. Rev. Civ. Stat. art. 5923-101, § 3 (1962); Utah Code Ann. § 75-15-4 (Supp. 1963); Vt. Stat. Ann. tit. 14, § 3203 (1959); Va. Code Ann. § 31-28 (Supp. 1962); Wash. Rev. Code § 21.24.030 (1961); W. Va. Code Ann. § 3581(25) (1961); Wis. Stat. § 319.63 (1961); Wyo. Stat. Ann. § 34-130 (1957).

and manage the custodial property and pay over to the minor, or expend for his benefit as much of the property as is thought advisable for the support, maintenance, education, and benefit of the minor.⁸² Any property not used for the minor is paid over to him when he reaches twenty-one years of age, or to his estate if he dies before then.⁸³ All states ex-

⁸² UGMA §§ 4(a), (b) read:

(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 . . .

Accord, all Uniform Act states: D.C. Code Ann. § 21-228 (Supp. II, 1963); Ala. Code tit. 47, § 154(4) (Supp. 1961); Ariz. Rev. Stat. Ann. § 44-2074 (Supp. 1963); Ark. Stat. § 50-904 (Supp. 1961); Cal. Civ. Code § 1158 (Supp. 1963); Colo. Rev. Stat. Ann. § 125-9-5 (Supp. 1961); Conn. Gen. Stat. Rev. § 45-104 (1958); Del. Code Ann. tit. 12, § 4504 (Supp. 1962); Fla. Stat. § 710.05 (Supp. 1962); Hawaii Rev. Laws § 338A-4 (Supp. 1961); Idaho Code Ann. § 68-804 (Supp. 1963); Ill. Rev. Stat. ch. 3, § 534 (1961); Ind. Ann. Stat. § 31-804 (Supp. 1963); Iowa Code § 565A.4 (Supp. 1962); Kan. Gen. Stat. Ann. § 38-904 (Supp. 1962); Ky. Rev. Stat. § 385.040 (1962); Me. Rev. Stat. Ann. ch. 158-A, § 4 (Supp. 1961); Md. Ann. Code art. 16, § 216 (1957); Mass. Gen. Laws Ann. ch. 201A, § 4 (Supp. 1962); Mich. Comp. Laws § 554.454 (Supp. 1961); Minn. Stat. § 527.04 (1961); Miss. Code Ann. § 672-104 (Supp. 1962); Mo. Rev. Stat. § 404.040 (Supp. 1962) (changes period at end of subdivision "1" to comma and adds "including the income therefrom," after "custodial property"); Mont. Rev. Codes Ann. § 67-1804 (1947); Neb. Rev. Stat. § 38-1004 (1960); Nev. Rev. Stat. § 167.050 (1961); N.H. Rev. Stat. Ann. § 463-A:4 (Supp. 1961); N.M. Stat. Ann. § 48-20-4 (Supp. 1961); N.Y. Pers. Prop. Law §§ 266(1)-(2); N.C. Gen. Stat. § 33-71 (Supp. 1961); N.D. Cent. Code § 47-24-04 (1960); Ohio Rev. Code Ann. § 1339.34 (Page 1962); Okla. Stat. tit. 60, § 404 (1961); Pa. Stat. Ann. tit. 20, § 3605 (Supp. 1962); R.I. Gen. Laws Ann. § 18-7-5 (Supp. 1962); S.C. Code § 62-405 (1962); S.D. Code § 43.0704 (Supp. 1960); Tenn. Code Ann. § 35-805 (Supp. 1963); Tex. Rev. Civ. Stat. art. 5923-101, § 4 (1962); Utah Code Ann. § 75-15-5 (Supp. 1963); Vt. Stat. Ann. tit. 14, § 3204 (1959); Va. Code Ann. § 31-29 (Supp. 1962); Wash. Rev. Code § 21.24.040 (1961) (adds "for the best interest of the minor and according to the provisions of this chapter" in subdivision (a) and changes subdivision (b) to read: "The custodian may expend for the benefit of a minor, or pay over to the minor if he is eighteen years old or more for expenditure by him, such monthly amounts as may be reasonably necessary for the minor's actual living expenses including maintenance, schooling and medical or dental expense . . ."); W. Va. Code Ann. § 3581(26) (1961); Wis. Stat. § 319.64 (1961); Wyo. Stat. Ann. § 34-131 (1957).

The Model Act § 3(a) reads as follows:

(a) The custodian shall hold, manage, invest and reinvest the property held by him as custodian, including any unexpended income therefrom, as hereinafter provided. He shall collect the income therefrom and apply so much of the whole thereof and so much of the whole of the other property held by him as custodian as he may deem advisable for the support, maintenance, education and general use and benefit of the minor . . .

Accord, Alaska Comp. Laws Ann. § 22-8-3(a) (1958); Ga. Code § 48-303(a) (Supp. 1961); La. Rev. Stat. § 9:738 (Supp. 1962); N.J. Rev. Stat. § 46:38-1 (Supp. 1962); Ore. Rev. Stat. § 126.820(1) (1961) ("The custodian shall hold, manage, invest and reinvest the custodial property as provided by ORS 126.805 to 126.880. He shall collect the income therefrom and apply so much of the whole thereof and so much of the whole of the other custodial property as he may deem advisable for the support, maintenance, education and general use and benefit of the minor.").

⁸³ UGMA § 4(a); Model Act § 3(a). Accord, all Uniform Act and Model Act states at the statutory citations in note 82 supra. California, Louisiana, and Texas have adopted the provision with the modifications hereinafter indicated: Cal. Civ. Code § 1158 (Supp. 1963) specifically provides for an accounting upon delivery of the custodial property; La. Rev. Stat. § 9:738 (Supp. 1962) in addition to the usual provisions concerning the disposition of the custodial property on the minor's attaining age 21 or upon the minor's death before 21 provides: "To the extent that property held by the custodian and the income thereof are not expended, it shall be delivered or paid over to the minor upon the minor's . . . being relieved from the time prescribed by law for attaining the age of majority pursuant to the provisions of the Revised Civil Code of the State of Louisiana."; Tex. Rev. Civ. Stat. art.

cept one expressly provide that the custodian may be reimbursed for his reasonable expenses.⁸⁴

The New York statute provides that only a trust company or the guardian of property of the minor is entitled to compensation for acting as custodian.⁸⁵ The Uniform Gifts to Minors Act provision is broader in scope and reads:

(c) Unless he is a donor, a custodian may receive from the custodial property reasonable compensation for his services determined [by one of the following standards in the order stated:

- (1) A direction by the donor when the gift is made;
- (2) A statute of this state applicable to custodians;
- (3) The statute of this state applicable to guardians;
- (4) An order of the court.]⁸⁶

Twenty-one states have adopted this language.⁸⁷ The District of Columbia and eighteen states have adopted certain variations of the Uniform

5903-101, § 4 (1962) provides that unexpended custodial property must be paid over to the minor on the minor's attaining the age of 21 or upon "ceasing to be a minor by marriage or general removal of disabilities of minority," or, if the minor dies before reaching 21 years, to the estate of the minor.

⁸⁴ UGMA § 5(a); Model Act § 4. Accord, all Uniform and Model Act states except Iowa, at the following statutory citations: D.C. Code Ann. § 21-229 (Supp. II, 1963); Ala. Code tit. 47, § 154(5) (Supp. 1961); Alaska Comp. Laws Ann. § 22-8-4 (1958); Ariz. Rev. Stat. Ann. § 44-2075 (Supp. 1963); Ark. Stat. § 50-905 (Supp. 1961); Cal. Civ. Code § 1159; Colo. Rev. Stat. Ann. § 125-9-6 (Supp. 1961); Conn. Gen. Stat. Rev. § 45-105 (1958); Del. Code Ann. tit. 12, § 4503 (Supp. 1962); Fla. Stat. § 710.05 (Supp. 1962); Ga. Code § 48-304 (Supp. 1961); Hawaii Rev. Laws § 338A-5 (Supp. 1961); Idaho Code Ann. § 68-805 (Supp. 1963); Ill. Rev. Stat. ch. 3, § 535 (1961); Ind. Ann. Stat. § 31-805 (Supp. 1963); Kan. Gen. Stat. Ann. § 38-905 (Supp. 1962); Ky. Rev. Stat. § 385.050 (1962); La. Rev. Stat. § 9:739 (Supp. 1962); Me. Rev. Stat. Ann. ch. 158-A, § 5 (Supp. 1961); Md. Ann. Code art. 16, § 217 (1957); Mass. Gen. Laws Ann. ch. 201A, § 5 (Supp. 1962); Mich. Comp. Laws § 554.455 (Supp. 1961); Minn. Stat. § 527.05 (1961); Miss. Code Ann. § 672-105 (Supp. 1947); Mo. Rev. Stat. § 404.050 (Supp. 1962); Mont. Rev. Codes Ann. § 67-1805 (1962); Neb. Rev. Stat. § 38-1005 (1960); Nev. Rev. Stat. § 167.060 (1961); N.H. Rev. Stat. Ann. § 463-A:5 (Supp. 1961); N.J. Rev. Stat. § 46:38-4 (Supp. 1962); N.M. Stat. Ann. § 48-20-5 (Supp. 1961); N.Y. Pers. Prop. Law § 266-a(1); N.C. Gen. Stat. § 33-72 (Supp. 1961); N.D. Cent. Code § 47-24-05 (1960); Ohio Rev. Code Ann. § 1339.35 (Page 1962); Okla. Stat. tit. 60, § 405 (1961); Ore. Rev. Stat. § 126.845 (1961); Pa. Stat. Ann. tit. 20, § 3606 (Supp. 1962); R.I. Gen. Laws Ann. § 18-7-6 (Supp. 1962); S.C. Code § 62-406 (1962); S.D. Code § 43.0705 (Supp. 1960); Tenn. Code Ann. § 35-806 (Supp. 1963); Tex. Rev. Civ. Stat. art. 5923-101, § 5 (1962); Utah Code Ann. § 75-15-6 (Supp. 1963); Vt. Stat. Ann. tit. 14, § 3205 (1959); Va. Code Ann. § 31-30 (Supp. 1962); Wash. Rev. Code § 21.24.050 (1961); W. Va. Code Ann. § 3581(27) (1961); Wis. Stat. § 319.65 (1961); Wyo. Stat. Ann. § 34-134 (1957).

Cal. Civ. Code § 1159 provides that "a custodian is entitled to reimbursement from the custodial property for his reasonable expenses, including reasonable fees for his attorney, incurred in the performance of his duties." Iowa omits the provision that the custodian is entitled to reimbursement from the custodial property for his reasonable expenses.

⁸⁵ N.Y. Pers. Prop. Law §§ 266-a(2)-(3).

⁸⁶ UGMA § 5(c) (brackets in original).

⁸⁷ Ala. Code tit. 47, § 154(5) (Supp. 1961); Ark. Stat. § 50-905 (Supp. 1961); Cal. Civ. Code § 1159; Mich. Comp. Laws § 554.455 (Supp. 1961); Minn. Stat. § 527.05 (1961); Miss. Code Ann. § 672-105 (Supp. 1962); Mont. Rev. Codes Ann. § 67-1805 (1947); Nev. Rev. Stat. § 167.060 (1961); N.H. Rev. Stat. Ann. § 463-A:5 (Supp. 1961); N.M. Stat. Ann. § 48-20-5 (Supp. 1961); N.C. Gen. Stat. § 33-72 (Supp. 1961); N.D. Cent. Code § 47-24-05 (1960); Ohio Rev. Code Ann. § 1339.35 (Page 1962); Okla. Stat. tit. 60, § 405 (1961); R.I. Gen. Laws Ann. § 18-7-6 (Supp. 1962); S.C. Code § 62-406 (1962); S.D. Code § 43.0705 (Supp. 1960); Tenn. Code Ann. § 35-806 (Supp. 1963); Utah Code Ann. § 75-15-6 (Supp. 1963); Vt. Stat. Ann. tit. 14, § 3205 (1959); Va. Code Ann. § 31-30 (Supp. 1962).

Gifts to Minors Act section relating to compensation.⁸⁸ Four states provide that a custodian, other than the donor, may receive "reasonable compensation for his services."⁸⁹ Six states provide that only a guardian of the property of the minor when acting as custodian may receive compensation.⁹⁰ The custodian who is not compensated for his services is liable only for losses resulting from bad faith, intentional wrongdoing, gross negligence, or failure to invest in accordance with due care.⁹¹

⁸⁸ D.C. Code Ann. § 21-229 (Supp. II, 1963) retains the provisions of UGMA with a limitation in the case of a donor, and renumbers the subdivisions as follows:

Section 5(b): Compensation for the guardian or custodian shall be according to:

- (1) Any direction of the donor when the gift is made, provided that it is not in excess of any statutory limitation of the District of Columbia for guardians or custodians;
- (2) Any statute of the District of Columbia applicable to custodians or guardians;
- (3) Any order of the court.

Four states retain UGMA §§ 5(c)(1), (3)-(4), eliminating clause (2). Colo. Rev. Stat. Ann. § 125-9-6 (Supp. 1961); Idaho Code Ann. § 68-805 (Supp. 1963); Mass. Gen. Laws Ann. ch. 201A, § 5 (Supp. 1962); Tex. Rev. Civ. Stat. art. 5923-101, § 5 (1962).

One state retains UGMA §§ 5(c)(1), (3), eliminating clauses (2), (4). Hawaii Rev. Laws § 338A-5 (Supp. 1961) ("the court may allow, such compensation as shall be fixed by written direction of the donor at the time the gift is made, or, in the absence of such direction, such compensation as shall be provided by law with respect to a guardian").

Seven states retain UGMA §§ 5(c)(1), (4), eliminating clauses (2)-(3). Ariz. Rev. Stat. Ann. § 44-2075 (Supp. 1963); Ill. Rev. Stat. ch. 3, § 535 (1961) (Illinois retains clause (4) only "in the case of a successor custodian"); Iowa Code § 565A.5 (Supp. 1962) (provides that absent donor's direction, compensation may be determined by order of court after submission by custodian of itemized claim or report setting forth his services as custodian from time to time, as long as he continues to serve); Kan. Gen. Stat. Ann. § 38-905 (Supp. 1962); Neb. Rev. Stat. § 38-1005 (1960); Wash. Rev. Code § 21.24.050 (1961); Wis. Stat. § 319.65 (1961).

One state retains UGMA §§ 5(c)(1)-(2). Md. Ann. Code art. 16, § 217 (1957) (absent donor's direction, custodian may receive "the fees that are customarily allowed in this State to trustees").

Four states retain UGMA § 5(c)(1) and eliminate clauses (2)-(4). Del. Code Ann. tit. 12, § 4505 (Supp. 1962):

[A] custodian may receive . . . reasonable compensation . . . as established by direction of the donor when the gift is made, or failing such direction, in accordance with the general rule of the court applicable in such cases, or in the absence of such rule, as determined by the court in accordance with the rule of the Court of Chancery governing trustees' commissions.

Fla. Stat. § 710.06 (Supp. 1962); Pa. Stat. Ann. tit. 20, § 3606 (Supp. 1962) ("a custodian may receive . . . reasonable compensation . . . which may be specified by the donor when the gift is made."); W. Va. Code Ann. § 3581(27) (1961) ("a custodian may receive . . . compensation . . . 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").

One state retains UGMA § 5(c)(3) and eliminates clauses (1)-(2), (4). Me. Rev. Stat. Ann. ch. 158-A, § 5 (Supp. 1961).

⁸⁹ Conn. Gen. Stat. Rev. § 45-105 (1958); Ind. Ann. Stat. § 31-805 (Supp. 1963); Ky. Rev. Stat. § 385.050 (1962) ("a custodian may receive . . . reasonable compensation . . . as determined by KRS 386.180"); Wyo. Stat. Ann. § 34-134 (1957).

⁹⁰ Alaska Comp. Laws Ann. § 22-8-4 (1958); Ga. Code § 48-304 (Supp. 1961); La. Rev. Stat. § 9:739 (Supp. 1962) (Louisiana substitutes the term "tutor" for "guardian"); Mo. Rev. Stat. § 404.050 (Supp. 1962) (Missouri substitutes "guardian or curator" for "guardian"); N.J. Rev. Stat. § 46:38-4 (Supp. 1962); Ore. Rev. Stat. § 126.845 (1961).

⁹¹ UGMA § 5(e). Accord, all Uniform Act states at the following citations: D.C. Code Ann. § 21-229 (Supp. II, 1963) (substitutes "shall not be liable" for "is not liable"); Ala. Code tit. 47, § 154(5) (Supp. 1961); Ariz. Rev. Stat. Ann. § 44-2075 (Supp. 1963); Ark. Stat. § 50-905 (Supp. 1961); Cal. Civ. Code § 1159; Colo. Rev. Stat. Ann. § 125-9-6 (Supp. 1961); Conn. Gen. Stat. Rev. § 45-105 (1958); Del. Code Ann. tit. 12, § 4504 (Supp. 1962); Fla. Stat. § 710.05 (Supp. 1962); Hawaii Rev. Laws § 338A-5 (Supp. 1961); Idaho Code Ann. § 68-805 (Supp. 1963); Ill. Rev. Stat. ch. 3, § 535 (1961); Ind. Ann. Stat. § 31-806

The New York statute provides that the compensated custodian is subject to the same liabilities as a guardian of the property of a minor, but that he is not liable for losses to the property if he maintains the investment standard of prudence indicated in the statute.⁹²

The Uniform Act states permit the custodian to retain any securities originally given, but hold him to a "prudent man" standard with respect to reinvestments.⁹³ The Model Act states require the "prudent man"

(Supp. 1963); Iowa Code § 565A.5 (Supp. 1962); Kan. Gen. Stat. Ann. § 38-905 (Supp. 1962); Ky. Rev. Stat. § 385.050 (1962); Me. Rev. Stat. Ann. ch. 158-A, § 5 (Supp. 1961); Md. Ann. Code art. 16, § 217 (1957); Mass. Gen. Laws Ann. ch. 201A, § 5 (Supp. 1962); Mich. Comp. Laws § 554.455 (Supp. 1961); Minn. Stat. § 527.05 (1961); Miss. Code Ann. § 672-105 (Supp. 1962); Mo. Rev. Stat. § 404.050 (Supp. 1962); Mont. Rev. Codes Ann. § 67-1805 (1947); Neb. Rev. Stat. § 38-1005 (1960); Nev. Rev. Stat. § 167.060 (1961); N.H. Rev. Stat. Ann. § 463-A:5 (Supp. 1961); N.M. Stat. Ann. § 48-20-5 (Supp. 1961); N.Y. Pers. Prop. Law § 266-a(5); N.C. Gen. Stat. § 33-72 (Supp. 1961); N.D. Cent. Code § 47-24-05 (1960); Ohio Rev. Code Ann. § 1339.35 (Page 1962); Okla. Stat. tit. 60, § 405 (1961); Pa. Stat. Ann. tit. 20, § 3606 (Supp. 1962); R.I. Gen. Laws Ann. § 18-7-6 (Supp. 1962); S.C. Code § 62-406 (1962); S.D. Code § 43.0705 (Supp. 1960); Tenn. Code Ann. § 35-806 (Supp. 1963); Tex. Rev. Civ. Stat. art. 5923-101, § 5 (1962); Utah Code Ann. § 75-15-6 (Supp. 1963); Vt. Stat. Ann. tit. 14, § 3205 (1959); Va. Code Ann. § 31-30 (Supp. 1962); Wash. Rev. Code § 21.24.050 (1961); W. Va. Code Ann. § 3581(27) (1961); Wis. Stat. § 319.65 (1961); Wyo. Stat. Ann. § 34-134 (1957).

The Model Act states hold a custodian who is not compensated for his services liable for losses resulting from bad faith, intentional wrongdoing, or failure to invest in accordance with the statute (omitting gross negligence). Alaska Comp. Laws Ann. § 22-8-5 (1958); Ga. Code § 48-305 (Supp. 1961); La. Rev. Stat. § 9:740 (Supp. 1962); N.J. Rev. Stat. § 46:38-5 (Supp. 1962); Ore. Rev. Stat. § 126.850 (1961).

⁹² N.Y. Pers. Prop. Law § 266-a(6).

⁹³ UGMA § 4(e) provides:

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 Act.

The District of Columbia and 42 states retain this provision. D.C. Code Ann. § 21-228 (Supp. II, 1963); Ala. Code tit. 47, § 154(4) (Supp. 1961); Ariz. Rev. Stat. Ann. § 44-2074 (Supp. 1963); Ark. Stat. § 50-904 (Supp. 1961); Cal. Civ. Code § 1158 (Supp. 1963); Colo. Rev. Stat. Ann. § 125-9-5 (Supp. 1961); Conn. Gen. Stat. Rev. § 45-104 (1958); Del. Code Ann. tit. 12, § 4504 (Supp. 1962); Fla. Stat. § 710.05 (Supp. 1962); Hawaii Rev. Laws § 338A-4 (Supp. 1961); Ind. Ann. Stat. § 31-804 (Supp. 1963) (substitutes "laws" for "statutes" following "notwithstanding"); Iowa Code § 565A.4 (Supp. 1962); Kan. Gen. Stat. Ann. § 38-904 (Supp. 1962); Ky. Rev. Stat. § 385.040 (1962); Me. Rev. Stat. Ann. ch. 158-A, § 4 (Supp. 1961); Md. Ann. Code art. 16, § 216 (1957); Mass. Gen. Laws Ann. ch. 201A, § 4 (Supp. 1962) adds after standard Uniform Act language (quoted supra) the following:

Without limiting the generality of the foregoing powers with respect to investments, the custodian may invest the income or principal of the custodial property in policies of life or endowment insurance or annuity contracts, issued by a life insurance company duly authorized to transact business in the commonwealth under chapter one hundred and seventy-five, on the life of the minor whose property he holds as custodian or on the life of a person in which life such minor has an insurable interest.

Mich. Comp. Laws § 554.454 (Supp. 1961); Minn. Stat. § 527.04 (1961); Miss. Code Ann. § 672-104 (Supp. 1962); Mo. Rev. Stat. § 404.040 (Supp. 1962) transposes the wording:

The custodian 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 without reference to the statutes relating to permissible investments by fiduciaries, except that he may, in his discretion and without liability to the minor or his estate, retain a security given to the minor as prescribed in section 404.020.

Mont. Rev. Codes Ann. § 67-1804 (1947); Neb. Rev. Stat. § 38-1004 (1960); Nev. Rev. Stat. § 167.050 (1961); N.H. Rev. Stat. Ann. § 463-A:4 (Supp. 1961); N.Y. Pers. Prop. Law § 266(5); N.C. Gen. Stat. § 33-71 (Supp. 1961); N.D. Cent. Code § 47-24-04 (1960); Ohio Rev. Code Ann. § 1339.34 (Page 1962); Okla. Stat. tit. 60, § 404 (1961); Pa. Stat. Ann. tit.

standard and make no express distinction between retained securities and reinvestments.⁹⁴ Adequate records must be maintained by the custodian and custodial property must be earmarked as such.⁹⁵

Forty-five states permit an adult member of the minor's family, a guardian, or a trust company to act as successor custodian.⁹⁶ One state

20, § 3605 (Supp. 1962); R.I. Gen. Laws Ann. § 18-7-5 (Supp. 1962); S.C. Code § 62-405 (1962); S.D. Code § 43.0704 (Supp. 1960); Tenn. Code Ann. § 35-805 (Supp. 1963); Tex. Rev. Civ. Stat. art. 5923-101, § 4 (1962); Utah Code Ann. § 75-15-5 (Supp. 1963); Vt. Stat. Ann. tit. 14, § 3204 (1959); Va. Code Ann. § 31-29 (Supp. 1962); Wash. Rev. Code § 21.24.040 (1961); W. Va. Code Ann. § 3581(26) (1961); Wis. Stat. § 319.64 (1961); Wyo. Stat. Ann. § 34-131 (1957).

Three states retain UGMA § 4(e) (quoted supra) with modifications: Idaho Code Ann. § 68-804 (Supp. 1963):

The custodian shall in his handling, investing and reinvesting of the custodial property be governed by and subject to the requirements of the prudent man investment rule set forth in section 68-502, Idaho Code; 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 act.

Ill. Rev. Stat. ch. 3, § 534 (1961) (omits "notwithstanding statutes restricting investments by fiduciaries" in UGMA § 4(e) quoted supra); N.M. Stat. Ann. § 48-20-4 (Supp. 1961) (makes same omission as Illinois).

⁹⁴ The five Model Act states use the following language:

[H]e shall invest the minor's property in such securities as would be acquired by prudent men of discretion and intelligence who are seeking a reasonable income and the preservation of their capital without reference to the statutes relating to permissible investments by fiduciaries or hold part or all of the same in one or more bank accounts in his name as such custodian

Alaska Comp. Laws Ann. § 22-8-3 (1958) (replaces "in such securities as would be acquired" with "in the securities which would be acquired"); Ga. Code § 48-303 (Supp. 1961); La. Rev. Stat. § 9:738 (Supp. 1962); N.J. Rev. Stat. § 46:38-3 (Supp. 1962) (inserts between "bank accounts" and "in his name as such custodian" the following: "or in one or more accounts in any savings and loan association of this State, or any Federal savings and loan association, having its principal office in this State, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation"); Ore. Rev. Stat. § 126.825 (1961) (inserts the words "and reinvest the custodial property" after "He shall invest" and before "the" at the beginning of the passage).

⁹⁵ UGMA §§ 4(g)-(h). All Uniform Act states have this provision at sections cited in note 93 supra. Hawaii, however, modifies the requirement that the minor's property be kept separate with the following proviso (Hawaii Rev. Laws § 338A-4 (Supp. 1961)): "provided, that a custodian which is a trust company may invest any part or all of the custodial property in any common trust fund established by it."

The Model Act contains a provision that custodial property be kept separate from the custodian's in such a manner as will clearly identify it as custodial property. Model Act § 3(d). However, instead of explicitly providing that records be kept of all transactions it merely requires that:

All registered securities held by the custodian from time to time shall be registered in his name followed by the words "as custodian for, a minor under
(Name of minor)
. . . laws of"
(Name of state)

The states whose acts are patterned on the Model Act retain the language quoted above at the sections cited at the end of note 94 supra. Ore. Rev. Stat. § 126.840 (1961) adds the following: "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 by substantially the following words: 'as custodian, under the laws of Oregon, for, a
(Name of minor)

minor.'"

⁹⁶ UGMA § 7(a); Model Act § 6. Accord, Ala. Code tit. 47, § 154(7) (Supp. 1961); Ariz. Rev. Stat. Ann. § 44-2077 (Supp. 1963); Ark. Stat. § 50-907 (Supp. 1961); Cal. Civ. Code § 1161; Colo. Rev. Stat. Ann. § 125-9-8 (Supp. 1961); Conn. Gen. Stat. Rev. § 45-107 (1958); Del. Code Ann. tit. 12, § 4507 (Supp. 1962); Fla. Stat. § 710.08 (Supp. 1962); Hawaii Rev. Laws § 338A-7 (Supp. 1961); Idaho Code Ann. § 68-807 (Supp. 1963); Ill.

provides that only a donor, an adult member of the minor's family, or a guardian of the minor is eligible to become a successor custodian.⁹⁷ The District of Columbia allows an adult, a guardian of the minor, or a trust company to act as successor custodian.⁹⁸ Four states provide for a successor custodian who is an adult member of the minor's family or a guardian of the minor.⁹⁹

New York and five other states permit a custodian to resign and designate a successor or to petition the court for permission to resign and to designate a successor.¹⁰⁰ The District of Columbia and forty states adopt the language of the Uniform Act, which provides that:

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

(c) A custodian, *whether or not a donor*, may petition the court for permission to resign and for the designation of a successor custodian. [Emphasis added.]¹⁰¹

Four states have adopted the Uniform Act provision with minor modifications.¹⁰² With but slight variations, the guardian of the minor becomes

Rev. Stat. ch. 3, § 537 (1961); Ind. Ann. Stat. § 31-807 (Supp. 1963); Iowa Code § 565A.7 (Supp. 1962); Kan. Gen. Stat. Ann. § 38-907 (Supp. 1962); Ky. Rev. Stat. § 385.070 (1962); La. Rev. Stat. § 9:741 (Supp. 1962); Me. Rev. Stat. Ann. ch. 158-A, § 7 (Supp. 1961); Md. Ann. Code art. 16, § 219 (1957); Mass. Gen. Laws Ann. ch. 201A, § 7 (Supp. 1962); Mich. Comp. Laws § 554.457 (Supp. 1961); Minn. Stat. § 527.07 (1961); Miss. Code Ann. § 672-107 (Supp. 1962); Mont. Rev. Codes Ann. § 67-1807 (1947); Neb. Rev. Stat. § 38-1007 (1960); Nev. Rev. Stat. § 167.080 (1961); N.H. Rev. Stat. Ann. § 463-A:7 (Supp. 1961); N.M. Stat. Ann. § 48-20-7 (Supp. 1961); N.Y. Pers. Prop. Law § 267(1); N.C. Gen. Stat. § 33-74 (Supp. 1961); N.D. Cent. Code § 47-24-07 (1960); Ohio Rev. Code Ann. § 1339.37 (Page 1962); Okla. Stat. tit. 60, § 407 (1961); Pa. Stat. Ann. tit. 20, § 3608 (Supp. 1962); R.I. Gen. Laws Ann. § 18-7-8 (Supp. 1962); S.C. Code § 62-408 (1962); S.D. Code § 43.0707 (Supp. 1960); Tenn. Code Ann. § 35-808 (Supp. 1963); Tex. Rev. Civ. Stat. art. 5923-101, § 7 (1962); Utah Code Ann. § 75-15-8 (Supp. 1963); Vt. Stat. Ann. tit. 14, § 3207 (1959); Va. Code Ann. § 31-32 (Supp. 1962); Wash. Rev. Code § 21.24.070 (1961); W. Va. Code Ann. § 3581(29) (1961); Wis. Stat. § 319.67 (1961); Wyo. Stat. Ann. § 34-132 (1957).

⁹⁷ Mo. Rev. Stat. § 404-070 (Supp. 1962).

⁹⁸ D.C. Code Ann. § 21-230 (Supp. II, 1963).

⁹⁹ Alaska Comp. Laws Ann. § 22-8-6 (1958); Ga. Code § 48-308 (Supp. 1961); N.J. Rev. Stat. § 46:38-6 (Supp. 1962); Ore. Rev. Stat. § 126.855 (1961).

¹⁰⁰ N.Y. Pers. Prop. Law §§ 267(2)-(3). New York is the only state which has the following statutory text:

2. A custodian may resign and designate his successor

3. A custodian may petition the court for permission to resign and for the designation of a successor custodian.

The New York provision resembles the Model Act § 6 which reads in part:

6. A custodian may resign by . . . executing and duly acknowledging an instrument of resignation designating a successor In the alternative, the custodian may petition the court for permission to resign and for the appointment of a successor custodian.

Four states adopt this language, some designating a specific court, at the statutory sections cited in notes 97, 99 *supra*. Alaska, Missouri, New Jersey, and Oregon. Georgia adopts a substantially similar section. Ga. Code § 48-306 (Supp. 1961).

¹⁰¹ UGMA §§ 7(b)-(c); District of Columbia; Alabama; Arizona; Arkansas; California; Colorado; Connecticut; Delaware; Hawaii; Idaho; Illinois; Indiana; Iowa; Kansas; Kentucky; Louisiana; Maine; Maryland; Massachusetts; Minnesota; Mississippi; Montana; Nebraska; Nevada; New Hampshire; North Carolina; North Dakota; Ohio; Oklahoma; Pennsylvania; Rhode Island; South Carolina; South Dakota; Tennessee; Texas; Utah; Virginia; Washington; West Virginia; Wisconsin; Wyoming at the statutory citations in notes 96, 98 *supra*.

¹⁰² See statutory sections cited in note 96 *supra*. Florida omits subdivision (b), thus a cus-

the successor custodian if the person designated as original custodian is not eligible, or renounces or dies before the minor becomes twenty-one years of age.¹⁰³ If the minor has no guardian, the court appoints the successor custodian under all but three statutes.¹⁰⁴ The Uniform

todian may resign and a successor be designated only by petitioning the court, and it omits "whether or not a donor" in subdivision (c) making this subdivision identical with that of New York; Michigan adds subdivision (g) to its UGMA adaptation (Mich. Pub. Acts 1962, No. 63):

(g) A custodian, whether or not the donor, against whom no proceedings have been commenced under paragraph (f) hereof, may transfer the custodial property to a guardian for the minor, acting under court appointment by causing each security which is custodial property to be registered in the name of said guardian and delivering such security and all other custodial property to said guardian, together with any additional instruments required for the transfer thereof. Thereafter the custodial property shall be held by the said guardian and administered as a part of the guardianship estate and the custodian shall be relieved of all liability therefor.

New Mexico substitutes "who is also" for "other than" preceding "the donor" in subdivision (b); Vermont omits subdivision (b) thus, as in Florida, a custodian may resign and a successor be designated only by petitioning the court.

¹⁰³ UGMA § 7(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 . . ."; N.Y. Pers. Prop. Law § 267(4). All of the Uniform Act states, except Illinois, Missouri, and Texas, have this provision. See the statutory citations in notes 96, 98 supra. Illinois omits the provision entirely, see note 104 infra. Mo. Rev. Stat. § 404.070 (Supp. 1962) provides:

If the custodian dies or is adjudicated an incompetent before the minor attains the age of twenty-one years and no other person has meanwhile become successor custodian or petitioned the circuit court for the appointment of a successor custodian, the guardian or curator of the property or estate of the minor, or the person designated as successor custodian in an instrument executed and acknowledged by the minor if he has attained the age of fourteen years, or in the will of the custodian, or in an instrument executed and acknowledged by the custodian or his legal representative, shall become custodian upon executing and acknowledging his consent and filing it in the circuit court together with the instrument designating him as successor custodian or, if he is so designated in the will of the custodian, a certified copy thereof. In the alternative, the donor, his legal representative, the legal representative of the custodian, an adult member of the minor's family or a guardian of the minor may petition the circuit court for the appointment of a successor custodian.

Tex. Rev. Civ. Stat. art. 5923-101, § 7 (1962) inserts "or otherwise ceases to be a minor" following "twenty-one (21) years." The Model Act § 7(a) reads as follows: "In the event of the death or incapacity of the custodian before the minor attains the age of twenty-one (21) years, and (a) if there is a duly appointed and acting general guardian of the property of the minor, he shall become the successor custodian . . ." All Model Act states retain this provision, with the exception of Louisiana, at the following citations: Alaska Comp. Laws Ann. § 22-8-7 (1958) (substantially equivalent); Ga. Code § 48-307 (Supp. 1961); N.J. Rev. Stat. § 46:38-7 (Supp. 1962); Ore. Rev. Stat. § 126.860 (1961) (similar, but not exact, language; substitutes "becomes an adult" for "attains the age of twenty-one (21) years" and substitutes "acting guardian" for "acting general guardian"). La. Rev. Stat. § 9:741 (Supp. 1962) provides:

In the event of the death of a custodian before the minor attains the age of twenty-one, the legal representative of the last acting custodian, the donor, a tutor of the minor or any adult member of the minor's family may petition the court, on such notice as the court may require, for the appointment of a successor custodian.

¹⁰⁴ UGMA 7(d):

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.

N.Y. Pers. Prop. Law § 267(4). Accord, Oregon and states cited in notes 96-98 supra, with the following modifications: Conn. Gen. Stat. Rev. § 45-107 (1958) adds after "designation of a successor custodian;" the following language:

[P]rovided, in the case of the death of the custodian, the court shall not appoint a successor custodian upon such petition until presentation has been made to it of a "consent to

Act states recognize a procedure by which the removal of the original custodian may be requested by the donor, an adult member of the minor's family, a guardian of the minor, or by a minor over fourteen years of age.¹⁰⁵ In these states, the court has the authority to remove the custodian and designate a successor or may, in its discretion, require the custodian to post a bond.¹⁰⁶ Only the New York statute specifically authorizes the court to require a successor custodian to post a bond.¹⁰⁷ With slight variations relating to time limitations, all the states indicate that an accounting may be required of the custodian by a minor over fourteen years of age, by the legal representatives of the minor, an adult member of the minor's family, or a donor or his legal representative.¹⁰⁸

transfer" by the tax department and of a complete inventory of the custodial property held in the name of the custodian.

Hawaii Rev. Laws § 338A-7 (Supp. 1961) (inserts "has not attained the age of twenty years and" following "If the minor"); Ill. Rev. Stat. ch. 3, § 537(d) (1961) reads:

If the person designated as custodian is not eligible, renounces or dies before the minor attains the age of twenty-one years, 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.

The Model Act § 7(b) provides:

(b) If there is no duly appointed and acting general guardian of the property of the minor, and

if the minor has attained the age of fourteen (14) years, he may designate in writing an adult member of the minor's family or a guardian of the minor as successor custodian, or

if the minor has not attained the age of fourteen (14) years, the successor custodian shall be the adult member of the minor's family or a guardian of the minor, designated by will or duly acknowledged instrument of appointment executed by the last acting custodian. If no such designation is made by the last acting custodian, his legal representative may designate in writing an adult member of the minor's family or a guardian of the minor a successor custodian.

The following Model Act states retain this provision at the statutory citations in note 103 supra: Alaska, Georgia, and New Jersey.

¹⁰⁵ UGMA § 7(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 alternating, that the custodian be required to give bond for the performance of his duties.

N.Y. Pers. Prop. Law § 267(5). Accord, all Uniform Act states at statutory citations in notes 96-98 supra (California substitutes "or for the best interests of the minor" for "in the petition" at statutory citation in note 96 supra).

The Model Act does not provide a procedure for the removal of the custodian and none of the Model Act states provides a procedure for the removal of the custodian.

¹⁰⁶ UGMA § 7(e). Accord, all Uniform Act states at statutory citations in notes 96-98 supra; N.Y. Pers. Prop. Law § 267(5).

¹⁰⁷ N.Y. Pers. Prop. Law § 267(7). There is no such provision in the UGMA, in the Model Act, or in the statutes of any of the other 49 states or the District of Columbia.

¹⁰⁸ UGMA § 8(a):

(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 of his legal representative may petition the court for an accounting by the custodian or his legal representative.

Accord, all Uniform Act states as follows: D.C. Code Ann. § 21-231 (Supp. II, 1963); Ala. Code tit. 47, § 154(8) (Supp. 1961); Ariz. Rev. Stat. Ann. § 44-2078 (Supp. 1963); Ark. Stat. § 50-908 (Supp. 1961); Cal. Civ. Code § 1162 (adds the following limitation: "The right to petition for an accounting shall continue for one year after the filing of a final accounting by the custodian or his legal representative and delivery of the custodial

Third persons such as transfer agents, banks, and brokers are granted a broad exemption from liability under these statutes in determining whether the custodian has been duly designated, the transaction authorized, or the property correctly applied.¹⁰⁹

property to the minor or his estate"); Colo. Rev. Stat. Ann. § 125-9-9 (Supp. 1961); Conn. Gen. Stat. Rev. § 45-108 (1958); Del. Code Ann. tit. 12, § 4508 (Supp. 1962); Fla. Stat. § 710.09 (Supp. 1962); Hawaii Rev. Laws § 338A-8 (Supp. 1961); Idaho Code Ann. § 68-808 (Supp. 1963); Ill. Rev. Stat. ch. 3, § 538 (1961); Ind. Ann. Stat. § 31-808 (Supp. 1963); Iowa Code § 565A.8 (Supp. 1962); Kan. Gen. Stat. Ann. § 38-908 (Supp. 1962); Ky. Rev. Stat. § 385.080 (Supp. 1962); Me. Rev. Stat. Ann. ch. 158-A, § 8 (Supp. 1961); Md. Ann. Code art. 16, § 220 (1957); Mass. Gen. Laws Ann. ch. 201A, § 8 (Supp. 1962) adds:

[B]ut such right to petition shall terminate two years after (1) the minor has reached the age of twenty-one years and the custodian has delivered his final account to the minor or his legal representative; or (2) the minor has died before reaching the age of twenty-one years and the custodian has delivered his final account to the legal representative of the minor.

Mich. Comp. Laws § 554.458 (Supp. 1961); Minn. Stat. § 527.08 (1961); Miss. Code Ann. § 672-108 (Supp. 1962); Mo. Rev. Stat. § 404.080 (Supp. 1962); Mont. Rev. Codes Ann. § 67-1808 (1947); Neb. Rev. Stat. § 38-1008 (1960); Nev. Rev. Stat. § 167.090 (1961); N.H. Rev. Stat. Ann. § 463-A:8 (Supp. 1961); N.M. Stat. Ann. § 48-20-8 (Supp. 1961); N.Y. Pers. Prop. Law § 268(1); N.C. Gen. Stat. § 33-75 (Supp. 1961); N.D. Cent. Code § 47-24-08 (1960); Ohio Rev. Code Ann. § 1339.38 (Page 1962); Okla. Stat. tit. 60, § 408 (1961); Pa. Stat. Ann. tit. 20, § 3609 (Supp. 1962); R.I. Gen. Laws Ann. § 18-7-9 (Supp. 1962); S.C. Code § 62-409 (1962); S.D. Code § 43.0708 (Supp. 1960); Tenn. Code Ann. § 35-809 (Supp. 1963); Tex. Rev. Civ. Stat. art. 5923-101, § 8 (1962); Utah Code Ann. § 75-15-9 (Supp. 1963); Vt. Stat. Ann. tit. 14, § 3208 (1959); Va. Code Ann. § 31-33 (Supp. 1962); Wash. Rev. Code § 21.24.080 (1961); W. Va. Code Ann. § 3581(30) (1961); Wis. Stat. § 319.68 (1961); Wyo. Stat. Ann. § 34-133 (1957).

The Model Act § 10 provides as follows:

The custodian shall not be required to account to the minor or to any other person for his acts and proceedings unless the minor, a parent of the minor, the legal representative of the minor or a successor custodian shall petition the court for such an accounting no later than one year after the minor attains the age of twenty-one years or dies before attaining the age of twenty-one years.

Three Model Act states adopt this provision. Alaska Comp. Laws Ann. § 22-8-10 (1958); Ga. Code § 48-310 (Supp. 1961); N.J. Rev. Stat. § 46:38-10 (Supp. 1962).

The other Model Act states adopt the provisions indicated: La. Rev. Stat. § 9:742 (Supp. 1962):

If the custodian fails to render an accounting within a reasonable time after receipt of a written request therefor from the minor, his parent or tutor, then the court upon the filing of a petition therefor by the minor, his parent or tutor, and after a hearing upon such notice to the custodian as the court may prescribe, may require the custodian to render an accounting, but no petition for an accounting may be filed later than four years after the minor dies or attains the age of twenty-one.

Ore. Rev. Stat. § 126.875 (1961) substitutes "two years after the minor becomes an adult or dies before becoming an adult" for "one year after the minor attains the age of twenty-one or dies before attaining the age of twenty-one years."

¹⁰⁹ UGMA § 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 act, or is obliged to inquire into the validity or propriety under this act 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.

Accord, all Uniform Act states except Missouri as follows: D.C. Code Ann. § 21-232 (Supp. II, 1963) (inserts "insurance company" after "broker"); Ala. Code tit. 47, § 154(6) (Supp. 1961) (designates § 6 supra as subdivision (a) and adds a subdivision (b) relating to deposits of cash or securities by purported custodian and payment thereof and nonliability

EVALUATION

At common law, a minor could own property in his own name but could disaffirm any conveyance of that property. Absent legislative authority, persons knowingly dealing with property owned by a minor

of depositary for failure to inquire into authority of custodian or for complying with instructions of such custodian, "unless the depositary has actual knowledge that such act, or the instruction or direction therefor, constitutes a breach of such person's obligations as such custodian, or unless the depositary performs such act with knowledge of such facts that acting pursuant to such instruction or direction amounts to bad faith."): Ariz. Rev. Stat. Ann. § 44-2076 (Supp. 1963); Ark. Stat. § 50-906 (Supp. 1961); Cal. Civ. Code § 1160 (Supp. 1963); Colo. Rev. Stat. Ann. § 125-9-7 (Supp. 1961) (substitutes "any other act of any person purporting to act as a donor or in the capacity of a custodian" for "any other act of any person purporting to act in the capacity of custodian"); Conn. Gen. Stat. Rev. § 45-106 (1958); Del. Code Ann. tit. 12, § 4506 (Supp. 1962); Fla. Stat. § 710.07 (Supp. 1962) (inserts "savings and loan association" following "broker"); Hawaii Rev. Laws § 338A-6 (Supp. 1961); Idaho Code Ann. § 68-806 (Supp. 1963); Ill. Rev. Stat. ch. 3, § 536 (1961); Ind. Ann. Stat. § 31-806 (Supp. 1963); Iowa Code § 565A.6 (Supp. 1962); Kan. Gen. Stat. Ann. § 38-906 (Supp. 1962); Ky. Rev. Stat. § 385.060 (1962); Me. Rev. Stat. Ann. ch. 158-A, § 6 (Supp. 1961); Md. Ann. Code art. 16, § 218 (1957); Mass. Gen. Laws Ann. ch. 201A, § 6 (Supp. 1962) adds the following in a separate paragraph:

In the case of custodial property registered or requested to be registered in the name of a person as custodian for a named minor under specified provisions of the laws of any other state which are substantially similar to the provisions of this chapter, whether or not they contain a provision similar to this sentence, this section shall apply to all persons to the same extent as if such custodial property were registered or requested to be registered in the name of such person as custodian for such minor under this chapter. Mich. Comp. Laws § 554.456 (Supp. 1961); Minn. Stat. § 527.06 (1961); Miss. Code Ann. § 672-106 (Supp. 1962); Mont. Rev. Codes Ann. § 67-1806 (1947); Neb. Rev. Stat. § 38-1006 (1960); Nev. Rev. Stat. § 167.070 (1961); N.H. Rev. Stat. Ann. § 463-A:6 (Supp. 1961); N.M. Stat. Ann. § 48-20-6 (Supp. 1961); N.Y. Pers. Prop. Law § 266-b; N.C. Gen. Stat. § 33-73 (Supp. 1961); N.D. Cent. Code § 47-2406 (1960); Ohio Rev. Code Ann. § 1339.36 (Page 1962) (inserts "building and loan association, savings and loan association, life insurance company" after "broker," substitutes "or is obligated" for "or is obliged"); Okla. Stat. tit. 60, § 406 (1961); Pa. Stat. Ann. tit. 20, § 3607 (Supp. 1962); R.I. Gen. Laws Ann. § 18-7-7 (Supp. 1962); S.C. Code § 62-407 (1962) (inserts "savings and loan association" following "bank"); S.D. Code § 43.0706 (Supp. 1960); Tenn. Code Ann. § 35-807 (Supp. 1963); Tex. Rev. Civ. Stat. art. 5923-101, § 6 (1962); Utah Code Ann. § 75-15-7 (Supp. 1963); Vt. Stat. Ann. tit. 14, § 3206 (1959); Va. Code Ann. § 31-31 (Supp. 1962); Wash. Rev. Code Ann. § 21.24.060 (1961) (adds "Provided, That this section does not exempt from liability third persons who but for this section would be liable for honoring a forged signature"); W. Va. Code Ann. § 3581(28) (1961); Wis. Stat. § 319.66 (1961); Wyo. Stat. Ann. § 34-135 (1957). Missouri's provision differs from that of UGMA at Mo. Rev. Stat. § 404.060 (Supp. 1962):

1. An issuer, transfer agent, bank, broker or other person who participates in any way in (1) the registration of a security or the opening of an account in the name of a person as custodian, (2) the sale or transfer of registration of a security registered in the name of a person as custodian and so indorsed or assigned by him, whether or not the sale, transfer or registration of the transfer is to the person named as custodian, individually, (3) the purchase or other acquisition of a security by or the transfer of a security to a person in his name as custodian, whether or not the purchase, acquisition or transfer is from the person named as custodian, individually, (4) the negotiation, collection or payment of a check drawn or signed by a person in his name as custodian, or of a check payable or indorsed to a person in his name as custodian and so indorsed by him, whether or not it is payable, indorsed or negotiated or its proceeds are paid to the person named as custodian, individually, or (5) any other transaction with or for a person in his name as custodian, has no duty to inquire whether and incurs no liability because (a) the person named as custodian is or is not custodian or eligible to be custodian under this chapter, or is or is not committing a breach of his duties under this chapter, or (b) the acts of the person named as custodian are or are not rightful or within the scope of his rights, powers, duties or authority, or (c) the person for whom the person named as custodian purports to act as custodian is or is not in fact a minor, or (d) the security is or is not a proper investment by a custodian under this chapter.

assume an insurer's liability. The minor can sue for reimbursement if the transaction results in a loss; if a gain results, the transaction can be affirmed and the benefit accepted. It is therefore a source of potential liability for a bank, a stock transfer agent, or a broker to deal with property owned directly by a minor.¹¹⁰ One alternative is to have a legal guardian appointed to manage the property owned by the minor. This

2. As used in this section, the words: "in the name of a person as custodian," or words of similar import, mean in the name of that person followed, in substance, by the words: "as custodian for under the
(name of minor)

Missouri Uniform Gifts to Minors Act", or in the name of that person as custodian for another person under the uniform gifts to minors act or any similar act, heretofore or hereafter enacted, of any other state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

The corresponding section of the Model Act § 3(d) reads as follows:

No issuer of securities, transfer agent, registrar or bank or other person acting on the instructions of any person purporting to be a custodian or donor shall be responsible for determining whether any person has been duly designated as a custodian under this section, or whether any purchase, sale or transfer to or by any person as custodian is in accordance with or authorized by this section, or shall be obliged to inquire into the validity under this section of any instrument or instructions executed or given by a person purporting to act as custodian or donor, or be bound to see to the application by any person purporting to act as custodian of any money or other property paid or delivered to him.

Referring to the differences in this provision between the UGMA and the Model Act, the National Conference of Commissioners on Uniform State Laws commented on § 6 of the UGMA as follows (Commissioner's Notes, 9B Unif. Laws Ann. § 190 (1957)):

It modifies the comparable provisions of the Model Act in order to clarify the words "purporting to be" and "purporting to act," which some have feared might absolve third persons from any responsibility to identify the person who represents himself as being a custodian. For example, X might "purport" to be Y and give instructions with respect to property held by Y as custodian for a minor. The use of the phrases "purports to act as" and "purports to act in the capacity of" removes any such possible ambiguity. All Model Act states except Oregon are in accord with the Model Act § 3(d) quoted supra. Alaska Comp. Laws Ann. § 22-8-3 (1958); Ga. Code § 48-303 (Supp. 1961); La. Rev. Stat. § 9:738 (Supp. 1961); N.J. Rev. Stat. § 46:38-3 (Supp. 1962). Ore. Rev. Stat. § 126.835 (1961) provides as follows:

No issuer of securities, transfer agent, broker, bank or other person acting on the instruction of any person purporting to act as a donor or in the capacity of a custodian shall be responsible for determining whether the person designated by the purported donor or purporting to act as a custodian has been duly designated under this ORS 126.805 to 126.880, or whether any purchase, sale or transfer to or by any person purporting to act in the capacity of custodian is in accordance with or authorized by ORS 126.805 to 126.880, or shall be obliged to inquire into the validity under ORS 126.805 to 126.880 of any instrument or instructions executed or given by a person purporting to act as donor or in the capacity of a custodian, or be 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 minor as the owner of any securities issued or registered pursuant to ORS 126.805 to 126.880 in the name of the custodian shall have any right of action, suit or other proceeding against an issuer of securities, transfer agent, broker, bank or other person acting on the instructions of any person purporting to act as a donor or custodian pursuant to ORS 126.805 to 126.880 unless such issuer of securities, transfer agent, broker, bank or other person acts with actual knowledge of such facts that acting on the instructions of the custodian or donor amounts to bad faith.

¹¹⁰ Day, "Stock Transfers Under Custodian Statutes," 31 Conn. B.J. 40 (1957); Shattuck, "Gifts to Minors, Legal and Tax Considerations in Arranging Transfers," 90 Trusts & Estates 659 (1951); Notes, 6 Notre Dame Law. 101 (1930), 12 N.Y.U. Intra. L. Rev. 10 (1956); Legislation, 31 St. John's L. Rev. 155 (1956); Recent Legislation, 54 Mich. L. Rev. 883 (1956). Statutes in particular situations permit adults to deal with minors. N.Y. Banking Law § 134(1) (bank deposits); N.Y. Ins. Law §§ 245-47; N.Y. Negotiable Instr. Law § 41.

offers great protection since a bond is posted, the minor's property is used only with the permission of the court, and periodic accountings are normally filed. But the appointment of a legal guardian is expensive and cumbersome.¹¹¹ A trust, as another alternative, avoids the awkwardness of the guardianship procedure and permits greater flexibility. But this too is costly and involves many administrative duties.¹¹²

The Gifts to Minors Acts were introduced to create a simple, inexpensive method of permitting minors to own securities in a manner that would protect the minor and third parties dealing with property owned by the minor and would at the same time permit the donor the advantage of the gift tax exclusion.¹¹³

Economic Considerations: Increase in Stock Ownership

A study of shareownership undertaken by the Brookings Institution in 1952 stated that at that time there were 140,000 individual shareowners under twenty-one years of age in a total share-owning population of 6,490,000.¹¹⁴ The 1962 New York Stock Exchange Census of Shareowners in America states that in 1959 there were 197,000 individual shareowners under twenty-one years of age in a total share-owning population of 12,490,000, and that in 1962 there were 450,000 individual shareowners under twenty-one years of age in a total share-owning population of 17,010,000.¹¹⁵ Thus in the period 1959-1962, when most of the states had enacted custodian statutes, there was an increase of more than 125 per cent in stock ownership by persons under twenty-one years of age with a corresponding increase in general stock ownership of only approximately thirty-five per cent. This significant increase in stock ownership by minors would appear to indicate that the Gifts to Minors Acts have been very widely used.

The Simplification of Gifts of Stock to Minors

The figures on increased stock ownership argue convincingly that the objective of simplifying the making of gifts of stock to minors has

¹¹¹ Browning, "Gifts to Minors," 27 Conn. B.J. 407, 413 (1953); Rogers, "Some Practical Considerations in Gifts to Minors," 20 Fordham L. Rev. 233, 241-42 (1951).

¹¹² Legislation, 25 Fordham L. Rev. 390-91 (1956).

¹¹³ Branscomb, "Gifts to Minors Act Enacted in Texas," 20 Texas B.J. 513 (1957); Hays, "The Iowa Uniform Gifts to Minors Act," 9 Drake L. Rev. 32, 33 (1959); MacNeill, "Giving to Minors Made Easy—In Eight States," 35 Trust Bull. 28 (1955); MacNeill, "Stock Gifts to Minors Act—Ten Months Later," 36 Trust Bull. 10 (1956); Novick, "The Massachusetts Uniform Gifts to Minors Act—Some Practical Considerations," 45 Mass. L.Q. 19, 20 (1960); Straus, "Gifts to Minors Inter Vivos and the New Uniform Act," 29 Penn. B.A.Q. 35, 36 (1957); Comments, 9 Loyola L. Rev. 218, 219 (1959), 40 Neb. L. Rev. 466, 468 (1960); Notes, 20 Albany L. Rev. 270 (1956), 62 Dick. L. Rev. 356 (1958), 33 Ind. L.J. 242, 250 (1958), 45 Iowa L. Rev. 390, 391 (1960); Legislation, 13 Baylor L. Rev. 107, 108 (1961); Legislation, 22 Brooklyn L. Rev. 313 (1956); Recent Legislation, 44 Calif. L. Rev. 569 (1956).

¹¹⁴ The Brookings Institution, Shareownership in the United States 91 (1952). A study prepared at the request of the New York Stock Exchange.

¹¹⁵ N.Y. Stock Exchange, 1962—Census of Shareowners in America (1962).

been achieved. In a survey of fifty brokerage firms and fifty banks throughout the country,¹¹⁶ it was asked whether the Gifts to Minors Acts were administratively convenient. The response was unanimously in the affirmative. This is the view of commentators as well.¹¹⁷

The present statute deals only with inter vivos dispositions. Since the statute has operated efficiently, it may be of value to extend its operation to testamentary dispositions. The advantages would be significant. A clear body of statutory law governs the rights, duties, and liabilities of the custodian. The necessity for annual accountings by a guardian is eliminated, and the expenses resulting from the posting of a bond, and from the guardian's commissions are removed. Moreover, the custodian is given greater flexibility in making investments since he is not restricted to a "legal" list but under the statute is held to a more general standard of prudence. The statutory requirement of record keeping by the custodian and the availability of accounting actions afford the minor adequate protection. Using the device of a donee of a power in trust under a will, while avoiding the expense and difficulties of a guardianship proceeding, presents its own difficulties since it may require the estate to remain in administration until the minor reaches twenty-one years of age. Further, the executor or trustee who is acting as the donee of a power in trust is entitled to commissions. Though only one state has enacted an independent statute authorizing a testator to bequeath securities or money to a minor in his will under the same terms and conditions as would be available by an inter vivos disposition under the Uniform Gifts to Minors Act,¹¹⁸ New York could accomplish this by a simple amendment. N.Y. Pers. Prop. Law § 265(a) could be amended to read as follows:

§ 265—Manner of Making Gift: 1. An adult person may, during his lifetime *or by his last will and testament*, make a gift of a security or money to a person who is a minor on the date of the gift: (a) if the subject of the gift is a security in registered form, by registering it in the name of the donor, *if living*, an adult member of the minor's family, a guardian of the minor, or a trust company, followed, in substance, by the words: "As custodian for under the New York Uniform Gifts to Minors Act."

Difficulties Relating to the Successor Custodian Provisions

*Matter of Bushing*¹¹⁹ concerned an application under the previous New York statute for the appointment of a successor custodian. The statute in effect at that time read as follows:

¹¹⁶ The results of this survey are on file in the library of the Cornell Law School.

¹¹⁷ Tenney, "Gifts to Children—A New and Realistic Method," 2 Prac. Law. 19 (1956).

¹¹⁸ Neb. Rev. Stat. § 38-1101 (1960).

¹¹⁹ 8 Misc. 2d 755, 167 N.Y.S.2d 132 (Surr. Ct. Nassau County 1957).

In the event of the death of a custodian before the minor attains the age of twenty-one years, the legal representative of the last acting custodian, the donor, a guardian of the minor or any adult member of the minor's family may petition the supreme court or the surrogate's court having jurisdiction of the minor, on such notice as the court may require, for the appointment of a successor custodian.¹²⁰

The court stated that the legislature's omission of those provisions of the Model Act, which provided for automatic succession of successor custodians, required the court to determine whether the appointment of the proposed successor custodian would be in the best interests of the minor.¹²¹ The New York law which governed the *Bushing* case has been amended, and the present New York statute¹²² adopts the following provision of the Uniform Gifts to Minors Act:

4. 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.¹²³

One further amendment is, however, suggested which is believed to retain both administrative simplicity and the protection desired for the minor. Since the legislature has already stated that the appointment of the guardian of the minor as successor custodian is a situation which does not require court action, it should be made clear that this applies not only to the legal guardian of the property but also to the natural guardian who would normally be the surviving parent of the minor.

¹²⁰ N.Y. Sess. Laws 1956, ch. 35, § 1 (repealed by N.Y. Sess. Laws 1959, ch. 233, § 1, eff. July 1, 1959).

¹²¹ The Model Act §§ 7-8 read as follows:

§ 7. In the event of the death or incapacity of the custodian before the minor attains the age of twenty-one (21) years, and

(a) if there is a duly appointed and acting general guardian of the property of the minor, he shall become the successor custodian, but

(b) if there is no duly appointed and acting general guardian of the property of the minor, and

(1) if the minor has attained the age of fourteen (14) years, he may designate in writing an adult member of the minor's family or a guardian of the minor as successor custodian, or

(2) if the minor has not attained the age of fourteen (14) years, the successor custodian shall be the adult member of the minor's family or a guardian of the minor, designated by will or duly acknowledged instrument of appointment executed by the last acting custodian. If no such designation is made by the last acting custodian, his legal representative may designate in writing an adult member of the minor's family or a guardian of the minor as successor custodian.

§ 8. At any time or times when there is no duly acting custodian the legal representative of the last acting custodian or any adult member of the minor's family or a guardian of the minor may petition the [name of court] for the appointment of a successor custodian.

¹²² N.Y. Pers. Prop. Law § 267(4).

¹²³ UGMA § 7(d).

As the statute now stands, transfer agents have been reluctant to permit the natural guardian to act as successor custodian in the absence of court authorization.¹²⁴

Tax Consequences

In *Kieckhefer v. Commissioner*¹²⁵ and in *Stifel v. Commissioner*¹²⁶ the trustees of a trust were given the power to pay or apply income to, or for the benefit of, the minor beneficiaries and to accumulate any amounts not so paid or applied. The beneficiaries or their guardians had the power to request that the accumulated income and corpus be distributed to them. In neither of the cases was a guardian actually appointed. The court in the *Kieckhefer* case decided that the annual gift tax exclusion was available since present rights had been created in the income and corpus despite the disability of the minor. The court in the *Stifel* case reached a contrary determination and denied the exclusion on the ground that there had been no guardian actually appointed and

¹²⁴ Among the responses to the 100 questionnaires sent to brokerage firms and banks was the following relevant reply:

Relative to the question posed in your paragraph third on abuses and difficulties in the present statute . . . I would earnestly suggest that an amendment in paragraph fourth of Section 267 of the Personal Property Law permitting the appointment, without petition and designation by the court of the minor's natural guardian should the custodian die while in office. We have had numerous instances of testators who were donor-custodians for their children, and where the assets held in the custodianship were so small that there was a great hardship presented in petitioning the court for the designation of a successor custodian. We have argued, to no avail, that the guardian referred to in the first sentence of paragraph fourth of Section 267 of the Personal Property Law was the natural guardian of the minor (in these instances, the surviving parent) and in each instance, general counsel for the transfer agents have refused so to interpret the statute. An argument to the effect that this was intended to simplify the transfer of shares belonging to a minor and that a liberal interpretation of the statute was in order was not met with any sympathy since counsel for the transfer agents were most anxious to protect their clients rather than adhere to the spirit of the statute.

See note 116 supra. Two other New York cases are of interest in the successor custodian area. *Matter of Strauss*, 11 Misc. 2d 277, 176 N.Y.S.2d 1014 (Sup. Ct. N.Y. County 1957) was a case in which petitioner made application for an order granting him leave to resign as custodian for his minor children and appointing his wife as successor custodian. The underlying basis for the application was Rev. Rul. 366, 1957-2 Cum. Bull. 618 which had held the custodial property taxable in the donor-custodian's estate if he died before the minor reached twenty-one years of age. The court determined that legal representation of the infant by a special guardian was required in the proceeding.

In *Matter of Muller*, 34 Misc. 2d 584, 235 N.Y.S.2d 125 (Surr. Ct. N.Y. County 1962), aff'd, 18 App. Div. 2d 1067, 239 N.Y.S.2d 519 (1st Dep't 1963) petitioner, the mother and natural guardian of three minor children, asserted the right to compel the removal of her former husband and the father of the minors as custodian of certain savings accounts, to have him account, and to have herself appointed successor custodian. The petition alleged that the respondent refused to make the custodial funds available for the use, benefit, and education of the infants, and refused to account for his acts and proceedings as custodian, that the savings accounts were in imminent danger of conversion by respondent to his own use and benefit, and that petitioner should be substituted as successor custodian under the provisions of art. 8-A of the Personal Property Law. The court held that though it had the power to direct the expenditure of custodial property necessary for the minors' support, maintenance, or education and to remove a custodian, the facts alleged did not warrant the relief sought.

¹²⁵ 189 F.2d 118 (7th Cir. 1951).

¹²⁶ 197 F.2d 107 (2d Cir. 1952).

that the minor therefore did not possess a sufficient present interest to entitle the settlor to the annual exclusion.¹²⁷ The 1954 Internal Revenue Code attempted to clarify the confusion in the exclusion problems involving gifts to minors by the enactment of section 2503(c) which provides in relevant part that:

No part of a gift to an individual who has not attained the age of 21 years on the date of such transfer shall be considered a gift of a future interest in property . . . if the property and the income therefrom—

- (1) may be expended by, or for the benefit of, the donee before his attaining the age of 21 years, and
- (2) will to the extent not so expended—
 - (A) pass to the donee on his attaining the age of 21 years, and
 - (B) in the event the donee dies before attaining the age of 21 years, be payable to the estate of the donee or as he may appoint under a general power of appointment¹²⁸

One of the originally stated purposes of the custodian act legislation was "to satisfy the provisions of the Internal Revenue Code relating to the annual gift tax exclusion." It was also of practical importance that the income from the custodian gift be taxed to the minor, and that the property be excluded from the donor's estate. The theory under the Uniform Gifts to Minors Act is that the minor has indefeasibly vested legal title to the property transferred. It was thought that, since the donor relinquished the ownership of the property, a completed gift was consummated; it therefore followed that since the minor owned the property, he should be taxed on its income and it should be considered to be part of the minor's estate, rather than property of the donor. Before prospective donors would use the Uniform Gifts to Minors Acts on a wide scale, however, these conclusions required further support. On March 17, 1955, eight days after the enactment of the first custodian statute, the attorneys for the New York Stock Exchange wrote to the Commissioner of Internal Revenue requesting a ruling on certain federal tax questions so that the Stock Exchange and its members could be properly advised concerning the tax effects of the transfer of securities under the statute adopted in Georgia on March 9, 1955. The facts stated in the request were that X, the owner of certain stock certificates planned to transfer these certificates to his son Y, a minor, pursuant to section 1(a) of the Georgia Act. The ruling was requested on the following questions:

¹²⁷ The Stifel case view was adopted by the Internal Revenue Service in cases under the 1939 Code. The appointment of a guardian was the determining factor. Rev. Rul. 91, 1954-1 Cum. Bull. 207.

¹²⁸ Treas. Reg. § 25.2503-4(b) (1958) states that a power of appointment exercisable by will or during lifetime will satisfy the statutory requirement.

- (1) whether the gift would be completed for federal gift tax purposes on the date the shares were registered on the books of the corporation in the name of X, as custodian for Y;
- (2) whether the gift qualified under section 2503(c) as a gift of a present interest and entitled the donor to the \$3,000 annual exclusion;
- (3) whether the income derived from the shares of stock after the gift was completed constituted income to the donee and not to the donor; and
- (4) whether the shares of stock which were the subject of the gift or any securities acquired in reinvestment would be includible in the donor's gross estate for federal estate tax purposes, absent a gift in contemplation of death situation.

The letter from the attorneys for the New York Stock Exchange then stated that their own views on the questions submitted were that:

- (1) The gift is completed for federal gift tax purposes on the date the shares are registered on the books of the corporation and the value of the shares for gift tax purposes is their fair market value as of such date.
- (2) The gift to the minor satisfies all the requirements of section 2503(c) of the 1954 Code and constitutes a present interest entitling the donor to the \$3,000 annual exclusion.
- (3) The gift to the minor is irrevocable. Legal title is vested in the minor and the income thereof is the property of the minor and is not taxable to the donor.
- (4) The donor does not retain any interest in the shares transferred to the minor and neither the value of the shares of stock which are the subject of the gift nor any securities acquired in reinvestment are includible in the donor's estate for federal estate tax purposes.¹²⁹

A memorandum¹³⁰ dated April 6, 1955, indicates that the Individual Rulings Division refused to act on the request for the ruling until a proposed transfer was presented. The original request for the ruling was therefore withdrawn. On May 4, 1955, Mr. John J. Sullivan wrote to the Commissioner of Internal Revenue for a ruling on the gift, income, and estate tax consequences of a transfer of securities by him to

¹²⁹ Letter From Clarence E. Dawson, of Milbank, Tweed, Hope & Hadley, to Commissioner of Internal Revenue, March 17, 1955, on file in the library of the Cornell Law School.

¹³⁰ Letter From Clarence E. Dawson, of the Washington office of Milbank, Tweed, Hope & Hadley, to Howard G. Colgan, Jr. of the New York office, April 6, 1955, on file in the library of the Cornell Law School.

his minor daughter under the Colorado Gifts to Minors Act.¹³¹ Once again the Rulings Division refused to act on the request, this time requiring an actual gift of securities to be made as a prerequisite to the issuance of a ruling. Mr. Sullivan remedied the deficiency in response to a letter from his counsel which stated in part that:

[T]he Internal Revenue Service has unhappily pulled the rule book on us again. Despite the original assurances which we received that they would accept our request for ruling on a gift of securities to a minor without the gift having actually been made, they now have told us in the estate and gift tax rulings section that it will be necessary to have an actual gift of securities before they will rule.¹³²

By November, 1955, there had still been no ruling issued because the income tax consequences had raised some problems which proved difficult to resolve. A letter was written to the Commissioner requesting a ruling on the gift and estate tax questions and suggesting that the income tax questions be reserved for future determination since legislative action on the Gifts to Minors Acts was expected in several states.¹³³ The long-awaited response from the Treasury Department Rulings Division dated January 6, 1956, stated that a gift of property to a minor qualified for the exclusion of \$3,000 under section 2503(c) if the income and property could be spent by or for the benefit of the minor prior to his attaining age twenty-one, and if not so spent would pass to the minor when he reached twenty-one years of age, or in the event of his prior death, to his estate or as he might appoint by deed or will. It was noted that section 3(a) of the Colorado Gifts to Minors Act contained language substantially the same as that used in section 2503(c) of the 1954 Code and that under the Gifts to Minors Act the minor is vested with full legal title to the securities. The ruling then provided that:

In view of the foregoing, it is held that the transfer by the donor of the shares of stock of Public Service Company of Colorado, under the circumstances stated above, was completed for Federal Gift tax purposes on the date the shares were registered on the books of the corporation in the name of the donor as custodian for his minor daughter. It is also held that the transfer of the shares in question represent a gift of a present interest in property within the meaning of Section 2503(c) of the 1954 Code.¹³⁴

The ruling further stated that the income tax questions submitted would

¹³¹ Letter From John J. Sullivan to Commissioner of Internal Revenue, May 4, 1955, pp. 5-6, on file in the library of the Cornell Law School.

¹³² Letter From Howard G. Colgan, Jr., Esq. to Mr. John J. Sullivan, May 26, 1955, on file in the library of the Cornell Law School.

¹³³ Letter From Howard G. Colgan, Jr., Esq. to Commissioner of Internal Revenue, Nov. 23, 1955, on file in the library of the Cornell Law School.

¹³⁴ Letter From H. T. Swartz, Director, Tax Rulings Division, to Clarence E. Dawson, c/o Milbank, Tweed, Hope & Hadley, Jan. 6, 1956, on file in the library of the Cornell Law School.

be the subject of a ruling at a future date and that since it was the policy of the Internal Revenue Service not to rule on questions of prospective application, there would be no ruling issued on the estate tax questions. Rev. Rul. 86, 1956-1 Cum. Bull. 499 thus held that a transfer under the Gifts to Minors Act constitutes a completed gift when the shares are registered on the books of the corporation and that the transfer is a gift of a present interest which qualifies for the \$3,000 annual exclusion.¹⁸⁵

The next communication in the development of the tax consequences of the Gifts to Minors Acts related to the income tax aspects of the problem. This letter, dated January 11, 1956, from the attorneys for the New York Stock Exchange to the Commissioner of Internal Revenue referred to the gift tax ruling of January 6, 1956, and then stated that an early disposition of the remaining income tax questions would be greatly appreciated. The New York Stock Exchange view, that the income derived from the shares is the property of the minor and is not taxable to the donor-father, was set forth with case law support and the correspondence concluded that:

To be consistent with all prior practice, we feel that the Service must rule that the income from the donated securities is taxable to its owner, the minor child. There surely has been no indication in any of the Treasury's numerous releases or rulings with respect to United States Savings Bonds and other securities that the interest thereon would be taxable to the father when registered in his name as legal or natural guardian for a minor child. A ruling in this case that the income is taxable to the father would necessitate a similar ruling in the case where Treasury Savings Bonds and not stock certificates were the subject of the gift. It is respectfully submitted that the income from the securities given to the minor under the provisions of the Colorado statute is taxable to the minor and not to the father as donor or as "custodian."¹⁸⁶

The reply to the income tax questions, dated March 27, 1956, and addressed to the attorneys for the New York Stock Exchange, stated that in Colorado, as in most other jurisdictions, a father has the legal obligation to support, maintain, and educate his children without resorting to their separate property. The letter from the Rulings Division then concluded that:

In view of the foregoing . . . regardless of the relationship of the donor or of

¹⁸⁵ Rev. Rul. 86, 1956-1 Cum. Bull. 449. See *Bowe*, "Tax Motivated Gifts To Minors," 34 *Dicta* 20, 27 (1957); *Bronston*, "Some Tax Problems in Making Gifts to or for Minors," 45 *Ill. B.J.* 320, 322 (1957); *Forbes*, "Gifts to Minors," 19 *Mont. L. Rev.* 106, 112 (1958); *Tenney*, "Tax Considerations in Gifts to Minors Made Under New State Custodian Laws," 5 *J. Taxation* 348 (1956); *Widmark*, "Security Gifts to Minors," 95 *Trusts & Estates* 698, 700 (1956).

¹⁸⁶ Letter From Howard G. Colgan, Jr., Esq. to Commissioner of Internal Revenue, Jan. 11, 1956, on file in the library of the Cornell Law School.

the custodian to the donee, income derived from property transferred under the Colorado custodian act which is used in the discharge or satisfaction, in whole or in part, of a legal obligation of any person to support or maintain a minor is, to the extent so used, taxable to such person under section 61 of the Internal Revenue Code of 1954. Therefore, during the period for which Mr. John J. Sullivan has the legal obligation to support and maintain Sheila M. Sullivan, his daughter, and to the extent of such obligation, he will be taxable on the income from the securities applied or distributed for her support or maintenance, regardless of whether he or an uncle is designated as custodian.¹³⁷

The gift tax consequences had been determined entirely on the basis urged by the attorneys for the proponents of the legislation. The income tax ruling, however, was not an unqualified victory. The income was to be taxed to the minor, except that, in those situations in which it was actually used to satisfy a legal obligation of the donor to support the minor, it would be taxed to the donor.¹³⁸ The Tax Rulings Division was requested to reconsider its income tax ruling. This letter, dated April 23, 1956, asked that the Division rule instead that since the gift to the minor conveys indefeasibly vested legal title to the securities, the income is thereafter taxable to the minor. The letter asserted that there was no authority for the conclusion reached in the ruling and that the authorities cited in the ruling did not support the conclusion reached. Thus, Rev. Rul. 469, 1955-2 Cum. Bull. 519 provided that where an absolute gift of stock was made by a grandparent to a minor, the income from the securities was taxable to the minor. *James T. Pettus*, 45 B.T.A. 855 (1941) (acq.) held that when a father had made absolute gifts of stock to a minor child, the income from the stock was taxable to the minor even though used for the support of the minor. In *Lawrence Miller*, 2 T.C. 285 (1943) (acq.) where an absolute gift of securities by a father to his son was registered in the father's name as legal guardian, the income was taxable to the minor. In *Prudence Miller*

¹³⁷ Letter From H. T. Swartz, Director, Tax Rulings Division, to Mr. Clarence E. Dawson, c/o Milbank, Tweed, Hope & Hadley, March 27, 1956, on file in the library of the Cornell Law School.

¹³⁸ The Treasury Department had thus, for income tax purposes, analogized the custodian statute situation to a trust, for § 677(b) of the 1954 Code provides that:

(b) Obligations of Support—Income of a trust shall not be considered taxable to the grantor . . . merely because such income in the discretion of another person, the trustee, or the grantor acting as trustee or co-trustee, may be applied or distributed for the support or maintenance of a beneficiary whom the grantor is legally obligated to support or maintain, except to the extent that such income is so applied or distributed.

The attorneys for the Stock Exchange believed this qualification to be dangerous on both the theoretical and practical level. The theory of the custodian statute was that a mechanism different from a trust relationship had been established. Thus, for example, the investment standards were not those of the trustee but were more extensive. The liability provisions were also more favorable to the custodian. This was a new legal concept, neither trust nor guardianship. Yet the income tax treatment did not recognize the creation of a new concept but preferred instead to treat it as a trust. As a practical matter, the Gifts to Minors Act would be more attractive to the potential investor if the income were taxed only to the minor, thus providing a means of shifting the income tax payable by the donor.

Trust, 7 T.C. 1245 (1946) (acq.) gifts of securities were held absolute though the term trustees was used and the income was taxable to the minors. Thus the only cases and regulations supporting the income tax conclusion of the Treasury Department were situations relating to trusts, rather than absolute gifts. The letter then concluded that:

The position of the custodian here is simply like that of the guardian of the minor, not like that of a trustee. The Colorado statute itself provides that the minor obtains legal title to the gift property. . . . Therefore, it is respectfully submitted that the ruling that the income from an absolute gift to a minor is taxable to the parent under Section 61 where such income may be used by the custodian, whether the parent or another, for the support of the minor under the Colorado statute and is so used, is in error. It is requested that the above ruling be rescinded and that it be ruled instead that after an absolute transfer to a minor under the above statute, income from the property transferred is thereafter income of the minor, taxable to him.¹³⁹

The Treasury Department remained unconvinced, as shown by its reply dated May 3, 1956, stating that:

[A]fter very careful consideration of the matter we adhere to the position stated . . . ruling that income derived from property transferred under the model custodian act adopted by the State of Colorado and a number of other states which is used in discharge of a legal obligation of any person to support or maintain a minor is, to the extent so used, taxable to such person under section 61 of the Internal Revenue Code of 1954.¹⁴⁰

Rev. Rul. 484, 1956-2 Cum. Bull. 23 thus held that income derived from property transferred under the custodian statutes which is used to discharge in whole or in part a legal obligation of any person to support or maintain a minor is, to the extent so used, taxable to the adult.¹⁴¹

The federal estate tax consequences of a gift under the custodian statutes were determined in 1957. Rev. Rul. 366, 1957-2 Cum. Bull. 618 stated that, when a donor transfers property to himself as trustee and retains the right to pay the income and the principal to a designated beneficiary or retains the right to withhold enjoyment until the beneficiary reaches a certain age, the value of the property is includible in the donor's estate under section 2038(a)(1) of the Internal Revenue Code of 1954 as a transfer with a retained power to alter, amend, revoke, or terminate. The ruling then indicated that the donor who trans-

¹³⁹ Letter From the attorneys for the New York Stock Exchange to H. T. Swartz, Director, Tax Rulings Division, April 23, 1956, on file in the library of the Cornell Law School.

¹⁴⁰ Letter From H. T. Swartz, Director, Tax Rulings Division to Mr. Clarence E. Dawson, May 3, 1956, on file in the library of Cornell Law School.

¹⁴¹ Rev. Rul. 484, 1956-2 Cum. Bull. 23. One way in which this conclusion could be changed would be to amend § 677(b) of the 1954 Internal Revenue Code to exclude specifically the custodian transfer situation. See Gossels, "Gifts to Minors—Income Tax Consequences of Massachusetts Support Law," 4 Boston B.J. 13, 19 (Feb. 1960); Lauritzen, "Tax Problems on Gifts of Securities To Minors—Additional Comments," 1 Tax Counselor's Q. 123, 126 (1957); Lauritzen, "Watch Out for Tax Problems on Gifts of Securities for Minors," 1 Tax Counselor's Q. 131, 132 (1957); Tomlinson, "Support Trusts and Gifts to Minors," 97 Trusts & Estates 929, 932 (1958).

fers property to himself as custodian for a minor is in the same position and concluded that "in view of the foregoing, it is held that the value of property transferred by a donor to himself as custodian for a minor donee . . . is includible in the donor's gross estate for federal estate tax purposes in the event of his death while acting as custodian and before the donee attains the age of twenty-one years."¹⁴² The Treasury ruling had again discouraged the simplicity of the custodian statute device.¹⁴³ The solution to the estate tax difficulty was not complex. The donor would now merely have his spouse or someone else designated as custodian. Unfortunately, when transfers had already been made in which the donor was custodian, the only way to avoid the possible estate tax difficulty was to have the custodian resign and designate a successor. This required a court proceeding and, in New York, the possible additional expense of a special guardian. What had been originally conceived as a simple substitute for a trust had become, at least insofar as estate tax consequences were concerned, a rather intricate procedure.

Many of the states had originally enacted the Model Act which was applicable only to gifts of securities. The Uniform Act extended the application of the custodian statute to gifts of money as well as securities and is today the statute in effect in virtually all of the states. The question that was raised was whether the tax rulings which had involved the Model Act statutes covered the Uniform Acts as well. In 1959, the Internal Revenue Service issued a ruling which stated initially that "the Internal Revenue Service has been requested to clarify its position in regard to the income, gift and estate tax consequences of gifts to minors under both the Uniform Gifts to Minors Act and the Model Gift of Securities to Minors Act." The variations between the "Model" act and the "Uniform" act were not thought to warrant any departure from the previous ruling, and it was therefore held that:

[A] transfer of property to a minor under statutes patterned after either the Model Gifts of Securities to Minors Act or the Uniform Gifts to Minors Act constitutes a completed gift for Federal gift tax purposes to the extent of the full fair market value of the property transferred. Such a gift qualifies for the annual gift tax exclusion. . . .

Income derived from property so transferred which is used in the discharge or satisfaction, in whole or in part, of a legal obligation of any person to support or maintain a minor is taxable to such person to the extent so used, but is otherwise taxable to the minor donee.

The value of property so transferred is includible in the gross estate of the donor for Federal estate tax purposes if (1) the property is given in contemplation of death within three years of the donor's death or (2) the donor appoints himself custodian and dies while serving in that capacity.¹⁴⁴

¹⁴² Rev. Rul. 366, 1957-2 Cum. Bull. 618.

¹⁴³ The Irving Lawyers' Letters, Sept. 1957.

¹⁴⁴ Rev. Rul. 357, 1959-2 Cum. Bull. 212.

The ruling was regarded as disappointing insofar as the estate tax consequences to the custodian-donor remained unaffected. It was hoped that legislation would be introduced to remove the custodial property from the donor-custodian's estate if he died before the minor reached twenty-one.¹⁴⁵ In 1960, such legislation was proposed but was not enacted. The proposed amendment to section 2039(a)(1) of the Internal Revenue Code reads as follows:

A power over the enjoyment of property transferred by the decedent during his lifetime to an individual who has not attained the age of 21 years at the date of death of the decedent shall not be deemed to constitute a power to alter, amend, revoke or terminate the enjoyment of the transfer if the reservation of said power by the decedent at the time of the transfer did not [to cover the case in which the decedent was the original custodian, guardian, or trustee and remained as such until his death] or would not have caused [to cover the case in which the decedent was not the original custodian, guardian, or trustee but became successor and remained as such until his death] the transfer to be considered a gift of a future interest in property by reason of the provisions of Section 2503(c).¹⁴⁶

The memorandum in support of this proposed amendment stated that the Internal Revenue Service had ruled that gifts to minors constitute gifts of present interests and qualify for the annual exclusion but that the Service had also taken the view that the custodial property was includible in the donor-custodian's estate for federal estate tax purposes if the donor died before the minor reached twenty-one. It was pointed out that the estate tax could easily be avoided by having the donor name someone else as custodian and that only the unsuspecting donor would be in danger. It was further indicated that this ruling would discourage gifts to minors. On a theoretical basis it was pointed out that it was inconsistent to consider the transfer an effective present gift for gift tax purposes and at the same time consider it an incomplete transfer for estate tax purposes.¹⁴⁷ The sponsors of the custodian legislation are still hopeful that the estate tax ruling will be overcome.

Misuse of Property Held Under the Uniform Gifts to Minors Acts

The situation which presents some difficulty under the Uniform Gifts to Minors Act is the possibility that the custodian can, as a practical matter, withdraw funds from the custodian bank account and use

¹⁴⁵ Ass'n of Stock Exchange Firms, Legislative Bull. No. 1, on file in the library of the Cornell Law School.

¹⁴⁶ A copy of the proposed amendment is on file in the library of the Cornell Law School.

¹⁴⁷ See Raymond, "Do Support Trusts and Gifts to Custodians Answer Planning Problems for the Family?" 11 J. Taxation 104, 106 (1959); Schlesinger, "When and How to Use the New Statutory Custodian for Gifts to Minors," 5 J. Taxation 263 (1956); Tenney, "Using the Custodian Statute as a Planning Device," N.Y.U. 16th Inst. Fed. Tax. 937, 946 (1958); Legislation, 32 St. John's L. Rev. 343, 351 (1958).

these funds for his own benefit. In such a situation, the bank is under no responsibility to follow the withdrawals from the account.¹⁴⁸ If such an abuse appears, there is a statutory remedy in the action for an accounting which may be brought by the minor, if over fourteen years of age, or by his legal representative or an adult member of his family. This, however, is likely to be a theoretical remedy which will not be employed in practice. One possible solution might be to eliminate all cash withdrawals from custodian accounts and to permit withdrawals from a custodian bank account to be made only by check which would be stamped "withdrawal from custodian account for minor."

While a solution to the problem of potential abuse appears to be available, the crucial question is whether there is any evidence at this time to indicate the actual misuse of custodial property. There have as yet been no court actions relating to misuse of such property. In a survey of brokerage firms and banks, responses bearing on the question of misuse of property held under the Uniform Gifts to Minors Act indicated that, at present, placing restrictions on the custodian's right to withdraw is undesirable.¹⁴⁹ While it is true that banks and brokerage

¹⁴⁸ N.Y. Pers. Prop. Law § 266-b.

¹⁴⁹

1. It seems obvious that some abuse can and may have been introduced by donors desiring only to sprinkle income with no serious intention to honor the true ownership of the asset in the infant donee upon his attaining his majority. . . . We have not been directly faced with this problem but in any case the proper benefits accruing to those recognizing the obligation to regard the gift as absolute should not be prejudiced by the few who might use it for improper purposes. It would not seem desirable from the commercial banking viewpoint to restrict a custodian's right to withdraw funds from a custodianship banking account. It seems to us that this would place too much of a burden on the bank of deposit particularly with the increasing expansion of automation in bookkeeping and recordkeeping.
2. We have not encountered any difficulties in connection with the transfer of stock.
3. There is a general lack of knowledge of the completion of the gift and the limitations on the powers of the custodian. Often a custodian will attempt to revoke on the theory that he made the gift and needs the funds for his personal use.

. . . .
A restriction on the right of the custodian to withdraw funds from a bank account might impose burdens on the custodian in making investments and providing support and maintenance for the minor. There might also be a charge by the bank for maintaining a small account which charge would in time consume all the funds in the account.

4. We have heard of no abuses or difficulties with the present statute.
We can see many administrative and regulatory problems if any restrictions were put on the custodian's right to withdraw funds from a bank balance and in any event we would not see any value to such restrictions.
5. The main abuses, of which we are aware, are not found in the statute itself, but in its ill advised or unadvised use. I believe we would be opposed to any restriction on the custodian's right to draw funds from a custodian's bank account. Such restrictions would place quasi fiduciary responsibilities on the bank, without any adequate compensation for the assumption of the responsibilities.
6. There have been difficulties in the use and administration of the Uniform Gifts Act, but we believe this comes mostly from not being familiar with its provisions. . . .

By the grapevine we learn that many custodian donors do not realize that they have made an irrevocable gift and try to have stock transferred from their names as custodians to their individual names. They also sell the shares with the intention of using the proceeds for their own benefit.

firms are themselves affected by the acts, the evidence to support the necessity of any restriction on the free transfer of funds by a custodian is lacking at this time. No widespread misuse of funds has come to the author's attention. No court actions are pending to prosecute such breaches of duty. That the potential abuse is present is certainly true. That there is any substantial indication of actual abuse is just as clearly untrue. To the extent that there are difficulties resulting from lack of proper information to donors, the public information of the Association of Stock Exchange Firms and of brokerage firms is an adequate safeguard at this time. Any suggested amendment imposing restrictions on the banks and on the custodian thus appears to be unwarranted by the information currently available.

The Absolute Vesting of the Custodial Property in the Minor at Age Twenty-one

Under the Uniform Gifts to Minors Acts, to the extent that the custodial property is not used for the minor's benefit, the custodian must deliver and pay it over to the minor when the minor reaches the age of twenty-one years. The terms of every gift are thus mandatory and require the delivery of the property to the minor when the minor reaches twenty-one years of age. The available statistics indicate that the custodian statutes have been very widely employed and it is therefore reasonable to assume that substantial property interests are being created through transfers under the custodian statutes.¹⁵⁰ The questions which become relevant in this situation are: (1) whether a significant percent-

It is not clear to the writer what benefit would be obtained by placing a restriction on the right of a custodian to withdraw funds from a bank account.

7. [I]n my personal experience I have not encountered any abuses or difficulties under the present statute. If restrictions were added it would place increasing burden on the bank (or transferees) which it might not be willing to assume.
8. We find that there are many difficulties and abuses because of lack of knowledge, or failure to supply adequate information to the donor or custodian. Custodians are continually attempting to transfer stock to themselves individually. . . .

A restriction on a custodian's right to withdraw funds from a bank account would seem to be counter to the purpose of "easy" administration, which is the spirit of the statute. Why select one potential arca of abuse to be policed?

The usefulness of the statute probably offsets many times the cases of misapplication, and it is probably safe to say that the statute has worked successfully in most cases.

9. We are not aware that there are presently abuses or difficulties in the present statute. We, further, do not believe restrictions on the custodian's right to withdraw funds from a bank account would be of value. The custodian, we feel, should be permitted the greatest amount of flexibility consistent with his fiduciary duty.
10. We do not believe that any restrictions on the present rights of custodians to handle the funds of his beneficiary would be advisable. We think the law should be as flexible as possible so as to encourage this type of gift. We understand there can be abuses but we believe that any such abuses are insignificant in comparison to the benefits which result from making as few restrictions as possible.

¹⁵⁰ See letter from Ass'n of Stock Exchange Firms on file in the library of the Cornell Law School.

age of donors would desire the option to choose an age beyond twenty-one at which property would vest in a minor; and (2) if so, whether a simple amendment to the statute is possible.

In our society, it is not clear that individuals twenty-one years old, though legally adults, are adequately prepared to handle financial responsibility. Many people at twenty-one have not completed their education, have not fulfilled military service requirements, are not employed, and are not married. There is no conclusive sociological or psychological evidence to indicate that the twenty-one year old has the requisite degree of responsibility¹⁵¹ necessary in this situation. It is thus conceivable that a prospective donor might desire to postpone the age of vesting beyond twenty-one and substitute instead an age at which he expects the minor's education to be completed or an age at which he believes that the minor will be capable of exercising mature judgment in the use of the gift.

It must be recognized, however, that the enthusiastic acceptance of the Uniform Gifts to Minors Acts has been due in great measure to the ease with which its procedures may be utilized. It is therefore necessary to be aware of the danger of complicating a statute which at present is admirably clear. The question is whether the particular additional choice is relatively common among other donors and whether other methods are available to satisfy his desires.

An analysis of the 181 wills contained in Libers 2392 and 2393 of the Records of the New York County Surrogate's Court revealed sixteen wills containing provisions which postpone vesting until the beneficiaries reached various ages beyond twenty-one.

Those which postponed vesting of the principal until one specific age in excess of twenty-one years provided as follows:

<i>Beneficiary</i>	<i>Age of Vesting</i>
1. Daughter ¹⁵²	45
2. Daughters ¹⁵³	23
3. Daughters ¹⁵⁴	23
4. Grandchildren ¹⁵⁵	35
5. Granddaughter ¹⁵⁶	45
6. Grandchildren ¹⁵⁷	30
7. Grandchildren ¹⁵⁸	25

¹⁵¹ See letters on file in the library of the Cornell Law School.

¹⁵² Will of Fay Solomon, Liber 2393, p. 53.

¹⁵³ Will of Thomas Ward, Liber 2393, p. 233.

¹⁵⁴ Will of Patrick A. McDonough, Liber 2392, p. 185.

¹⁵⁵ Will of Lillian Robertson, Liber 2392, p. 493.

¹⁵⁶ Will of August C. Pieper, Liber 2392, p. 357.

¹⁵⁷ Will of Ruby Rosenak, Liber 2392, p. 591.

¹⁵⁸ Will of Mathilda Asch, Liber 2393, p. 449.

Those which provided that portions of the principal be paid from time to time after age twenty-one did so as follows:

<i>Beneficiary</i>	<i>Age of Vesting</i>
1. Grandchildren ¹⁵⁹	1/3 at 21 1/2 balance at 25 Balance at 30
2. Children ¹⁶⁰	\$5,000 at 25 \$10,000 at 28 Balance at 30
3. Grandchildren ¹⁶¹	1/2 at 25 Balance at 30
4. Daughters ¹⁶²	1/3 at 21 1/2 Balance at 26 Balance at 31
5. (a) Children	1/2 at 25 Balance at 35
(b) Nieces and Nephews ¹⁶³	1/2 at 21 Balance at 25
6. Son ¹⁶⁴	1/2 at 25 Balance at 35
7. Daughter ¹⁶⁵	15% at 21 30% at 25 50% at 30 Balance at 35
8. Grandchildren ¹⁶⁶	1/3 at 25 1/3 at 30 Balance at 35
9. Children ¹⁶⁷	1/4 at 45 1/3 Balance at 50 1/2 Balance at 55 Balance at 60

Twenty-two other wills contained provisions which would generally postpone vesting until the various beneficiaries reached the age of twenty-one.¹⁶⁸ It is not always possible to ascertain from the language

¹⁵⁹ Will of Lillian Greene, Liber 2393, p. 371.

¹⁶⁰ Will of George Asch, Liber 2393, p. 443.

¹⁶¹ Will of Sylvia Riesner, Liber 2392, p. 457.

¹⁶² Will of George W. Smith, Liber 2393, p. 313.

¹⁶³ Will of Josephine Bay Paul, Liber 2392, p. 331.

¹⁶⁴ Will of Raymond Trigger, Liber 2393, p. 153.

¹⁶⁵ Will of Philip Wolfson, Liber 2393, p. 259.

¹⁶⁶ Will of Rufus W. Scott, Liber 2392, p. 645.

¹⁶⁷ Will of Joseph E. Prince, Liber 2392, p. 375.

¹⁶⁸ Will of Vivian B. Allen, Liber 2393, p. 383; Will of Kent deLieb Avery, Liber 2393, p. 465; Will of Walter Beauparlant, Liber 2393, p. 493; Will of Lillian Bernheim, Liber 2393, p. 549; Will of Mabel Farrington Lockwood, Liber 2392, p. 3; Will of Marion G. MacLean, Liber 2392, p. 29; Will of Carl C. Mattmann, Liber 2392, p. 71; Will of Charles Senff McVeigh, Liber 2392, p. 193; Will of Jack Melnikoff, Liber 2392, p. 91; Will of Harry

of the will whether there is a serious possibility that a minor may ultimately be a beneficiary and, if so, whether the testator considered this possibility. Certainly all those testators who postponed vesting to specific ages in excess of twenty-one years did contemplate this possibility; and those who provided postponement of vesting to age twenty-one may also have done so. The latter, however, is by no means certain because the provision with respect to postponement of vesting until age twenty-one in the case of minor beneficiaries is often inserted by the draftsman as a form clause to avoid the necessity for the appointment of a guardian in any situation in which a minor might possibly become a beneficiary. On the other hand, with respect to the other wills in *Liber* 2392 and 2393, there are few wills in which it would be impossible for a beneficiary to be a minor at the time of the testator's death. Thus, the precise percentage of testators who seriously consider the possibility that one or more of their beneficiaries will be minors and who provide for postponement of vesting until an age in excess of twenty-one is elusive.

However, out of the thirty-eight testators who generally indicated that they would postpone the vesting of principal at least until a beneficiary reached age twenty-one, sixteen, or approximately forty per cent, would postpone vesting until a later age.

On the basis of the above sampling of wills, it seems that the desires of many donors, actual or potential, are not being fulfilled under the Uniform Act. This is not to say that *exactly* forty per cent of those who wish to make an inter vivos gift to a minor desire to postpone vesting until an age in excess of twenty-one. The number of prospective donors with such an intention is probably significant enough, however, to make worthwhile the further consideration of whether their desires should be capable of effectuation under the Uniform Act.

An amendment to the statute would not be unduly complicated. Section 4(d) of the statute could be amended to read as follows:

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, at the option of the donor, an age beyond twenty-one years.* If the minor dies before attaining the age of twenty-one years, *or such other age specified by the donor,* the custodian shall thereupon deliver and pay the property over to the estate of the minor. *Whenever the delivery or pay-*

Meyersburg, *Liber* 2392, p. 109; Will of Julia E. O'Mara, *Liber* 2392, p. 267; Will of Manuel Ornstein, *Liber* 2392, p. 277; Will of John Parthenides, *Liber* 2392, p. 297; Will of Morehead Patterson, *Liber* 2392, p. 311; Will of Theodore T. Rose, *Liber* 2392, p. 541; Will of Nathan Sweet, *Liber* 2393, p. 115; Will of Ernest Spiegelberg, *Liber* 2393, p. 67; Will of Chin Dut Toy, *Liber* 2393, p. 142; Will of Frederick Vettel, Jr., *Liber* 2393, p. 201; Will of Morton M. Wakoff, *Liber* 2393, p. 217; Will of Belle White, *Liber* 2393, p. 243; Will of Anne Wright, *Liber* 2393, p. 277.

*ment of property is to occur at an age beyond twenty-one, all income accumulated during minority shall be paid to the minor when he attains twenty-one years of age and the entire net income from the property, after the minor has attained twenty-one years of age, shall be paid at least annually to the individual ultimately entitled to the property.*¹⁶⁹

The registration of the security could simply have the age of vesting added. Thus the registration could be "..... as custodian for under the New York Uniform Gifts to Minors Act—to age 30." Upon proof that the beneficiary has attained the required age, the transfer agent could issue the new certificate in his individual name.

The survey of brokerage firms and banks produced the following responses to the question of whether it would be desirable to permit the donor to have an option which would allow him to prevent the minor from receiving the property outright at age twenty-one and would permit him to substitute another age beyond twenty-one:¹⁷⁰

1. . . . there seems to be in the minds of some people a reluctance to use this method of making gifts of stock because the minor could compel the delivery of stock at age twenty-one and, acquiring complete control, could use the money for purposes which would defeat the intent of the donor at the time of the gift. Perhaps permitting the custodian to hold to a later age, as a part of the gift transfer, might induce such transferors to place more reliance on the Act.
2. If the donor desires such an arrangement, it can be accomplished by other means without unnecessarily complicating the custodian arrangement.
3. Our experience does not indicate that it would be desirable to permit the donor to have an option which would allow him to prevent the minor from receiving the property outright at the age of twenty-one and would substitute for example, age thirty.
4. If a donor wants to tie up property until, say, age thirty, he has the presently available ability to create a trust until that date.
5. Under most circumstances, I do not believe we would feel that the act ought to be used to hold property beyond the age of twenty-one. If it could be so used, there would be an even greater temptation than there is now to use it in inappropriate situations and for inappropriate amounts. The result would be that more people than at present would find that they had entered into an inflexible arrangement often creating serious obstacles to sound family and tax planning.
6. . . . I would like to suggest that in many instances where we act as Trustees, there is a provision in the trust agreement or will that the principal of the fund is not to be turned over to the beneficiary-re-

¹⁶⁹ Though the custodial property would be held until the designated age under the proposed amendment, the income accumulated during minority should be paid to the donee when he attains twenty-one years of age. It would appear that the present interest qualifying for the gift tax annual exclusion would be the discounted value of the income from the custodial property during the beneficiary's minority, rather than the entire trust property. See Arlean I. Herr, 35 T.C. 732 (1961), aff'd, 303 F.2d 780 (3d Cir. 1962) (nonacq.).

¹⁷⁰ See correspondence on file in the library of the Cornell Law School.

mainderman until he shall have attained the age of twenty-five, thirty, or thirty-five years. As a matter of fact, the instances of delayed pay-out are very more numerous than those which specify a termination at age twenty-one. By analogy, I would assume that there are many instances where donors under the Uniform Gifts to Minors Act would prefer that the beneficiary receive the funds considerably after he has attained his majority.

7. . . . the purposes of the Uniform Act . . . are to provide a method of giving and for the preservation of the minor's property only during minority. If any other period of time is contemplated by the donor, it appears that there are other means which can be just as easily used to obtain the result.
8. We are not in favor of extending the time that a custodian should act beyond the minority of the infant.
9. Inasmuch as the Uniform Gifts to Minors Act is frequently not utilized because some of our customers do not believe their donees capable of managing investments at age twenty-one, we do believe it would be desirable to permit a donor to have an option providing for the maturity of the gift at an age other than age twenty-one.
10. We are quite in agreement that the Custodian or Donor should have such option.
11. We . . . think it would be beneficial to permit the donor to extend the [delivery] until the age of thirty.
12. If the custodian statute is so broadened it cuts into an area where a trust is a better vehicle. As it now stands it is, in effect, an inexpensive version of legal guardianship. Why make it more than this?
13. I would think there might be a greater tendency on the part of donors to make gifts of securities to minors if they did have the option to prevent the minor from receiving the property at the age of twenty-one.
14. It is our opinion that rather than extend the Uniform Gifts Act an option of this nature should be handled under a Trust instrument.

The substantial property interests being created under the Uniform Gifts to Minors Acts, the desires of the prospective donor, the reaction of banks and brokerage firms—all these indicate that a proposal to give the donor the option to extend the age of vesting beyond twenty-one deserves serious consideration.