

Fifty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1092

Introduced by

Judiciary Committee

(At the request of the Commission on Uniform State Laws)

1 A BILL for an Act to create and enact eleven new sections to chapter 59-02 of the North Dakota
2 Century Code, relating to the Uniform Prudent Investor Act; and to amend and reenact section
3 30.1-34-02 of the North Dakota Century Code, relating to the duties of a trustee.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 30.1-34-02 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **30.1-34-02. (7-302) Trustee's standard of care and performance.** Except as
8 otherwise provided by the terms of the trust, the trustee shall observe the standards in dealing
9 with the trust assets ~~that would be observed by a prudent man dealing with the property of~~
10 ~~another, and if the trustee has special skills or is named trustee on the basis of representations~~
11 ~~of special skills or expertise, the trustee is under a duty to use those skills as provided in~~
12 section 2 of this Act.

13 **SECTION 2.** Eleven new sections to chapter 59-02 of the North Dakota Century Code
14 are created and enacted as follows:

15 **Prudent investor rule.**

16 1. Except as otherwise provided in subsection 2, a trustee who invests and manages
17 trust assets owes a duty to the beneficiaries of the trust to comply with the prudent
18 investor rule set forth in section 2 of this Act.

19 2. The prudent investor rule, a default rule, may be expanded, restricted, eliminated,
20 or otherwise altered by the provisions of a trust. A trustee is not liable to a
21 beneficiary to the extent that the trustee acted in reasonable reliance on the
22 provisions of the trust.

23 **Standard of care - Portfolio strategy - Risk and return objectives.**

- 1 1. A trustee shall invest and manage trust assets as a prudent investor would, by
2 considering the purposes, terms distribution requirements, and other
3 circumstances of the trust. In satisfying this standard, the trustee shall exercise
4 reasonable care, skill, and caution.
- 5 2. A trustee's investment and management decisions respecting individual assets
6 must be evaluated not in isolation but in the context of the trust portfolio as a whole
7 and as a part of an overall investment strategy having risk and return objectives
8 reasonably suited to the trust.
- 9 3. Among circumstances a trustee shall consider in investing and managing trust
10 assets are any of the following that are relevant to the trust or its beneficiaries:
 - 11 a. General economic conditions;
 - 12 b. The possible effect of inflation or deflation;
 - 13 c. The expected tax consequences of investment decisions or strategies;
 - 14 d. The role that each investment or course of action plays within the overall trust
15 portfolio, which may include financial assets, interests in closely held
16 enterprises, tangible and intangible personal property, and real property;
 - 17 e. The expected total return from income and the appreciation of capital;
 - 18 f. Other resources of the beneficiaries;
 - 19 g. Needs for liquidity, regularity of income, and preservation or appreciation of
20 capital; and
 - 21 h. An asset's special relationship or special value, if any, to the purposes of the
22 trust or to one or more of the beneficiaries.
- 23 4. A trustee shall make a reasonable effort to verify facts relevant to the investment
24 and management of trust assets.
- 25 5. A trustee may invest in any kind of property or type of investment consistent with
26 the standards of section 2 of this Act.
- 27 6. A trustee who has special skills or expertise, or is named trustee in reliance upon
28 the trustee's representation that the trustee has special skills or expertise, has a
29 duty to use those special skills or expertise.

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

4 **Duties at inception of trusteeship.** Within a reasonable time after accepting a
5 trusteeship or receiving trust assets, a trustee shall review the trust assets and make and
6 implement decisions concerning the retention and disposition of assets, in order to bring the
7 trust portfolio into compliance with the purposes, terms, distribution requirements, and other
8 circumstances of the trust, and with the requirements of section 2 of this Act.

9 **Loyalty.** A trustee shall invest and manage the trust assets solely in the interest of the
10 beneficiaries.

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

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

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

20 **Delegation of investment and management functions.**

21 1. A trustee may delegate investment and management functions that a prudent
22 trustee of comparable skills could properly delegate under the circumstances. The
23 trustee shall exercise reasonable care, skill, and caution in:

24 a. Selecting an agent;

25 b. Establishing the scope and terms of the delegation, consistent with the
26 purposes and terms of the trust; and

27 c. Periodically reviewing the agent's actions in order to monitor the agent's
28 performance and compliance with the terms of the delegation.

29 2. In performing a delegated function, an agent owes a duty to the trust to exercise
30 reasonable care to comply with the terms of the delegation.

1 3. A trustee who complies with the requirements of subsection 1 is not liable to the
2 beneficiaries or to the trust for the decisions or actions of the agent to whom the
3 function was delegated.

4 4. By accepting the delegation of a trust function from the trustee of a trust that is
5 subject to the law of this state, an agent submits to the jurisdiction of the courts of
6 this state.

7 **Language invoking standard of section 2 of this Act.** The following terms or
8 comparable language in the provisions of a trust, unless otherwise limited or modified,
9 authorizes any investment or strategy permitted under section 2 of this Act: "investments
10 permissible by law for investment of trust funds", "legal investments", "authorized investments",
11 "using the judgment and care under the circumstances then prevailing that persons of
12 prudence, discretion, and intelligence exercise in the management of their own affairs, not in
13 regard to speculation but in regard to the permanent disposition of their funds, considering the
14 probable income as well as the probable safety of their capital", "prudent man rule", "prudent
15 trustee rule", "prudent person rule", and "prudent investor rule".

16 **Application to existing trusts.** Section 2 of this Act applies to trusts existing on and
17 created after August 1, 1997. As applied to trusts existing on August 1, 1997, section 2 of this
18 Act governs only decisions or actions occurring after that date.