

TRUSTS, USES, AND POWERS

CHAPTER 508

HOUSE BILL NO. 1092

(Judiciary Committee)

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

UNIFORM PRUDENT INVESTOR ACT

AN ACT to create and enact eleven new sections to chapter 59-02 of the North Dakota Century Code, relating to the Uniform Prudent Investor Act; to amend and reenact section 30.1-34-02 of the North Dakota Century Code, relating to the duties of a trustee; and to repeal section 59-02-08 of the North Dakota Century Code, relating to the prudent investor rule.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

Prudent investor rule.

1. Except as otherwise provided in subsection 2, 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 section 2 of this Act.
2. The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

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

1. 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.
2. 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.

3. Among circumstances a trustee shall consider in investing and managing trust assets are any of the following that are relevant to the trust or its beneficiaries:
 - a. General economic conditions;
 - b. The possible effect of inflation or deflation;
 - c. The expected tax consequences of investment decisions or strategies;
 - d. 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;
 - e. The expected total return from income and the appreciation of capital;
 - f. Other resources of the beneficiaries;
 - g. Needs for liquidity, regularity of income, and preservation or appreciation of capital; and
 - h. An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.
4. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.
5. A trustee may invest in any kind of property or type of investment consistent with the standards of section 2 of this Act.
6. 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.

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.

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 section 2 of this Act.

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

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.

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.

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.

Delegation of investment and management functions.

1. A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:
 - a. Selecting an agent;
 - b. Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
 - c. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.
2. 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.
3. A trustee who complies with the requirements of subsection 1 is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.
4. 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.

Language invoking standard of section 2 of this Act. The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under section 2 of this Act: "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".

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

SECTION 3. REPEAL. Section 59-02-08 of the North Dakota Century Code is repealed.

CHAPTER 509

HOUSE BILL NO. 1276 (Representatives Berg, Carlson) (Senators Mutch, Krebsbach)

CHARITABLE TRUST RECEIPTS AND EXPENDITURES ALLOCATION

AN ACT to create and enact a new section to chapter 59-04.1 of the North Dakota Century Code, relating to allocation of receipts and expenditures of charitable trusts to principal or income.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 59-04.1 of the North Dakota Century Code is created and enacted as follows:

Certain charitable remainder unitrusts.

1. Notwithstanding any other provision of this chapter, unless the trust instrument directs otherwise, an increase in the value of the obligations described in this subsection owned by a charitable remainder unitrust of the type authorized in section 664(d)(3) of the Internal Revenue Code [26 U.S.C. 664(d)(3)] or its successor provisions is distributable as income when it becomes available for distribution:
 - a. A zero coupon bond;
 - b. An annuity contract before annuitization;
 - c. A life insurance contract before the death of the insured;
 - d. An interest in a common trust fund as defined in section 584 of the Internal Revenue Code [26 U.S.C. 584] or its successor provisions;
 - e. An interest in a partnership as defined in section 7701 of the Internal Revenue Code [26 U.S.C. 7701] or its successor provisions; and
 - f. Any other obligation for the payment of money that is payable at a future time in accordance with a fixed, variable, or discretionary schedule of appreciation in excess of the price at which it was issued.
2. The increase in value of the obligations described in subsection 1 is distributable to the beneficiary who was the income beneficiary at the time of the increase.

3. For purposes of this section, the increase in value of an obligation described in subsection 1 is available for distribution only when the trustee receives cash on account of the obligation. If the obligation is surrendered or liquidated partially, the cash available must be attributed first to the increase.

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