

No. 1999-28

AN ACT

SB 174

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, providing for fiduciaries' investment and management of property held in trust; making editorial changes; and making a conforming amendment to Title 15 (Corporations and Unincorporated Associations).

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 3316, 5145 and 7134 of Title 20 of the Pennsylvania Consolidated Statutes are amended to read:

§ 3316. Investment of funds.

Subject to his duty to liquidate the estate for prompt distribution and to the provisions of the will, if any, the personal representative may invest the funds of the estate but shall have no duty to do so. Any such investment, except as the court or the will may otherwise authorize or direct, shall be restricted to:

(1) obligations of the United States or the United States Treasury, of the Commonwealth, or of any political subdivision of the Commonwealth[, and to interest bearing deposits authorized by section 7313 (relating to interest-bearing deposit) and to];

(2) *an interest-bearing deposit in any bank, bank and trust company, savings bank or national banking association located within this Commonwealth if:*

(i) the maturity date or the permissible date of withdrawal does not exceed one year from the date of the deposit or any renewal thereof; and

(ii) the deposits do not exceed the amount which is fully insured by the Federal Deposit Insurance Corporation pursuant to the Federal Deposit Insurance Act (64 Stat. 873, 12 U.S.C. §§ 264 and 1811 et seq.);

(3) savings accounts [in savings associations authorized in section 7310(b) (relating to savings accounts insured by Federal Savings and Loan Insurance Corporation).] *of any savings association incorporated under the laws of this Commonwealth, or of any Federal savings and loan association incorporated under the laws of the United States, if the withdrawal or repurchase value thereof is insured by the Federal Deposit Insurance Corporation pursuant to the Federal Deposit Insurance Act; and*

(4) *a money market mutual fund affiliated with a corporate personal representative.*

The personal representative may also make temporary investments as authorized by section [7315.1(b)] 7207 (relating to retention of cash; temporary investments) without regard to any investment restrictions imposed by the will.

§ 5145. Investments.

Subject only to the provisions of a governing instrument, if any, a guardian may accept, hold, invest in and retain investments as provided by Chapter [73 (relating to fiduciaries investments)] 72 (*relating to prudent investor rule*).

§ 7134. Investments.

Subject only to the provisions of a governing instrument, if any, a trustee may accept, hold, invest in and retain investments as provided by Chapter [73 (relating to fiduciaries investments)] 72 (*relating to prudent investor rule*).

Section 2. Title 20 is amended by adding a chapter to read:

CHAPTER 72
PRUDENT INVESTOR RULE

Sec.

7201. Definitions.

7202. Default rule.

7203. Prudent investor rule.

7204. Diversification.

7205. Retention of inception assets.

7206. Delegation.

7207. Retention of cash; temporary investments.

7208. Life insurance.

7209. Mutual funds.

7210. Common trust fund and mortgage investment fund.

7211. Further investment authority.

7212. Degree of care.

7213. Judgment of fiduciary's decisions.

7214. Language invoking chapter.

§ 7201. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Fiduciary.” Includes guardians and trustees, whether domiciliary or ancillary, individual or corporate, subject to the jurisdiction of the orphans’ court. The term shall not include a custodian under Chapter 53 (relating to Pennsylvania Uniform Transfers to Minors Act), an agent acting under a power of attorney, a personal representative, an administrator of a municipal pension or retirement plan or a person whose fiduciary duties are, by statute, governed by the principles of Chapter 73 (relating to municipalities investments).

“Mutual fund.” The securities of an open-end or closed-end management investment company or investment trust registered under the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.).

“Trust.” Includes guardianships and trusts subject to the jurisdiction of the orphans’ court and having property owned or managed by a fiduciary. The term shall not include custodianships, agencies created by a power of attorney, decedents’ estates or municipal pension or retirement plans.

§ 7202. Default rule.

(a) General rule.—Except as otherwise provided by the governing instrument, a fiduciary shall invest and manage property held in a trust in accordance with the provisions of this chapter.

(b) Exception.—Where the instrument establishing a trust contains a restriction on the fiduciary’s power of investment and the court having jurisdiction over the trust finds that adherence to the restriction is impractical or that the existing or reasonably foreseeable economic conditions are so far different from those prevailing at the creation of the trust that adherence to the restriction might deprive the respective beneficiaries of income and principal of the full benefits the testator or settlor intended them to enjoy, the court may release the fiduciary from the restriction to the extent and on conditions, if any, as the court may deem appropriate.

(c) Court direction.—A fiduciary appointed by the court and not acting under a trust instrument, in addition to or in place of the investments authorized by this chapter, may make, and retain without liability for resulting loss, investments as the court, upon petition of the fiduciary or of any party in interest, after notice as it shall direct, aided by the report of a master if necessary, shall authorize or direct, subject only to the conditions and limitations as shall be fixed by the court in the decree authorizing or directing the investment.

§ 7203. Prudent investor rule.

(a) General rule.—A fiduciary shall invest and manage property held in a trust as a prudent investor would, by considering the purposes, terms and other circumstances of the trust and by pursuing an overall investment strategy reasonably suited to the trust.

(b) Permissible investments.—A fiduciary may invest in every kind of property and type of investment, including, but not limited to, mutual funds and similar investments, consistent with this chapter.

(c) Considerations in making investment and management decisions.—In making investment and management decisions, a fiduciary shall consider, among other things, to the extent relevant to the decision or action:

- (1) the size of the trust;
- (2) the nature and estimated duration of the fiduciary relationship;
- (3) the liquidity and distribution requirements of the trust;
- (4) the expected tax consequences of investment decisions or strategies and of distributions of income and principal;

(5) the role that each investment or course of action plays in the overall investment strategy;

(6) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries;

(7) to the extent reasonably known to the fiduciary, the needs of the beneficiaries for present and future distributions authorized or required by the governing instrument; and

(8) to the extent reasonably known to the fiduciary, the income and resources of the beneficiaries and related trusts.

§ 7204. Diversification.

Except as provided in section 7205 (relating to retention of inception assets), a fiduciary shall reasonably diversify investments, unless the fiduciary reasonably determines that it is in the interests of the beneficiaries not to diversify, taking into account the purposes, terms and other circumstances of the trust and the requirements of this chapter.

§ 7205. Retention of inception assets.

A fiduciary, in the exercise of reasonable care, skill and caution, may retain any asset received in kind, even though the asset constitutes a disproportionately large share of the portfolio.

§ 7206. Delegation.

(a) Permissible delegation.—A fiduciary may delegate investment and management functions that a prudent investor of comparable skills might delegate under the circumstances.

(b) Duties of fiduciary.—A fiduciary shall not be responsible for the investment decisions or actions of the investment agent to which the investment functions are delegated if the fiduciary exercises reasonable care, skill and caution in selecting the investment agent, in establishing the scope and specific terms of the delegation and in reviewing periodically the investment agent's actions in order to monitor the investment agent's performance and compliance with the scope and specific terms of the delegation.

(c) Duties of investment agent.—The investment agent shall comply with the scope and terms of the delegation and shall exercise the delegated function with reasonable care, skill and caution and shall be liable to the trust for failure to do so. An investment agent who represents that he has special investment skills shall exercise those skills.

(d) Jurisdiction.—An investment agent who accepts the delegation of a fiduciary's function from a fiduciary who is subject to the jurisdiction of a court of this Commonwealth shall be deemed to have submitted to the jurisdiction of that court even if the delegation agreement provides for a different jurisdiction or venue.

(e) When cofiduciary may delegate to another cofiduciary.—A cofiduciary may delegate investment and management functions to another cofiduciary if the delegating cofiduciary reasonably believes that the other cofiduciary has greater investment skills than the delegating cofiduciary with respect to those

functions. The delegating cofiduciary shall not be responsible for the investment decisions or actions of the other cofiduciary to which the investment functions are delegated if the delegating cofiduciary exercises reasonable care, skill and caution in establishing the scope and specific terms of the delegation and in reviewing periodically the other cofiduciary's actions in order to monitor the cofiduciary's performance and compliance with the scope and specific terms of the delegation.

(f) Mutual funds.—Investment in a mutual fund is not a delegation of investment function, and neither the mutual fund nor its advisor is an investment agent.

§ 7207. Retention of cash; temporary investments.

(a) Uninvested cash.—A fiduciary may hold cash uninvested:

(1) which the fiduciary reasonably expects to:

(i) distribute to beneficiaries as income on a quarterly or more frequent basis;

(ii) use for payment of debts, taxes, expenses of administration or reinvestment within the next 90 days; or

(2) when the amount available for investment does not justify the administrative burden of making the investment determined in the light of the facilities available to the fiduciary.

A corporate fiduciary may deposit uninvested funds in its own or an affiliate's commercial department.

(b) Temporary investments.—A fiduciary may make temporary investment of funds which the fiduciary is entitled to hold uninvested or which the fiduciary wishes to hold in liquid form in short-term interest-bearing obligations or deposits, or other short-term liquid investments, selected in each case in compliance with the standards of section 7203 (relating to prudent investor rule) but without regard to any investment restrictions imposed by the governing instrument and may make a reasonable charge, in addition to all other compensation to which the fiduciary is entitled, for services rendered in making the temporary investment.

§ 7208. Life insurance.

A trustee may acquire or retain a contract of life insurance upon the life of the settlor or the settlor's spouse, or both, without liability for a loss arising from the trustee's failure to:

(1) determine whether the contract is or remains a proper investment;

(2) investigate the financial strength of the life insurance company;

(3) exercise nonforfeiture provisions available under the contract; or

(4) diversify the contract.

§ 7209. Mutual funds.

Notwithstanding that a bank or trust company or an affiliate provides services to the investment company or investment trust, including that of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor or manager, and receives reasonable compensation for those services and

notwithstanding any other provision of law, a bank or trust company acting as a fiduciary, agent or otherwise may invest and reinvest in a mutual fund if the portfolio of the mutual fund consists substantially of investments not prohibited by the governing instrument. With respect to any funds invested, the basis upon which compensation is calculated, expressed as a percentage of asset value or otherwise, shall be disclosed by prospectus, account statement or otherwise to all persons to whom statements of the account are rendered.

§ 7210. Common trust fund and mortgage investment fund.

Any corporate fiduciary and its cofiduciary, if any, may invest in:

(1) A common trust fund or collective trust fund containing only investments authorized for fiduciaries, established and maintained by the corporate fiduciary or by any affiliate of the corporate fiduciary within the meaning of section 1504 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1504) and otherwise in conformity with the laws of this Commonwealth and of the United States.

(2) A mortgage investment fund containing only mortgages and other investments authorized for fiduciaries, established and maintained by the corporate fiduciary in conformity with the laws of this Commonwealth and of the United States.

§ 7211. Further investment authority.

Unless a contrary intent is clearly expressed in the instrument, the authority to invest in specified types of investments includes authorization to invest in a mutual fund, or in any common or collective trust fund established and maintained by a corporate fiduciary, or by any affiliate of a corporate fiduciary within the meaning of section 1504 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1504) or any successor provision, if the portfolio of the mutual fund or of the common or collective trust fund consists of the specified types of investments and is otherwise in conformity with the laws of this Commonwealth and of the United States.

§ 7212. Degree of care.

A fiduciary shall exercise reasonable care, skill and caution in making and implementing investment and management decisions. A fiduciary who represents that he has special investment skills shall exercise those skills.

§ 7213. Judgment of fiduciary's decisions.

The rules of this chapter are standards of conduct and not of outcome or performance. Compliance with the rules of this chapter shall be determined in light of the facts and circumstances prevailing at the time of the fiduciary's decision or action and not by hindsight. A fiduciary is not liable to the extent the fiduciary acted in substantial compliance with the rules of this chapter or in reasonable reliance on the terms and provisions of the governing instrument. A fiduciary's investment and management decisions respecting individual assets shall be considered in the context of the trust portfolio as a whole and as part of an overall investment strategy, and not in isolation. No

specific investment or course of action, taken alone, shall be considered inherently prudent or imprudent.

§ 7214. Language invoking chapter.

The following terms or words or words of similar import in the provisions of a trust, unless otherwise limited or modified, shall authorize any investment or investment strategy permitted under this chapter: "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 own 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."

Section 3. Chapter 73 heading of Title 20 is amended to read:

CHAPTER 73
[FIDUCIARIES INVESTMENTS]
MUNICIPALITIES INVESTMENTS

Section 4. Section 7301 of Title 20 is amended to read:

§ 7301. Definition of fiduciary.

The term "fiduciary" as used in this chapter shall include **[guardians, trustees, and other fiduciaries, whether domiciliary or ancillary, subject to the jurisdiction of the common pleas court but shall not include a personal representative]** *an administrator of a municipal pension or retirement plan and any other person whose fiduciary duties are, by statute, governed by the principles of this chapter. The provisions of this chapter shall apply only to such fiduciaries.*

Section 5. Section 5548(a) of Title 15 is amended to read:

§ 5548. Investment of trust funds.

(a) General rule.—Unless otherwise specifically directed in the trust instrument, the board of directors or other body of a nonprofit corporation incorporated for charitable purposes shall have power to invest any assets vested in the corporation by such instrument or the proceeds thereof separately or together with other assets of the corporation, in the manner authorized for fiduciaries by **[the Fiduciaries Investment Act of 1949]** *20 Pa.C.S. Ch. 72 (relating to prudent investor rule)*, and to retain any investments heretofore so made. Any such nonprofit corporation may, by appropriate action of its board of directors or other body, keep any investments or fractional interests in any investments, held by it or made by it, in the name of the corporation or in the name of a nominee of the corporation.

* * *

Section 6. (a) This act shall apply to all actions of fiduciaries occurring on or after the effective date of this subsection, regardless of whether the guardianship or trust was created before, on or after that effective date, except as provided in subsection (b).

(b) (1) The addition of 20 Pa.C.S. § 7204 shall not apply to guardianships created prior to the effective date of section 7204, even if the action of the guardian occurs after that date.

(2) The addition of 20 Pa.C.S. § 7204 shall not apply to trusts becoming irrevocable prior to the effective date of section 7204, even if the action of the trustee occurs after that date; nor shall section 7204 apply to trusts created by revocable instruments executed prior to the effective date of section 7204 if such instruments are not amended on or after that date, even if the action of the trustee occurs after that date.

(3) The addition of 20 Pa.C.S. § 7206 shall apply to actions of guardians and trustees on or after the effective date of the addition of that section.

(4) The addition of 20 Pa.C.S. § 7208 shall apply to actions of trustees before, on or after the effective date of the addition of that section.

Section 7. This act shall take effect as follows:

(1) The addition of 20 Pa.C.S. §§ 7206 and 7208 shall take effect immediately.

(2) Section 6(b) and this section shall take effect immediately.

(3) The remainder of this act shall take effect in six months.

APPROVED—The 25th day of June, A.D. 1999.

THOMAS J. RIDGE