

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 178
House Committee Substitute Favorable 5/17/99

Short Title: Uniform Prudent Investor Act/AB.

(Public)

Sponsors:

Referred to:

March 1, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO BE KNOWN AS THE NORTH CAROLINA UNIFORM PRUDENT
3 INVESTOR ACT, AS RECOMMENDED BY THE GENERAL STATUTES
4 COMMISSION.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 36A of the General Statutes is amended by adding a new
7 Article to read:

8 **"ARTICLE 15.**

9 **"NORTH CAROLINA UNIFORM PRUDENT INVESTOR ACT.**

10 **"§ 36A-161. Prudent investor rule; applicability.**

11 (a) Except as otherwise provided in subsection (b) of this section, a trustee who
12 invests and manages trust assets owes a duty to the beneficiaries of the trust to comply
13 with the prudent investor rule set forth in this Article.

14 (b) The prudent investor rule, a default rule, may be expanded, restricted,
15 eliminated, or otherwise altered by the provisions of a trust which govern or direct
16 investments in a manner inconsistent with this Article. A trustee is not liable to a
17 beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of
18 the trust.

1 (c) This Article applies to express trusts, including charitable, inter vivos, and
2 testamentary trusts, and trustees of those trusts. The following terms or comparable
3 language in the provisions of a trust, unless otherwise limited or modified, authorizes any
4 investment or strategy permitted under this Article: 'investments in accordance with
5 Article 15 of Chapter 36A,' 'investments permissible by law for investment of trust
6 funds,' 'legal investments,' 'authorized investments,' 'using the judgment and care under
7 the circumstances then prevailing that persons of prudence, discretion, and intelligence
8 exercise in the management of their own affairs, not in regard to speculation but in regard
9 to the permanent disposition of their funds, considering the probable income as well as
10 the probable safety of their capital,' 'prudent man rule,' 'prudent trustee rule,' 'prudent
11 person rule,' and 'prudent investor rule.'

12 This Article also applies where a trust contains no investment standard. A reference
13 to 'Chapter 36A' in a trust instrument governing a trust executed prior to the effective date
14 of this Article shall be construed to be a reference to this Article.

15 (d) This Article does not apply:

16 (1) Unless the provisions of the trust provide otherwise by specific
17 reference to this Article, to:

- 18 a. Trusts under any federal employee retirement income security
19 statute or other retirement or pension trusts;
20 b. Trusts which are created by legislative act;
21 c. Trusts which are created by or pursuant to premarital or
22 postmarital agreements, divorce settlements, settlements of other
23 proceedings or disputes;
24 d. Transfers under the Uniform Transfers to Minors Act;
25 e. Transfers under the Uniform Custodial Trust Act; or
26 f. Honorary trusts, trusts for pets, and trusts for cemetery lots.

27 (2) To trusts imposed or required under another chapter of the General
28 Statutes or by rule in which the investment of the trust funds is
29 regulated by the other chapter or by rule, unless a provision of the other
30 chapter or the rule provides otherwise by a specific reference to this
31 Article.

32 (3) To:

- 33 a. Constructive trusts and resulting trusts;
34 b. Guardianship, conservatorship, and estates managed by personal
35 representatives;
36 c. Trust accounts as defined in G.S. 53-146.2, 54-109.57, 54C-166,
37 and 54B-130; or
38 d. Business trusts providing for certificates to be issued to
39 beneficiaries, common trust funds, voting trusts, security
40 arrangements, liquidation trusts, and trusts for the primary
41 purpose of paying debts, dividends, interests, salaries, wages,
42 profits, pensions, or employee benefits of any kind, and any

1 arrangement under which a person is nominee or escrowee for
2 another.

3 **"§ 36A-162. Standard of care; portfolio strategy; risk and return objectives.**

4 (a) A trustee shall invest and manage trust assets as a prudent investor would, by
5 considering the purposes, terms, distribution requirements, and other circumstances of the
6 trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and
7 caution.

8 (b) A trustee's investment and management decisions respecting individual assets
9 must be evaluated not in isolation but in the context of the trust portfolio as a whole and
10 as a part of an overall investment strategy having risk and return objectives reasonably
11 suited to the trust.

12 (c) Among circumstances that a trustee shall consider in investing and managing
13 trust assets are any of the following as are relevant to the trust or its beneficiaries:

14 (1) General economic conditions;

15 (2) The possible effect of inflation or deflation;

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

17 (4) The role that each investment or course of action plays within the
18 overall trust portfolio, which may include financial assets, interests in
19 closely held enterprises, tangible and intangible personal property, and
20 real property;

21 (5) The expected total return from income and the appreciation of capital;

22 (6) Other resources of the beneficiaries known to the trustee;

23 (7) Needs for liquidity, regularity of income, and preservation or
24 appreciation of capital; and

25 (8) An asset's special relationship or special value, if any, to the purposes of
26 the trust or to one or more of the beneficiaries.

27 (d) A trustee shall make a reasonable effort to verify facts relevant to the
28 investment and management of trust assets.

29 (e) A trustee may invest in any kind of property or type of investment consistent
30 with the standards of this Article.

31 (f) A trustee who has special skills or expertise, or is named trustee in reliance
32 upon the trustee's representation that the trustee has special skills or expertise, has a duty
33 to use those special skills or expertise.

34 **"§ 36A-163. Diversification.**

35 A trustee shall diversify the investments of the trust unless the trustee reasonably
36 determines that, because of special circumstances, the purposes of the trust are better
37 served without diversifying.

38 **"§ 36A-164. Duties at inception of trusteeship.**

39 Within a reasonable time after accepting a trusteeship or receiving trust assets, a
40 trustee shall review the trust assets and make and implement decisions concerning the
41 retention and disposition of assets in order to bring the trust portfolio into compliance
42 with the purposes, terms, distribution requirements, and other circumstances of the trust,
43 and with the requirements of this Article.

1 **"§ 36A-165. Loyalty.**

2 A trustee shall invest and manage the trust assets solely in the interest of the
3 beneficiaries.

4 **"§ 36A-166. Impartiality.**

5 If a trust has two or more beneficiaries, the trustee shall act impartially in investing
6 and managing the trust assets, taking into account any differing interests of the
7 beneficiaries.

8 **"§ 36A-167. Investment costs.**

9 In investing and managing trust assets, a trustee may only incur costs that are
10 appropriate and reasonable in relation to the assets, the purposes of the trust, and the
11 skills of the trustee.

12 **"§ 36A-168. Reviewing compliance.**

13 Compliance with the prudent investor rule is determined in light of the facts and
14 circumstances existing at the time of a trustee's decision or action and not by hindsight.

15 **"§ 36A-169. Delegation of investment and management functions.**

16 (a) A trustee may delegate investment and management functions if it is prudent to
17 do so under the circumstances. The trustee shall exercise reasonable care, skill, and
18 caution in:

19 (1) Selecting an agent;

20 (2) Establishing the scope and terms of any delegation, consistent with the
21 purposes and terms of the trust; and

22 (3) Periodically reviewing the agent's actions in order to monitor the agent's
23 performance and compliance with the terms of the delegation.

24 (b) In performing a delegated function, an agent owes a duty to the trust to
25 exercise reasonable care to comply with the terms of the delegation.

26 (c) A trustee who complies with the requirements of subsection (a) of this section
27 is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to
28 whom the function was delegated.

29 (d) By accepting the delegation of a trust function from the trustee of a trust that is
30 subject to the law of this State, an agent submits to the jurisdiction of the courts of this
31 State.

32 **"§ 36A-170. Effect on charitable remainder trusts.**

33 Nothing in this Article shall prevent the application of Article 4A of this Chapter to
34 'charitable remainder trusts' as defined in G.S. 36A-59.3(1).

35 **"§ 36A-171. Application to existing trusts.**

36 This Article applies to trusts existing on and created after its effective date. As
37 applied to trusts existing on its effective date, this Article governs only actions or
38 omissions occurring after that date.

39 **"§ 36A-172. Short title.**

40 This Article may be cited as the 'North Carolina Uniform Prudent Investor Act.'

41 **"§ 36A-173. Severability.**

42 If any provision of this Article or its application to any person or circumstance is held
43 invalid, the invalidity does not affect other provisions or applications of this Article

1 which can be given effect without the invalid provision or application, and to this end the
2 provisions of this Article are severable."

3 Section 2. G.S. 36A-2 reads as rewritten:

4 "**§ 36A-2. Investment; prudent ~~man-person~~ rule.**

5 (a) In acquiring, investing, reinvesting, exchanging, retaining, selling, and
6 managing property for the benefit of another, a fiduciary shall observe the standard of
7 judgment and care under the circumstances then prevailing, which an ordinarily prudent
8 ~~man-person~~ of discretion and intelligence, who is a fiduciary of the property of others,
9 would observe as such fiduciary; and if the fiduciary has special skills or is named a
10 fiduciary on the basis of representations of special skills or expertise, ~~he~~ the fiduciary is
11 under a duty to use those skills. This subsection and subsection (b) of this section do not
12 apply to trusts governed by Article 15 of this Chapter.

13 (b) Within the limitations of the foregoing standard, a fiduciary is authorized to
14 acquire and retain every kind of property and every kind of investment, including
15 specifically, but without in any way limiting the generality of the foregoing, bonds,
16 debentures, and other corporate or governmental obligations; stocks, preferred or
17 common; real estate mortgages; shares in building and loan associations or savings and
18 loan associations; annual premium or single premium life, endowment, or annuity
19 contracts; and securities of any management type investment company or investment
20 trust registered under the Federal Investment Company Act of 1940, as from time to time
21 amended.

22 (c) Notwithstanding the provisions of subsections (a) and (b) of this ~~section,~~
23 section and Article 15 of this Chapter, the duties of a trustee with respect to acquiring or
24 retaining a contract of insurance upon the life of the settlor, or the lives of the settlor and
25 the settlor's spouse, do not include a duty (i) to determine whether any such contract is or
26 remains a proper investment; (ii) to exercise policy options available under any such
27 contract; or (iii) to diversify any such contract. A trustee is not liable to the beneficiaries
28 of the trust or to any other party for any loss arising from the absence of those duties
29 upon the trustee.

30 (d) The trustee of a trust described under subsection (c) of this section established
31 prior to October 1, 1995, shall notify the settlor in writing that, unless the settlor provides
32 written notice to the contrary to the trustee within 60 days of the trustee's notice, the
33 provisions of subsection (c) of this section shall apply to the trust. Subsection (c) of this
34 section shall not apply if, within 60 days of the trustee's notice, the settlor notifies the
35 trustee that subsection (c) of this section shall not apply."

36 Section 3. The Revisor of Statutes shall cause to be printed along with this act
37 all relevant portions of the Official Comments to the Uniform Prudent Investor Act and
38 all explanatory comments of the drafters of this act as the Revisor deems appropriate.

39 Section 4. This act becomes effective January 1, 2000.