SENATE BILL 492 (LRB -4305)

An Act to amend 36.29 (1), 40.82 (2), 66.0603 (1m) (b), 881.02 and 881.06; and to repeal and recreate 881.01 of the statutes; relating to: regulating the investments of personal representatives, trustees, conservators, and guardians of the estate.

2004

02-24.	S.	Introduced by Senators **Schultz** and **Risser**; cosponsored by Representatives **Grothman** and **Cullen**.	
02-24.	S.	Read first time and referred to committee on Agriculture, Financial Institutions and Insurance	623
03-03.	S.	Executive action taken.	
03-03.	S.	Report passage recommended by committee on Agriculture, Financial Institutions and Insurance, Ayes 5, Noes 0	659
03-03.	S.	Available for scheduling.	
03-08.	S.	Placed on calendar 3-9-2004 by committee on Senate Organization.	
03-09.	S.	Read a second time.	
03-09.	S.	Ordered to a third reading.	
03-09.	S.	Rules suspended.	
03-09.	S.	Read a third time and **passed**.	
03-09.	S.	Ordered immediately messaged.	
03-10.	A.	Received from Senate	821
03-10.	A.	Read first time and referred to committee on Rules	821
03-10.	A.	Rules suspended to withdraw from committee on Rules and take up	847
03-10.	A.	Read a second time	847
03-10.	A.	Ordered to a third reading	847
03-10.	A.	Rules suspended	847
03-10.	A.	Read a third time and **concurred in**	847
03-10.	A.	Ordered immediately messaged	847
03-10.	S.	Received from Assembly concurred in.	

2003
ENROLLED BILL

03en SB-492

ADOPTED DOCUMENTS:

☒ Orig ☐ Engr ___ SubAmdt ___ 03 - 4305/1

Amendments to above (if none, write "NONE"): none

Corrections – show date (if none, write "NONE"): none

Topic relaty

3/11/04
Date

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2003 SENATE BILL 492

February 24, 2004 – Introduced by Senators SCHULTZ and RISSER, cosponsored by Representatives GROTHMAN and CULLEN. Referred to Committee on Agriculture, Financial Institutions and Insurance.

1 AN ACT ***to amend*** 36.29 (1), 40.82 (2), 66.0603 (1m) (b), 881.02 and 881.06; and
2 ***to repeal and recreate*** 881.01 of the statutes; **relating to:** regulating the
3 investments of personal representatives, trustees, conservators, and guardians
4 of the estate.

Analysis by the Legislative Reference Bureau

Under current law, personal representatives, guardians of the estate, and fiduciaries are bound by the prudent person rule, which requires them to invest the assets of their trusts and estates conservatively. For example, no more than 50 percent of the assets may consist of common stocks. This bill replaces the prudent person rule with the Uniform Prudent Investor Act, which sets general standards for fiduciaries, allows them greater flexibility in choosing investments, specifies that their work is to be judged on the basis of the performance of all their investments, allows them to delegate investment decisions, and requires them to consider the tax consequences of investments. These changes affect state and local deferred compensation plans, the State Historical Society's funds that are invested by the Investment Board, municipal cemetery funds, employee welfare funds, wards' estates, care funds, and preneed trust funds. The bill also adds conservators to the types of fiduciaries to which the Uniform Prudent Investor Act applies. A

conservator is appointed by a court to manage the property or income of a person who is competent and who has requested that the conservator be appointed.

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

1 **SECTION 1.** 36.29 (1) of the statutes is amended to read:

2 36.29 **(1)** All gifts, grants, and bequests for the benefit or advantage of the
3 system or any of its institutions, departments, or facilities or to provide any means
4 of instruction, illustration, or knowledge in connection therewith, whether made to
5 trustees or otherwise, shall be valid notwithstanding any other provision of this
6 chapter except as otherwise provided in this subsection and shall be executed and
7 enforced according to the provisions of the instrument making the same, including
8 all provisions and directions in any such instrument for accumulation of the income
9 of any fund or rents and profits of any real estate without being subject to the
10 limitations and restrictions provided by law in other cases; but no such income
11 accumulation shall be allowed to produce a fund more than 20 times as great as that
12 originally given. ~~When such gifts, grants or bequests include common stocks or other~~
13 ~~investments which are not authorized by ch. 881, the board may continue to hold~~
14 ~~such common stocks or other investments and exchange, invest or reinvest the funds~~
15 ~~of such gift, grant or bequest in similar types of investments without being subject~~
16 ~~to the limitations and restrictions provided by law in other cases.~~ No ~~such~~
17 investment <u>of the funds of such gifts, grants, or bequests</u> shall knowingly be made
18 in any company, corporation, subsidiary, or affiliate ~~which~~ <u>that</u> practices or condones
19 through its actions discrimination on the basis of race, religion, color, creed, or sex.
20 Except as otherwise provided in this section, the board may invest not to exceed 85%
21 of trust funds held and administered by the board in common stocks~~, the limitation~~

1 ~~of 50% in s. 881.01 (2) to the contrary notwithstanding~~. This subsection does not
2 apply to a gift, grant, or bequest that the board declines to accept or that the board
3 is not authorized to accept under this section.

4 **SECTION 2.** 40.82 (2) of the statutes is amended to read:

5 40.82 **(2)** Compensation ~~which~~ that is withheld under a deferred compensation
6 plan contract between an employer and an employee may be invested by the
7 employer or a person other than the employer who is authorized by contract to
8 administer the funds. The employer may determine the types of investments in
9 which the deferred compensation funds may be invested. The deferred compensation
10 funds may be invested and reinvested in the same manner provided for investments
11 under s. 881.01 ~~(1)~~.

12 **SECTION 3.** 66.0603 (1m) (b) of the statutes is amended to read:

13 66.0603 **(1m)** (b) A town, city, or village may invest surplus funds in any bonds
14 or securities issued under the authority of the municipality, whether the bonds or
15 securities create a general municipality liability or a liability of the property owners
16 of the municipality for special improvements, and may sell or hypothecate the bonds
17 or securities. Funds of an employer, as defined by s. 40.02 (28), in a deferred
18 compensation plan may also be invested and reinvested in the same manner
19 authorized for investments under s. 881.01 ~~(1)~~. Funds of any school district
20 operating under ch. 119, held in trust for pension plans intended to qualify under
21 section 401 (a) of the Internal Revenue Code, other than funds held in the public
22 employee trust fund, may be invested and reinvested in the same manner as is
23 authorized for investments under s. 881.01.

24 **SECTION 4.** 881.01 of the statutes is repealed and recreated to read:

25 **881.01 Uniform prudent investor act. (1)** DEFINITION. In this section:

1 (a) "Beneficiary," with respect to a guardianship of the estate, means a ward
2 for whom a guardian of the estate has been appointed and, with respect to a
3 conservator, means a person for whose estate a conservator has been appointed.
4 (b) "Fiduciary" means personal representative, trustee, conservator, or
5 guardian of the estate.
6 **(2)** PRUDENT INVESTOR RULE. (a) Except as provided in s. 112.10 and except as
7 otherwise provided in par. (b), a fiduciary who invests and manages assets owes a
8 duty to the beneficiaries to comply with the prudent investor rule set forth in this
9 section.
10 (b) The prudent investor rule, a default rule, may be expanded, restricted,
11 eliminated, or otherwise altered by the provisions of a will, trust, or court order. A
12 fiduciary is not liable to a beneficiary to the extent that the fiduciary acted in
13 reasonable reliance on the provisions of the will, trust, or court order.
14 **(3)** STANDARD OF CARE; PORTFOLIO STRATEGY; RISK AND RETURN OBJECTIVES. (a) A
15 fiduciary shall invest and manage assets as a prudent investor would, by considering
16 the purposes, terms, distribution requirements, and other circumstances of the
17 estate, trust, conservatorship, or guardianship. In satisfying this standard, the
18 fiduciary shall exercise reasonable care, skill, and caution.
19 (b) A fiduciary's investment and management decisions about individual assets
20 shall be evaluated, not in isolation but in the context of the portfolio as a whole and
21 as a part of an overall investment strategy having risk and return objectives
22 reasonably suited to the estate, trust, conservatorship, or guardianship.
23 (c) Among circumstances that a fiduciary shall consider in investing and
24 managing assets are those of the following that are relevant to the estate, trust,
25 conservatorship, or guardianship or its beneficiaries:

1 1. General economic conditions.

2 2. The possible effect of inflation or deflation.

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

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

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

8 6. Other resources of the beneficiaries.

9 7. Needs for liquidity, regularity of income, and preservation or appreciation
10 of capital.

11 8. An asset's special relationship or special value to the purposes of the estate,
12 trust, conservatorship, or guardianship or to one or more of the beneficiaries.

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

15 (e) A fiduciary may invest in any kind of property or type of investment
16 consistent with the standards of this section.

17 (f) A fiduciary who has special skills or expertise, or who is named fiduciary in
18 reliance upon the fiduciary's representation that the fiduciary has special skills or
19 expertise, has a duty to use those special skills or expertise.

20 **(4)** DIVERSIFICATION. A fiduciary shall diversify investments unless the
21 fiduciary reasonably determines that, because of special circumstances, the
22 purposes of the estate, trust, conservatorship, or guardianship are better served
23 without diversifying.

24 **(5)** DUTIES AT INCEPTION. Within a reasonable time after accepting a fiduciary
25 appointment or receiving assets, a fiduciary shall review the assets and make and

1 implement decisions concerning the retention and disposition of assets, in order to
2 bring the portfolio into compliance with the purposes, terms, distribution
3 requirements, and other circumstances of the estate, trust, conservatorship, or
4 guardianship and with the requirements of this section.

5 **(6)** LOYALTY. A fiduciary shall invest and manage the assets solely in the
6 interest of the beneficiaries.

7 **(7)** IMPARTIALITY. If an estate, trust, conservatorship, or guardianship has 2 or
8 more beneficiaries, the fiduciary shall act impartially in investing and managing the
9 assets, taking into account the differences between the interests of the beneficiaries.

10 **(8)** INVESTMENT COSTS. In investing and managing assets, a fiduciary may incur
11 only costs that are appropriate and reasonable in relation to the assets, the purposes
12 of the estate, trust, conservatorship, or guardianship, and the skills of the fiduciary.

13 **(9)** REVIEWING COMPLIANCE. Compliance with the prudent investor rule is
14 determined in light of the facts and circumstances existing at the time of a fiduciary's
15 decision or action and not by hindsight.

16 **(10)** DELEGATION OF INVESTMENT AND MANAGEMENT FUNCTIONS. (a) A fiduciary
17 may delegate investment and management functions that a prudent fiduciary of
18 similar skills could properly delegate under the circumstances. The fiduciary shall
19 exercise reasonable care, skill, and caution in all of the following:

20 1. Selecting an agent.

21 2. Establishing the scope and terms of the delegation, consistent with the
22 purposes and terms of the estate, trust, conservatorship, or guardianship.

23 3. Periodically reviewing the agent's actions to monitor the agent's performance
24 and compliance with the terms of the delegation.

1 (b) In performing a delegated function, an agent owes a duty to the estate, trust,
2 conservatorship, or guardianship to exercise reasonable care to comply with the
3 terms of the delegation.

4 (c) A fiduciary who complies with the requirements of par. (a) is not liable to
5 the beneficiaries or to the estate, trust, conservatorship, or guardianship for the
6 decisions or actions of the agent to whom a function was delegated.

7 (d) By accepting the delegation of a function from the fiduciary of an estate,
8 trust, conservatorship, or guardianship that is subject to the law of this state, an
9 agent submits to the jurisdiction of the courts of this state.

10 **(11)** PHRASES INVOKING STANDARD OF THIS SECTION. The following phrases or
11 similar phrases in a will, trust, or court order, unless otherwise limited or modified,
12 authorize any investment or strategy permitted under this section: "investments
13 permissible by law for investment of trust funds"; "legal investments"; "authorized
14 investments"; "using the judgment and care under the circumstances then
15 prevailing that persons of prudence, discretion, and intelligence exercise in the
16 management of their own affairs, not in regard to speculation but in regard to the
17 permanent disposition of their funds, considering the probable income as well as the
18 probable safety of their capital"; "prudent man rule"; "prudent trustee rule";
19 "prudent person rule"; and "prudent investor rule."

20 **(12)** APPLICATION TO EXISTING ESTATES, TRUSTS, CONSERVATORSHIPS, AND
21 GUARDIANSHIPS. This section applies to estates, trusts, conservatorships, and
22 guardianships of the estate existing on, or created on or after, the effective date of
23 this subsection .... [revisor inserts date]. As applied to estates, trusts,
24 conservatorships, and guardianships of the estate existing on the effective date of

this subsection .... [revisor inserts date], this section governs only decisions or actions occurring after that date.

(13) UNIFORMITY OF APPLICATION AND CONSTRUCTION. This section shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this section among the states that have enacted this uniform legislation.

SECTION 5. 881.02 of the statutes is amended to read:

881.02 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 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 this chapter~~.

SECTION 6. 881.06 of the statutes is amended to read:

881.06 Law governing existing instruments. ~~This~~ Subject to s. 881.01 (12), this chapter shall govern fiduciaries, including personal representatives, guardians of the estate, conservators, and trustees acting under wills, agreements, court orders, and other instruments now existing or hereafter made.

(END)