

HOUSE BILL No. 5645

March 10, 1998, Introduced by Reps. Baird and Richner and referred to the Committee on Commerce.

A bill to prescribe the duties of a trustee in investing and managing trust assets; to prescribe the prudent investor rule; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) Except as otherwise provided in subsection (2),
2 a trustee who invests and manages trust assets owes a duty to the
3 beneficiaries of the trust to comply with the prudent investor
4 rule set forth in this act.

5 (2) The prudent investor rule may be expanded, restricted,
6 eliminated, or otherwise altered by the provisions of a trust. A
7 trustee is not liable to a beneficiary to the extent that the
8 trustee acted in reasonable reliance on the provisions of the
9 trust.

10 Sec. 2. (1) A trustee shall invest and manage trust assets
11 as a prudent investor would, by considering the purposes, terms,

1 distribution requirements, and other circumstances of the trust.
2 In satisfying this standard, the trustee shall exercise reason-
3 able care, skill, and caution.

4 (2) A trustee's investment and management decisions respect-
5 ing individual assets must be evaluated not in isolation but in
6 the context of the trust portfolio as a whole and as a part of an
7 overall investment strategy having risk and return objectives
8 reasonably suited to the trust.

9 (3) Among the circumstances in investing and managing trust
10 assets, a trustee shall consider as many of the following that
11 are relevant to the trust or its beneficiaries:

12 (a) General economic conditions.

13 (b) The possible effect of inflation or deflation.

14 (c) The expected tax consequences of investment decisions or
15 strategies.

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

20 (e) The expected total return from income and the apprecia-
21 tion of capital.

22 (f) Other resources of the beneficiaries.

23 (g) Needs for liquidity, regularity of income, and preserva-
24 tion or appreciation of capital.

25 (h) An asset's special relationship or special value, if
26 any, to the purposes of the trust or to 1 or more of the
27 beneficiaries.

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

3 (5) A trustee may invest in any kind of property or type of
4 investment consistent with the standards of this act.

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

9 Sec. 3. A trustee shall diversify the investments of the
10 trust unless the trustee reasonably determines that, because of
11 special circumstances, the purposes of the trust are better
12 served without diversifying.

13 Sec. 4. Within a reasonable time after accepting a trustee-
14 ship or receiving trust assets, a trustee shall review the trust
15 assets and make and implement decisions concerning the retention
16 and disposition of assets, in order to bring the trust portfolio
17 into compliance with the purposes, terms, distribution require-
18 ments, and other circumstances of the trust, and with the
19 requirements of this act.

20 Sec. 5. A trustee shall invest and manage the trust assets
21 solely in the interest of the beneficiaries.

22 Sec. 6. If a trust has 2 or more beneficiaries, the trustee
23 shall act impartially in investing and managing the trust assets
24 and take into account any differing interests of the
25 beneficiaries.

26 Sec. 7. In investing and managing trust assets, a trustee
27 may only incur costs that are appropriate and reasonable in

1 relation to the assets, the purposes of the trust, and the skills
2 of the trustee.

3 Sec. 8. Compliance with the prudent investor rule is deter-
4 mined in light of the facts and circumstances existing at the
5 time of a trustee's decision or action and not by hindsight.

6 Sec. 9. (1) A trustee may delegate investment and manage-
7 ment functions that a prudent trustee of comparable skills could
8 properly delegate under the circumstances. The trustee shall
9 exercise reasonable care, skill, and caution in all of the
10 following:

11 (a) Selecting an agent.

12 (b) Establishing the scope and terms of the delegation, con-
13 sistent with the purposes and terms of the trust.

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

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

20 (3) A trustee who complies with the requirements of
21 subsection (1) is not liable to the beneficiaries or to the trust
22 for the decisions or actions of the agent to whom the function
23 was delegated.

24 (4) By accepting the delegation of a trust function from the
25 trustee of a trust that is subject to the law of this state, an
26 agent submits to the jurisdiction of the courts of this state.

1 Sec. 10. Unless otherwise limited or modified, the
2 following terms or comparable language in the provisions of a
3 trust authorizes any investment or strategy permitted under this
4 act:

5 (a) Investments permissible by law for investment of trust
6 funds.

7 (b) Legal investments.

8 (c) Authorized investments.

9 (d) Using the judgment and care under the circumstances then
10 prevailing that persons of prudence, discretion, and intelligence
11 exercise in the management of their own affairs, not in regard to
12 speculation but in regard to the permanent disposition of their
13 funds, considering the probable income as well as the probable
14 safety of their capital.

15 (e) Prudent man rule.

16 (f) Prudent trustee rule.

17 (g) Prudent person rule.

18 (h) Prudent investor rule.

19 Sec. 11. This act applies to trusts existing on and created
20 after its effective date. As applied to trusts existing on its
21 effective date, this act governs only decisions or actions occur-
22 ring after that date.

23 Sec. 12. This act shall be applied and construed to effec-
24 tuate its general purpose to make uniform the law with respect to
25 the subject of this act among the states enacting it.

1 Sec. 13. This act shall be known as the "Michigan uniform
2 prudent investor act".

3 Sec. 14. 1937 PA 177, MCL 555.201 to 555.203, is repealed.