

SENATE BILL No. 5

DIGEST OF INTRODUCED BILL

Citations Affected: IC 30-4-3-3; IC 30-4-3-6; IC 30-4-3.5.

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; by incurring only appropriate costs in investing assets; and by diversifying the investments of the trust unless circumstances or the provisions of the trust require otherwise. Requires the trustee to be loyal to the trust and to treat co-beneficiaries impartially. Allows the 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. Makes a trustee immune from liability for the actions of an agent acting within the scope of agency if the trustee has exercised reasonable care, skill,

(Continued next page)

Effective: July 1, 1998.

Simpson

November 18, 1998, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.



Digest Continued

and caution. Creates a duty between an agent and a beneficiary. 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.



Introduced

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.

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 to
5 perform without court authorization, except as provided in IC 30-4-3-4(b)
6 and IC 30-4-3-5(a), every act necessary or appropriate for the purposes
7 of the trust including, by way of illustration and not of limitation, the
8 power:

9 (1) to deal with the trust estate; to buy, sell, or exchange and convey
10 or transfer all property (real, personal, or mixed) for cash or on
11 credit and at public or private sale with or without notice; and to
12 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;



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



1 accountants, investment advisors, and agents, to advise and assist
2 the trustee in the performance of his duties;

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

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

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

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

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

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

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

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



1 according to its terms.

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

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

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

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

8 ~~(3) (2) Take possession of and maintain control over the trust~~
9 ~~property.~~

10 ~~(4) (3) Preserve the trust property.~~

11 ~~(5) (4) Make the trust property productive for both the income and~~
12 ~~remainder beneficiary. As used in this subdivision, "productive"~~
13 ~~includes the production of income or investment for potential~~
14 ~~appreciation.~~

15 ~~(6) (5) Keep the trust property separate from the trustee's individual~~
16 ~~property and separate from or clearly identifiable from property~~
17 ~~subject to another trust.~~

18 ~~(7) (6) Maintain clear and accurate accounts with respect to the trust~~
19 ~~estate.~~

20 ~~(8) (7) Upon reasonable request, give the beneficiary complete and~~
21 ~~accurate information concerning any matter related to the~~
22 ~~administration of the trust and permit the beneficiary or the~~
23 ~~beneficiary's agent to inspect the trust property, the trustee's~~
24 ~~accounts, and any other documents concerning the administration of~~
25 ~~the trust.~~

26 ~~(9) (8) Take whatever action is reasonable to realize on claims~~
27 ~~constituting part of the trust property.~~

28 ~~(10) (9) Defend actions involving the trust estate.~~

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

31 ~~(12) (10) Supervise any person to whom authority has been~~
32 ~~delegated.~~

33 SECTION 3. IC 30-4-3.5 IS ADDED TO THE INDIANA CODE AS
34 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1,
35 1998]:

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

37 **Sec. 1. (a) Except as otherwise provided in subsection (b), a**
38 **trustee who invests and manages trust assets owes a duty to the**
39 **beneficiaries of the trust to comply with the prudent investor rule set**
40 **forth in this chapter.**

41 **(b) The prudent investor rule, a default rule, may be expanded,**



1 restricted, eliminated, or otherwise altered by the provisions of a
2 trust. A trustee is not liable to a beneficiary to the extent that the
3 trustee acted in reasonable reliance on the provision of the trust.

4 **Sec. 2. (a) A trustee shall invest and manage trust assets as a**
5 **prudent investor would, by considering the purposes, terms,**
6 **distribution requirements, and other circumstances of the trust. In**
7 **satisfying this standard, the trustee shall exercise reasonable care,**
8 **skill, and caution.**

9 **(b) A trustee's investment and management decisions respecting**
10 **individual assets must be evaluated not in isolation but in the context**
11 **of the trust portfolio as a whole and as a part of an overall**
12 **investment strategy having risk and return objectives reasonably**
13 **suited to the trust.**

14 **(c) Among circumstances that a trustee shall consider in investing**
15 **and managing trust assets are those of the following that are relevant**
16 **to the trust or its beneficiaries:**

17 **(1) General economic conditions.**

18 **(2) The possible effect of inflation or deflation.**

19 **(3) The expected tax consequences of investment decisions or**
20 **strategies.**

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

25 **(5) The expected total return from income and the appreciation**
26 **of capital.**

27 **(6) Other resources of the beneficiaries.**

28 **(7) Needs for liquidity, regularity of income, and preservation**
29 **or appreciation of capital.**

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

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

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

36 **(f) A trustee who has special skills or expertise, or is named**
37 **trustee in reliance upon the trustee's representation that the trustee**
38 **has special skills or expertise, has a duty to use those special skills or**
39 **expertise.**

40 **Sec. 3. A trustee shall diversify the investments of the trust unless**
41 **the trustee reasonably determines that, because of special**
42 **circumstances, the purposes of the trust are better served without**



1 diversifying.

2 **Sec. 4.** Within a reasonable time after accepting a trusteeship or
3 receiving trust assets, a trustee shall review the trust assets and
4 make and implement decisions concerning the retention and
5 disposition of assets, in order to bring the trust portfolio into
6 compliance with the purposes, terms, distribution requirements, and
7 other circumstances of the trust, and with the requirements of this
8 chapter.

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

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

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

17 **Sec. 8.** Compliance with the prudent investor rule is determined
18 in light of the facts and circumstances existing at the time of a
19 trustee's decision or action and not by hindsight.

20 **Sec. 9. (a)** A trustee may delegate investment and management
21 functions that a prudent trustee of comparable skills could properly
22 delegate under the circumstances. The trustee shall exercise
23 reasonable care, skill, and caution in:

- 24 (1) selecting an agent;
25 (2) establishing the scope and terms of the delegation,
26 consistent with the purposes and terms of the trust; and
27 (3) reviewing the agent's actions periodically in order to
28 monitor the agent's performance and compliance with the
29 terms of the delegation.

30 **(b)** In performing a delegated function, an agent owes a duty to
31 the trust to exercise reasonable care to comply with the terms of the
32 delegation.

33 **(c)** A trustee who complies with the requirements of subsection
34 **(a)** is not liable to the beneficiaries or to the trust for the decisions or
35 actions of the agent to whom the function was delegated.

36 **(d)** By accepting the delegation of a trust function from the
37 trustee of a trust that is subject to the law of Indiana, an agent
38 submits to the jurisdiction of the courts of Indiana.

39 **Sec. 10.** The following terms or comparable language in the
40 provisions of a trust, unless otherwise limited or modified, authorizes
41 any investment or strategy permitted under this chapter:

- 42 (1) "Investments permissible by law for investment of trust



- 1 funds".
2 (2) "Legal investments".
3 (3) "Authorized investments".
4 (4) "Using the judgment and care under the circumstances then
5 prevailing that persons of prudence, discretion, and intelligence
6 exercise in the management of their own affairs, not in regard
7 to speculation but in regard to the permanent disposition of
8 their funds, considering the probable income as well as the
9 probable safety of their capital".
10 (5) "Prudent man rule".
11 (6) "Prudent trustee rule".
12 (7) "Prudent person rule".
13 (8) "Prudent investor rule".
14 Sec. 11. This chapter applies to trusts existing on and created
15 after June 30, 1998. As applied to trusts existing on June 30, 1998,
16 this chapter governs only decisions or actions occurring after June
17 30, 1998.
18 Sec. 12. This chapter shall be applied and construed to effectuate
19 its general purpose to make uniform the law with respect to the
20 subject of this chapter among the states enacting it.
21 Sec. 13. This chapter may be cited as the "Indiana Uniform
22 Prudent Investor Act".

