



Sen. Kirk W. Dillard

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LRB098 06513 HEP 57976 a

1 AMENDMENT TO SENATE BILL 2002

2 AMENDMENT NO. _____. Amend Senate Bill 2002 by replacing
3 everything after the enacting clause with the following:

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

6 (760 ILCS 5/16.3)

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. Notwithstanding
13 any provision of this Section to the contrary, a person
14 does not fail to qualify as an excluded fiduciary solely by
15 reason of having effectuated, participated in, or
16 consented to a transaction, including but not limited to
17 any transaction described in Section 16.1 or Section 16.4
18 of this Act, invoking the provisions of this Section with
19 respect to any new or existing trust.

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

23 (5) "Governing instrument" refers to the instrument
24 stating the terms of a trust, including but not limited to
25 any court order or nonjudicial settlement agreement
26 establishing, construing, or modifying the terms of the

1 trust in accordance with Section 16.1, 16.4, or 16.6 or
2 other applicable law.

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

7 (7) "Power" means authority to take or withhold an
8 action or decision, including but not limited to an
9 expressly specified power, the implied power necessary to
10 exercise a specified power, and authority inherent in a
11 general grant of discretion.

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

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

1 of the governing instrument provide otherwise, the investment
2 trust advisor has the authority to:

3 (1) direct the trustee with respect to the retention,
4 purchase, transfer, assignment, sale, or encumbrance of
5 trust property and the investment and reinvestment of
6 principal and income of the trust;

7 (2) direct the trustee with respect to all management,
8 control, and voting powers related directly or indirectly
9 to trust assets, including but not limited to voting
10 proxies for securities held in trust;

11 (3) select and determine reasonable compensation of
12 one or more advisors, managers, consultants, or
13 counselors, including the trustee, and to delegate to them
14 any of the powers of the investment trust advisor in
15 accordance with subsection (b) of Section 5.1; and

16 (4) determine the frequency and methodology for
17 valuing any asset for which there is no readily available
18 market value.

19 (c) Powers of distribution trust advisor. A distribution
20 trust advisor may be designated in the governing instrument of
21 a trust. The powers of a distribution trust advisor may be
22 exercised or not exercised in the sole and absolute discretion
23 of the distribution trust advisor, and are binding on all other
24 persons, including but not limited to each beneficiary,
25 fiduciary, excluded fiduciary, and any other party having an
26 interest in the trust. The governing instrument may use the

1 title "distribution trust advisor" or any similar name or
2 description demonstrating the intent to provide for the office
3 and function of a distribution trust advisor. Unless the terms
4 of the governing instrument provide otherwise, the
5 distribution trust advisor has authority to direct the trustee
6 with regard to all decisions relating directly or indirectly to
7 discretionary distributions to or for one or more
8 beneficiaries.

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

23 (1) modify or amend the trust instrument to achieve
24 favorable tax status or respond to changes in the Internal
25 Revenue Code, federal laws, State law, or the rulings and
26 regulations under such laws;

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

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

8 (4) remove, appoint, or remove and appoint, a trustee,
9 investment trust advisor, distribution trust advisor,
10 another directing party, investment committee member, or
11 distribution committee member, including designation of a
12 plan of succession for future holders of any such office;

13 (5) terminate the trust, including determination of
14 how the trustee shall distribute the trust property to be
15 consistent with the purposes of the trust;

16 (6) change the situs of the trust, the governing law of
17 the trust, or both;

18 (7) appoint one or more successor trust protectors,
19 including designation of a plan of succession for future
20 trust protectors;

21 (8) interpret terms of the trust instrument at the
22 request of the trustee;

23 (9) advise the trustee on matters concerning a
24 beneficiary; or

25 (10) amend or modify the trust instrument to take
26 advantage of laws governing restraints on alienation,

1 distribution of trust property, or to improve the
2 administration of the trust.

3 If a charity is a current beneficiary or a presumptive
4 remainder beneficiary of the trust, a trust protector must give
5 notice to the Attorney General's Charitable Trust Bureau at
6 least 60 days before taking any of the actions authorized under
7 item (2), (3), (4), (5), or (6) of this subsection. The
8 Attorney General's Charitable Trust Bureau may, however, waive
9 this notice requirement.

10 (e) Duty and liability of directing party. A directing
11 party is a fiduciary of the trust subject to the same duties
12 and standards applicable to a trustee of a trust as provided by
13 applicable law unless the governing instrument provides
14 otherwise, but the governing instrument may not, however,
15 relieve or exonerate a directing party from the duty to act or
16 withhold acting as the directing party in good faith reasonably
17 believes is in the best interests of the trust.

18 (f) Duty and liability of excluded fiduciary. The excluded
19 fiduciary shall act in accordance with the governing instrument
20 and comply with the directing party's exercise of the powers
21 granted to the directing party by the governing instrument.
22 Unless otherwise provided in the governing instrument, an
23 excluded fiduciary has no duty to monitor, review, inquire,
24 investigate, recommend, evaluate, or warn with respect to a
25 directing party's exercise or failure to exercise any power
26 granted to the directing party by the governing instrument,

1 including but not limited to any power related to the
2 acquisition, disposition, retention, management, or valuation
3 of any asset or investment. Except as otherwise provided in
4 this Section or the governing instrument, an excluded fiduciary
5 is not liable, either individually or as a fiduciary, for any
6 action, inaction, consent, or failure to consent by a directing
7 party, including but not limited to any of the following:

8 (1) if a governing instrument provides that an excluded
9 fiduciary is to follow the direction of a directing party,
10 and such excluded fiduciary acts in accordance with such a
11 direction, then except in cases of willful misconduct on
12 the part of the excluded fiduciary in complying with the
13 direction of the directing party, the excluded fiduciary is
14 not liable for any loss resulting directly or indirectly
15 from following any such direction, including but not
16 limited to compliance regarding the valuation of assets for
17 which there is no readily available market value;

18 (2) if a governing instrument provides that an excluded
19 fiduciary is to act or omit to act only with the consent of
20 a directing party, then except in cases of willful
21 misconduct on the part of the excluded fiduciary, the
22 excluded fiduciary is not liable for any loss resulting
23 directly or indirectly from any act taken or omitted as a
24 result of such directing party's failure to provide such
25 consent after having been asked to do so by the excluded
26 fiduciary; or

1 (3) if a governing instrument provides that, or for any
2 other reason, an excluded fiduciary is required to assume
3 the role or responsibilities of a directing party, or if
4 the excluded party appoints a directing party or successor
5 to a directing party, then the excluded fiduciary shall
6 also assume the same fiduciary and other duties and
7 standards that applied to such directing party.

8 (g) Submission to court jurisdiction; effect on directing
9 party. By accepting an appointment to serve as a directing
10 party of a trust that is subject to the laws of this State, the
11 directing party submits to the jurisdiction of the courts of
12 this State even if investment advisory agreements or other
13 related agreements provide otherwise, and the directing party
14 may be made a party to any action or proceeding if issues
15 relate to a decision or action of the directing party.

16 (h) Duty to inform excluded fiduciary. Each directing party
17 shall keep the excluded fiduciary and any other directing party
18 reasonably informed regarding the administration of the trust
19 with respect to any specific duty or function being performed
20 by the directing party to the extent that the duty or function
21 would normally be performed by the excluded fiduciary or to the
22 extent that providing such information to the excluded
23 fiduciary or other directing party is reasonably necessary for
24 the excluded fiduciary or other directing party to perform its
25 duties, and the directing party shall provide such information
26 as reasonably requested by the excluded fiduciary or other

1 directing party. Neither the performance nor the failure to
2 perform of a directing party's duty to inform as provided in
3 this subsection affects whatsoever the limitation on the
4 liability of the excluded fiduciary as provided in this
5 Section.

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

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

11 (1) all existing and future trusts that appoint or
12 provide for a directing party, including but not limited to
13 a party granted power or authority effectively comparable
14 in substance to that of a directing party as provided in
15 this Section; or

16 (2) any existing or future trust that:

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

20 (B) is modified to appoint or provide for a
21 directing party, including but not limited to a party
22 granted power or authority effectively comparable in
23 substance to that of a directing party, in accordance
24 with (i) a court order, or (ii) a nonjudicial
25 settlement agreement made in accordance with Section
26 16.1, whether or not such order or agreement specifies

1 that this Section governs the responsibilities,
2 actions, and liabilities of persons designated as a
3 directing party or excluded fiduciary.

4 (Source: P.A. 97-921, eff. 1-1-13.)".