

[First Reprint]  
ASSEMBLY, No. 940

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman KRAMER

1 **AN ACT** concerning the standards for prudent investing by fiduciaries  
2 of certain trust estates and of certain funds by the Director of the  
3 Division of Investment <sup>1</sup>[, supplementing and amending chapter 20  
4 of Title 3B of the New Jersey Statutes, amending P.L.1948, c.67  
5 and P.L.1959, c.17 and repealing] and revising<sup>1</sup> parts of the  
6 statutory law.

7  
8 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
9 *of New Jersey:*

10

11 1. (New section) Sections 1 through 12 of this 1996 amendatory  
12 and supplementary act shall be known and may be cited as the  
13 "Prudent Investor Act."

14

15 2. (New section) a. Except as provided in subsection b. of this  
16 section, a fiduciary who invests and manages trust assets owes a duty  
17 to the beneficiaries of the trust to comply with the prudent investor  
18 rule, as set forth in this act.

19 b. The prudent investor rule is a default rule that may be expanded,  
20 restricted, eliminated, or otherwise altered by express provisions of the  
21 trust instrument. A fiduciary is not liable to a beneficiary to the extent  
22 that the fiduciary acted in reasonable reliance on those express  
23 provisions. Nothing herein shall affect the jurisdiction of the Superior  
24 Court to order or authorize a fiduciary to deviate from the express  
25 terms or provisions of a trust instrument for the causes, in the manner,  
26 and to the extent otherwise provided by law.

27

28 3. (New section) a. A fiduciary shall invest and manage trust  
29 assets as a prudent investor would, by considering the purposes, terms,  
30 distribution requirements, and other circumstances of the trust. In  
31 satisfying this standard, the fiduciary shall exercise reasonable care,

**EXPLANATION** - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly AFI committee amendments adopted June 3, 1996.

1 skill, and caution.

2 b. A fiduciary's investment and management decisions respecting  
3 individual assets shall not be evaluated in isolation, but in the context  
4 of the trust portfolio as a whole and as a part of an overall investment  
5 strategy having risk and return objectives reasonably suited to the  
6 trust.

7 c. Subject to the standards established in this act, a fiduciary may  
8 invest in any kind of property or type of investment. No specific  
9 investment or course of action is inherently imprudent.

10 d. Among the circumstances that the fiduciary shall consider in  
11 investing and managing trust assets are those of the following as are  
12 relevant to the trust and its beneficiaries:

13 (1) general economic conditions;

14 (2) the possible effect of inflation or deflation;

15 (3) the expected tax consequences of investment decisions or  
16 strategies;

17 (4) the role that each investment or course of action plays within  
18 the overall trust portfolio;

19 (5) the expected total return from income and the appreciation of  
20 capital;

21 (6) other resources of the beneficiaries;

22 (7) the need for liquidity, for regularity of income, and for  
23 preservation or appreciation of capital; and

24 (8) an asset's special relationship or special value, if any, to the  
25 purposes of the trust or to one or more of the beneficiaries as, for  
26 example, an interest in a closely-held enterprise, tangible and  
27 intangible personalty, or real estate.

28 e. The fiduciary shall take reasonable steps to verify facts relevant  
29 to the investment and management of trust assets and may rely and be  
30 fully protected in relying upon statistical, financial, corporate or other  
31 information as to a particular investment, and upon ratings or other  
32 opinion as to the financial or other status thereof, contained in or  
33 offered by any financial, statistical, investment, rating or other  
34 publication or service published for the use of and accepted as reliable  
35 by investors in like investments or upon a copy of the prospectus  
36 prepared and filed with the Securities and Exchange Commission in  
37 connection with a new issue.

38 f. A fiduciary who has special skills or expertise, or is named  
39 fiduciary in reliance upon representations of special skills or expertise,  
40 has a duty to use those special skills or expertise.

41

42 4. (New section) A fiduciary shall diversify the investments of the  
43 trust unless the fiduciary reasonably determines that, because of  
44 special circumstances, the purposes of the trust are better served  
45 without diversifying.

1       5. (New Section) A fiduciary shall invest and manage the trust  
2 assets solely in the interest of the beneficiaries.

3

4       6. (New Section) If a trust has two or more beneficiaries, the  
5 fiduciary shall act impartially in investing and managing the trust  
6 assets, taking into account any differing interests of the beneficiaries.

7

8       7. (New section) Within <sup>1</sup>[a reasonable time] six months<sup>1</sup> after  
9 accepting trust assets, the fiduciary shall review the trust assets and  
10 shall make and implement decisions concerning the retention and  
11 disposition of assets received at the inception of the trust, in order to  
12 bring the trust portfolio into compliance with the provisions of the  
13 trust instrument or with the requirements of this [article] act<sup>1</sup>.

14

15       8. (New section) In investing and managing trust assets, a fiduciary  
16 may only incur costs that are appropriate and reasonable in relation to  
17 the assets, the purposes of the trust, and the skills of the fiduciary. A  
18 fiduciary who delegates investment and management functions  
19 pursuant to section 10 of P.L. , c. (C. )(pending before the  
20 Legislature as this bill) shall control the overall costs of the delegation,  
21 including making a reduction in the amount of corpus commissions  
22 otherwise allowable to the fiduciary with respect to the trust assets for  
23 which investment responsibility has been delegated, which reduction  
24 shall take account of the duties and responsibilities retained by the  
25 fiduciary with respect to such assets.

26

27       9. (New section) The prudent investor rule expresses a standard of  
28 conduct, not outcome. Compliance with the rule is determined in light  
29 of the facts and circumstances existing at the time of the fiduciary's  
30 decision or action.

31

32       10. (New section) a. A fiduciary may delegate investment and  
33 management functions that a prudent fiduciary of comparable skills  
34 could properly delegate under the circumstances. The fiduciary shall  
35 exercise reasonable care, skill, and caution in:

36       (1) selecting an agent with special investment skills and expertise  
37 and of sound financial standing;

38       (2) establishing the scope and terms of the delegation consistent  
39 with the purpose and terms of the trust instrument; and

40       (3) periodically reviewing the agent's actions in order to monitor  
41 the agent's performance and compliance with the scope and terms of  
42 the delegation.

43       b. In performing a delegated function, the agent shall owe to the  
44 trustee and the beneficiaries the same duties as the fiduciary and shall  
45 be held to the same standards as the fiduciary.

46       c. The fiduciary who complies with the requirements of subsection

1 a. of this section shall not be liable to the beneficiaries or to the trust  
2 for the decisions or actions of the agent to whom the function was  
3 delegated.

4 d. By accepting the delegation of a trust function from the  
5 fiduciary of a trust that is subject to the law of New Jersey, the agent  
6 submits to the jurisdiction of the courts of New Jersey, even if the  
7 delegation agreement provides otherwise.

8 e. If there are two or more fiduciaries serving, only one of whom  
9 has special investment and management skills or expertise or has been  
10 named in reliance upon representations of such special skills or  
11 expertise, then the fiduciary or fiduciaries not possessed of such  
12 special skills or expertise may, pursuant to this section, delegate  
13 investment and management functions to the other fiduciary as if such  
14 other fiduciary were an agent selected in accordance with this section  
15 and subject to the provisions of this section.

16 f. A fiduciary shall provide reasonable advance written notice on  
17 each occasion upon which the fiduciary intends to delegate investment  
18 and management functions pursuant to this section, including the  
19 identity of the agent, to the beneficiary or beneficiaries eligible to  
20 receive income from the trust on the date of the intended delegation.  
21 Upon providing such notice, the fiduciary shall be authorized to  
22 delegate investment and management functions pursuant to this  
23 section.

24

25 11. (New section) The following terms or comparable language in  
26 a trust instrument, unless otherwise limited or modified by that  
27 instrument, shall be construed as authorizing any investment or  
28 strategy permitted under this act: "investments permissible by law for  
29 investment of trust funds," "legal investment," "authorized  
30 investments," "using the judgement and care under the circumstances  
31 then prevailing that persons of prudence, discretion, and intelligence  
32 exercise in the management of their own affairs, not in regard to  
33 speculation but in regard to the permanent disposition of their funds,  
34 considering the probable income as well as the probable safety of their  
35 capital," "prudent man rule," "prudent trustee rule," "prudent person  
36 rule," and "prudent investor rule."

37

38 12. (New section) This act shall apply to and govern trusts existing  
39 on and created after its effective date. As applied to trusts existing on  
40 its effective date, this act governs only actions or omissions occurring  
41 after that date.

42

43 13. N.J.S.3B:20-1 is amended to read as follows:

44 3B:20-1. Definitions. As used in this chapter:

45 a. "Trust instrument" means and includes a will, deed, agreement,  
46 court order or other instrument pursuant to which money or other

1 property is entrusted to a fiduciary;

2 b. "Fiduciary" means an individual or corporation that is authorized  
3 to act as or acts as a trustee, personal representative, conservator,  
4 guardian, and every other [person] individual or corporation charged  
5 with the duty of administering a trust estate;

6 c. "Trust estate" or "trust assets" means money or other property  
7 entrusted to a fiduciary <sup>1</sup>[pursuant to a trust instrument, will, estate of  
8 an intestate decedent or the estate of a minor or mentally incompetent  
9 person being administered by a guardian]<sup>1</sup>;

10 d. ["Investments" means and includes property of every nature,  
11 real, personal and mixed, tangible and intangible, and specifically  
12 includes, solely by way of description and not by way of limitation,  
13 bonds, debentures and other corporate obligations, direct and indirect  
14 investment in equity real estate mortgages and other direct or indirect  
15 interests in real estate or investments secured by real estate, capital  
16 stocks, common stocks, preferred stocks, diversified pools of venture  
17 capital which otherwise could be made consistently with the standard  
18 of care required by N.J.S.3B:20-13, common trust funds as defined in  
19 and regulated by article 9, "Common Trust Funds," P.L.1948, c.67  
20 (C.17:9A-36 et seq.), repurchase agreements, securities loan  
21 transactions secured by cash, securities issued by the United States  
22 government or its agencies, irrevocable bank letters of credit, whether  
23 directly or through a bank or similar financial institution acting as  
24 agent or trustee, mutual funds, and any other security issued by an  
25 investment company or investment trust, whether managed or not by  
26 third parties, registered under the "Investment Company Act of 1940,"  
27 15 U.S.C.§800-1 et seq., as from time to time amended. No  
28 investment that is otherwise permissible under this subsection shall be  
29 considered to be unlawful solely because the investment is made  
30 indirectly through a partnership, trust, or other legal entity.] (Deleted  
31 by amendment, P.L. , c. .)

32 e. "Beneficiary" means an individual or corporation for whose  
33 benefit a fiduciary acts or is authorized to act.

34 (cf: P.L.1995, c.48, s.1)

35

36 14. N.J.S.3B:20-7 is amended to read as follows:

37 3B:20-7. Directions of court concerning the sale, conversion or  
38 retention of investments. When securities or other property come into  
39 possession of a fiduciary as part of the assets of the trust estate [he]  
40 the fiduciary is to administer or manage, the fiduciary may apply to the  
41 court for direction as to the sale, conversion or retention of the  
42 securities or property.

43 The court shall make an order as it shall deem most advantageous  
44 to the trust estate[, or the trust fund] and the interests of persons  
45 entitled to share therein.

46 (cf: N.J.S.3B:20-7)

1 15. N.J.S.3B:20-8 is amended to read as follows:

2 3B:20-8. Protection afforded fiduciary continuing investments  
3 under court order. A fiduciary [continuing to hold securities or other  
4 property as investments in accordance with an order of court pursuant  
5 to N.J.S.3B:20-7] shall not be held accountable for any loss by reason  
6 of continuing to hold the [securities or other property] trust assets in  
7 accordance with an order pursuant to N.J.S.3B:20-7.

8 (cf: N.J.S.3B:20-8)

9

10 16. N.J.S.3B:20-9 is amended to read as follows:

11 3B:20-9. Application to court upon change in conditions. If, as a  
12 result of a change in conditions which occurs or which may be  
13 reasonably foreseen, the objects of [a] the trust [created by a will,  
14 other instrument or order of court] estate may be defeated in whole or  
15 in part by the investment or retention of investments of the trust estate  
16 in [securities or other] property to which the fiduciary is limited by the  
17 [will, other] trust instrument [or court order creating the trust], the  
18 fiduciary or any beneficiary of the trust may apply to the court to  
19 secure authority permitting or directing the fiduciary to invest all or  
20 any part of the trust estate in [other investments] accordance with the  
21 provisions of N.J.S.3B:20-1 et seq.

22 (cf: N.J.S.3B:20-9)

23

24 17. N.J.S.3B:20-10 is amended to read as follows:

25 3B:20-10. Investments by court order upon change in conditions.  
26 If the court finds that by reason of a change in conditions which has  
27 occurred since the creation of the trust or which may be reasonably  
28 foreseen, the objects of the trust estate may be defeated in whole or in  
29 part by the investment or retention of the trust estate in [securities or  
30 other] property to which the fiduciary is limited by the trust instrument  
31 [or court order creating the trust estate] and that the objects of the  
32 trust estate and those interested in it would be promoted by the  
33 investment of all or part of the trust estate otherwise, the court shall  
34 authorize or direct the fiduciary to invest the whole of the trust estate  
35 or that part of it as shall be designated, in [any securities or other  
36 property which in its judgment will promote the objects of the trust  
37 and those interested in it] accordance with the provisions of  
38 N.J.S.3B:20-1 et seq.

39 (cf: N.J.S.3B:20-10)

40

41 18. N.J.S.3B:20-18 is amended to read as follows:

42 3B:20-18. Authority to exchange or convert securities. Except as  
43 otherwise provided in [a will, deed of trust, other] the trust instrument  
44 [or court order], a fiduciary who holds securities in a trust <sup>1</sup>estate<sup>1</sup>  
45 issued by a corporation which has been recapitalized or reorganized,  
46 or which has been a party to a merger or consolidation, may exchange

1 or convert the securities so held for or into other securities issued by  
2 the corporation as an incident of its recapitalization, reorganization,  
3 merger or consolidation, or issued by the corporation's successor  
4 corporation as an incident of the merger or consolidation.

5 (cf: N.J.S.3B:20-18)

6

7 19. N.J.S.3B:20-19 is amended to read as follows:

8 3B:20-19. Fiduciary as issuing corporation. An exchange or  
9 conversion of securities may be made pursuant to this article  
10 notwithstanding that the fiduciary which holds the securities in a trust  
11 estate is the same corporation which issued the securities.

12 (cf: N.J.S.3B:20-19)

13

14 20. N.J.S.3B:20-23 is amended to read as follows:

15 3B:20-23. Banking institution acting as fiduciary. An exchange or  
16 conversion of shares may be made pursuant to this article  
17 notwithstanding that the fiduciary which holds the shares in the trust  
18 estate is the banking institution which issued them.

19 (cf: N.J.S.3B:20-23)

20

21 21. N.J.S.3B:20-25 is amended to read as follows:

22 3B:20-25. Application of article. This article shall not apply where  
23 a [will, deed of trust or other] trust instrument contains provisions  
24 inconsistent with or contrary to the provisions of this article.

25 (cf: N.J.S.3B:20-25)

26

27 22. N.J.S.3B:20-27 is amended to read as follows:

28 3B:20-27. Definitions. As used in this article:

29 a. ["Fiduciary" includes an individual or corporation authorized to  
30 act as a custodian under the "New Jersey Uniform Gifts to Minors  
31 Act," P.L.1963, c.177 (C.46:38-13 et seq.);](Deleted by amendment,  
32 P.L. , c. .)

33 b. "Securities" means instruments which are commonly dealt with  
34 on securities exchanges or markets or commonly recognized in any  
35 area in which they are issued or dealt with as a medium for investment,  
36 and which are subject to the provisions of chapter 8, "Uniform  
37 Commercial Code-Investment Securities" (chapter 8, Title 12A of the  
38 New Jersey Statutes);

39 c. "Clearing corporation" means a corporation as defined in N.J.S.  
40 12A:8-102.

41 (cf: N.J.S.3B:20-27)

42

43 23. N.J.S.3B:20-34 is amended to read as follows:

44 3B:20-34. Application of article. This article shall apply to any  
45 fiduciary holding securities in its fiduciary capacity, and to any banking  
46 institution holding securities as a custodian, managing agent or

1 custodian for a fiduciary, acting on January 2, 1974, or who thereafter  
2 may act regardless of the date of the [agreement,]trust instrument [or  
3 court order] by which the fiduciary is appointed and regardless of  
4 whether or not the fiduciary[.]or the banking institution acting as  
5 custodian, managing agent or custodian for a fiduciary owns capital  
6 stock of the clearing corporation.

7 (cf: N.J.S.3B:20-34)

8

9 24. Section 38 of P.L.1948, c.67 (C.17:9A-38) is amended to read  
10 as follows:

11 38. Effect of trust instruments.

12 A. Except as otherwise provided by subsection B of this section,  
13 where the trust instrument defines, limits, or specifies the investments  
14 which may be made of a trust estate, any common trust fund in which  
15 all or any part of such trust estate is invested shall consist only of the  
16 investments defined, limited, or specified in such trust instrument.

17 B. Where the trust instrument makes no provision governing the  
18 investments which may be made of a trust estate, or where the trust  
19 instrument directs that an estate be invested in "legal investments" or  
20 in "investments in which a fiduciary may by law invest" or in "legal  
21 investments for trustees," or uses words of similar import, investment  
22 of such trust estate may be made, in whole or in part, in a common  
23 trust fund, consisting of property [of every nature, real, personal, and  
24 mixed, tangible and intangible, and further including, solely by way of  
25 description and not by way of limitation, bonds, debentures, and other  
26 corporate obligations, capital stocks, common stocks, preferred  
27 stocks, investments as authorized by article 1 of chapter 15 of Title 3A  
28 of the New Jersey Statutes, and shares of any open-end or closed-end  
29 management type investment company or investment trust registered  
30 pursuant to the Federal Investment Company Act of 1940, as from  
31 time to time amended] in which fiduciaries of trust estates in this State  
32 may invest pursuant to chapter 20 of Title 3B of the New Jersey  
33 Statutes.

34 C. (Deleted by amendment.)

35 D. In making investments as provided in this section a bank shall  
36 exercise [care and judgment under the circumstances then prevailing,  
37 which persons of ordinary prudence and reasonable discretion exercise  
38 in the management of and dealing with the property and affairs of  
39 another, considering the probable income as well as the probable  
40 safety of capital, and, if the bank has special skills or is named as the  
41 fiduciary on the basis of representations of special skills or expertise,  
42 it is under a duty to exercise those skills] the standard of care required  
43 of a fiduciary of trust assets in New Jersey pursuant to chapter 20 of

1 Title 3B of the New Jersey Statutes.

2 (cf: P.L.1975, c.338, s.2)

3

4 25. Section 1 of P.L.1959, c.17 (C.52:18A-88.1) is amended to  
5 read as follows:

6 1. <sup>1</sup>[a.]<sup>1</sup> The Director of the Division of Investment, in addition to  
7 other investments, presently or from time to time hereafter authorized  
8 by law, shall have authority to invest and reinvest the moneys in, and  
9 to acquire for or on behalf of the funds of the following enumerated  
10 agencies:

11 The Consolidated Police and Firemen's Pension Fund Commission;

12 The Police and Firemen's Retirement System of New Jersey;

13 The Prison Officers' Pension <sup>1</sup>[Fund]<sup>1</sup> Commission;

14 The Public Employees' Retirement System of New Jersey;

15 The State Police Retirement System;

16 The Teachers' Pension and Annuity Fund;

17 The 1837 Surplus Revenue Fund; and

18 The Trustees for the Support of Public Schools;

19 such investments which shall be authorized or approved for  
20 investment by regulation of the State Investment Council [and in  
21 which fiduciaries of trust estates in this State may legally invest and  
22 subject to the limitations and conditions applicable thereto].

23 <sup>1</sup>[b. The director shall exercise the care, skill, prudence and  
24 diligence under the circumstances then prevailing that a prudent person  
25 acting in a like capacity and familiar with such matters would use in  
26 the conduct of an enterprise of a like character and with like aims. In  
27 making each investment, the director may, depending on the nature  
28 and objectives of the portfolio, consider the whole portfolio, provided  
29 that, in making each investment, the director shall act with the  
30 reasonable expectation that the return on each investment shall be  
31 commensurate with the risk associated with each investment. The  
32 director shall be under a duty to manage and invest the portfolio solely  
33 in the interests of the enumerated agency and for the exclusive purpose  
34 of providing financial benefits to the enumerated agency.

35 c. For the purposes of this section, "investments" means and  
36 includes property of every nature, real, personal and mixed, tangible  
37 and intangible, and specifically includes, solely by way of description  
38 and not by way of limitation, bonds, debentures and other corporate  
39 obligations, direct and indirect investment in equity real estate  
40 mortgages and other direct or indirect interests in real estate or  
41 investments secured by real estate, capital stocks, common stocks,  
42 preferred stocks, diversified pools of venture capital which otherwise  
43 could be made consistent with the standard of care required by  
44 subsection a. of this section, common trust funds as defined in and  
45 regulated by article 9, Common Trust Funds, P.L.1948, c.67  
46 (C.17:9A-36 et seq.), repurchase agreements, securities loan

1 transactions secured by cash, securities issued by the United States  
2 government or its agencies, irrevocable bank letters of credit, whether  
3 directly or through a bank or similar financial institution acting as  
4 agent or trustee, mutual funds, and any other security issued by an  
5 investment company or investment trust, whether managed or not by  
6 third parties, registered under the "Investment Company Act of 1940,"  
7 15 U.S.C. §80a-1 et seq., as from time to time amended. No investment  
8 that is otherwise permissible under this subsection shall be considered  
9 to be unlawful solely because the investment is made indirectly  
10 through a partnership, trust, or other legal entity.

11 d. Notwithstanding any provision of this section to the contrary,  
12 and with the exception of sections 1 through 12 of the "Prudent  
13 Investor Act," P.L. , c. (c. ) (pending before the Legislature as  
14 this bill), all other limitations and conditions applicable to investments  
15 by fiduciaries of trust estates in this State shall apply to the investment  
16 and management of funds in the custody of the State Treasurer.

17 e. The provisions of this section shall apply to the investment and  
18 management of all funds in the custody of the State Treasurer, unless  
19 otherwise provided by law.]<sup>1</sup>

20 (cf: P.L.1972, c.176, s.1)

21

22 <sup>1</sup>26. Section 11 of P.L.1950, c.20 (C.52:18A-89) is amended to  
23 read as follows:

24 11. a. Limitations, conditions and restrictions contained in any law  
25 concerning the kind or nature of investment of any of the moneys of  
26 any of the funds or accounts referred to herein shall continue in full  
27 force and effect; provided, however, that subject to any acceptance  
28 required, or limitation or restriction contained herein: the Director of  
29 the Division of Investment shall at all times have authority to invest  
30 and reinvest any such moneys in [ , and to acquire for or on behalf of  
31 any such funds or accounts, bonds, and other evidences of  
32 indebtedness of the United States of America, and such bonds, and  
33 other evidences of indebtedness, which may be authorized or approved  
34 for investment by regulation of the State Investment Council, in which  
35 (1) savings banks in this State may legally invest; or (2) which are  
36 evidences of indebtedness issued by a company incorporated within  
37 and transacting business within the United States, which are not in  
38 default as to either principal or interest when acquired, and which have  
39 a maturity of not more than twelve months from the date of purchase;  
40 or (3) which are the direct obligations of or unconditionally  
41 guaranteed as to principal and interest by the government of Canada,  
42 payable as to both principal and interest in United States dollars, or  
43 which are the direct obligations of or unconditionally guaranteed as to  
44 principal and interest by any of the provinces thereof, payable as to  
45 both principal and interest in United States dollars;] investments as  
46 defined in subsection c. of this section and, for or on behalf of any

1 such fund or account, to sell or exchange any such investments [or  
2 securities thereof].

3 b. In investing and reinvesting any and all money and property  
4 committed to the director's investment discretion from any source  
5 whatever, and in acquiring, retaining, selling, exchanging and  
6 managing investments, the Director of the Division of Investment shall  
7 exercise the care, skill, prudence and diligence under the circumstances  
8 then prevailing that a prudent person acting in a like capacity and  
9 familiar with such matters would use in the conduct of an enterprise  
10 of a like character and with like aims. In making each investment, the  
11 director may, depending on the nature and objectives of the portfolio,  
12 consider the whole portfolio, provided that, in making each  
13 investment, the director shall act with the reasonable expectation that  
14 the return on each investment shall be commensurate with the risk  
15 associated with each investment. The director shall be under a duty to  
16 manage and invest the portfolio solely in the interests of the  
17 beneficiaries of the portfolio and for the exclusive purpose of  
18 providing financial benefits to the beneficiaries of the portfolio.

19 c. For the purposes of this section, "investments" means and  
20 includes property of every nature, real, personal and mixed, tangible  
21 and intangible, and specifically includes, solely by way of description  
22 and not by way of limitation, bonds, debentures and other corporate  
23 obligations, direct and indirect investments in equity real estate,  
24 mortgages and other direct or indirect interests in real estate or  
25 investments secured by real estate, capital stocks, common stocks,  
26 preferred stocks, diversified pools of venture capital which otherwise  
27 could be made consistent with the standard of care required by  
28 subsection b. of this section, common trust funds as defined in and  
29 regulated by sections 36 through 46 of P.L.1948, c.67 (C.17:9A-36  
30 through 17:9A-46), repurchase agreements, securities loan  
31 transactions secured by cash, securities issued by the United States  
32 government or its agencies, or irrevocable bank letters of credit,  
33 whether directly or through a bank or similar financial institution  
34 acting as agent or trustee, mutual funds, and any other security issued  
35 by an investment company or investment trust, whether managed or  
36 not by third parties, registered under the "Investment Company Act of  
37 1940," 15 U.S.C. §80a-1 et seq. No investment that is otherwise  
38 permissible under this subsection shall be considered to be unlawful  
39 solely because the investment is made indirectly or through a  
40 partnership, trust, or other legal entity.<sup>1</sup>

41 (cf: P.L.1952, c.8)

42

43 <sup>1</sup>[26.] 27.<sup>1</sup> The following are repealed:

44 N.J.S.3B:20-2;

45 N.J.S.3B:20-6;

46 N.J.S.3B:20-11 through N.J.S.3B:20-17 inclusive;

1 N.J.S.3B:20-20; and

2 N.J.S.3B:20-24.

3

4 <sup>1</sup>[27.] 28.<sup>1</sup> This act shall take effect 90 days after enactment.

5

6

7

8

9 Concerns the investment and management of certain trust estates by  
10 fiduciaries and of certain funds by the Director of the Division of  
11 Investment.