

LEGISLATIVE BILL 54

Approved by the Governor April 2, 1997

Introduced by Landis, 46

AN ACT relating to trusts and trustees; to amend sections 30-2464, 30-2646, 30-2813, 30-2819, and 30-3201, Reissue Revised Statutes of Nebraska; to adopt the Nebraska Uniform Prudent Investor Act; to harmonize provisions; to provide severability; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 13 of this act shall be known and may be cited as the Nebraska Uniform Prudent Investor Act.

Sec. 2. (1) Except as otherwise provided in subsection (2) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in the Nebraska Uniform Prudent Investor Act.

(2) 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 provisions of the trust.

Sec. 3. (1) 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.

(2) 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.

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

(a) General economic conditions;

(b) The possible effect of inflation or deflation;

(c) The expected tax consequences of investment decisions or strategies;

(d) 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;

(e) The expected total return from income and the appreciation of capital;

(f) Other resources of the beneficiaries;

(g) Needs for liquidity, regularity of income, and preservation or appreciation of capital; and

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

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

(5) A trustee may invest in any kind of property or type of investment consistent with the standards of the Nebraska Uniform Prudent Investor Act.

(6) 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 those special skills or expertise.

Sec. 4. 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. 5. 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 the Nebraska Uniform Prudent Investor Act.

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

Sec. 7. If a trust has two or more beneficiaries, the trustee shall

act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

Sec. 8. 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. 9. 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. 10. (1) 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:

(a) Selecting an agent;

(b) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

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

(2) 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.

(3) A trustee who complies with the requirements of subsection (1) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

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

Sec. 11. The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under the Nebraska Uniform Prudent Investor Act: Investments permissible by law for investment of trust funds, legal investments, authorized investments, 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, prudent man rule, prudent trustee rule, prudent person rule, and prudent investor rule.

Sec. 12. The Nebraska Uniform Prudent Investor Act applies to trusts existing on and created after the effective date of this act. As applied to trusts existing on the effective date of this act, the act governs only decisions or actions occurring after that date.

Sec. 13. The Nebraska Uniform Prudent Investor Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the act among the states enacting it.

Sec. 14. Section 30-2464, Reissue Revised Statutes of Nebraska, is amended to read:

30-2464. (a) A personal representative is a fiduciary who shall (1) prior to the effective date of this act, observe the standards of care applicable to trustees as described by section 30-2813 and (2) on and after the effective date of this act, comply with the Nebraska Uniform Prudent Investor Act. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate. He or she shall use the authority conferred upon him or her by this code, the terms of the will, if any, and any order in proceedings to which he or she is party for the best interests of successors to the estate.

(b) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his or her appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children and any pretermitted child of the decedent as described elsewhere in this code.

(c) Except as to proceedings which do not survive the death of the

decendent, a personal representative of a decendent domiciled in this state at his or her death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as his or her decendent had immediately prior to death.

Sec. 15. Section 30-2646, Reissue Revised Statutes of Nebraska, is amended to read:

30-2646. In the exercise of his or her powers, a conservator is to act as a fiduciary and shall (1) prior to the effective date of this act, observe the standards of care applicable to trustees as described by section 30-2813 and (2) on and after the effective date of this act, comply with the Nebraska Uniform Prudent Investor Act.

Sec. 16. Section 30-2813, Reissue Revised Statutes of Nebraska, is amended to read:

30-2813. Except as otherwise provided by the terms of the trust, the trustee (1) prior to the effective date of this act, shall observe the standards in dealing with the trust assets that would be observed by a prudent man person dealing with the property of another, and if the trustee has special skills, or is named trustee on the basis of representations of special skills or expertise, he or she is under a duty to use those skills, and (2) on and after the effective date of this act, shall comply with the Nebraska Uniform Prudent Investor Act.

Sec. 17. Section 30-2819, Reissue Revised Statutes of Nebraska, is amended to read:

30-2819. As used in sections 30-2820 to 30-2826 the Nebraska Trustees' Powers Act, unless the context otherwise requires:

(1) The terms beneficiary, trust, trustee, and such other terms defined in section 30-2209, as may be applicable, shall be used as defined in such section; and

(2) Prudent person ~~shall mean~~ means a trustee whose exercise of trust powers is reasonable and equitable in view of the interests of income or principal beneficiaries, or both, and (a) prior to the effective date of this act, in accordance with the standards of care provided for trustees in section 30-2813 and (b) on and after the effective date of this act, in accordance with the Nebraska Uniform Prudent Investor Act.

Sec. 18. Section 30-3201, Reissue Revised Statutes of Nebraska, is amended to read:

30-3201. Except as may be otherwise provided in section 8-318, or otherwise provided by law or by the instrument creating the fiduciary relationship involved, each and every trustee, guardian, conservator, executor, or administrator, whether appointed by the courts of this state, or acting under authority other than a court appointment, having funds for investment shall (1) prior to the effective date of this act, invest the same in investments of the nature which men persons of prudence, discretion, and intelligence acquire or retain in dealing with the property of another, and if the trustee, guardian, conservator, executor, or administrator has special skills or is named as fiduciary on the basis of representations of special skills or expertise, he or she is under a duty to use those skills, and (2) on and after the effective date of this act, comply with the Nebraska Uniform Prudent Investor Act.

Sec. 19. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 20. Original sections 30-2464, 30-2646, 30-2813, 30-2819, and 30-3201, Reissue Revised Statutes of Nebraska, are repealed.