

CHAPTER 233

AN ACT to repeal 320.01 (3) to (17) and 320.09; to amend 320.01 (intro. par.), 320.03, 320.04 and 320.05; to repeal and recreate 320.01 (1) and (2) and 320.02; and to create 320.06 of the statutes, relating to investment of trust funds.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 320.01 (intro. par.) of the statutes is amended to read:

320.01 (intro. par.) Executors, administrators, guardians and trustees may invest the funds of their trusts in accordance with the provisions pertaining to investments contained in the instrument under which they are acting, or in the absence of any such provision, then * * * *within the limits of the following * * * standards:*

SECTION 2. 320.01 (1) and (2) of the statutes are repealed and recreated to read:

320.01 (1) In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of another, a fiduciary shall exercise the judgment and care under the circumstances then prevailing, which men 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. Within the limitations of the foregoing standard, a fiduciary is authorized to acquire and retain every kind of property, real, personal or mixed, and every kind of investment, specifically including but not by way of limitation, bonds, debentures and other corporate obligations, stocks, preferred or common, and shares of investment companies and investment trusts, which men of prudence, discretion and intelligence acquire or retain for their own account.

(2) Notwithstanding the provisions of sub. (1), a fiduciary shall not purchase or otherwise invest in common stocks if the percentage of the fund invested in common stocks immediately after such purchase or investment will exceed 50 per cent of the total market value of the fund. The preceding sentence shall not be construed (a) to require the sale or other liquidation of a portion of a fund's holdings of common stocks even though at any given time the market value of the common stock investments of the fund exceeds 50 per cent of the total market value of the fund, or (b) to prevent the reinvestment of the proceeds of the sale or other disposition of common stocks in other common stocks even though at the time the market value of the common stock investments of the fund exceeds 50 per cent of the total market value of the fund. A fiduciary may rely upon published market quotations as to those investments for which such quotations are available, and upon such valuations of other investments as are fair and reasonable according to available information.

SECTION 3. 320.01 (3) to (17) of the statutes are repealed.

SECTION 4. 320.02 of the statutes is repealed and recreated to read:

320.02 CONSTRUCTION; COURT ORDERS; WRITTEN INSTRUMENTS. Nothing contained in this chapter shall be construed as authorizing any departure from, or variation of, the express terms or limitations set forth in any will, agreement, court order or other instrument creating

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or defining the fiduciary's duties and powers, but the terms "legal investment" or "authorized investment" or words of similar import, as used in any such instrument, shall be taken to mean any investment which is permitted by the terms of s. 320.01.

SECTION 5. 320.03, 320.04 and 320.05 of the statutes are amended to read:

320.03 Nothing contained in this chapter shall be construed to affect the power or jurisdiction of any court of the state of Wisconsin in respect to trusts and trustees, nor * * * *as restricting the power of a court of proper jurisdiction to permit a fiduciary to deviate from the terms of any will, agreement or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale or management of fiduciary property.*

320.04 Nothing contained in this chapter shall affect any investment made prior to the enactment hereof *or any amendment hereof* or affect any rights or interests established, accrued or created thereunder or affect any suit or action pending when this chapter *or any amendment hereof* becomes effective.

320.05 * * * (1) *Unless the trust instrument or a court order specifically directs otherwise, a trustee shall not be required to dispose of any property, real, personal, or mixed, in the estate or trust, however acquired, until the trustee determines in the exercise of a sound discretion that it is advisable to dispose of the same; but nothing herein contained shall excuse the trustee from the duty to exercise discretion at reasonable intervals and to determine at such times the advisability of retaining or disposing of such property.*

(2) Any heir or beneficiary shall have the right at any time to file an application with the * * * court in which said estate or trust is being administered for the purpose of compelling the sale of such * * * *property* so held, and to compel the investment of the proceeds in *other investments which are in accordance with the provisions of this chapter* * * *. Upon the filing of such application said * * * court shall conduct a hearing, after giving to all persons interested in said estate or trust such notice as shall be designated by said court, and upon such hearing said court shall enter *an order thereon directing the retention or sale of such * * * property as may be for the best interests of said estate or trust.*

SECTION 6. 320.06 of the statutes is created to read:

320.06 LAW GOVERNING EXISTING INSTRUMENTS. The provisions of this chapter shall govern fiduciaries, including executors, administrators, guardians, and trustees acting under wills, agreements, court orders and other instruments now existing or hereafter made.

SECTION 7. 320.09 of the statutes is repealed.

Approved July 28, 1959.