

SENATE, No. 1092

STATE OF NEW JERSEY

INTRODUCED MAY 9, 1996

By Senator INVERSO

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 and revising parts of the statutory law.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

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

11

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

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

24

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

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

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.

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

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

7 (1) general economic conditions;

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

9 (3) the expected tax consequences of investment
10 decisions or strategies;

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

13 (5) the expected total return from income and the
14 appreciation of capital;

15 (6) other resources of the beneficiaries;

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

18 (8) an asset's special relationship or special value, if any,
19 to the purposes of the trust or to one or more of the beneficiaries as,
20 for example, an interest in a closely-held enterprise, tangible and
21 intangible personality, or real estate.

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

32 f. A fiduciary who has special skills or expertise, or is named
33 fiduciary in reliance upon representations of special skills or expertise,
34 has a duty to use those special skills or expertise.

35

36 4. (New section) A fiduciary shall diversify the investments of the
37 trust unless the fiduciary reasonably determines that, because of
38 special circumstances, the purposes of the trust are better served
39 without diversifying.

40

41 5. (New section) A fiduciary shall invest and manage the trust
42 assets solely in the interest of the beneficiaries.

43

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

1 7. (New section) Within a reasonable time after accepting trust
2 assets, the fiduciary shall review the trust assets and shall make and
3 implement decisions concerning the retention and disposition of assets
4 received at the inception of the trust, in order to bring the trust
5 portfolio into compliance with the provisions of the trust instrument
6 or with the requirements of this act.

7

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

19

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

24

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

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

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

33 (3) periodically reviewing the agent's actions in order to
34 monitor the agent's performance and compliance with the scope and
35 terms of the delegation.

36 b. In performing a delegated function, the agent shall owe to the
37 trustee and the beneficiaries the same duties as the fiduciary and shall
38 be held to the same standards as the fiduciary.

39 c. The fiduciary who complies with the requirements of subsection
40 a. of this section shall not be liable to the beneficiaries or to the trust
41 for the decisions or actions of the agent to whom the function was
42 delegated.

43 d. By accepting the delegation of a trust function from the
44 fiduciary of a trust that is subject to the law of New Jersey, the agent
45 submits to the jurisdiction of the courts of New Jersey, even if the
46 delegation agreement provides otherwise.

1 e. If there are two or more fiduciaries serving, only one of whom
2 has special investment and management skills or expertise or has been
3 named in reliance upon representations of such special skills or
4 expertise, then the fiduciary or fiduciaries not possessed of such
5 special skills or expertise may, pursuant to this section, delegate
6 investment and management functions to the other fiduciary as if such
7 other fiduciary were an agent selected in accordance with this section
8 and subject to the provisions of this section.

9 f. A fiduciary shall provide reasonable advance written notice on
10 each occasion upon which the fiduciary intends to delegate investment
11 and management functions pursuant to this section, including the
12 identity of the agent, to the beneficiary or beneficiaries eligible to
13 receive income from the trust on the date of the intended delegation.
14 Upon providing such notice, the fiduciary shall be authorized to
15 delegate investment and management functions pursuant to this
16 section.

17

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

30

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

35

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

37 3B:20-1. Definitions. As used in this chapter:

38 a. "Trust instrument" means and includes a will, deed, agreement,
39 court order or other instrument pursuant to which money or other
40 property is entrusted to a fiduciary;

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

45 c. "Trust estate" or "trust assets" means money or other property
46 entrusted to a fiduciary [pursuant to a trust instrument, will, estate of

1 an intestate decedent or the estate of a minor or mentally incompetent
2 person being administered by a guardian];

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

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

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

28

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

30 3B:20-7. Directions of court concerning the sale, conversion or
31 retention of investments. When securities or other property come into
32 possession of a fiduciary as part of the assets of the trust estate [he]
33 the fiduciary is to administer or manage, the fiduciary may apply to the
34 court for direction as to the sale, conversion or retention of the
35 securities or property.

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

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

40

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

42 3B:20-8. Protection afforded fiduciary continuing investments
43 under court order. A fiduciary [continuing to hold securities or other
44 property as investments in accordance with an order of court pursuant
45 to N.J.S. 3B:20-7] shall not be held accountable for any loss by reason
46 of continuing to hold the [securities or other property] trust assets in

1 accordance with an order pursuant to N.J.S.3B:20-7.

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

3

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

5 3B:20-9. Application to court upon change in conditions. If, as a
6 result of a change in conditions which occurs or which may be
7 reasonably foreseen, the objects of [a] the trust [created by a will,
8 other instrument or order of court] estate may be defeated in whole or
9 in part by the investment or retention of investments of the trust estate
10 in [securities or other] property to which the fiduciary is limited by the
11 [will, other] trust instrument [or court order creating the trust], the
12 fiduciary or any beneficiary of the trust may apply to the court to
13 secure authority permitting or directing the fiduciary to invest all or
14 any part of the trust estate in [other investments] accordance with the
15 provisions of N.J.S.3B:20-1 et seq.

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

17

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

19 3B:20-10. Investments by court order upon change in conditions.
20 If the court finds that by reason of a change in conditions which has
21 occurred since the creation of the trust or which may be reasonably
22 foreseen, the objects of the trust estate may be defeated in whole or in
23 part by the investment or retention of the trust estate in [securities or
24 other] property to which the fiduciary is limited by the trust instrument
25 [or court order creating the trust estate] and that the objects of the
26 trust estate and those interested in it would be promoted by the
27 investment of all or part of the trust estate otherwise, the court shall
28 authorize or direct the fiduciary to invest the whole of the trust estate
29 or that part of it as shall be designated, in [any securities or other
30 property which in its judgment will promote the objects of the trust
31 and those interested in it] accordance with the provisions of
32 N.J.S.3B:20-1 et seq.

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

34

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

36 3B:20-18. Authority to exchange or convert securities. Except as
37 otherwise provided in [a will, deed of trust, other] the trust instrument
38 [or court order], a fiduciary who holds securities in a trust estate
39 issued by a corporation which has been recapitalized or reorganized,
40 or which has been a party to a merger or consolidation, may exchange
41 or convert the securities so held for or into other securities issued by
42 the corporation as an incident of its recapitalization, reorganization,
43 merger or consolidation, or issued by

1 the corporation's successor corporation as an incident of the merger
2 or consolidation.
3 (cf: N.J.S.3B:20-18)

4

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

6 3B:20-19. Fiduciary as issuing corporation. An exchange or
7 conversion of securities may be made pursuant to this article
8 notwithstanding that the fiduciary which holds the securities in a trust
9 estate is the same corporation which issued the securities.

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

11

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

13 3B:20-23. Banking institution acting as fiduciary. An exchange or
14 conversion of shares may be made pursuant to this article
15 notwithstanding that the fiduciary which holds the shares in the trust
16 estate is the banking institution which issued them.

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

18

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

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

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

24

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

26 3B:20-27. Definitions. As used in this article:

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

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

37 c. "Clearing corporation" means a corporation as defined in N.J.S.
38 12A:8-102.

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

40

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

42 3B:20-34. Application of article. This article shall apply to any
43 fiduciary holding securities in its fiduciary capacity, and to any banking
44 institution holding securities as a custodian, managing agent or
45 custodian for a fiduciary, acting on January 2, 1974, or who thereafter
46 may act regardless of the date of the [agreement,] trust instrument [or

1 court order] by which the fiduciary is appointed and regardless of
2 whether or not the fiduciary[,]or the banking institution acting as
3 custodian, managing agent or custodian for a fiduciary owns capital
4 stock of the clearing corporation.

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

6

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

9 38. Effect of trust instruments.

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

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

32 C. (Deleted by amendment.)

33 D. In making investments as provided in this section a bank shall
34 exercise [care and judgment under the circumstances then prevailing,
35 which persons of ordinary prudence and reasonable discretion exercise
36 in the management of and dealing with the property and affairs of
37 another, considering the probable income as well as the probable
38 safety of capital, and, if the bank has special skills or is named as the
39 fiduciary on the basis of representations of special skills or expertise,
40 it is under a duty to exercise those skills] the standard of care required
41 of a fiduciary of trust assets in New Jersey pursuant to chapter 20 of
42 Title 3B of the New Jersey Statutes.

43 (P.L.1975, c.338, s.2)

44

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

1 1. The Director of the Division of Investment, in addition to other
2 investments, presently or from time to time hereafter authorized by
3 law, shall have authority to invest and reinvest the moneys in, and to
4 acquire for or on behalf of the funds of the following enumerated
5 agencies:

6 The Consolidated Police and Firemen's Pension Fund Commission;
7 The Police and Firemen's Retirement System of New Jersey;
8 The Prison Officers' Pension [Fund] Commission;
9 The Public Employees' Retirement System of New Jersey;
10 The State Police Retirement System;
11 The Teachers' Pension and Annuity Fund;
12 The 1837 Surplus Revenue Fund; and
13 The Trustees for the Support of Public Schools;
14 such investments which shall be authorized or approved for
15 investment by regulation of the State Investment Council [and in
16 which fiduciaries of trust estates in this State may legally invest and
17 subject to the limitations and conditions applicable thereto].

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

19

20 26. Section 11 of P.L.1950, c.20 (C.52:18A-89) is amended to
21 read as follows:

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

46 b. In investing and reinvesting any and all money and property

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

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

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

39

40 27. The following are repealed:

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

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

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

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

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

46

1 28. This act shall take effect 90 days after enactment.

2

3

STATEMENT

5

6 This bill repeals existing law, N.J.S.3B:20-12 through 17,
7 commonly known as the "prudent man rule" and, in its place,
8 establishes a new prudent investor rule for fiduciaries in New Jersey.
9 The bill incorporates many of the provisions of the Uniform Prudent
0 Investor Act recently adopted by the National Conference of
1 Commissioners on Uniform State Laws which, in turn, drew upon the
2 revised standards for prudent trust investment stated in the
3 Restatement (Third) of Trusts: Prudent Investor Rule (1992).

4 Fiduciaries must follow the investment standard set forth in their
5 governing instrument, such as a will, deed, agreement or court order
6 pursuant to which money or other property is entrusted to a fiduciary.
7 If no standards are specified, the bill requires that the fiduciary comply
8 with the new prudent investor rule. The bill's definition of "fiduciary"
9 includes executors, trustees, guardians, conservators and "every other
10 individual or corporation charged with the duty of administering a
11 trust estate."

The bill changes substantially the criteria for prudent investing by fiduciaries. The bill requires a fiduciary to invest trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust, requires the fiduciary to exercise reasonable care, skill and caution and imposes upon the fiduciary the duties of loyalty and impartiality toward beneficiaries. The bill incorporates the "modern portfolio theory," by requiring a fiduciary to apply the prudent investor rule to the trust portfolio as a whole rather than to each individual trust investment. A fiduciary may invest in any kind of property or type of investment; no specific investment or course of action is per se imprudent, so long as each investment or course of action is consistent with an overall investment strategy having risk and return objectives reasonably suited to the trust estate. Specific circumstances that a fiduciary should consider are set forth in the bill, but the list is not intended to be exclusive. Investments that could be made by fiduciaries under the bill include, but are not limited to, real estate, mortgages, repurchase agreements, mutual funds, and diversified pools of venture capital.

The bill requires a fiduciary to diversify the investments of the trust unless it is reasonably determined that, because of special circumstances, the purposes of the trust are better served without diversification.

45 The new prudent investor rule imposes a standard of conduct, not
46 of performance or outcome. Compliance by a fiduciary is determined

1 in light of the facts and circumstances existing at the time of the
2 fiduciary's decision or action.

3 The second major revision to current law made by the bill concerns
4 delegation of investment responsibility. The bill allows a fiduciary to
5 delegate investment and management functions that a prudent fiduciary
6 of comparable skills could properly delegate under the circumstances.

7 A fiduciary that exercises reasonable care, skill and caution in
8 selecting an investment agent, establishing the scope and terms of the
9 delegated function, and periodically monitoring the agent's
10 performance and compliance with the scope and terms of the
11 delegation shall not be liable to the beneficiaries or to the trust for the
12 agent's decisions or actions. The agent to whom a fiduciary has
13 delegated investment responsibility owes to the trustee and to the
14 beneficiaries the same duties as the fiduciary and shall be held to the
15 same standards as the fiduciary. The bill makes the agent subject to
16 the jurisdiction of the courts of New Jersey, even if the agent
17 delegation agreement provides otherwise. The bill requires the
18 fiduciary to give the income beneficiaries advance notice of any
19 intended delegation.

20 In investing and managing trust assets, the bill requires that a
21 fiduciary incur only those costs that are appropriate and reasonable in
22 relation to the assets, the trust purposes and the skills of the fiduciary.
23 To protect the beneficiaries, where the fiduciary has delegated
24 investment responsibility the bill requires a reduction in the fiduciary's
25 compensation to reflect the fiduciary's lessened responsibilities.

26 The bill also amends section 38 of P.L.1948, c.67 (C.17:9A-38) to
27 make the new prudent investor rule applicable to the investments of
28 common trust funds maintained by New Jersey banks.

29 The bill provides that the Director of the Division of Investment
30 shall not be subject to the fiduciary standards of the new "Prudent
31 Investor Act," and keeps the director subject to fiduciary standards
32 identical to the standards of the current "Prudent Investment Law"
33 (N.J.S.A.3B:20-12 et seq.) when the director invests and manages
34 funds in the custody of the State Treasurer.

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38

39 Concerns the investment and management of certain trust estates by
40 fiduciaries and of certain funds by the Director of the Division of
41 Investment.