

2003 Senate Bill 492

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2003 WISCONSIN ACT 264

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.

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

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

36.29 (1) All gifts, grants, and bequests for the benefit or advantage of the system or any of its institutions, departments, or facilities or to provide any means of instruction, illustration, or knowledge in connection therewith, whether made to trustees or otherwise, shall be valid notwithstanding any other provision of this chapter except as otherwise provided in this subsection and shall be executed and enforced according to the provisions of the instrument making the same, including all provisions and directions in any such instrument for accumulation of the income of any fund or rents and profits of any real estate without being subject to the limitations and restrictions provided by law in other cases; but no such income accumulation shall be allowed to produce a fund more than 20 times as great as that originally given. ~~When such gifts, grants or bequests include common stocks or other investments which are not authorized by ch. 881, the board may continue to hold such common stocks or other investments and exchange, invest or reinvest the funds of such gift, grant or bequest in similar types of investments without being subject to the limitations and restrictions provided by law in other cases. No such investment of the~~

~~funds of such gifts, grants, or bequests~~ shall knowingly be made in any company, corporation, subsidiary, or affiliate which that practices or condones through its actions discrimination on the basis of race, religion, color, creed, or sex. Except as otherwise provided in this section, the board may invest not to exceed 85% of trust funds held and administered by the board in common stocks, ~~the limitation of 50% in s. 881.01 (2) to the contrary notwithstanding.~~ This subsection does not apply to a gift, grant, or bequest that the board declines to accept or that the board is not authorized to accept under this section.

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

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

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

* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

66.0603 (1m) (b) A town, city, or village may invest surplus funds in any bonds or securities issued under the authority of the municipality, whether the bonds or securities create a general municipality liability or a liability of the property owners of the municipality for special improvements, and may sell or hypothecate the bonds or securities. Funds of an employer, as defined by s. 40.02 (28), in a deferred compensation plan may also be invested and reinvested in the same manner authorized for investments under s. 881.01 (4). Funds of any school district operating under ch. 119, held in trust for pension plans intended to qualify under section 401 (a) of the Internal Revenue Code, other than funds held in the public employee trust fund, may be invested and reinvested in the same manner as is authorized for investments under s. 881.01.

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

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

(a) "Beneficiary," with respect to a guardianship of the estate, means a ward for whom a guardian of the estate has been appointed and, with respect to a conservator, means a person for whose estate a conservator has been appointed.

(b) "Fiduciary" means personal representative, trustee, conservator, or guardian of the estate.

(2) **PRUDENT INVESTOR RULE.** (a) Except as provided in s. 112.10 and except as otherwise provided in par. (b), a fiduciary who invests and manages assets owes a duty to the beneficiaries to comply with the prudent investor rule set forth in this section.

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

(3) **STANDARD OF CARE; PORTFOLIO STRATEGY; RISK AND RETURN OBJECTIVES.** (a) A fiduciary shall invest and manage assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the estate, trust, conservatorship, or guardianship. In satisfying this standard, the fiduciary shall exercise reasonable care, skill, and caution.

(b) A fiduciary's investment and management decisions about individual assets shall be evaluated, not in isolation but in the context of the portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the estate, trust, conservatorship, or guardianship.

(c) Among circumstances that a fiduciary shall consider in investing and managing assets are those of the following that are relevant to the estate, trust, conservatorship, or guardianship 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 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 to the purposes of the estate, trust, conservatorship, or guardianship or to one or more of the beneficiaries.

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

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

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

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

(5) **DUTIES AT INCEPTION.** Within a reasonable time after accepting a fiduciary appointment or receiving assets, a fiduciary shall review the assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the estate, trust, conservatorship, or guardianship and with the requirements of this section.

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

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

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

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

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

1. Selecting an agent.
2. Establishing the scope and terms of the delegation, consistent with the purposes and terms of the estate, trust, conservatorship, or guardianship.
3. Periodically reviewing the agent's actions 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 estate, trust, conservatorship, or guardianship to exercise reasonable care to comply with the terms of the delegation.

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

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

(11) PHRASES INVOKING STANDARD OF THIS SECTION. The following phrases or similar phrases in a will, trust, or court order, unless otherwise limited or modified, authorize any investment or strategy permitted under this section: "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."

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