

3A:15-35 et. seq.

LEGISLATIVE HISTORY CHECKLIST

NJSA 3A:15-35 to 3A:15-41

Laws of 1975 Chapter 337

Bill No. S 1058

Sponsor(s) Bateman, Lynch & Parker

Date Introduced April 4, 1974

Committee: Assembly Judiciary, Law, Public Safety & Defense
Senate Judiciary

Amended during passage Yes No

Date of passage: Assembly January 5, 1976

Senate February 27, 1975

Date of approval March 3, 1976

Following statements are attached if available:

Sponsor statement Yes No

Committee Statement: Assembly Yes No

Senate Yes No

Fiscal Note Yes No

Veto message Yes No

Message on signing Yes No

Following were printed:

Reports Yes No

Hearings Yes No

Cited in sponsor's statement:

TB100 Uniform Probate Code (in Uniform Laws Annotated,
U58 v. 8, pp.287 - 568)

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SENATE, No. 1058

STATE OF NEW JERSEY

INTRODUCED APRIL 4, 1974

By Senators BATEMAN, LYNCH and PARKER

Referred to Committee on Judiciary

AN Act concerning investments by fiduciaries administering trust estates, supplementing chapter 15 of Title 3A of the New Jersey Statutes, repealing article 2 of chapter 15 of Title 3A of the New Jersey Statutes (N. J. S. 3A:15-18 through 3A:15-29) and revising parts of the statutory law.

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

1 1. This act shall be known and may be cited as the "Prudent
2 Investment Law."

1 2. As used in this act:

2 a. "Trust instrument" means and includes a will, deed, agree-
3 ment, court order or other instrument pursuant to which money or
4 other property is entrusted to a fiduciary;

5 b. "Fiduciary" means an individual or corporation authorized
6 to act as a trustee, executor, administrator with the will annexed,
7 or guardian, and every other person or corporation charged with
8 the duty of administering a trust estate;

9 c. "Trust estate" means money or other property entrusted to
10 a fiduciary pursuant to a trust instrument;

11 d. "Investments" means and includes property of every nature,
12 real, personal and mixed, tangible and intangible, which persons
13 of ordinary prudence and reasonable discretion acquire for the
14 purpose of preserving capital and of realizing income; and
15 specifically includes, solely by way of description and not by way
16 of limitation, bonds, debentures and other corporate obligations,
17 capital stocks, common stocks, preferred stocks, common trust
18 funds as defined in and regulated by article 9, Common Trust
19 Funds, P. L. 1948, c. 67 (C. 17:9A-36 et seq.), investments as
20 authorized by article 1 of chapter 15 of Title 3A of the New Jersey
21 Statutes, and securities of any open-end or closed-end manage-

22 ment type investment company or investment trust registered
23 pursuant to the Federal Investment Company Act of 1940, as from
24 time to time amended.

1 3. In investing and reinvesting money and property of a trust
2 estate and in acquiring, retaining, selling, exchanging and manag-
3 ing investments, a fiduciary shall exercise care and judgment
4 under the circumstances then prevailing, which persons of ordinary
5 prudence and reasonable discretion exercise in the management of
6 and dealing with the property and affairs of another, considering
7 the probable income as well as the probable safety of capital.
8 If the fiduciary has special skills or is named as the fiduciary on the
9 basis of representations of special skills or expertise, he is under
10 a duty to exercise those skills.

1 4. Notwithstanding the provisions of any other law of this State
2 and except as otherwise provided in this act, a fiduciary may, within
3 the limitations of the standard prescribed by section 3 of this act,
4 invest in any investments whatsoever, and subject to the limitations
5 imposed by section 5 of this act.

1 5. If a trust instrument prescribes, defines, limits or otherwise
2 regulates a fiduciary's powers, duties, acts, or obligations in ac-
3 quiring, investing, reinvesting, exchanging, retaining, selling,
4 valuing or otherwise acting with respect to the property of a
5 trust estate, the trust instrument shall control notwithstanding
6 this act; but nothing herein shall affect the jurisdiction of the
7 Superior Court to order or authorize a fiduciary to depart from
8 the express terms or provisions of a trust investment for the causes,
9 in the manner, and to the extent otherwise provided by law.

1 6. Whenever any trust instrument or any statute of this State
2 directs or authorizes a fiduciary to make any investment for a trust
3 estate in "legal investments," or in "investments in which a fidu-
4 ciary may by law invest" or in "legal investments for trustees"
5 or uses words of similar import, such words shall, in the absence
6 of an express provision to the contrary contained in such trust
7 instrument or such statute, be taken to include any investments of
8 the kinds authorized by this act and article 1 of chapter 15 of Title
9 3A of the New Jersey Statutes.

1 7. This act shall apply to and govern trust estates heretofore
2 and hereafter created, fiduciaries heretofore and hereafter ap-
3 pointed, and trust instruments heretofore and hereafter made.

1 8. Article 2 of chapter 15 of Title 3A of the New Jersey Statutes
2 (N. J. S. 3A:15-18 to 3A:15-29, inclusive) is repealed.

1 9. This act shall take effect immediately.

STATEMENT

This bill, if enacted, would vest in fiduciaries administering trust estates (as defined in the bill) the power to invest the assets of such estates in any kind of investments in which persons of prudence and reasonable discretion would invest funds of another, having regard to the probable income as well as the probable safety of capital. If the fiduciary has special skills or is named as the fiduciary on the basis of representations of special skills or expertise, he is under a duty to exercise those skills. This conforms to the standard of care required of personal representatives as set forth in the Uniform Probate Code.

The bill would give full effect to the prudent investment concept, which was first enunciated in this country in the case of *Harvard College v. Amory*, decided in 1830 by the Supreme Judicial Court of Massachusetts. Statutes have been adopted in 32 states, giving full effect to the prudent investment principle, including New York, Pennsylvania, and Delaware, New Jersey's close neighbors. In addition, at least five states have adopted the prudent investment rule by judicial decision.

The bill is consistent with the modern concept and guideline for fiduciary investment and embodies provisions uniformly used for many years in wills and trust instruments. With broad powers permitted and employed in the great majority of fiduciary accounts established over the past 25 years, the beneficiaries named in trust instruments created before the recognition of the full prudent investment principle are being discriminated against in that their fiduciaries do not have the flexibility demanded under rapidly changing conditions in the securities markets.

Comparative analyses of the total dollar return in fiduciary accounts, determined by the sum of income and appreciation in value of investment portfolios over a term of years, clearly demonstrate that the present statutory restrictions on investment powers of fiduciaries impose a hardship on those beneficiaries of trust estates being administered by fiduciaries who do not have the broader powers which a full prudent investment rule would confer.

An important feature of the bill is that the broadened powers which would be conferred by it could not be exercised contrary to the express provisions contained in any statute or trust instrument.

The following states have adopted statutes containing provisions similar to those contained in this bill: Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Missis-

Mississippi, Nebraska, Nevada, New Mexico, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington and Wyoming.

Following are the five states in which the prudent investment rule is law by judicial decision: Massachusetts, Maryland, Missouri, North Carolina and Rhode Island.

The prudent investment concept is therefore, law in 37 of the 50 states. Of the remaining 13 states (including New Jersey) five have modified prudent investment laws, which restrict the application of the prudent investment concept to a stated percentage of the value of the assets in the trust estate.