

Senate Study Bill 2229

Conference Committee Text

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1 1 Section 1. Section [633.123](#), subsection 1, Code 1995, is
1 2 amended to read as follows:

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

1 10

~~1 11 This standard requires that when making investment decisions,~~

1 11

~~1 12 a fiduciary shall consider the role that the investment plays~~

1 12

~~1 13 within the account's portfolio of assets and may consider the~~

1 13

~~1 14 general economic conditions, the anticipated tax consequences~~

1 14

~~1 15 of the investment, the anticipated duration of the account,~~

1 15

~~1 16 and the needs of all beneficiaries of the account.~~

1 16

~~1 17 The propriety of an investment decision is to be determined~~

1 17

~~1 18 by what the fiduciary knew or should have known at the time of~~

1 18

~~1 19 the decision about the inherent nature and expected~~

1 19

~~1 20 performance of the investment, the attributes of the account~~

1 20

~~1 21 portfolio, the general economy, and the needs and objectives~~

1 21

~~of the beneficiaries of the account as they existed at the~~

1 22

~~time of the investment decision.~~

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

1 25 All proposed investments of trust funds by fiduciaries
1 26 shall first be reported to the court or a judge for approval
1 27 and be approved and unless otherwise authorized or directed by
1 28 the court under authority of which the fiduciary acts, or by
1 29 the will, trust agreement, or other document which is the
1 30 source of authority, a trustee, executor, administrator, or
1 31 guardian shall invest all moneys received by such fiduciary,
1 32 to be by the fiduciary invested

~~, in securities which at the~~

1 33

~~time of the purchase thereof are included in one or more of~~

1 34

~~the following classes:~~

~~pursuant to chapter 636A.~~

1 35 Sec. 3. Section 636.23, subsections 1 through 16, Code
2 1 1995, are amended by striking the subsections.

2 2 Sec. 4. Section [636.24](#), Code 1995, is amended to read as
2 3 follows:

2 4 636.24

~~POPULATION AND~~

~~INDEBTEDNESS.~~

2 5

~~The population specified in section 636.23 shall be~~

2 6

~~determined by the last preceding official federal census.~~

~~The~~

2 7 indebtedness of any municipality or governmental subdivision
2 8 shall be determined by the official certificate of the officer
2 9 of such municipality or district in charge of its public
2 10 accounts.

2 11 Sec. 5. Section [636.25](#), Code 1995, is amended to read as
2 12 follows:

2 13 636.25 EXISTING INVESTMENTS.

2 14 Any fiduciary not governed by the probate code may by and
2 15 with the consent of the court having jurisdiction over such
2 16 fiduciary or under permission of the instrument creating the
2 17 trust, continue to hold any investment originally received by
2 18 the fiduciary under the trust or any increase thereof. Such
2 19 fiduciary may also make investments which the fiduciary may
2 20 deem necessary to protect and safeguard investments already
2 21 made according to the provisions of

~~this and sections 636.23~~

2 22

~~and 636.24~~

~~chapter 636A.~~

2 23 Sec. 6. Section [636.60](#), Code 1995, is amended to read as
2 24 follows:

2 25 636.60 POWERS AND DUTIES OF TRUSTEES NOT SUBJECT TO COURT

2 26 ADMINISTRATION.

2 27 Trustees of trusts not being administered in the probate
2 28 court, shall have all the powers and shall be subject to all
2 29 the duties and liabilities as provided in the probate code,
2 30 except the duty of reporting to or obtaining approval of the
2 31 court, and shall be authorized to make investments pursuant to
2 32 chapter 636A.

2 33 Sec. 7. NEW SECTION. 636A.1 TITLE.

2 34 This chapter may be cited as the "Iowa Uniform Prudent
2 35 Investor Act".

3 1 Sec. 8. NEW SECTION. 636A.2 PRUDENT INVESTOR RULE.

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

3 6 2. The prudent investor rule may be expanded, restricted,
3 7 eliminated, or otherwise altered by the provisions of a trust.
3 8 A trustee is not liable to a beneficiary to the extent that
3 9 the trustee acted in reasonable reliance on the provisions of
3 10 the trust.

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

3 13 1. A trustee shall invest and manage trust assets as a
3 14 prudent investor would, by considering the purposes, terms,
3 15 distribution requirements, and other circumstances of the
3 16 trust. In satisfying this standard, the trustee shall
3 17 exercise reasonable care, skill, and caution.

3 18 2. A trustee's investment and management decisions
3 19 respecting individual assets must be evaluated not in
3 20 isolation but in the context of the trust portfolio as a whole
3 21 and as a part of an overall investment strategy having risk
3 22 and return objectives reasonably suited to the trust.

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

3 26 a. General economic conditions.

3 27 b. The possible effect of inflation or deflation.

3 28 c. The expected tax consequences of investment decisions
3 29 or strategies.

3 30 d. The role that each investment or course of action plays
3 31 within the overall trust portfolio, which may include
3 32 financial assets, interests in closely held enterprises,
3 33 tangible and intangible personal property, and real property.

3 34 e. The expected total return from income and the
3 35 appreciation of capital.

4 1 f. Other resources of the beneficiaries.

4 2 g. The trust's needs for liquidity, regularity of income,
4 3 and preservation or appreciation of capital.

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

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

4 10 5. A trustee may invest in any kind of property or type of
4 11 investment consistent with the standards of this chapter.

4 12 6. A trustee who has special skills or expertise, or is
4 13 named trustee in reliance upon the trustee's representation
4 14 that the trustee has special skills or expertise, has a duty
4 15 to use those special skills or expertise.

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

4 17 A trustee shall diversify the investments of the trust
4 18 unless the trustee reasonably determines that, because of
4 19 special circumstances, the purposes of the trust are better
4 20 served without diversifying.

4 21 Sec. 11. NEW SECTION. 636A.5 DUTIES AT INCEPTION OF

4 22 TRUSTEESHIP.

4 23 Within a reasonable time after accepting a trusteeship or
4 24 receiving trust assets, a trustee shall review the trust
4 25 assets and make and implement decisions concerning the
4 26 retention and disposition of assets, in order to bring the
4 27 trust portfolio into compliance with the purposes, terms,
4 28 distribution requirements, and other circumstances of the
4 29 trust, and with the requirements of this chapter.

4 30 Sec. 12. NEW SECTION. 636A.6 LOYALTY.

4 31 A trustee shall invest and manage the trust assets solely
4 32 in the interest of the beneficiaries.

4 33 Sec. 13. NEW SECTION. 636A.7 IMPARTIALITY.

4 34 If a trust has two or more beneficiaries, the trustee shall
4 35 act impartially in investing and managing the trust assets,
5 1 taking into account any differing interests of the
5 2 beneficiaries.

5 3 Sec. 14. NEW SECTION. 636A.8 INVESTMENT COSTS.

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

5 8 Sec. 15. NEW SECTION. 636A.9 REVIEWING COMPLIANCE.

5 9 Compliance with the prudent investor rule is determined in
5 10 light of the facts and circumstances existing at the time of a
5 11 trustee's decision or action and not by hindsight.

5 12 Sec. 16. NEW SECTION. 636A.10 DELEGATION OF INVESTMENT
5 13 AND MANAGEMENT FUNCTIONS.

5 14 1. A trustee may delegate investment and management
5 15 functions that a prudent trustee of comparable skills would
5 16 properly delegate under the circumstances. The trustee shall
5 17 exercise reasonable care, skill, and caution in the following:

5 18 a. Selecting an agent.

5 19 b. Establishing the scope and terms of the delegation,
5 20 consistent with the purposes and terms of the trust.

5 21 c. Periodically reviewing the agent's actions in order to
5 22 monitor the agent's performance and compliance with the terms
5 23 of the delegation.

5 24 2. In performing a delegated function, an agent owes a
5 25 duty to the trust to exercise reasonable care to comply with
5 26 the terms of the delegation.

5 27 3. A trustee who complies with the requirements of
5 28 subsection 1 is not liable to the beneficiaries or to the
5 29 trust for the decisions or actions of the agent to whom the
5 30 function was delegated.

5 31 4. An agent who accepts the delegation of a trust function
5 32 from the trustee of a trust that is subject to the law of this
5 33 state submits to the jurisdiction of the courts of this state.

5 34 Sec. 17. NEW SECTION. 636A.11 TRUST LANGUAGE INVOKING
5 35 STANDARD OF THIS CHAPTER.

6 1 The following terms or comparable language in the
6 2 provisions of a trust, unless otherwise limited or modified,
6 3 authorize any investment or strategy permitted under this
6 4 chapter:

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

6 7 2. Legal investments.

6 8 3. Authorized investments.

6 9 4. Using the judgment and care under the circumstances
6 10 then prevailing that persons of prudence, discretion, and
6 11 intelligence exercise in the management of their own affairs,
6 12 not in regard to speculation but in regard to the permanent
6 13 disposition of their funds, considering the probable income as
6 14 well as the probable safety of their capital.

6 15 5. The prudent man, trustee, person, or investor rule.

6 16 Sec. 18. NEW SECTION. 636A.12 APPLICATION TO EXISTING
6 17 TRUSTS.

6 18 This chapter applies to trusts existing on or created after
6 19 July 1, 1996. As applied to trusts existing on July 1, 1996,

6 20 this chapter governs only decisions or actions occurring after
6 21 that date.

6 22 Sec. 19. NEW SECTION. 636A.13 UNIFORMITY OF APPLICATION
6 23 AND CONSTRUCTION.

6 24 This chapter shall be applied and construed to effectuate
6 25 its general purpose to make uniform the law with respect to
6 26 the subject of this chapter among the states enacting the
6 27 uniform prudent investor Act.

6 28 Sec. 20. NEW SECTION. 636A.14 SEVERABILITY.

6 29 If any provision of this chapter or its application to any
6 30 person or circumstance is held invalid, the invalidity does
6 31 not affect other provisions or applications of this chapter
6 32 which can be given effect without the invalid provision or
6 33 application, and to this end the provisions of this chapter
6 34 are severable.

6 35 EXPLANATION

7 1 This bill adopts the Uniform Prudent Investor Act approved
7 2 and recommended by the national conference of commissioners on
7 3 uniform state laws by establishing the Iowa Uniform Prudent
7 4 Investor Act.

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

7 16 The bill eliminates the list of authorized securities a
7 17 fiduciary is allowed to invest in under section 636.23 and
7 18 provides that a fiduciary can invest pursuant to the prudent
7 19 investor rule as provided by the uniform Act. This change
7 20 permits investments pursuant to the prudent investor rule for
7 21 trusts subject to the probate code, memorial buildings and
7 22 monument commissions, levee and drainage districts, and
7 23 cemetery funds as provided in chapter 566.

7 24 LSB 3277XL 76

7 25 ec/sc/14