

By: Paxton (Senate Sponsor - Harris) H.B. No. 2240  
(In the Senate - Received from the House May 2, 2003;  
May 7, 2003, read first time and referred to Committee on  
Jurisprudence; May 22, 2003, reported favorably, as amended, by  
the following vote: Yeas 5, Nays 0; May 22, 2003, sent to printer.)

COMMITTEE AMENDMENT NO. 1 By: Harris

Amend H.B. 2240 as follows:

(1) on page 4, strike SECTION 8 and renumber the subsequent sections accordingly.

(2) on page 5, line 35, strike "Sections 117.004(a) - (c)" and substitute "Section 117.004(b)".

(3) on page 5, line 54, strike "Sections 117.004(a) - (c)" and substitute "Section 117.004(b)".

(4) on page 5, line 62, strike "Sections 117.004(a) - (c)" and substitute "Section 117.004(b)".

A BILL TO BE ENTITLED  
AN ACT

relating to the management of certain trusts and the adoption of the Uniform Prudent Investor Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 9, Property Code, is amended by adding Chapter 117 to read as follows:

CHAPTER 117. UNIFORM PRUDENT INVESTOR ACT

Sec. 117.001. SHORT TITLE. This chapter may be cited as the "Uniform Prudent Investor Act."

Sec. 117.002. UNIFORMITY OF APPLICATION AND CONSTRUCTION. 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. 117.003. PRUDENT INVESTOR RULE. (a) Except as otherwise provided in Subsection (b), 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 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 provisions of the trust.

Sec. 117.004. STANDARD OF CARE; PORTFOLIO STRATEGY; RISK AND RETURN OBJECTIVES. (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 such of the following as 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; and

(8) an asset's special relationship or special value, if any, to the purposes of the trust or to one 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) Except as otherwise provided by and subject to this subtitle, 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 those special skills or expertise.

Sec. 117.005. DIVERSIFICATION. 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. 117.006. DUTIES AT INCEPTION OF TRUSTEESHIP. 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. 117.007. LOYALTY. A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

Sec. 117.008. IMPARTIALITY. 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. 117.009. INVESTMENT COSTS. 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. 117.010. REVIEWING COMPLIANCE. 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. 117.011. DELEGATION OF INVESTMENT AND MANAGEMENT FUNCTIONS. (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) periodically reviewing the agent's actions 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, unless:

(1) the agent is an affiliate of the trustee; or  
 (2) under the terms of the delegation:  
 (A) the trustee or a beneficiary of the trust is required to arbitrate disputes with the agent; or

(B) the period for bringing an action by the trustee or a beneficiary of the trust with respect to an agent's actions is shortened from that which is applicable to trustees under the law of this state.

(d) 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. 117.012. LANGUAGE INVOKING STANDARD OF CHAPTER. 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: "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."

SECTION 2. Section 111.004(1), Property Code, is amended to read as follows:

(1) "Affiliate" includes:

(A) ~~[means]~~ a person who directly or indirectly, through one or more intermediaries, controls, is ~~[controlling]~~ controlled by, or is under common control with another person; or

(B) any officer, director, partner, employee, or relative of a person, and any corporation or partnership of which a person is an officer, director, or partner ~~[, including a person with whom a trustee has an express or implied agreement regarding the direct or indirect purchase of trust investments by each from the other, except a broker or stock exchange].~~

SECTION 3. Section 113.006, Property Code, is amended to read as follows:

Sec. 113.006. GENERAL AUTHORITY TO MANAGE AND INVEST TRUST PROPERTY. Subject to the requirements of Chapter 117, a [A] trustee may manage the trust property and invest and reinvest in property of any character on the conditions and for the lengths of time as the trustee considers proper, notwithstanding that the time may extend beyond the term of the trust.

SECTION 4. Sections 113.053(e) and (g), Property Code, are amended to read as follows:

(e) A trustee may:

(1) comply with the terms of a written executory contract signed by the settlor, including a contract for deed, earnest money contract, buy/sell agreement, or stock purchase or redemption agreement; and

(2) sell the stock, bonds, obligations, or other securities of a corporation to the issuing corporation or to its corporate affiliate if the sale is made under an agreement described in Subdivision (1) or complies with the duties imposed by Chapter 117 ~~[Section 113.056]~~.

(g) In addition to other investments authorized by law for the investment of funds held by a fiduciary or by the instrument governing the fiduciary relationship, and notwithstanding any other provision of law and subject to the standard contained in Chapter 117 ~~[Section 113.056]~~, a bank or trust company acting as a fiduciary, agent, or otherwise, in the exercise of its investment discretion or at the direction of another person authorized to direct the investment of funds held by the bank or trust company as fiduciary, may invest and reinvest in the securities of an open-end or closed-end management investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.) if the portfolio of the investment company or investment trust consists substantially of investments that are not prohibited by the governing instrument. The fact that the bank or trust company or an affiliate of the bank or trust company provides services to the investment company or investment trust, such as those of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager, or otherwise, and receives compensation for those services does not preclude the bank or trust company from investing or reinvesting in the securities if the compensation is disclosed by prospectus, account statement, or otherwise. An executor or administrator of an estate under a

dependent administration or a guardian of an estate shall not so invest or reinvest unless specifically authorized by the court in which such estate or guardianship is pending.

SECTION 5. Section 113.055(b), Property Code, is amended to read as follows:

(b) A trustee may:

(1) retain stock already owned by the trust unless ~~[if] the retention does not satisfy the requirements prescribed by Chapter 117 [satisfies Section 113.056 of this Act]; and~~

(2) exercise stock rights or purchase fractional shares under Section 113.053 of this Act.

SECTION 6. The heading of Section 113.056, Property Code, is amended to read as follows:

Sec. 113.056. AUTHORIZATION TO MAKE CERTAIN INVESTMENTS ~~[STANDARD FOR TRUST MANAGEMENT AND INVESTMENT]~~.

SECTION 7. Sections 113.056(a) and (d), Property Code, are amended to read as follows:

(a) Unless the terms of the trust instrument provide otherwise, and subject to the investment standards provided by this subtitle and any investment standards provided by the trust instrument, the trustee may invest all or part of the trust assets in ~~[in acquiring, investing, reinvesting, exchanging, retaining, selling, supervising, and managing trust property, including]~~ an investment vehicle authorized for the collective investment of trust funds pursuant to Part 9, Title 12, of the Code of Federal Regulations ~~[, a trustee shall exercise the judgment and care under the circumstances then prevailing that persons of ordinary 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 from as well as the probable increase in value and the safety of their capital. In determining whether a trustee has exercised prudence with respect to an investment decision, such determination shall be made taking into consideration the investment of all the assets of the trust, or the assets of the collective investment vehicle, as the case may be, over which the trustee had management and control, rather than a consideration as to the prudence of the single investment of the trust, or the single investment of the collective investment vehicle, as the case may be].~~

(d) Subject to any investment standards provided by this chapter, Chapter 117, or the trust instrument ~~[Within the limitations of Subsection (a) of this section]~~, whenever the instrument directs, requires, authorizes, or permits investment in obligations of the United States government, the trustee may invest in and hold such obligations either directly or in the form of interests in an open-end management type investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., or in an investment vehicle authorized for the collective investment of trust funds pursuant to Part 9, Title 12 of the Code of Federal Regulations, so long as the portfolio of such investment company, investment trust, or collective investment vehicle is limited to such obligations and to repurchase agreements fully collateralized by such obligations.

SECTION 8. Section 113.060(c), Property Code, is amended to read as follows:

(c) A trustee is not responsible for investment decisions made by an investment agent employed as provided by this section if:

(1) the trustee exercises the judgment and care under the circumstances then prevailing that a person of ordinary prudence, discretion, and intelligence would exercise in the management of the person's own funds in selecting the investment agent and in establishing the scope and terms of the delegation;

(2) the trustee investigates the credentials of the investment agent, including:

(A) reviewing the agent's experience, performance history, and financial stability;

(B) verifying the agent's professional license and registration, if any; and

(C) establishing that the agent is insured or

5-1 bonded;

5-2 (3) the investment agent is subject to the  
5-3 jurisdiction of the courts of this state;

5-4 (4) under the terms of the delegation agreement, the  
5-5 investment agent:

5-6 (A) is subject to the standard of trust  
5-7 management and investment applicable to the trust [~~prescribed by~~  
5-8 ~~Section 113.056~~]; and

5-9 (B) assumes liability for the failure to follow  
5-10 that standard; and

5-11 (5) the trustee periodically reviews the investment  
5-12 decisions made by the investment agent to ensure compliance with  
5-13 the investment strategy prescribed by the trustee for the trust.

5-14 SECTION 9. Section 114.001(b), Property Code, is amended to  
5-15 read as follows:

5-16 (b) The trustee is not liable to the beneficiary for a loss  
5-17 or depreciation in value of the trust property or for a failure to  
5-18 make a profit that does not result from a failure to perform the  
5-19 duties set forth in this subtitle [~~Section 113.056~~] or from any  
5-20 other breach of trust.

5-21 SECTION 10. Section 45.107, Education Code, is amended to  
5-22 read as follows:

5-23 Sec. 45.107. INVESTMENT OF GIFTS, DEVISES, AND BEQUESTS. A  
5-24 gift, devise, or bequest made to a school district to provide  
5-25 college scholarships for graduates of the district may be invested  
5-26 [~~or retained~~] by the board of trustees of the district as provided  
5-27 by Section 117.004 [~~113.056~~], Property Code, unless otherwise  
5-28 specifically provided by the terms of the gift, devise, or bequest.

5-29 SECTION 11. Section 815.307, Government Code, is amended to  
5-30 read as follows:

5-31 Sec. 815.307. DUTY OF CARE. The assets of the retirement  
5-32 system shall be invested and reinvested without distinction as to  
5-33 their source in accordance with Section 67, Article XVI, Texas  
5-34 Constitution. Investment decisions are subject to the standard  
5-35 provided in the Texas Trust Code by Sections 117.004(a)-(c)  
5-36 [~~Section 113.056(a)~~], Property Code.

5-37 SECTION 12. Section 825.301(a), Government Code, is amended  
5-38 to read as follows:

5-39 (a) The board of trustees shall invest and reinvest assets  
5-40 of the retirement system without distinction as to their source in  
5-41 accordance with Section 67, Article XVI, Texas Constitution. For  
5-42 purposes of the investment authority of the board of trustees under  
5-43 Section 67, Article XVI, Texas Constitution, "securities" means any  
5-44 investment instrument within the meaning of the term as defined by  
5-45 Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil  
5-46 Statutes), 15 U.S.C. Section 77b(a)(1), or 15 U.S.C. Section  
5-47 78c(a)(10). An interest in a limited partnership or investment  
5-48 contract is considered a security without regard to the number of  
5-49 investors or the control, access to information, or rights granted  
5-50 to or retained by the retirement system. Any instrument or contract  
5-51 intended to manage transaction or currency exchange risk in  
5-52 purchasing, selling, or holding securities is considered to be a  
5-53 security. Investment decisions are subject to the standard  
5-54 provided in the Texas Trust Code by Sections 117.004(a)-(c)  
5-55 [~~Section 113.056(a)~~], Property Code.

5-56 SECTION 13. Section 840.303, Government Code, is amended to  
5-57 read as follows:

5-58 Sec. 840.303. DUTY OF CARE. The assets of the retirement  
5-59 system shall be invested and reinvested without distinction as to  
5-60 their source in accordance with Section 67, Article XVI, Texas  
5-61 Constitution. Investment decisions are subject to the standard  
5-62 provided in the Texas Trust Code by Sections 117.004(a)-(c)  
5-63 [~~Section 113.056(a)~~], Property Code.

5-64 SECTION 14. Section 845.301(a), Government Code, is amended  
5-65 to read as follows:

5-66 (a) The assets of the retirement system shall be invested  
5-67 and reinvested without distinction as to their source in accordance  
5-68 with Section 67, Article XVI, Texas Constitution. For purposes of  
5-69 the investment authority of the board of trustees under Section 67,

Article XVI, Texas Constitution, "securities" means any investment instrument within the meaning of the term as defined by Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes), 15 U.S.C. Section 77b(a)(1), or 15 U.S.C. Section 78c(a)(10). Investment decisions are subject to the standard provided in the Texas Trust Code by Sections 117.004(a)-(c) [~~Section 113.056(a)~~], Property Code.

SECTION 15. Section 333(b), Texas Probate Code, is amended to read as follows:

(b) In determining whether to order the sale of an asset under Subsection (a) of this section, the court shall consider:

(1) the representative's duty to take care of and manage the estate as a person of ordinary prudence, discretion, and intelligence would exercise in the management of the person's own affairs; and

(2) whether the asset constitutes an asset that a trustee is authorized to invest under Chapter 117 [~~Section 113.056~~] or Subchapter F, Chapter 113, Property Code.

SECTION 16. Section 812(b), Texas Probate Code, is amended to read as follows:

(b) In determining whether to order the sale of an asset under Subsection (a) of this section, the court shall consider:

(1) the guardian's duty to take care of and manage the estate as a person of ordinary prudence, discretion, and intelligence would exercise in the management of the person's own affairs; and

(2) whether the asset constitutes an asset that a trustee is authorized to invest under Chapter 117 [~~Section 113.056~~] or Subchapter F, Chapter 113, Property Code.

SECTION 17. Section 856(a), Texas Probate Code, is amended to read as follows:

(a) If a guardian of an estate deems it is in the best interests of the ward the guardian is appointed to represent to invest on behalf of the ward in the Texas tomorrow constitutional trust fund [~~Tomorrow Fund~~] established by Subchapter F, Chapter 54, Education Code, or to invest in or sell any property or security in which a trustee is authorized to invest by either Chapter 117 [~~Section 113.056~~] or Subchapter F, Chapter 113, of the Texas Trust Code (Subtitle B, Title 9, Property Code), and the investment or sale is not expressly permitted by other sections of this chapter, the guardian may file a written application in the court in which the guardianship is pending that asks for an order authorizing the guardian to make the desired investment or sale and states the reason why the guardian is of the opinion that the investment or sale would be beneficial to the ward. A citation or notice is not necessary under this subsection unless ordered by the court.

SECTION 18. Sections 113.003, 113.056(b) and (c), and 113.060, Property Code, are repealed.

SECTION 19. (a) This Act takes effect January 1, 2004, and applies only to a trust existing on or created after that date.

(b) With respect to a trust existing on January 1, 2004, this Act applies only to an act or decision relating to the trust occurring after December 31, 2003.

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