

H. 3/12/96 Commerce  
H. 3/22/96 Do Pass  
FILED MAR 4 1996

SENATE FILE 2394

BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2229)

(p. 705)  
Passed Senate, Date 3-11-96

Passed House, Date \_\_\_\_\_

Vote: Ayes 49 Nays 0

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to investment guidelines for trustees and  
2 providing an applicability date.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 2394

1 Section 1. Section 633.123, subsection 1, Code 1995, is  
2 amended to read as follows:

3 1. INVESTMENTS BY FIDUCIARIES. When investing,  
4 reinvesting, purchasing, acquiring, exchanging, selling, and  
5 managing property for the benefit of another, a fiduciary  
6 shall exercise the care, skill, prudence, and diligence under  
7 the circumstances then prevailing that a prudent person acting  
8 in a like capacity and familiar with such matters would use to  
9 attain the purposes of the account pursuant to chapter 636A.

10 ~~This standard requires that when making investment decisions,~~  
11 ~~a fiduciary shall consider the role that the investment plays~~  
12 ~~within the account's portfolio of assets and may consider the~~  
13 ~~general economic conditions, the anticipated tax consequences~~  
14 ~~of the investment, the anticipated duration of the account,~~  
15 ~~and the needs of all beneficiaries of the account.~~

16 ~~The propriety of an investment decision is to be determined~~  
17 ~~by what the fiduciary knew or should have known at the time of~~  
18 ~~the decision about the inherent nature and expected~~  
19 ~~performance of the investment, the attributes of the account~~  
20 ~~portfolio, the general economy, and the needs and objectives~~  
21 ~~of the beneficiaries of the account as they existed at the~~  
22 ~~time of the investment decision.~~

23 Sec. 2. Section 636.23, unnumbered paragraph 1, Code 1995,  
24 is amended to read as follows:

25 All proposed investments of trust funds by fiduciaries  
26 shall first be reported to the court or a judge for approval  
27 and be approved and unless otherwise authorized or directed by  
28 the court under authority of which the fiduciary acts, or by  
29 the will, trust agreement, or other document which is the  
30 source of authority, a trustee, executor, administrator, or  
31 guardian shall invest all moneys received by such fiduciary,  
32 to be by the fiduciary invested, ~~in securities which at the~~  
33 ~~time of the purchase thereof are included in one or more of~~  
34 ~~the following classes:~~ pursuant to chapter 636A.

35 Sec. 3. Section 636.23, subsections 1 through 16, Code

1 1995, are amended by striking the subsections:

2 Sec. 4. Section 636.24, Code 1995, is amended to read as  
3 follows:

4 636.24 ~~POPULATION-AND~~ INDEBTEDNESS.

5 ~~The population specified in section 636.23 shall be~~  
6 ~~determined by the last preceding official federal census.~~ The  
7 indebtedness of any municipality or governmental subdivision  
8 shall be determined by the official certificate of the officer  
9 of such municipality or district in charge of its public  
10 accounts.

11 Sec. 5. Section 636.25, Code 1995, is amended to read as  
12 follows:

13 636.25 EXISTING INVESTMENTS.

14 Any fiduciary not governed by the probate code may by and  
15 with the consent of the court having jurisdiction over such  
16 fiduciary or under permission of the instrument creating the  
17 trust, continue to hold any investment originally received by  
18 the fiduciary under the trust or any increase thereof. Such  
19 fiduciary may also make investments which the fiduciary may  
20 deem necessary to protect and safeguard investments already  
21 made according to the provisions of ~~this and sections 636.23~~  
22 ~~and 636.24~~ chapter 636A.

23 Sec. 6. Section 636.60, Code 1995, is amended to read as  
24 follows:

25 636.60 POWERS AND DUTIES OF TRUSTEES NOT SUBJECT TO COURT  
26 ADMINISTRATION.

27 Trustees of trusts not being administered in the probate  
28 court, shall have all the powers and shall be subject to all  
29 the duties and liabilities as provided in the probate code,  
30 except the duty of reporting to or obtaining approval of the  
31 court, and shall be authorized to make investments pursuant to  
32 chapter 636A.

33 Sec. 7. NEW SECTION. 636A.1 TITLE.

34 This chapter may be cited as the "Iowa Uniform Prudent  
35 Investor Act".

1     Sec. 8. NEW SECTION. 636A.2 PRUDENT INVESTOR RULE.

2     1. Except as otherwise provided in this section, a trustee  
3 who invests and manages trust assets owes a duty to the  
4 beneficiaries of the trust to comply with the prudent investor  
5 rule as set forth in this chapter.

6     2. The prudent investor rule may be expanded, restricted,  
7 eliminated, or otherwise altered by the provisions of a trust.  
8 A trustee is not liable to a beneficiary to the extent that  
9 the trustee acted in reasonable reliance on the provisions of  
10 the trust.

11     Sec. 9. NEW SECTION. 636A.3 STANDARD OF CARE --  
12 PORTFOLIO STRATEGY -- RISK AND RETURN OBJECTIVES.

13     1. A trustee shall invest and manage trust assets as a  
14 prudent investor would, by considering the purposes, terms,  
15 distribution requirements, and other circumstances of the  
16 trust. In satisfying this standard, the trustee shall  
17 exercise reasonable care, skill, and caution.

18     2. A trustee's investment and management decisions  
19 respecting individual assets must be evaluated not in  
20 isolation but in the context of the trust portfolio as a whole  
21 and as a part of an overall investment strategy having risk  
22 and return objectives reasonably suited to the trust.

23     3. A trustee shall consider the following circumstances,  
24 to the extent they are relevant to the trust or its  
25 beneficiaries, in investing and managing trust assets:

26     a. General economic conditions.

27     b. The possible effect of inflation or deflation.

28     c. The expected tax consequences of investment decisions  
29 or strategies.

30     d. The role that each investment or course of action plays  
31 within the overall trust portfolio, which may include  
32 financial assets, interests in closely held enterprises,  
33 tangible and intangible personal property, and real property.

34     e. The expected total return from income and the  
35 appreciation of capital.

1 f. Other resources of the beneficiaries.

2 g. The trust's needs for liquidity, regularity of income,  
3 and preservation or appreciation of capital.

4 h. An asset's special relationship or special value, if  
5 any, to the purposes of the trust or to one or more of the  
6 beneficiaries.

7 4. A trustee shall make a reasonable effort to verify  
8 facts relevant to the investment and management of trust  
9 assets.

10 5. A trustee may invest in any kind of property or type of  
11 investment consistent with the standards of this chapter.

12 6. A trustee who has special skills or expertise, or is  
13 named trustee in reliance upon the trustee's representation  
14 that the trustee has special skills or expertise, has a duty  
15 to use those special skills or expertise.

16 Sec. 10. NEW SECTION. 636A.4 DIVERSIFICATION.

17 A trustee shall diversify the investments of the trust  
18 unless the trustee reasonably determines that, because of  
19 special circumstances, the purposes of the trust are better  
20 served without diversifying.

21 Sec. 11. NEW SECTION. 636A.5 DUTIES AT INCEPTION OF  
22 TRUSTEESHIP.

23 Within a reasonable time after accepting a trusteeship or  
24 receiving trust assets, a trustee shall review the trust  
25 assets and make and implement decisions concerning the  
26 retention and disposition of assets, in order to bring the  
27 trust portfolio into compliance with the purposes, terms,  
28 distribution requirements, and other circumstances of the  
29 trust, and with the requirements of this chapter.

30 Sec. 12. NEW SECTION. 636A.6 LOYALTY.

31 A trustee shall invest and manage the trust assets solely  
32 in the interest of the beneficiaries.

33 Sec. 13. NEW SECTION. 636A.7 IMPARTIALITY.

34 If a trust has two or more beneficiaries, the trustee shall  
35 act impartially in investing and managing the trust assets,

1 taking into account any differing interests of the  
2 beneficiaries.

3 Sec. 14. NEW SECTION. 636A.8 INVESTMENT COSTS.

4 In investing and managing trust assets, a trustee shall  
5 only incur costs that are appropriate and reasonable in  
6 relation to the assets, the purposes of the trust, and the  
7 skills of the trustee.

8 Sec. 15. NEW SECTION. 636A.9 REVIEWING COMPLIANCE.

9 Compliance with the prudent investor rule is determined in  
10 light of the facts and circumstances existing at the time of a  
11 trustee's decision or action and not by hindsight.

12 Sec. 16. NEW SECTION. 636A.10 DELEGATION OF INVESTMENT  
13 AND MANAGEMENT FUNCTIONS.

14 1. A trustee may delegate investment and management  
15 functions that a prudent trustee of comparable skills would  
16 properly delegate under the circumstances. The trustee shall  
17 exercise reasonable care, skill, and caution in the following:

- 18 a. Selecting an agent.
- 19 b. Establishing the scope and terms of the delegation,  
20 consistent with the purposes and terms of the trust.
- 21 c. Periodically reviewing the agent's actions in order to  
22 monitor the agent's performance and compliance with the terms  
23 of the delegation.

24 2. In performing a delegated function, an agent owes a  
25 duty to the trust to exercise reasonable care to comply with  
26 the terms of the delegation.

27 3. A trustee who complies with the requirements of  
28 subsection 1 is not liable to the beneficiaries or to the  
29 trust for the decisions or actions of the agent to whom the  
30 function was delegated.

31 4. An agent who accepts the delegation of a trust function  
32 from the trustee of a trust that is subject to the law of this  
33 state submits to the jurisdiction of the courts of this state.

34 Sec. 17. NEW SECTION. 636A.11 TRUST LANGUAGE INVOKING  
35 STANDARD OF THIS CHAPTER.

1 The following terms or comparable language in the  
2 provisions of a trust, unless otherwise limited or modified,  
3 authorize any investment or strategy permitted under this  
4 chapter:

5 1. Investments permissible by law for investment of trust  
6 funds.

7 2. Legal investments.

8 3. Authorized investments.

9 4. Using the judgment and care under the circumstances  
10 then prevailing that persons of prudence, discretion, and  
11 intelligence exercise in the management of their own affairs,  
12 not in regard to speculation but in regard to the permanent  
13 disposition of their funds, considering the probable income as  
14 well as the probable safety of their capital.

15 5. The prudent man, trustee, person, or investor rule.

16 Sec. 18. NEW SECTION. 636A.12 APPLICATION TO EXISTING  
17 TRUSTS.

18 This chapter applies to trusts existing on or created after  
19 July 1, 1996. As applied to trusts existing on July 1, 1996,  
20 this chapter governs only decisions or actions occurring after  
21 that date.

22 Sec. 19. NEW SECTION. 636A.13 UNIFORMITY OF APPLICATION  
23 AND CONSTRUCTION.

24 This chapter shall be applied and construed to effectuate  
25 its general purpose to make uniform the law with respect to  
26 the subject of this chapter among the states enacting the  
27 uniform prudent investor Act.

28 Sec. 20. NEW SECTION. 636A.14 SEVERABILITY.

29 If any provision of this chapter or its application to any  
30 person or circumstance is held invalid, the invalidity does  
31 not affect other provisions or applications of this chapter  
32 which can be given effect without the invalid provision or  
33 application, and to this end the provisions of this chapter  
34 are severable.

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EXPLANATION

1 This bill adopts the Uniform Prudent Investor Act approved  
2 and recommended by the national conference of commissioners on  
3 uniform state laws by establishing the Iowa Uniform Prudent  
4 Investor Act.

5 The uniform Act provides that a trustee shall invest and  
6 manage trust assets based on a prudent investor standard. The  
7 bill directs the trustee to view investments based on the  
8 total portfolio, and not on individual investments. The bill  
9 provides for a trustee's standard of care, portfolio strategy,  
10 risk and return objectives, and duties of diversification,  
11 loyalty and impartiality. The bill permits a trustee to  
12 delegate investment and management functions. The bill  
13 provides that the uniform Act applies to trusts created after  
14 July 1, 1996, and to actions on previously existing trusts  
15 after that date.

16 The bill eliminates the list of authorized securities a  
17 fiduciary is allowed to invest in under section 636.23 and  
18 provides that a fiduciary can invest pursuant to the prudent  
19 investor rule as provided by the uniform Act. This change  
20 permits investments pursuant to the prudent investor rule for  
21 trusts subject to the probate code, memorial buildings and  
22 monument commissions, levee and drainage districts, and  
23 cemetery funds as provided in chapter 566.

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Redfern  
Giannetto  
Neuhouser  
Vilsack  
McKean

SSB-2229

Judiciary

Succeeded By

SENATE/HOUSE FILE SF 2394  
BY (PROPOSED COMMISSION ON  
UNIFORM STATE LAWS BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

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7 the circumstances then prevailing that a prudent person acting  
8 in a like capacity and familiar with such matters would use to  
9 attain the purposes of the account pursuant to chapter 636A.

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13 ~~general economic conditions, the anticipated tax consequences~~  
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30 source of authority, a trustee, executor, administrator, or  
31 guardian shall invest all moneys received by such fiduciary,  
32 to be by the fiduciary invested, ~~in securities which at the~~  
33 ~~time of the purchase thereof are included in one or more of~~  
34 ~~the following classes:~~ pursuant to chapter 636A.

35 Sec. 3. Section 636.23, subsections 1 through 16, Code

1 1995, are amended by striking the subsections.

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4 636.24 ~~POPULATION-AND~~ INDEBTEDNESS.

5 ~~The-population-specified-in-section-636-23-shall-be~~  
6 ~~determined-by-the-last-preceding-official-federal-census.~~ The  
7 indebtedness of any municipality or governmental subdivision  
8 shall be determined by the official certificate of the officer  
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19 fiduciary may also make investments which the fiduciary may  
20 deem necessary to protect and safeguard investments already  
21 made according to the provisions of ~~this-and-sections-636-23~~  
22 ~~and-636-24~~ chapter 636A.

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29 or strategies.

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31 within the overall trust portfolio, which may include  
32 financial assets, interests in closely held enterprises,  
33 tangible and intangible personal property, and real property.

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35 appreciation of capital.

1 f. Other resources of the beneficiaries.

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32 from the trustee of a trust that is subject to the law of this  
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