GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 146

Short Title: Uniform Prudent Investor Act/AB. (Public)

Sponsors: Representative Culpepper.

Referred to: Judiciary IV.

February 25, 1999

A BILL TO BE ENTITLED

AN ACT TO BE KNOWN AS THE NORTH CAROLINA UNIFORM PRUDENT INVESTOR ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

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

"ARTICLE 15.

"UNIFORM PRUDENT INVESTOR ACT.

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

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

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

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

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

(d) Unless the provisions of the trust provide otherwise by specific reference to this Article, this Article does not apply to:

(1) Trusts under any federal employee retirement income security statute or other retirement or pension trusts;
(2) Trusts which are created by legislative act and trusts which are created by or pursuant to premarital or postmarital agreements, divorce settlements, settlements of other proceedings or disputes;
(3) Transfers under the Uniform Transfers to Minors Act;
(4) Transfers under the Uniform Custodial Trust Act; or
(5) Honorary trusts, trusts for pets, and cemetery trusts.

For the purposes of this Article, the term 'trust' excludes constructive trusts, resulting trusts, guardianships, conservatorships, personal representatives, trust accounts as defined in G.S. 53-146.2, 54-109.57, and 54B-130, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interests, salaries, wages, profits, pensions or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

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

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

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

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

(1) General economic conditions;
(2) The possible effect of inflation or deflation;
(3) The expected tax consequences of investment decisions or strategies;

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

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

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

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

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

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

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

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

"§ 36A-163. Diversification.

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

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

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

"§ 36A-165. Loyalty.

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

"§ 36A-166. Impartiality.

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

"§ 36A-167. Investment costs.

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

"§ 36A-168. Reviewing compliance.

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

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

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

(1) Selecting an agent;

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

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

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

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

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

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

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

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

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

"§ 36A-172. Short title.

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

"§ 36A-173. Severability.

If any provision of this Article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable."

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

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

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

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

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

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

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

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