



Sen. Kirk W. Dillard

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LRB097 00144 AJ0 53193 a

1 AMENDMENT TO SENATE BILL 1294

2 AMENDMENT NO. _____. Amend Senate Bill 1294 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Trusts and Trustees Act is amended by
5 adding Sections 16.3 and 16.7 as follows:

6 (760 ILCS 5/16.3 new)

7 Sec. 16.3. Directed trusts.

8 (a) Definitions. In this Section:

9 (1) "Directing party" means any investment trust
10 advisor, distribution trust advisor, or trust protector as
11 provided in this Section.

12 (2) "Distribution trust advisor" means any one or more
13 persons given authority by the governing instrument to
14 direct, consent to, veto, or otherwise exercise all or any
15 portion of the distribution powers and discretions of the
16 trust, including but not limited to authority to make

1 discretionary distribution of income or principal.

2 (3) "Excluded fiduciary" means any fiduciary that by
3 the governing instrument is directed to act in accordance
4 with the exercise of specified powers by a directing party,
5 in which case such specified powers shall be deemed granted
6 not to the fiduciary but to the directing party and such
7 fiduciary shall be deemed excluded from exercising such
8 specified powers. If a governing instrument provides that a
9 fiduciary as to one or more specified matters is to act,
10 omit action, or make decisions only with the consent of a
11 directing party, then such fiduciary is an excluded
12 fiduciary with respect to such matters.

13 (4) "Fiduciary" means any person expressly given one or
14 more fiduciary duties by the governing instrument,
15 including but not limited to a trustee.

16 (5) "Governing instrument" refers to the instrument
17 stating the terms of a trust, including but not limited to
18 any court order or nonjudicial settlement agreement
19 establishing, construing, or modifying the terms of the
20 trust in accordance with Section 16.1, 16.4, or 16.6 or
21 other applicable law.

22 (6) "Investment trust advisor" means any one or more
23 persons given authority by the governing instrument to
24 direct, consent to, veto, or otherwise exercise all or any
25 portion of the investment powers of the trust.

26 (7) "Power" means authority to take or withhold an

1 action or decision, including but not limited to an
2 expressly specified power, the implied power necessary to
3 exercise a specified power, and authority inherent in a
4 general grant of discretion.

5 (8) "Trust protector" means any one or more persons
6 given any one or more of the powers specified in subsection
7 (d), whether or not designated with the title of trust
8 protector by the governing instrument.

9 (b) Powers of investment trust advisor. An investment trust
10 advisor may be designated in the governing instrument of a
11 trust. The powers of an investment trust advisor may be
12 exercised or not exercised in the sole and absolute discretion
13 of the investment trust advisor, and are binding on all other
14 persons, including but not limited to each beneficiary,
15 fiduciary, excluded fiduciary, and any other party having an
16 interest in the trust. The governing instrument may use the
17 title "investment trust advisor" or any similar name or
18 description demonstrating the intent to provide for the office
19 and function of an investment trust advisor. Unless the terms
20 of the governing instrument provide otherwise, the investment
21 trust advisor has the authority to:

22 (1) direct the trustee with respect to the retention,
23 purchase, transfer, assignment, sale, or encumbrance of
24 trust property and the investment and reinvestment of
25 principal and income of the trust;

26 (2) direct the trustee with respect to all management,

1 control, and voting powers related directly or indirectly
2 to trust assets, including but not limited to voting
3 proxies for securities held in trust;

4 (3) select and determine reasonable compensation of
5 one or more advisors, managers, consultants, or
6 counselors, including the trustee, and to delegate to them
7 any of the powers of the investment trust advisor in
8 accordance with subsection (b) of Section 5.1; and

9 (4) determine the frequency and methodology for
10 valuing any asset for which there is no readily available
11 market value.

12 (c) Powers of distribution trust advisor. A distribution
13 trust advisor may be designated in the governing instrument of
14 a trust. The powers of a distribution trust advisor may be
15 exercised or not exercised in the sole and absolute discretion
16 of the distribution trust advisor, and are binding on all other
17 persons, including but not limited to each beneficiary,
18 fiduciary, excluded fiduciary, and any other party having an
19 interest in the trust. The governing instrument may use the
20 title "distribution trust advisor" or any similar name or
21 description demonstrating the intent to provide for the office
22 and function of a distribution trust advisor. Unless the terms
23 of the governing instrument provide otherwise, the
24 distribution trust advisor has authority to direct the trustee
25 with regard to all decisions relating directly or indirectly to
26 discretionary distributions to or for one or more

1 beneficiaries.

2 (d) Powers of trust protector. A trust protector may be
3 designated in the governing instrument of a trust. The powers
4 of a trust protector may be exercised or not exercised in the
5 sole and absolute discretion of the trust protector, and are
6 binding on all other persons, including but not limited to each
7 beneficiary, investment trust advisor, distribution trust
8 advisor, fiduciary, excluded fiduciary, and any other party
9 having an interest in the trust. The governing instrument may
10 use the title "trust protector" or any similar name or
11 description demonstrating the intent to provide for the office
12 and function of a trust protector. The powers granted to a
13 trust protector by the governing instrument may include but are
14 not limited to authority to do any one or more of the
15 following:

16 (1) modify or amend the trust instrument to achieve
17 favorable tax status or respond to changes in the Internal
18 Revenue Code, federal laws, State law, or the rulings and
19 regulations under such laws;

20 (2) increase, decrease, or modify the interests of any
21 beneficiary or beneficiaries of the trust;

22 (3) modify the terms of any power of appointment
23 granted by the trust; provided, however, such modification
24 or amendment may not grant a beneficial interest to any
25 individual, class of individuals, or other parties not
26 specifically provided for under the trust instrument;

1 (4) remove, appoint, or remove and appoint, a trustee,
2 investment trust advisor, distribution trust advisor,
3 another directing party, investment committee member, or
4 distribution committee member, including designation of a
5 plan of succession for future holders of any such office;

6 (5) terminate the trust, including determination of
7 how the trustee shall distribute the trust property to be
8 consistent with the purposes of the trust;

9 (6) change the situs of the trust, the governing law of
10 the trust, or both;

11 (7) appoint one or more successor trust protectors,
12 including designation of a plan of succession for future
13 trust protectors;

14 (8) interpret terms of the trust instrument at the
15 request of the trustee;

16 (9) advise the trustee on matters concerning a
17 beneficiary; or

18 (10) amend or modify the trust instrument to take
19 advantage of laws governing restraints on alienation,
20 distribution of trust property, or to improve the
21 administration of the trust.

22 (e) Duty and liability of directing party. Each directing
23 party is a fiduciary of the trust unless the governing
24 instrument provides otherwise; provided, however, the
25 governing instrument may not exonerate a directing party from
26 the duty to act or withhold acting as the directing party in

1 good faith reasonably believes is in the best interests of the
2 trust. A directing party who the governing instrument specifies
3 is a fiduciary is subject to the same duties and standards that
4 are applicable to a trustee of a trust as provided by
5 applicable law, except to the extent the governing instrument
6 provides otherwise.

7 (f) Duty and liability of excluded fiduciary. The excluded
8 fiduciary shall act in accordance with the governing instrument
9 and comply with the directing party's exercise of the powers
10 granted to the directing party by the governing instrument.
11 Unless otherwise provided in the governing instrument, an
12 excluded fiduciary has no duty to monitor, review, inquire,
13 investigate, recommend, evaluate, or warn with respect to a
14 directing party's exercise or failure to exercise any power
15 granted to the directing party by the governing instrument,
16 including but not limited to any power related to the
17 acquisition, disposition, retention, management, or valuation
18 of any asset or investment. Except as otherwise provided in
19 this Section or the governing instrument, an excluded fiduciary
20 is not liable, either individually or as a fiduciary, for any
21 action, inaction, consent, or failure to consent by a directing
22 party, including but not limited to any of the following:

23 (1) if a governing instrument provides that an excluded
24 fiduciary is to follow the direction of a directing party,
25 and such excluded fiduciary acts in accordance with such a
26 direction, then except in cases of willful misconduct on

1 the part of the excluded fiduciary in complying with the
2 direction of the directing party, the excluded fiduciary is
3 not liable for any loss resulting directly or indirectly
4 from following any such direction, including but not
5 limited to compliance regarding the valuation of assets for
6 which there is no readily available market value;

7 (2) if a governing instrument provides that an excluded
8 fiduciary is to act or omit to act only with the consent of
9 a directing party, then except in cases of willful
10 misconduct on the part of the excluded fiduciary, the
11 excluded fiduciary is not liable for any loss resulting
12 directly or indirectly from any act taken or omitted as a
13 result of such directing party's failure to provide such
14 consent after having been asked to do so by the excluded
15 fiduciary; or

16 (3) if a governing instrument provides that, or for any
17 other reason, an excluded fiduciary is required to assume
18 the role or responsibilities of a directing party, then
19 except in cases of willful misconduct, the excluded
20 fiduciary is not liable for any loss resulting directly or
21 indirectly from any act taken or omitted in complying with
22 that requirement.

23 (g) Submission to court jurisdiction; effect on directing
24 party. By accepting an appointment to serve as a directing
25 party of a trust that is subject to the laws of this State, the
26 directing party submits to the jurisdiction of the courts of

1 this State even if investment advisory agreements or other
2 related agreements provide otherwise, and the directing party
3 may be made a party to any action or proceeding if issues
4 relate to a decision or action of the directing party.

5 (h) Duty to inform excluded fiduciary. Each directing party
6 shall keep the excluded fiduciary and any other directing party
7 reasonably informed regarding the administration of the trust
8 with respect to any specific duty or function being performed
9 by the directing party to the extent that the duty or function
10 would normally be performed by the excluded fiduciary or to the
11 extent that providing such information to the excluded
12 fiduciary or other directing party is reasonably necessary for
13 the excluded fiduciary or other directing party to perform its
14 duties, and the directing party shall provide such information
15 as reasonably requested by the excluded fiduciary or other
16 directing party. Neither the performance nor the failure to
17 perform of a directing party's duty to inform as provided in
18 this subsection affects whatsoever the limitation on the
19 liability of the excluded fiduciary as provided in this
20 Section.

21 (i) Reliance on counsel. An excluded fiduciary may, but is
22 not required to, obtain and rely upon an opinion of counsel on
23 any matter relevant to this Section.

24 (j) Applicability. On and after its effective date, this
25 Section applies to:

26 (1) all existing and future trusts that appoint or

1 provide for a directing party, including but not limited to
2 a party granted power or authority effectively comparable
3 in substance to that of a directing party as provided in
4 this Section; or

5 (2) any existing or future trust that:

6 (A) is modified in accordance with applicable law
7 or the terms of the governing instrument to appoint or
8 provide for a directing party; or

9 (B) is modified to appoint or provide for a
10 directing party, including but not limited to a party
11 granted power or authority effectively comparable in
12 substance to that of a directing party, in accordance
13 with (i) a court order, or (ii) a nonjudicial
14 settlement agreement made in accordance with Section
15 16.1, whether or not such order or agreement specifies
16 that this Section governs the responsibilities,
17 actions, and liabilities of persons designated as a
18 directing party or excluded fiduciary.

19 (760 ILCS 5/16.7 new)

20 Sec. 16.7. Application. Section 16.3 applies to all trusts
21 in existence on the effective date of this amendatory Act of
22 the 97th General Assembly or created after that date. Section
23 16.3 shall be construed as pertaining to the administration of
24 a trust and shall be available to any trust that is
25 administered in Illinois under Illinois law or that is governed

1 by Illinois law with respect to the meaning and effect of its
2 terms, except to the extent the governing instrument expressly
3 prohibits that Section by specific reference to that Section. A
4 provision in the governing instrument in the form: "The
5 provisions of Section 16.3 of the Trusts and Trustees Act and
6 any corresponding provision of future law may not be used in
7 the administration of this trust." or a similar provision
8 demonstrating that intent is sufficient to preclude the use of
9 Section 16.3.

10 Section 99. Effective date. This Act takes effect upon
11 becoming law."