

Representative James A. Ferrin proposes the following substitute bill:

TRUST AMENDMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: John L. Valentine

This act modifies the Utah Uniform Probate Code to address issues related to trusts and to make technical changes. This act addresses certain circumstances when a trustee may take action based on investment direction or with the consent or approval of another person, and the duties and liability of a person that gives investment directions or whose consent or approval is required for investment actions. This act provides revisors instructions.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

75-7-302, as repealed and reenacted by Chapter 119, Laws of Utah 1995

75-7-403, as last amended by Chapter 119, Laws of Utah 1995

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **75-7-302** is amended to read:

75-7-302. Trustee's standard of care and performance.

(1) For purposes of this section, "investment direction" means a direction:

(a) that is binding on the trustee, except for an investment direction given by a settlor as described in Subsection (13);

(b) to do any of the following with respect to an investment:

(i) retention;

(ii) purchase;

(iii) sale;

(iv) exchange;

(v) tender; or



26 (vi) any other transaction affecting ownership in the investment.

27 ~~[(+)]~~ (2) (a) Except as otherwise provided in Subsection ~~[(2)]~~ (3), a trustee who invests and
28 manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent
29 investor rule as set forth in this section.

30 (b) If a trustee is named on the basis of a trustee's representations of special skills or
31 expertise, the trustee has a duty to use those special skills or expertise.

32 ~~[(2)]~~ (3) (a) The prudent investor rule, a default rule, may be expanded, restricted,
33 eliminated, or otherwise altered by the provisions of a trust.

34 (b) A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable
35 reliance on the provisions of the trust.

36 ~~[(3)]~~ (4) (a) A trustee shall invest and manage trust assets as a prudent investor would, by
37 considering the purposes, terms, distribution requirements, and other circumstances of the trust.

38 (b) In satisfying ~~[this]~~ the standard stated in Subsection (4)(a), the trustee shall exercise
39 reasonable care, skill, and caution.

40 ~~[(4)]~~ (5) (a) A trustee's investment and management decisions respecting individual assets
41 ~~[must]~~ shall be evaluated not in isolation but in the context of the trust portfolio as a whole and
42 as a part of an overall investment strategy having risk and return objectives reasonably suited to
43 the trust.

44 (b) Among circumstances that the trustee shall consider in investing and managing trust
45 assets are ~~[such]~~ any of the following ~~[as]~~ that are relevant to the trust or ~~[its]~~ the trust's
46 beneficiaries:

47 ~~[(a)]~~ (i) general economic conditions;

48 ~~[(b)]~~ (ii) the possible effect of inflation or deflation;

49 ~~[(c)]~~ (iii) the expected tax consequences of investment decisions or strategies;

50 ~~[(d)]~~ (iv) the role that each investment or course of action plays within the overall trust
51 portfolio, which may include:

52 (A) financial assets~~[-];~~

53 (B) interests in closely held enterprises~~[-];~~

54 (C) tangible and intangible personal property~~[-];~~ and

55 (D) real property;

56 ~~[(e)]~~ (v) the expected total return from income and the appreciation of capital;

57 ~~[(f)]~~ (vi) other resources of the beneficiaries;

58 ~~[(g)]~~ (vii) needs for liquidity, regularity of income, and preservation or appreciation of
59 capital;

60 ~~[(h)]~~ (viii) the duty to incur only reasonable and appropriate investment costs; and

61 ~~[(i)]~~ (ix) an asset's special relationship or special value, if any, to the purposes of the trust
62 or to one or more of the beneficiaries.

63 ~~[(5)]~~ (6) A trustee shall make a reasonable effort to verify facts relevant to the investment
64 and management of trust assets.

65 ~~[(6)]~~ (7) A trustee may invest in any kind of property or type of investment consistent with
66 the standards of this section.

67 ~~[(7)]~~ (8) A trustee shall diversify the investments of the trust unless, the trustee reasonably
68 determines that, because of special circumstances, the purposes of the trust are better served
69 without diversifying.

70 ~~[(8)]~~ (9) (a) A trustee shall invest and manage the trust assets solely in the interest of the
71 beneficiaries.

72 (b) If a trust has two or more beneficiaries, the trustee shall act impartially in investing and
73 managing the trust assets, taking into account any differing interests of the two or more
74 beneficiaries.

75 ~~[(9)]~~ (10) (a) This section does not require a specific outcome in investing~~[-and~~
76 compliance].

77 **(b) Compliance** with the prudent investor rule is determined in light of the facts and
78 circumstances existing at the time of a trustee's decision or action and not by hindsight.

79 ~~[(10)]~~ (11) Within a reasonable time after accepting a trusteeship or receiving trust assets,
80 a trustee shall review the trust assets and make and implement decisions concerning the retention
81 and disposition of assets, in order to bring the trust portfolio into compliance with the:

82 (a) purposes, terms, distribution requirements, and other circumstances of the trust~~[-];~~ and
83 ~~[with the]~~

84 (b) requirements of this section.

85 ~~[(11)]~~ (12) (a) A trustee may delegate investment and management functions that a prudent
86 trustee of comparable skills could properly delegate under the circumstances. The trustee shall
87 exercise reasonable care, skill, and caution in:

88 (i) selecting the agent;
89 (ii) establishing the scope and terms of the delegation consistent with the purposes of the
90 trust; and

91 (iii) periodically reviewing the agent's actions to monitor the agent's performance and
92 compliance with the terms of the delegation.

93 (b) In performing a delegated function, an agent has a duty to the trust to exercise
94 reasonable care to comply with the terms of the delegation.

95 (c) A trustee who complies with the requirements of Subsection [(H)] (12)(a) is not liable
96 to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function
97 was delegated.

98 (13) (a) During the time period that a trust is revocable, the trustee may follow any
99 investment direction of the settlor, including an investment direction that:

100 (i) is manifestly contrary to the terms of the trust; or

101 (ii) seriously breaches a fiduciary duty to the beneficiaries.

102 (b) The trustee is not liable for any loss resulting from following an investment direction
103 described in Subsection (13)(a).

104 (14) If the terms of a trust authorize a person to give investment direction to the trustee,
105 the person authorized to give investment direction:

106 (a) is presumptively a fiduciary only with respect to an investment direction that the person
107 gives to the trustee;

108 (b) is required to act in good faith with regard to:

109 (i) the purposes of the trust; and

110 (ii) the interests of the beneficiaries; and

111 (c) is liable for any loss that results from breach of the fiduciary duty only with respect to
112 an investment direction that the person gives to the trustee.

113 (15) Except in cases of willful misconduct or gross negligence, a trustee is not liable for
114 any loss that results from following an investment direction if:

115 (a) the terms of a trust authorizes a person to give the investment direction to the trustee;
116 and

117 (b) the trustee acts in accordance with the investment direction given by a person described
118 in Subsection (15)(a).

119 (16) If the terms of a trust require another person's approval or consent to an investment
120 decision of the trustee:

121 (a) the person from whom approval or consent is required:

122 (i) is presumptively a fiduciary;

123 (ii) is required to act in good faith with regard to:

124 (A) the purposes of the trust; and

125 (B) the interests of the beneficiaries; and

126 (iii) is liable for any loss that results from breach of the fiduciary duty; and

127 (b) except in cases of willful misconduct or gross negligence, the trustee is not liable for
128 any loss resulting from any act not taken as a result of the person's failure to respond to a request
129 for approval or consent.

130 ~~[(12)]~~ (17) The following terms or comparable language in the provisions of a trust, unless
131 otherwise limited or modified, authorizes any investment or strategy permitted under this section:

132 (a) "investments permissible by law for investment of trust funds[;]";

133 (b) "legal investments[;]";

134 (c) "authorized investments[;]";

135 (d) "using the judgment and care under the circumstances then prevailing that persons of
136 prudence, discretion, and intelligence exercise in the management of their own affairs, not in
137 regard to the speculation but in regard to the permanent disposition of their funds, considering the
138 probable income as well as the probable safety of their capital[;]";

139 (e) "prudent man rule[;]";

140 (f) "prudent trustee rule[;]";

141 (g) "prudent person rule[;]"; and

142 (h) "prudent investor rule."

143 ~~[(13) This]~~ (18) (a) (i) Except as provided in Subsection (18)(b), this section applies to
144 trusts existing on and created after July 1, 1995.

145 (ii) As applied to trusts existing on July 1, 1995, this section governs only decisions or
146 actions occurring after July 1, 1995.

147 (b) (i) The amendments to this section in this act apply to a trust:

148 (A) existing on May 6, 2002; or

149 (B) created on or after May 6, 2002.

150 (ii) As applied to a trust existing on May 6, 2002, the amendments to this section in this
151 act only govern a decision or action occurring after May 6, 2002.

152 Section 2. Section **75-7-403** is amended to read:

153 **75-7-403. Trustee's office not transferable -- Transactions excepted.**

154 (1) The trustee shall not transfer his office to another or delegate the entire administration
155 of the trust to a co-trustee or another.

156 (2) Subsection (1) does not apply to any transaction permitted under Section 7-5-14 or
157 Subsection 75-7-302[~~(11)~~] (12).

158 Section 3. **Revisors instructions.**

159 It is the intent of the Legislature that, in preparing the Utah Code Database for publication,
160 the Office of Legislative Research and General Counsel shall replace the reference in Subsection
161 75-7-302(18)(b) from "this act" to the act's designated chapter number in the Laws of Utah.