



Sub. H.B. 509*

124th General Assembly

(As Reported by S. Finance & Financial Institutions)

Reps. Womer Benjamin, Blasdel, Salerno, Allen, Schmidt, Seitz, Carey, Evans

BILL SUMMARY

- Expands the powers of trust companies by providing, under certain circumstances, that a trust company acting in a fiduciary capacity may purchase any service or product through or directly from the trust company or an affiliate of the trust company or from a syndicate or selling group that includes the trust company or an affiliate of the trust company.
- Expands the investment authority of fiduciaries under the Probate Fiduciaries Law.
- Restricts bequests and other property transfers to persons adopted as adults, unless such persons are expressly included in the instrument of transfer.

CONTENT AND OPERATION

Expanded powers of trust companies

(sec. 1111.15)

The Trust Companies Law (Chapter 1111. of the Revised Code) authorizes a trust company to receive and hold money or property--in trust or as custodian--from executors, administrators, assignees, guardians, trustees, corporations, or individuals. In addition, it permits a trust company to engage in activities constituting or incidental to the trust business. A trust company acting as a

* *This analysis was prepared before the report of the Senate Finance and Financial Institutions Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

fiduciary generally is permitted to invest trust funds in a specified manner, unless otherwise prohibited by law or by the instrument creating the trust. (See **COMMENT 1**.)

Under the bill, a trust company acting in any fiduciary capacity may purchase any service or product--including insurance or securities underwritten or otherwise distributed by the trust company or by an affiliate--through or directly from the trust company or an affiliate of the trust company or from a syndicate or selling group that includes the trust company or an affiliate of the trust company, *if* both of the following apply:

(1) The purchase is otherwise prudent under the Ohio Uniform Prudent Investor Act (see **COMMENT 2**).

(2) The compensation for the service or product is reasonable and is not prohibited by the instrument governing the fiduciary relationship. This compensation may be in addition to the compensation the trust company otherwise is entitled to receive from the fiduciary account.

A trust company is required by the bill to disclose at least annually any purchase of a service or product authorized by the bill that was made by the trust company during that reporting period. The disclosure must be given, in writing or electronically, to all persons entitled to receive statements of account activity and must include (1) any capacities in which the trust company or an affiliate acts for the issuer of the securities or the provider of the products or services and (2) the fact that the trust company or an affiliate may have an interest in the products or services.

The bill states that it applies to the purchase of securities made at the time of the initial offering of the securities or at any time thereafter.

Investment authority of probate fiduciaries

(sec. 2109.371)

The Probate Fiduciaries Law (Chapter 2109.) sets forth the investments that may be made by probate fiduciaries, including investments in certain kinds and classes of securities. Under that Law, fiduciaries may invest in collective investment funds established under the Trust Companies Law (Chapter 1111.) and securities of any investment company, including any affiliated investment company. The bill provides that such investments may be made regardless of the eligibility of the underlying assets held by the fund portfolios of the investment company.

Under the bill, investments also may be made in the debt or equity securities of foreign corporations that trade on recognized United States domiciled exchanges.

Due to a cross-reference in current law, this additional investment authority also applies to trust companies acting in a fiduciary manner (see sec. 1111.13(A)(1)(a), not in the bill).

Transfers of property to persons adopted as adults

(sec. 3107.15; Section 3)

Under the existing Adoption Law (Chapter 3107.), a final decree of adoption and an interlocutory order of adoption that has become final as issued by an Ohio court, or a decree issued by a jurisdiction outside Ohio, have specified effects, including the creation of a parent/child relationship between the petitioner and the adopted person for all purposes, including inheritance and applicability of statutes, documents, and instruments, whether executed before or after the adoption is decreed, which do not expressly exclude an adopted person from their operation or effect.

The bill states that, notwithstanding this provision, a person who is 18 years old or older at the time the person is adopted, and the adopted person's lineal descendants, are *not* included as recipients of gifts, devises, bequests, or other transfers of property, including transfers in trust made to a class of persons (such as children, grandchildren, heirs, issue, lineal descendants, and next of kin) for purposes of inheritance and applicability of statutes, documents, and instruments, *unless* the document or instrument (1) expressly includes the adopted person by name or (2) expressly states that it includes a person who is 18 years old or older at the time the person is adopted.

Under the bill, no liability can arise against any one of the following that, prior to the bill's effective date, authorized or was otherwise responsible for a distribution or other payment or a transfer of property that is inconsistent with the above-described provision of the bill:

- (1) A fiduciary under a trust instrument, will, or other document;
- (2) A bank, savings and loan association, credit union, or society for savings, in connection with written contracts regarding payable-on-death deposits;
- (3) A registering entity for a transfer-on-death made pursuant to the Uniform Transfer-On-Death Security Registration Act (Chapter 1709.).

COMMENT

1. For example, the Trust Companies Law prohibits a trust company acting as a fiduciary from investing trust funds in stock issued by the fiduciary itself except under specified circumstances (sec. 1111.13(A)(2)).

2. Generally, if a trustee invests and manages trust assets under the Ohio Uniform Prudent Investor Act, that trustee must invest and manage the assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. The Act, in addition to other provisions, specifies standards and requirements applicable to the management of trust assets, rather than specifying a list of permissible investments by a trustee. (Secs. 1339.52 to 1339.61.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-14-02	p. 1407
Reported, H. Financial Institutions	05-30-02	p. 1892
Passed House (89-0)	06-19-02	pp. 1944-1945
Reported, S. Finance & Financial Institutions	---	---

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