

17: 9A-36 et. al.

LEGISLATIVE HISTORY CHECKLIST

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Laws of 1975 Chapter 338

Bill No. S 1059

Sponsor(s) Bateman, Lynch & Parker

Date Introduced April 4, 1974

Committee: Assembly Judiciary, Law, Public Safety & Defense

Senate Judiciary

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Following statements are attached if available:

Sponsor statement Yes No

Committee Statement: Assembly No

Senate No

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MAR 1977

SENATE, No. 1059

STATE OF NEW JERSEY

INTRODUCED APRIL 4, 1974

By Senators BATEMAN, LYNCH and PARKER

Referred to Committee on Judiciary

AN ACT to amend "An act concerning banking and banking institutions (Revision of 1948)," approved April 29, 1948 (P. L. 1948, c. 67).

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

1 1. Section 36 of P. L. 1948, c. 67 (C. 17:9A-36) is amended to
2 read as follows:

3 36. Definitions.

4 As used in this article, and except as the context otherwise
5 requires,

6 (1) "common trust fund" means a fund established and main-
7 tained by a bank exclusively for the collective investment and re-
8 investment of moneys contributed thereto by the bank in any
9 fiduciary capacity specified in paragraphs (5), (6), (9) and (10)
10 of section 28;

11 (2) "bank" means a qualified bank which is empowered to invest
12 moneys entrusted to it in any capacity specified in paragraphs (5),
13 (6), (9) and (10) of section 28;

14 (3) "cofiduciary" means one or more individuals or corporations,
15 or both, lawfully acting or entitled to act jointly with a bank in the
16 exercise of the powers referred to in the next preceding paragraph;

17 (4) "trust instrument" means the will, deed, agreement, court
18 order or other instrument pursuant to which money or other prop-
19 erty is entrusted to a bank as sole fiduciary or jointly with a
20 cofiduciary;

21 (5) "trust estate" means money or other property entrusted to
22 a bank solely or jointly with a cofiduciary pursuant to a trust
23 instrument;

24 [(6) "legal investments," (a) when applied to the investments
25 of a trust estate, means those investments which a fiduciary is

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law,**

26 authorized to make pursuant to any statute of this State, and which
27 the fiduciary may make at any time, without limitation or restric-
28 tion imposed by statute on the percentage of the value of the trust
29 estate which may be invested in such investments; and, (b) when
30 applied to the investments of a common trust fund, "legal invest-
31 ments" means all legal investments, as defined in subdivision (a)
32 of this paragraph, which qualify as investments for common trust
33 funds under the provisions of section 39;】

34 【(7) "limited legal investments," (a) when applied to the in-
35 vestments of a trust estate, means all investments other than legal
36 investments as defined in subdivision (a) of paragraph (6) of this
37 section; and, (b) when applied to the investments of a common
38 trust fund, "limited legal investments" means all limited legal
39 investments, as defined in subdivision (a) of this paragraph, which
40 qualify as investments for common trust funds under the provisions
41 of section 39;】

42 【(8) "legal common trust fund" means a common trust fund
43 which, in addition to uninvested cash balances held pursuant to
44 subsection C of section 39, consists wholly of legal investments, or
45 partly of legal investments and partly of limited legal investments
46 in the ratio hereinafter in this paragraph provided. No investment
47 of the funds of a legal common trust fund shall be made in a
48 limited legal investment unless such investment is made not later
49 than the end of the seventh full business day next following a date
50 as of which (a) the aggregate value of all the limited legal invest-
51 ments held in such legal common trust fund does not exceed, or
52 (b) the making of such limited legal investment would not cause
53 such aggregate value to exceed, 60% of the aggregate value of all
54 the property which constitutes the principal of such legal common
55 trust fund. No change in the investments of a legal common trust
56 fund shall be required solely by reason of fluctuations in the value
57 of the investments held in such fund, notwithstanding that such
58 fluctuations cause the aggregate value of the limited legal invest-
59 ments held in such fund to exceed 60% of the aggregate value of
60 all the property which constitutes the principal of such legal com-
61 mon trust fund. A participation in a legal common trust fund shall
62 be deemed to be a legal investment;】

63 【(9) "discretionary common trust fund" means a common trust
64 fund other than a legal common trust fund; and, in addition to
65 uninvested cash balances held pursuant to subsection C of section
66 39, a discretionary common trust fund may consist wholly of limited
67 legal investments, or partly of limited legal investments and partly
68 of legal investments in such proportions as the trust investment

69 committee may, from time to time, determine. A participation in
 70 a discretionary common trust fund shall be deemed to be a limited
 71 legal investment;】

72 (6) 【(10)】 “participation” means the undivided share in a
 73 common trust fund which accrues to a trust estate as the result of
 74 a bank’s investment of funds of such trust estate in such common
 75 trust fund【;】.

76 【(11) “trust investment committee” means a trust committee of
 77 a bank created pursuant to section 109, a trust committee of a
 78 savings bank created pursuant to section 190, and a trust invest-
 79 ment committee of a national banking association; and, where no
 80 trust committee has been established by such bank or savings bank,
 81 “trust investment committee” means the board of directors of a
 82 bank and the board of managers of a savings bank acting as a
 83 trust investment committee.】

1 2. Section 38 of P. L. 1948, c. 67 (C. 17:9A-38) is amended to
 2 read as follows:

3 38. Effect of trust instruments.

4 A. Except as otherwise provided by subsection B of this section,
 5 where the trust instrument defines, limits, or specifies the invest-
 6 ments which may be made of a trust estate, any common trust
 7 fund in which all or any part of such trust estate is invested shall
 8 consist only of the investments defined, limited, or specified in
 9 such trust instrument.

10 B. Where the trust instrument makes no provision governing
 11 the investments which may be made of a trust estate, or where the
 12 trust instrument directs that an estate be invested in “legal in-
 13 vestments” or in “investments in which a fiduciary may by law
 14 invest” or in “legal investments for trustees,” or uses words of
 15 similar import, investment of such trust estate may be made, in
 16 whole or in part, in a 【legal common trust fund, or in part, in a
 17 discretionary common trust fund, or in both; but no investment
 18 of such an estate shall be made in a discretionary common trust
 19 fund at any time when the aggregate value of all limited legal
 20 investments held in such trust estate exceeds, or if the investing
 21 in such discretionary common trust fund would cause such aggre-
 22 gate value to exceed 60% of the aggregate value of all the property
 23 which constitutes the principal of such trust estate.】 *common trust*
 24 *fund, consisting of property of every nature, real, personal, and*
 25 *mixed, tangible and intangible, and further including, solely by way*
 26 *of description and not by way of limitation, bonds, debentures, and*
 27 *other corporate obligations, capital stocks, common stocks, pre-*

28 *ferred stocks, investments as authorized by article 1 of chapter 15*
 29 *of Title 3A of the New Jersey Statutes, and shares of any open-end*
 30 *or closed-end management type investment company or investment*
 31 *trust registered pursuant to the Federal Investment Company Act*
 32 *of 1940, as from time to time amended.*

33 C. **[Where the trust instrument permits investments of the trust**
 34 **estate to be made in limited legal investments, investment of all**
 35 **or any part of such trust estate may be made in either a legal**
 36 **common trust fund, or in a discretionary common trust fund, or**
 37 **in both, as the trust investment committee shall deem advisable.]**
 38 *(Deleted by amendment.)*

39 D. *In making investments as provided in this section a bank*
 40 *shall exercise care and judgment under the circumstances then*
 41 *prevailing, which persons of ordinary prudence and reasonable*
 42 *discretion exercise in the management of and dealing with the*
 43 *property and affairs of another, considering the probable income*
 44 *as well as the probable safety of capital, and, if the bank has special*
 45 *skills or is named as the fiduciary on the basis of representations of*
 46 *special skills or expertise, it is under a duty to exercise those*
 47 *skills.*

1 3. Section 39 of P. L. 1948, c. 67 (C. 17:9A-39) is amended to
 2 read as follows:

3 39. **[Investments.]** *Cash balances.*

4 A. **[Notwithstanding any other provision of this article, no**
 5 **common trust fund or any part thereof shall be invested in any**
 6 **one or more of the following:**

- 7 (1) bonds, notes, or other obligations of an individual or
 8 partnership;
 9 (2) real property, or any interest therein;
 10 (3) tangible personal property, or any interest therein;
 11 (4) bonds, notes, or other obligations secured by mortgage,
 12 or by a group or pool of mortgages, or any share or interest in
 13 any such bond, note, or other obligation; but this paragraph
 14 shall not prohibit investment in corporate bonds, notes or other
 15 obligations, secured as in this paragraph specified, if the
 16 issuer thereof shall be engaged primarily in a business other
 17 than holding, buying, selling, or managing real property or
 18 real property mortgages, or issuing bonds, notes or other
 19 obligations, secured as in this paragraph specified, and shall
 20 have received a gross income of not less than five hundred
 21 thousand dollars (\$500,000.00) in each of three of the four
 22 fiscal years of the issuing corporation next preceding the date
 23 of such investment;

24 (5) mortgages, or shares or interests therein, or any share
25 or interest in any group or pool of mortgages;

26 (6) securities issued by the bank maintaining the common
27 trust fund, or upon which the bank is directly or contingently
28 liable.】 (*Deleted by amendment.*)

29 B. 【Every investment of funds of a common trust fund, other
30 than investments in direct obligations of the United States, shall,
31 at the time of its making, have a ready market over the counter,
32 or on a stock, securities, or investment exchange.】 (*Deleted by
33 amendment.*)

34 C. Any common trust fund may consist in part of uninvested
35 cash balances awaiting investment or held for the purpose of
36 meeting cash requirements.

1 4. Section 40 of P. L. 1948, c. 67 (C. 17:9A-40) is amended
2 to read as follows:

3 40. Participations; valuation; general provisions.

4 A. If so provided in the plan pursuant to which a common trust
5 fund is established and maintained, the bank may divide the com-
6 mon trust fund into as many units as it may deem advisable, and
7 it may increase or decrease the number of such units from time to
8 time. Each unit shall at all times have the same value as every
9 other unit of the same common trust fund. Such plan may also
10 provide that a participation shall consist of a whole unit or a
11 number of whole units, and may provide that withdrawals be made
12 only of a whole unit or a number of whole units.

13 B. In determining the value of the property and investments of
14 a common trust fund,

15 (1) an investment which is listed upon a stock, securities or
16 investment exchange, shall be valued at the last recorded
17 sales price in the ten-day period next preceding the date as
18 of which the valuation is made, unless, within the said ten-day
19 period, and subsequent to the date of the last recorded sales
20 price, there have been recorded bid and asked prices, in which
21 case the mean of the latest of such bid and asked prices shall
22 be taken to be the value of such investment. An investment
23 which is not listed upon a stock, securities or investment
24 exchange, but which has an over-the-counter market, shall be
25 valued at the mean of the last recorded bid and asked prices
26 in the ten-day period next preceding the date as of which such
27 valuation is made. If within the said ten-day period, there
28 have been no recorded sales and no recorded bid and asked
29 prices, the investment shall be valued at the mean of the last

30 bid and asked prices as of a date not earlier than thirty days
31 prior to the date as of which such valuation is made, as
32 supplied by two stock or securities brokers deemed by the
33 **[trust investment committee]** *bank* to be reliable. For the
34 purposes of this paragraph, recorded sales prices, and recorded
35 bid and asked prices shall be those which appear in a news-
36 paper of general circulation, or in a financial, statistical,
37 investment, rating or other publication or service, published
38 for the use of and accepted as reliable by investors in like
39 investments, or in the records of a stock, securities, or invest-
40 ment exchange;

41 (2) obligations of the United States which are not transfer-
42 able or negotiable shall be valued at the issue price
43 thereof;

44 (3) an investment about to be made, and an investment
45 made and awaiting delivery against payment, shall be valued
46 at the cost of acquisition thereof, and the cash account of the
47 common trust fund shall be adjusted to reflect such cost of
48 acquisition;

49 (4) an investment sold but not delivered pending receipt
50 of the proceeds of sale shall be valued at the net sale price
51 thereof;

52 (5) uninvested funds of a common trust fund shall be
53 included in the aggregate value of all the property of a com-
54 mon trust fund to the extent that such funds constitute
55 principal**[;]**.

56 **[(6) an investment which is not susceptible of valuation**
57 **pursuant to the foregoing paragraphs of this subsection shall,**
58 **before any admission to or withdrawal from such common**
59 **trust fund is permitted, and before any further investment of**
60 **the funds of the common trust fund is made, be sold, or dis-**
61 **tributed in kind, or segregated and administered for the benefit**
62 **ratably of all trust estates holding participations in such com-**
63 **mon trust fund at the time of such segregation, as the plan**
64 **pursuant to which such common trust fund is created shall**
65 **provide.]**

66 C. No person having an interest in a trust estate which has
67 been invested in whole or in part in a common trust fund shall
68 have any ownership in any asset included in such common trust
69 fund. The bank shall have exclusive control of every common trust
70 fund established and maintained by it.

71 D. The bank shall not amortize premiums paid upon the purchase
72 of an investment for a common trust fund, nor shall it accumulate
73 discount in respect of investments purchased at less than face
74 or par value, notwithstanding that the trust instrument may
75 require amortization of premiums or accumulation of discount.

76 E. Money or other property paid by the bank as income from a
77 common trust fund to itself in its capacity as the fiduciary admini-
78 stering and managing a trust estate shall, for the purpose of
79 apportioning such income among the beneficiaries of the trust
80 estate, be deemed to be income to the trust estate as of the date
81 of such payment, regardless of the time when such income may
82 have accrued, been earned, or accumulated.

83 F. For the purposes of this article, an investment made pursuant
84 to a commitment therefor shall be deemed to be made on the date
85 when the commitment was made.

1 5. This act shall take effect immediately, and shall apply to and
2 govern trust estates heretofore and hereafter created, common
3 trust funds heretofore and hereafter established, and trust instru-
4 ments heretofore and hereafter made.

STATEMENT

This bill, if adopted, will amend certain portions of the existing statutory law relating to the establishment and maintenance of "comon trust funds" by qualified banks.

In the absence of restrictions in a trust instrument, this bill will authorize a qualified bank to invest a trust estate in a common trust fund consisting of any kind of an investment in which persons of ordinary 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 bank has special skills or is named as the fiduciary on the basis of representations of special skills or expertise, it is under a duty to exercise those skills. The authority to invest and the degree of care required under this bill are comparable to the powers of investment and the degree of care which will be required of other fiduciaries under a companion bill to be introduced simultaneously with this bill and known as the "Prudent Investment Law," and that of personal representatives in the care and management of estates under a bill relating to decedents' estates which will also be introduced simultaneously with this bill.