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SENATE FILE 26

BY MCKEAN

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to uniform prudent investor guidelines for
2 trustees and providing an applicability date.

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

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SF 26 JUDICIARY

1 Section 1. Section 633.123, subsection 1, Code 1999, 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 pursuant to chapter 636A the care, skill,
7 prudence, and diligence under the circumstances then
8 prevailing that a prudent person acting in a like capacity and
9 familiar with such matters would use to attain the purposes of
10 the account. ~~This standard requires that when making~~
11 ~~investment decisions, a fiduciary shall consider the role that~~
12 ~~the investment plays within the account's portfolio of assets~~
13 ~~and may consider the general economic conditions, the~~
14 ~~anticipated tax consequences of the investment, the~~
15 ~~anticipated duration of the account, and the needs of all~~
16 ~~beneficiaries of the account.~~

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

24 Sec. 2. Section 634A.2, subsection 6, Code 1999, is
25 amended to read as follows:

26 6. A supplemental needs trust is not subject to
27 administration in the Iowa district court sitting in probate.
28 A trustee of a supplemental needs trust has all powers and
29 shall be subject to all the duties and liabilities of a
30 trustee as provided in the probate code and in chapter 636A,
31 except the duty of reporting to or obtaining approval of the
32 court.

33 Sec. 3. Section 636.23, unnumbered paragraph 1, Code 1999,
34 is amended to read as follows:

35 All proposed investments of trust funds by fiduciaries

1 shall first be reported to the court or a judge for approval
2 and be approved and unless otherwise authorized or directed by
3 the court under authority of which the fiduciary acts, or by
4 the will, trust agreement, or other document which is the
5 source of authority, a trustee, executor, administrator, or
6 guardian shall invest pursuant to chapter 636A all moneys
7 received by such fiduciary, to be ~~by-the-fiduciary invested,~~
8 ~~in-securities-which-at-the-time-of-the-purchase-thereof-are~~
9 ~~included-in-one-or-more-of-the-following-classes:.~~

10 Sec. 4. Section 636.23, subsections 1 through 16, Code
11 1999, are amended by striking the subsections.

12 Sec. 5. Section 636.24, Code 1999, is amended to read as
13 follows:

14 636.24 ~~POPULATION-AND~~ INDEBTEDNESS.

15 ~~The-population-specified-in-section-636-23-shall-be~~
16 ~~determined-by-the-last-preceding-official-federal-census.~~ The
17 indebtedness of any municipality or governmental subdivision
18 shall be determined by the official certificate of the officer
19 of such municipality or district in charge of its public
20 accounts.

21 Sec. 6. Section 636.25, Code 1999, is amended to read as
22 follows:

23 636.25 EXISTING INVESTMENTS.

24 Any fiduciary not governed by the probate code may by and
25 with the consent of the court having jurisdiction over such
26 fiduciary or under permission of the instrument creating the
27 trust, continue to hold any investment originally received by
28 the fiduciary under the trust or any increase thereof. Such
29 fiduciary may also make investments which the fiduciary may
30 deem necessary to protect and safeguard investments already
31 made according to the provisions of ~~this-and-sections-636-23~~
32 ~~and-636-24~~ chapter 636A.

33 Sec. 7. Section 636.60, Code 1999, is amended to read as
34 follows:

35 636.60 POWERS AND DUTIES OF TRUSTEES NOT SUBJECT TO COURT

1 ADMINISTRATION.

2 Trustees of trusts not being administered in the probate
3 court, shall have all the powers and shall be subject to all
4 the duties and liabilities as provided in the probate code,
5 except the duty of reporting to or obtaining approval of the
6 court, and shall be authorized to make investments pursuant to
7 chapter 636A.

8 Sec. 8. NEW SECTION. 636A.1 TITLE.

9 This chapter may be cited as the "Iowa Uniform Prudent
10 Investor Act".

11 Sec. 9. NEW SECTION. 636A.2 PRUDENT INVESTOR RULE.

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

16 2. The prudent investor rule may be expanded, restricted,
17 eliminated, or otherwise altered by the provisions of a trust.
18 A trustee is not liable to a beneficiary to the extent that
19 the trustee acted in reasonable reliance on the provisions of
20 the trust.

21 Sec. 10. NEW SECTION. 636A.3 STANDARD OF CARE --
22 PORTFOLIO STRATEGY -- RISK AND RETURN OBJECTIVES.

23 1. A trustee shall invest and manage trust assets as a
24 prudent investor would, by considering the purposes, terms,
25 distribution requirements, and other circumstances of the
26 trust. In satisfying this standard, the trustee shall
27 exercise reasonable care, skill, and caution.

28 2. A trustee's investment and management decisions
29 respecting individual assets must be evaluated not in
30 isolation but in the context of the trust portfolio as a whole
31 and as a part of an overall investment strategy having risk
32 and return objectives reasonably suited to the trust.

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

- 1 a. General economic conditions.
- 2 b. The possible effect of inflation or deflation.
- 3 c. The expected tax consequences of investment decisions
- 4 or strategies.
- 5 d. The role that each investment or course of action plays
- 6 within the overall trust portfolio, which may include
- 7 financial assets, interests in closely held enterprises,
- 8 tangible and intangible personal property, and real property.
- 9 e. The expected total return from income and the
- 10 appreciation of capital.
- 11 f. Other resources of the beneficiaries.
- 12 g. The trust's needs for liquidity, regularity of income,
- 13 and preservation or appreciation of capital.
- 14 h. An asset's special relationship or special value, if
- 15 any, to the purposes of the trust or to one or more of the
- 16 beneficiaries.

17 4. A trustee shall make a reasonable effort to verify

18 facts relevant to the investment and management of trust

19 assets.

20 5. A trustee may invest in any kind of property or type of

21 investment consistent with the standards of this chapter.

22 6. A trustee who has special skills or expertise, or is

23 named trustee in reliance upon the trustee's representation

24 that the trustee has special skills or expertise, has a duty

25 to use those special skills or expertise.

26 Sec. 11. NEW SECTION. 636A.4 DIVERSIFICATION.

27 A trustee shall diversify the investments of the trust

28 unless the trustee reasonably determines that, because of

29 special circumstances, the purposes of the trust are better

30 served without diversifying.

31 Sec. 12. NEW SECTION. 636A.5 DUTIES AT INCEPTION OF

32 TRUSTEESHIP.

33 Within a reasonable time after accepting a trusteeship or

34 receiving trust assets, a trustee shall review the trust

35 assets and make and implement decisions concerning the

1 retention and disposition of assets, in order to bring the
2 trust portfolio into compliance with the purposes, terms,
3 distribution requirements, and other circumstances of the
4 trust, and with the requirements of this chapter.

5 Sec. 13. NEW SECTION. 636A.6 LOYALTY.

6 A trustee shall invest and manage the trust assets solely
7 in the interest of the beneficiaries.

8 Sec. 14. NEW SECTION. 636A.7 IMPARTIALITY.

9 If a trust has two or more beneficiaries, the trustee shall
10 act impartially in investing and managing the trust assets,
11 taking into account any differing interests of the
12 beneficiaries.

13 Sec. 15. NEW SECTION. 636A.8 INVESTMENT COSTS.

14 In investing and managing trust assets, a trustee shall
15 only incur costs that are appropriate and reasonable in
16 relation to the assets, the purposes of the trust, and the
17 skills of the trustee.

18 Sec. 16. NEW SECTION. 636A.9 REVIEWING COMPLIANCE.

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

22 Sec. 17. NEW SECTION. 636A.10 DELEGATION OF INVESTMENT
23 AND MANAGEMENT FUNCTIONS.

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

28 a. Selecting an agent.

29 b. Establishing the scope and terms of the delegation,
30 consistent with the purposes and terms of the trust.

31 c. Periodically reviewing the agent's actions in order to
32 monitor the agent's performance and compliance with the terms
33 of the delegation.

34 2. In performing a delegated function, an agent owes a
35 duty to the trust to exercise reasonable care to comply with

1 the terms of the delegation.

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

6 4. An agent who accepts the delegation of a trust function
7 from the trustee of a trust that is subject to the laws of
8 this state submits to the jurisdiction of the courts of this
9 state.

10 Sec. 18. NEW SECTION. 636A.11 TRUST LANGUAGE INVOKING
11 STANDARD OF THIS CHAPTER.

12 The following terms or comparable language in the
13 provisions of a trust, unless otherwise limited or modified,
14 authorize any investment or strategy permitted under this
15 chapter:

16 1. Investments permissible by law for investment of trust
17 funds.

18 2. Legal investments.

19 3. Authorized investments.

20 4. Using the judgment and care under the circumstances
21 then prevailing that persons of prudence, discretion, and
22 intelligence exercise in the management of their own affairs,
23 not in regard to speculation but in regard to the permanent
24 disposition of their funds, considering the probable income as
25 well as the probable safety of their capital.

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

27 Sec. 19. NEW SECTION. 636A.12 APPLICATION TO EXISTING
28 TRUSTS.

29 This chapter applies to trusts existing on or created after
30 July 1, 1999. As applied to trusts existing on July 1, 1999,
31 this chapter governs only decisions or actions occurring after
32 that date.

33 Sec. 20. NEW SECTION. 636A.13 UNIFORMITY OF APPLICATION
34 AND CONSTRUCTION.

35 This chapter shall be applied and construed to effectuate

1 its general purpose to make uniform the law with respect to
2 the subject of this chapter among the states enacting the
3 uniform prudent investor Act.

4 EXPLANATION

5 This bill adopts the Uniform Prudent Investor Act approved
6 and recommended by the national conference of commissioners on
7 uniform state laws by establishing the Iowa Uniform Prudent
8 Investor Act.

9 The uniform Act provides that a trustee shall invest and
10 manage trust assets based on a prudent investor standard. The
11 bill directs the trustee to view investments based on the
12 total portfolio, and not on individual investments. The bill
13 provides for a trustee's standard of care, portfolio strategy,
14 risk and return objectives, and duties of diversification,
15 loyalty, and impartiality. The bill permits a trustee to
16 delegate investment and management functions. The bill
17 provides that the uniform Act applies to trusts created after
18 July 1, 1999, and to actions on previously existing trusts
19 after that date.

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

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