

February 17, 1998

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## ENGROSSED SENATE BILL No. 5

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DIGEST OF SB 5 (Updated February 16, 1998 3:14 pm - DI 38)

**Citations Affected:** IC 30-4.

**Synopsis:** Uniform Prudent Investor Act. Adopts the Uniform Prudent Investor Act. Requires a trustee to administer the trust prudently by exercising care, skill, and caution, by using the trustee's skills and expertise, and by incurring only appropriate costs in investing assets. Allows the trustee to diversify the investments of the trust unless: (1) circumstances or the provisions of the trust require otherwise; or (2) a non-incapacitated beneficiary files a written statement instructing the trustee not to diversify the investments of the trust. Requires the trustee to be loyal to the trust and to treat co-beneficiaries impartially. Allows a natural person trustee to delegate investment and management functions to an agent if the trustee exercises reasonable care, skill, and caution in selecting an agent, in establishing the scope of the delegation, and in periodically reviewing the agent's actions. Creates a duty between an agent and a beneficiary. Provides that when an agent  
(Continued next page)

**Effective:** July 1, 1998.

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### Simpson, Kenley, Lubbers

(HOUSE SPONSORS — KUZMAN, FOLEY)

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November 18, 1997, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.

January 29, 1998, amended, reported favorably — Do Pass.

February 2, 1998, read second time, amended, ordered engrossed. Engrossed.

February 3, 1998, read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

February 10, 1998, read first time and referred to Committee on Rules and Legislative Procedures.

February 16, 1998, amended, reported — Do Pass.

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performs an investment and management function that is delegated to the agent by a trustee, the agent owes the same duty to the trust and its beneficiaries as does the trustee. Subjects an agent to the jurisdiction of Indiana if the agent accepts the delegation of investment and management functions of a trust subject to Indiana law. Makes conforming amendments.

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February 17, 1998

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

## ENGROSSED SENATE BILL No. 5

A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 30-4-3-3 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 1998]: Sec. 3. Unless the terms of the trust  
3 provide otherwise:  
4 (a) Subject to subsection (c) of this section, a trustee has the power  
5 to perform without court authorization, except as provided in  
6 IC 30-4-3-4(b) and IC 30-4-3-5(a), every act necessary or appropriate  
7 for the purposes of the trust including, by way of illustration and not of  
8 limitation, the power:  
9 (1) to deal with the trust estate; to buy, sell, or exchange and  
10 convey or transfer all property (real, personal, or mixed) for cash  
11 or on credit and at public or private sale with or without notice;  
12 and to invest and reinvest the trust estate;  
13 (2) to receive additions to the assets of the trust;  
14 (3) to acquire an undivided interest in a trust asset in which the  
15 trustee, in any trust capacity, holds an undivided interest;

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- 1 (4) to manage real property in every way, including, among other  
2 things, the adjusting of boundaries; erecting, altering or  
3 demolishing buildings; dedicating of streets, alleys, or other  
4 public uses; subdividing; developing; obtaining vacation of plats;  
5 granting of easements and rights-of-way; partitioning; entering  
6 into party wall agreements and obtaining title insurance for trust  
7 property;  
8 (5) to grant options concerning disposition of trust property,  
9 including the sale of covered security options, and to take options  
10 for acquisition of trust property, including the purchase back of  
11 previously sold covered security options;  
12 (6) to enter into a lease as lessor or lessee, with or without option  
13 to renew;  
14 (7) to enter into arrangements for exploration and removal of  
15 minerals or other natural resources and enter into a pooling or  
16 unitization agreement;  
17 (8) to continue the operation or management of any business or  
18 other enterprise placed in trust;  
19 (9) to borrow money, to be repaid from trust property or  
20 otherwise, and to encumber, mortgage, pledge, or grant a security  
21 interest in trust property in connection with the exercise of any  
22 power;  
23 (10) to advance money for the benefit of the trust estate and for all  
24 expenses or losses sustained in the administration of the trust and  
25 to collect any money advanced, without interest or with interest,  
26 at no more than the lowest rate prevailing when advanced;  
27 (11) to prosecute or defend actions, claims, or proceedings for the  
28 protection of trust property and of himself in the performance of  
29 his duties;  
30 (12) to pay or contest any claim, to settle a claim by or against the  
31 trust by compromise or arbitration, and to abandon or release,  
32 totally or partially, any claim belonging to the trust;  
33 (13) to insure the trust estate against damage or loss and the  
34 trustee against liability with respect to third persons;  
35 (14) to pay taxes, assessments, and other expenses incurred in the  
36 acquisition, retention, and maintenance of the trust property and  
37 in the administration of the trust;  
38 (15) to vote securities, in person or by a general or special proxy;  
39 to hold the securities in the name of a nominee if the trustee is a  
40 corporate trustee; and to effect or approve, and deposit securities  
41 in connection with, any change in the form of the corporation  
42 including, among other things, dissolution, liquidation,

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1 reorganization, acquisition, and merger;

2 (16) to employ persons, including, among others, attorneys,  
3 accountants, investment advisors, and agents, to advise and assist  
4 the trustee in the performance of his duties;

5 (17) to effect distribution of property in cash, in kind, or partly in  
6 cash and partly in kind, in divided or undivided interests; and

7 (18) to execute and deliver all instruments necessary or  
8 appropriate to accomplishing or facilitating the exercise of the  
9 trustee's powers.

10 (b) Any act under subdivision (4) of subsection (a) of this section,  
11 an option under subdivision (5), a lease under subdivision (6), an  
12 arrangement under subdivision (7), and an encumbrance, mortgage,  
13 pledge, or security interest under subdivision (9) may be for a term  
14 either within or extending beyond the term of the trust.

15 (c) In acquiring, investing, reinvesting, exchanging, retaining,  
16 selling, and managing property for any trust, the trustee thereof shall  
17 exercise the judgment and care ~~under the circumstances then prevailing~~  
18 ~~which persons of prudence, discretion, and intelligence exercise in the~~  
19 ~~management of their own affairs, not in regard to speculation but in~~  
20 ~~regard to the permanent disposition of their funds, considering the~~  
21 ~~probable income as well as the probable safety of their capital~~  
22 **required by IC 30-4-3.5.** Within the limitations of the foregoing  
23 standard, the trustee is authorized to acquire and retain every kind of  
24 property, real, personal, or mixed, and every kind of investment,  
25 including specifically, but without in any way limiting the generality of  
26 the foregoing, bonds, debentures, and other corporate obligations,  
27 stocks, preferred or common, and real estate mortgages, which persons  
28 of prudence, discretion, and intelligence acquire or retain for their own  
29 account, and within the limitations of the foregoing standard, the  
30 trustee is authorized to retain property properly acquired, without  
31 limitation as to time and without regard to its suitability for original  
32 purchase. Within the limitations of the foregoing standard the trustee  
33 is authorized to sell covered security options and to purchase back  
34 previously sold covered security options.

35 (d) If a distribution of particular trust assets is to be made to two (2)  
36 or more beneficiaries entitled to receive fractional shares in those  
37 assets, the trustee may distribute the particular assets without  
38 distributing to each beneficiary a pro rata share of each asset. However,  
39 the trustee shall:

40 (1) distribute to each beneficiary a pro rata share of the total fair  
41 market value of all of the particular assets as of the date of  
42 distribution; and



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(2) cause the distribution to result in a fair and equitable division among the beneficiaries of capital gain or loss on the assets.

SECTION 2. IC 30-4-3-6, AS AMENDED BY P.L.198-1996, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 6. (a) The trustee has a duty to administer a trust according to its terms.

(b) Unless the terms of the trust provide otherwise, the trustee also has a duty to do the following:

~~(1) Administer the trust solely in the interest of the beneficiaries.~~

~~(2) Treat multiple beneficiaries impartially.~~

**(1) Administer the trust in a manner consistent with IC 30-4-3.5.**

~~(3) (2) Take possession of and maintain control over the trust property.~~

~~(4) (3) Preserve the trust property.~~

~~(5) (4) Make the trust property productive for both the income and remainder beneficiary. As used in this subdivision, "productive" includes the production of income or investment for potential appreciation.~~

~~(6) (5) Keep the trust property separate from the trustee's individual property and separate from or clearly identifiable from property subject to another trust.~~

~~(7) (6) Maintain clear and accurate accounts with respect to the trust estate.~~

~~(8) (7) Upon reasonable request, give the beneficiary complete and accurate information concerning any matter related to the administration of the trust and permit the beneficiary or the beneficiary's agent to inspect the trust property, the trustee's accounts, and any other documents concerning the administration of the trust.~~

~~(9) (8) Take whatever action is reasonable to realize on claims constituting part of the trust property.~~

~~(10) (9) Defend actions involving the trust estate.~~

~~(11) Not delegate to another person the authority to perform acts which the trustee can reasonably perform personally.~~

~~(12) (10) Supervise any person to whom authority has been delegated.~~

SECTION 3. IC 30-4-3.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

**Chapter 3.5. Indiana Uniform Prudent Investor Act**

**Sec. 1. (a) Except as otherwise provided in subsection (b), a**

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1 trustee who invests and manages trust assets owes a duty to the  
2 beneficiaries of the trust to comply with the prudent investor rule  
3 set forth in this chapter.

4 (b) The prudent investor rule may be expanded, or in the case  
5 of a natural person trustee, restricted, eliminated, or otherwise  
6 altered by the provisions of a trust. A trustee is not liable to a  
7 beneficiary to the extent that the trustee acted in reasonable  
8 reliance on the provision of the trust.

9 Sec. 2. (a) A trustee shall invest and manage trust assets as a  
10 prudent investor would, by considering the purposes, terms,  
11 distribution requirements, and other circumstances of the trust. In  
12 satisfying this standard, the trustee shall exercise reasonable care,  
13 skill, and caution.

14 (b) A trustee's investment and management decisions respecting  
15 individual assets must be evaluated not in isolation but in the  
16 context of the trust portfolio as a whole and as a part of an overall  
17 investment strategy having risk and return objectives reasonably  
18 suited to the trust.

19 (c) Among circumstances that a trustee shall consider in  
20 investing and managing trust assets are those of the following that  
21 are relevant to the trust and its beneficiaries:

22 (1) General economic conditions.

23 (2) The possible effect of inflation or deflation.

24 (3) The expected tax consequences of investment decisions or  
25 strategies.

26 (4) The role that each investment or course of action plays  
27 within the overall trust portfolio, which may include financial  
28 assets, interests in closely held enterprises, tangible and  
29 intangible personal property, and real property.

30 (5) The expected total return from income and the  
31 appreciation of capital.

32 (6) Other resources of the beneficiaries, to the extent known.

33 (7) Needs for liquidity, income, the timing of the receipt of  
34 income, and preservation or appreciation of capital.

35 (8) An asset's special relationship or special value, if any, to  
36 the purposes of the trust or to one (1) or more of the  
37 beneficiaries.

38 (d) A trustee shall make a reasonable effort to verify facts  
39 relevant to the investment and management of trust assets.

40 (e) A trustee may invest in any kind of property or type of  
41 investment consistent with the standards of this chapter.

42 (f) A trustee who has special skills or expertise, or is named

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1 trustee in reliance upon the trustee's advertising, promotional  
2 material, or other representation that the trustee has special skills  
3 or expertise, has a duty to use those special skills or expertise.

4 **Sec. 3. A trustee may diversify the investments of the trust**  
5 **unless:**

6 (1) the trustee reasonably determines that, because of special  
7 circumstances, the purposes of the trust are better served  
8 without diversifying; or

9 (2) a non-incapacitated beneficiary who is, or beneficiaries  
10 who are, entitled to receive a majority of the income of the  
11 trust file a written statement instructing the trustee not to  
12 diversify the investments of the trust.

13 **Sec. 4. Within a reasonable time after accepting a trusteeship or**  
14 **receiving trust assets, a trustee shall review the trust assets and**  
15 **make and implement decisions concerning the retention and**  
16 **disposition of assets in order to bring the trust portfolio into**  
17 **compliance with the purposes, terms, distribution requirements,**  
18 **and other circumstances of the trust, and with the requirements of**  
19 **this chapter.**

20 **Sec. 5. A trustee shall invest and manage the trust assets solely**  
21 **in the interest of the beneficiaries.**

22 **Sec. 6. If a trust has two (2) or more beneficiaries, the trustee**  
23 **shall act impartially in investing and managing the trust assets,**  
24 **taking into account any differing interests of the beneficiaries.**

25 **Sec. 7. In investing and managing trust assets, a trustee may**  
26 **only incur costs that are appropriate and reasonable in relation to**  
27 **the assets, the purposes of the trust, and the skills of the trustee.**

28 **Sec. 8. Compliance with the prudent investor rule is determined**  
29 **in light of the facts, circumstances, and law existing at the time of**  
30 **a trustee's decision or action and not by hindsight.**

31 **Sec. 9. (a) A natural person trustee may delegate investment and**  
32 **management functions that a prudent trustee of comparable skills**  
33 **could properly delegate under the circumstances. The trustee shall**  
34 **exercise reasonable care, skill, and caution in:**

35 (1) selecting an agent;

36 (2) establishing the scope and terms of the delegation,  
37 consistent with the purposes and terms of the trust; and

38 (3) reviewing the agent's actions periodically in order to  
39 monitor the agent's performance and compliance with the  
40 terms of the delegation.

41 (b) In performing a delegated function, an agent owes the same  
42 duty to the trust and its beneficiaries as does the trustee.

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1 (c) By accepting the delegation of a trust function from the  
2 trustee of a trust that is subject to the law of Indiana, an agent  
3 submits to the jurisdiction of the courts of Indiana.

4 Sec. 10. The following terms or comparable language in the  
5 provisions of a trust, unless otherwise limited or modified,  
6 authorizes any investment or strategy permitted under this  
7 chapter:

8 (1) "Investments permissible by law for investment of trust  
9 funds".

10 (2) "Legal investments".

11 (3) "Authorized investments".

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

18 (5) "Prudent man rule".

19 (6) "Prudent trustee rule".

20 (7) "Prudent person rule".

21 (8) "Prudent investor rule".

22 Sec. 11. This chapter applies to trusts existing on and created  
23 after June 30, 1998. As applied to trusts existing on June 30, 1998,  
24 this chapter governs only decisions or actions occurring after June  
25 30, 1998.

26 Sec. 12. This chapter shall be applied and construed to  
27 effectuate its general purpose to make uniform the law with respect  
28 to the subject of this chapter among the states enacting it.

29 Sec. 13. This chapter may be cited as the "Indiana Uniform  
30 Prudent Investor Act".

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SENATE MOTION

Mr. President: I move that Senator Lubbers be added as coauthor of Senate Bill 5.

SIMPSON

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Corrections, Criminal and Civil Procedures, to which was referred Senate Bill 5, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 5, line 27, after "beneficiaries" insert ", to the extent known".

Page 5, line 40, delete "shall" and insert "**may**".

Page 5, line 40, after "unless" insert ":".

Page 5, line 41, before "the trustee" begin a new line block indented and insert:

"(1)".

Page 6, line 1, delete "." and insert "; or"

Page 6, between lines 1 and 2, begin a new line block indented and insert:

"(2) **a non-incapacitated beneficiary files a written statement instructing the trustee not to diversify the investments of the trust.**".

Page 6, line 30, delete "a" and insert "**the same**".

Page 6, line 31, after "trust" insert "**as does the trustee.**".

Page 6, line 31, delete "to exercise reasonable care to comply with the terms of the".

Page 6, delete line 32.

and when so amended that said bill do pass.

(Reference is to Senate Bill 5 as introduced.)

MEEKS, Chairperson

Committee Vote: Yeas 9, Nays 0.

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SENATE MOTION

Mr. President: I move that Senate Bill 5 be amended to read as follows:

Page 6, line 39, delete "**same**".

Page 6, line 39, delete "**a**" and insert "**the same**".

(Reference is to Senate Bill 5 as printed January 30, 1998.)

KENLEY

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SENATE MOTION

Mr. President: I move that Senator Kenley be added as second author of Senate Bill 5.

SIMPSON

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Rules and Legislative Procedures, to which was referred Senate Bill 5, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the amendment made on motion of Senator Kenley adopted February 2, 1998.

Page 5, line 4, delete ", a default rule,".

Page 5, line 4, after "expanded," insert "**or in the case of a natural person trustee,**".

Page 5, line 20, delete "or" and insert "**and**".

Page 5, line 32, delete "regularity of".

Page 5, line 32, after "income," insert "**the timing of the receipt of income,**".

Page 5, line 42, after "trustee's" insert "**advertising, promotional material, or other**".

Page 6, line 8, delete "files" and insert "**who is, or beneficiaries who are, entitled to receive a majority of the income of the trust file**".

Page 6, line 14, delete ",,".

Page 6, line 27, delete "facts and" and insert "**facts,**".

Page 6, line 27, after "circumstances" insert "**, and law**".

Page 6, line 29, after "A" insert "**natural person**".

Page 6, line 39, delete "the same" and insert "**a**".

Page 6, line 39, after "owes" delete "a" and insert "**the same**".

Page 6, line 40, after "trust" insert "**and its beneficiaries**".

Page 6, delete lines 41 through 42.

Page 7, delete line 1.

Page 7, line 2, delete "(d)" and insert "(c)".

and when so amended that said bill do pass.

(Reference is to Senate Bill 5 as printed January 30, 1998, and as amended on motion of Senator Kenley adopted February 2, 1998.)

GREGG, Chair

Committee Vote: yeas 6, nays 0.

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