

SENATE BILL NO. 230
INTRODUCED BY CROMLEY

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE MONTANA PRUDENT INVESTOR RULE; PROVIDING STANDARDS OF CARE AND DUTIES OF TRUSTEES IN MAKING INVESTMENTS AND MANAGING TRUST ASSETS; AMENDING SECTIONS 72-34-113 AND 72-34-114, MCA; AND REPEALING SECTION 72-34-121, MCA."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 9] and 72-34-104 constitute the Montana prudent investor rule and may be cited as the "Montana Uniform Prudent Investor Act".

NEW SECTION. **Section 2. Compliance -- duty of trustee -- exception -- liability.** (1) The trustee has a duty to administer the trust solely in the interest of the beneficiaries. Except as provided in subsection (2), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule.

(2) The trustor may expand or restrict the prudent investor rule by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee's good faith reliance on these express provisions.

NEW SECTION. **Section 3. Standard of care -- investments and management -- considerations.** (1) 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.

(2) A trustee's investment and management decisions respecting individual assets and courses of action 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.

(3) Among circumstances that are appropriate to consider in investing and managing trust assets are the following, to the extent relevant to the trust or its beneficiaries:

- (a) general economic conditions;
- (b) the possible effect of inflation or deflation;

- (c) the expected tax consequences of investment decisions or strategies;
- (d) the role that each investment or course of action plays within the overall trust portfolio;
- (e) the expected total return from income and the appreciation of capital;
- (f) other resources of the beneficiaries known to the trustee as determined from information provided by the beneficiaries;
- (g) needs for liquidity, regularity of income, and preservation or appreciation of capital; and
- (h) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(4) A trustee shall make a reasonable effort to ascertain facts relevant to the investment and management of trust assets.

(5) A trustee may invest in any kind of property or type of investment or engage in any course of action or investment strategy consistent with the standards of [sections 1 through 9] and 72-34-104.

NEW SECTION. Section 4. Diversification -- duty of trustee -- exception. (1) ~~IN~~ SUBJECT TO SUBSECTION (2), IN making and implementing investment decisions, the trustee has a duty to diversify the investments of the trust unless, under the circumstances, it is not prudent to do so.

(2) IF TRUST ASSETS INCLUDE FARM OR RANCH PROPERTY, A CLOSELY HELD FAMILY BUSINESS, TIMBER INTERESTS, OR INTERESTS IN OIL, GAS, OR MINERALS, THE TRUSTEE MAY ELECT TO RETAIN THOSE ASSETS UNLESS OTHERWISE DIRECTED BY A MAJORITY OF ADULT TRUST BENEFICIARIES. A TRUSTEE'S EXERCISE OF DISCRETION TO RETAIN ASSETS OF THE CHARACTER DESCRIBED IN THIS SUBSECTION IS NOT A BREACH OF THE TRUSTEE'S DUTY TO DIVERSIFY INVESTMENTS.

NEW SECTION. Section 5. Review of assets -- time for compliance. 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 [sections 1 through 9] and 72-34-104.

NEW SECTION. Section 6. Costs -- incurrence. In investing and managing trust assets, a trustee may incur only costs that are appropriate and reasonable in relation to the assets, overall investment strategy, purposes, and other circumstances of the trust.

NEW SECTION. Section 7. Compliance determinations -- standards. 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.

NEW SECTION. Section 8. Delegation of investment and management functions -- standards of care -- trustees and agents -- liability -- jurisdiction. (1) A trustee may delegate investment and management functions as prudent under the circumstances. The trustee shall exercise prudence in the following:

- (a) selecting an agent;
- (b) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
- (c) periodically reviewing the agent's overall performance and compliance with the terms of the delegation.

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

(3) Except as otherwise provided in 72-34-502, a trustee who complies with the requirements of subsection (1) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(4) 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.

NEW SECTION. Section 9. Interpretation of trust terms construing legal investments. The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, must be construed as authorizing any investment or strategy permitted under [sections 1 through 9] and 72-34-104: "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 10. Section 72-34-113, MCA, is amended to read:

"72-34-113. Duty not to delegate entire administration of trust. (1) The trustee has a duty not to

delegate to others the performance of acts that the trustee can reasonably be required personally to perform and may not transfer the office of trustee to another person or delegate the entire administration of the trust to a cotrustee or other person.

~~(2) A trustee may delegate investment, management, and administrative functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:~~

~~—— (a) selecting an agent;~~

~~—— (b) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust;~~

~~—— (c) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.~~

~~—— (3) 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.~~

~~—— (4) A trustee who complies with the requirements of subsection (2) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.~~

~~—— (5) By accepting the delegation of a trust function from the trustee of a trust that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state.~~

(2) In a case in which a trustee has properly delegated a matter to an agent, cotrustee, or other person, the trustee has a duty to exercise general supervision over the person performing the delegated matter.

(3) This section does not apply to investment and management functions under [section 8]."

Section 11. Section 72-34-114, MCA, is amended to read:

"72-34-114. Duty to use ordinary skill and prudence. (1) The trustee shall administer the trust with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would use to accomplish the purposes of the trust as determined from the trust instrument.

~~(2) 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:~~

~~—— (3) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of a trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.~~

~~(4) Among circumstances that a trustee shall consider in investing and managing trust assets are any of the following that are relevant to the trust or its beneficiaries:~~

~~(a) general economic conditions;~~

~~(b) the possible effect of inflation or deflation;~~

~~(c) the expected tax consequences of investment decisions or strategies;~~

~~(d) 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;~~

~~(e) the expected total return from income and the appreciation of the capital;~~

~~(f) other resources of the beneficiaries;~~

~~(g) needs for liquidity, regularity of income, and preservation or appreciation of capital; and~~

~~(h) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.~~

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

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

~~(7)(2)~~ The trustor may expand or restrict the standards provided in ~~subsections~~ subsection (1) through (6) by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee's reliance on these express provisions.

~~(8)(3)~~ 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.

(4) This section does not apply to investment and management functions governed by the Montana Uniform Prudent Investor Act, as set forth in [sections 1 through 9] and 72-34-104."

NEW SECTION. Section 12. Repealer. Section 72-34-121, MCA, is repealed.

NEW SECTION. Section 13. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 72, chapter 34, and the provisions of Title 72, chapter 34, apply to [sections 1 through 9].

NEW SECTION. **Section 14. Instruction to code commissioner.** The code commissioner shall renumber 72-34-104 as an integral part of [sections 1 through 9].

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