March 18, 1999

ENGROSSED
SENATE BILL No. 9

DIGEST OF SB 9 (Updated March 16, 1999 10:24 am - DI 69)

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; by incurring only appropriate costs in investing assets; and by diversifying the investments of the trust. 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, 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

(Continued next page)

Effective: July 1, 1999.

Simpson, Paul
(HOUSE SPONSORS — DVORAK, FOLEY, ULMER)

January 6, 1999, read first time and referred to Committee on Insurance and Financial Institutions.
February 22, 1999, reported favorably — Do Pass.
March 1, 1999, ordered engrossed.
March 2, 1999, engrossed. Placed back on second reading for purposes of amendment.
March 3, 1999, reread second time, amended, ordered engrossed.
March 4, 1999, engrossed. Read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

March 10, 1999, read first time and referred to Committee on Judiciary.
March 17, 1999, amended, reported — Do Pass.

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and management functions of a trust subject to Indiana law. Makes conforming amendments.

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March 18, 1999

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

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ENGROSSED
SENATE BILL No. 9

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:

SECTION 1. IC 30-4-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. Unless the terms of the trust provide otherwise:

(a) Subject to subsection (c) of this section, a trustee has the power to perform without court authorization, except as provided in IC 30-4-3-4(b) and IC 30-4-3-5(a), every act necessary or appropriate for the purposes of the trust including, by way of illustration and not of limitation, the power:

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

(2) to receive additions to the assets of the trust;

(3) to acquire an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest;

(4) to manage real property in every way, including, among other things, the adjusting of boundaries; erecting, altering or demolishing buildings; dedicating of streets, alleys, or other public uses; subdividing; developing; obtaining vacation of plats; granting of easements and rights-of-way; partitioning; entering into party wall agreements and obtaining title insurance for trust property;

(5) to grant options concerning disposition of trust property, including the sale of covered security options, and to take options for acquisition of trust property, including the purchase back of previously sold covered security options;

(6) to enter into a lease as lessor or lessee, with or without option to renew;

(7) to enter into arrangements for exploration and removal of minerals or other natural resources and enter into a pooling or unitization agreement;

(8) to continue the operation or management of any business or other enterprise placed in trust;

(9) to borrow money, to be repaid from trust property or otherwise, and to encumber, mortgage, pledge, or grant a security interest in trust property in connection with the exercise of any power;

(10) to advance money for the benefit of the trust estate and for all expenses or losses sustained in the administration of the trust and to collect any money advanced, without interest or with interest, at no more than the lowest rate prevailing when advanced;

(11) to prosecute or defend actions, claims, or proceedings for the protection of trust property and of himself in the performance of his duties;

(12) to pay or contest any claim, to settle a claim by or against the trust by compromise or arbitration, and to abandon or release, totally or partially, any claim belonging to the trust;

(13) to insure the trust estate against damage or loss and the trustee against liability with respect to third persons;

(14) to pay taxes, assessments, and other expenses incurred in the acquisition, retention, and maintenance of the trust property and in the administration of the trust;

(15) to vote securities, in person or by a general or special proxy; to hold the securities in the name of a nominee if the trustee is a corporate trustee; and to effect or approve, and deposit securities in connection with, any change in the form of the corporation including, among other things, dissolution, liquidation,

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reorganization, acquisition, and merger;

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

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

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

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

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

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

(1) distribute to each beneficiary a pro rata share of the total fair market value of all of the particular assets as of the date of 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 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: 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, 1999]:

Chapter 3.5. Indiana Uniform Prudent Investor Act

Sec. 1. (a) Except as otherwise provided in subsection (b), a trustee who invests and manages trust assets owes a duty to the

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beneficiaries of the trust to comply with the prudent investor rule set forth in this chapter.

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

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

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

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

(1) General economic conditions.

(2) The possible effect of inflation or deflation.

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

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

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

(6) Other resources of the beneficiaries.

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

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

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

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

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use the special

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skills or expertise.

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

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

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

Sec. 6. If a trust has at least two (2) beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

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

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

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

(1) selecting an agent;

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

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

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

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

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

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

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

(2) "Legal investments".

(3) "Authorized investments".

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

(5) "Prudent man rule".

(6) "Prudent trustee rule".

(7) "Prudent person rule".

(8) "Prudent investor rule".

Sec. 11. This chapter applies to trusts existing on and created after June 30, 1999. As applied to trusts existing on June 30, 1999, this chapter governs only decisions or actions occurring after June 30, 1999.

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

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

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COMMITTEE REPORT

Mr. President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 9, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 9 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 9, Nays 0.

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SENATE MOTION

Mr. President: I move that Senator Paul be added as second author of Senate Bill 9.

SIMPSON

SENATE MOTION

Mr. President: I move that Senate Bill 9, which is elgible for third reading, be returned to second reading for purposes of amendment.

SIMPSON

SENATE MOTION

Mr. President: I move that Senate Bill 9 be amended to read as follows:

Page 6, delete lines 2 through 5, begin a new paragraph and insert:

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

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

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

Page 6, line 35, after "trust" insert "**, as does the trustee,**".

(Reference is to S.B. 9 as printed February 23, 1999.)

SIMPSON

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 9, 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:

Page 6, delete lines 2 through 9, begin a new paragraph and insert:

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

Page 6, line 39, delete ", as does the trustee,".

and when so amended that said bill do pass.

(Reference is to SB 9 as reprinted March 4, 1999.)

VILLALPANDO, Chair

Committee Vote: yeas 13, nays 0.

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