

in accordance with the "prudent man" rule. It permits a donor to take advantage of the gift tax exclusion authorized by Internal Revenue Code of 1954, Section 2503 (b), at a time when market conditions may not seem appropriate for immediate investment. It simplifies the mechanics of a gift, and avoids a double stock transfer tax on it, when a donor does not already own the security in which he wants the gift invested. It enables a donor to put the custodian in funds with which to exercise stock rights or to "round out" a block of a security to be purchased by the custodian with the proceeds of interest, dividends or sale of other securities. [Bill 355-S]

Draftsman's Note, 1967: [As to sub. (1) (c)] Simply uses the broader term "financial institution" which includes savings and loan associations and credit unions. Notice that the financial institution need not be an insured one; the donor has discretion as to the type of financial institution in which he places a gift of money since any gift benefits the minor. [Bill 131-S]

319.63 History: 1957 c. 467; Stats. 1957 s. 319.63; 1967 c. 46.

319.64 History: 1957 c. 467; Stats. 1957 s. 319.64; 1967 c. 46.

Revisor's Note, 1957: Subs. (1), (2) and (4) follow closely 319.60 (4) (a).

Sub. (3) is included to make clear the enforceable duty of the custodian to expand income or principal when necessary for the support, maintenance or education of the minor.

The words "general use" in the phrase "support, maintenance, education and general use and benefit" in 319.60 (4) (a) are omitted as being too broad (See Section 266.2 (a) of the New York Property Law).

Sub. (9) is derived from Section 266.1 of the New York Personal Property Law. It is similar to 319.60 (4) (c). [Bill 355-S]

Draftman's Note, 1967: The amendment of sub. (5) makes it clear that the custodian may keep money in a financial institution to which the donor paid or delivered it, whether or not the institution is insured.

The amendment of sub. (7) requires the deposit of all other money in an insured institution.

[As to sub. (10)] Changes from the present statute are: (1) Adds a reference to annuity contracts; (2) requires that a policy on a life other than the minor be payable to the custodian as custodian, and (3) provides that the custodian may pay premiums out of custodial property. [Bill 131-S]

319.65 History: 1957 c. 467; Stats. 1957 s. 319.65.

319.66 History: 1957 c. 467; Stats. 1957 s. 319.66; 1967 c. 46.

Revisor's Note, 1957: This section is similar to 319.60 (4) (d).

This modification of the comparable provisions of the Model Act is intended 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. [Bill 355-S]

319.67 History: 1957 c. 467; Stats. 1957 s. 319.67; 1967 c. 46.

Revisor's Note, 1957: Sub. (1) is derived from Section 267.1 of the New York Personal Property Law and is similar to 319.60 (7). [Bill 355-S]

Draftsman's Note, 1967: Sub. (1) is amended to allow a custodian to designate a successor to take effect upon his resignation, death or legal incapacity; the old provision required him to resign upon making such a designation. Also empowers a minor over 14 to make a designation if the custodian has not done so.

Sub. (2) provides for the taking effect of the designation of the successor.

Sub. (3) requires the transfer of custodial property to the successor.

Sub. (4) provides that the guardian of the minor becomes successor custodian if the designated successor is not eligible, dies or becomes legally incapacitated. A petition to the court will still be necessary if the minor has no guardian and the nomination of a proper successor has not been made.

Sub. (5) is amended to permit a successor custodian to petition the court for the removal of another successor designated by an instrument bearing an earlier date, or designated by the minor, and for the designation of petitioner as successor. It continues to provide for removal for cause shown or for giving bond. Without the amendment serious conflicts might arise. [Bill 131-S]

319.68 History: 1957 c. 467; Stats. 1957 s. 319.68.

Revisor's Note, 1957: Sub. (1) is derived from Section 268.1 of the New York Personal Property Law and is similar to 319.60 (11).

Sub. (2) is derived from section 268.2 of the New York Personal Property Law. [Bill 355-S]

319.69 History: 1957 c. 467; Stats. 1957 s. 319.69.

319.70 History: 1957 c. 467; Stats. 1957 s. 319.70.

319.71 History: 1957 c. 467; Stats. 1957 s. 319.71.

319.75 History: 1961 c. 424; Stats. 1961 s. 319.75.

319.76 History: 1965 c. 53; Stats. 1965 s. 319.76.

CHAPTER 320.

Trust Fund Investments.

320.01 History: 1935 c. 363, 511; 1935 c. 520 s. 7, 12; Stats. 1935 s. 320.01; 1937 c. 131, 152; 1939 c. 513 s. 54; 1941 c. 244, 246, 257; 1947 c. 362; 1947 c. 411 s. 6; 1947 c. 612 s. 1, 32; 1949 c. 205; 1951 c. 404, 579; 1953 c. 164, 590; 1955

c. 502; 1959 c. 233, 235, 443; 1959 c. 660 s. 75, 76.

Editor's Note: For cases construing 320.01 prior to the adoption of the prudent man investment rule in 1959 see those cited in Wis. Annotations, 1950 and Wis. Statutes, 1957.

Diversification requirements, as to stock substituted for original assets, are discussed in Will of Mueller, 28 W (2d) 26, 135 NW (2d) 854.

The prudent man investment rule. Rubloff, 1960 WLR 142.

320.02 History: 1959 c. 233; Stats. 1959 s. 320.02.

320.03 History: 1935 c. 363; Stats. 1935 s. 320.03; 1959 c. 233.

320.04 History: 1935 c. 363; Stats. 1935 s. 320.04; 1959 c. 233.

320.05 History: 1933 c. 379; Stats. 1933 s. 231.34; 1935 c. 363; Stats. 1935 s. 320.05; 1949 c. 331; 1959 c. 233.

320.06 History: 1959 c. 233; Stats. 1959 s. 320.06.

CHAPTER 321.

Bonds in County Courts.

Editor's Note: The legislative histories which follow are the histories of the several sections of ch. 321 through 1969, including the effects of ch. 339, Laws 1969. Various provisions of ch. 321 are restated in a new probate code, effective April 1, 1971. For more detailed information concerning the effects of ch. 339, Laws 1969, see the editor's note printed in this volume ahead of the histories for ch. 351.

321.01 History: R. S. 1849 c. 73 s. 1; R. S. 1849 c. 85 s. 23; R. S. 1858 c. 104 s. 1; R. S. 1858 c. 117 s. 23; R. S. 1878 s. 4013; Stats. 1898 s. 4013; 1907 c. 183; 1925 c. 4; Stats. 1925 s. 321.01; Court Rule VII; Sup. Ct. Order, 212 W xxxv; 1959 c. 414; 1969 c. 339.

Sec. 23, ch. 117, R. S. 1858, does not apply to an appeal bond given to the adverse party, but only to bonds required to run to the county judge. Bowles v. Page, 20 W 309.

321.015 History: R. S. 1849 c. 80 s. 28; R. S. 1858 c. 112 s. 30; R. S. 1878 s. 3967; Stats. 1898 s. 3967; 1919 c. 506; 1921 c. 590 s. 33; 1925 c. 4; Stats. 1925 s. 319.06; Sup. Ct. Order, 212 W xxxiii; Stats. 1933 s. 321.015; 1969 c. 339.

Where a new bond was given without notice or examination of the account, or compliance with the requirement in respect to the discharge of sureties, a release of the old bond was ineffective and the new bond merely cumulative. Brehm v. United States F. & G. Co. 124 W 339, 102 NW 36.

321.02 History: R. S. 1849 c. 80 s. 29, 30; R. S. 1849 c. 73 s. 2 to 5; R. S. 1858 c. 104 s. 2 to 5; R. S. 1858 c. 112 s. 31, 32; 1865 c. 484; R. S. 1878 s. 3968, 4014; 1891 c. 156; 1893 c. 71; Stats. 1898 s. 3968, 4014; 1913 c. 202; 1925 c. 4; Stats. 1925 s. 319.07, 321.02; Court Rule XXIII; 1933 c. 190 s. 79, 80, 81; Stats. 1933 s. 321.02; 1939 c. 513 s. 55; 1969 c. 339.

Editor's Note: On the historical background of sec. 3968, R. S. 1878, see Paine v. Jones, 93 W 70, 74, 67 NW 31, 32.

In an action on an administration bond, it is sufficient, in order to charge the surety, to show service of the final order of distribution on the administrator, a proper demand of payment made upon him, and his failure to pay as ordered; and it is not necessary to show any demand upon the surety. Elwell v. Prescott, 38 W 274.

Under the statute, the county judge may grant permission to bring suit in his name upon the administration bond, on an ex parte application of creditors whose demands the administrator has neglected or refused to pay as ordered; and such permission, granted in the form of an order, is sufficient, without notice given the administratrix or the surety, of the application therefor. Elwell v. Prescott, 38 W 274.

Under sec. 2, ch 104, R. S. 1858, an action on an executor's bond lay for a failure to account or to return an inventory. An action brought in the name of the county judge for the use of a creditor is treated as an action at the instance of the latter. Johannes v. Youngs, 45 W 445.

A breach of an administrator's bond results from his neglect to make or return an inventory or to administer the estate. Creditors may maintain an action in such a case. Ellis v. Johnson, 83 W 394, 53 NW 691.

An action for contribution between sureties on an executor's bond is not an action on such bond, and may be brought without leave of court. Hardell v. Carroll, 90 W 350, 63 NW 275.

A guardian is discharged when his guardianship terminates, and this occurs when a ward attains his majority, notwithstanding the trust relation in respect to property is not terminated. Paine v. Jones, 93 W 70, 67 NW 31.

In an action on a guardian's bond a complaint alleging the settlement of the guardian's final account, that the sum he should pay was determined, that an order had been entered for its payment and had not been complied with, is good. Schoenleber v. Burkhardt, 94 W 575, 69 NW 343.

An order for the payment of debts is not open to collateral attack, though made without notice to the executor or administrator, but is conclusive until reversed or set aside in a direct proceeding on all questions necessarily passed upon. An order permitting suit on the bond is also conclusive unless so reversed or set aside. Roberts v. Weadock, 98 W 400, 74 NW 93.

The objection that payment was not demanded or refused before the order directing payment was made can only be made on direct appeal from the order or in some other direct proceeding. Such demand and refusal are admitted by not denying an allegation in the complaint that the former was made and the latter refused. Roberts v. Weadock, 98 W 400, 74 NW 93.

An executor's liability continues until his account is settled and the estate fully administered. Wallber v. Wilmanns, 116 W 246, 93 NW 47.