

3B:14-23

LEGISLATIVE HISTORY CHECKLIST
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(Fiduciary accounts)

NJSA: 3B:14-23

LAWS OF: 1991 CHAPTER: 503

BILL NO: A5215

SPONSOR(S): Roberts

DATE INTRODUCED: December 2, 1991

COMMITTEE: ASSEMBLY: Financial Institutions

SENATE: Labor

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: ASSEMBLY: January 8, 1992

SENATE: January 13, 1992

DATE OF APPROVAL: January 18, 1992

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG/pp

P.L.1991, CHAPTER 503, *approved January 18, 1992*

1991 Assembly No. 5215

1 **AN ACT** concerning fiduciary powers of qualified banks and
2 amending and supplementing N.J.S.3B:14-23.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the
5 **State of New Jersey:**

6 1. (New section) The Legislature hereby finds and declares
7 that:

8 a. Qualified banks currently have the authority to collectively
9 invest fiduciary assets in common trust funds established by such
10 banks;

11 b. Qualified banks currently have the authority to provide
12 investment management and other services required by common
13 trust funds;

~~14 c. Investment companies which are regulated by the federal
15 "Investment Company Act of 1940," 15 U.S.C.80a-1 et seq., and
16 are thus prohibited from engaging in self-dealing pursuant to 15
17 U.S.C.80a-17, are collective investment funds similar to common
18 trust funds but with several distinct advantages including
19 regulation by the federal Securities and Exchange Commission,
20 oversight by an independent board of directors, daily pricing of
21 investments, the ability to effect daily deposits and withdrawals
22 and the ability to obtain daily disclosure of investment
23 performance and current price levels through newspaper listings
24 or otherwise; and~~

25 d. It is advisable to clearly establish the authority of qualified
26 banks to invest fiduciary assets in investment companies
27 including those investment companies for which such banks
28 provide investment advisory and other services, provided certain
29 conditions are satisfied and certain safeguards are in place.

30 2. N.J.S.3B:14-23 is amended to read as follows:

31 3B:14-23. Powers. In the absence of contrary or limiting
32 provisions in the judgment or order appointing a fiduciary, in the
33 will, deed or other instrument or in a subsequent court judgment
34 or order, every fiduciary shall, in the exercise of good faith and
35 reasonable discretion, have the power:

36 a. To accept additions to any estate or trust from sources
37 other than the estate of the decedent, minor, mental incompetent
38 or the settlor of a trust;

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

Matter underlined thus is new matter.

1 b. To acquire the remaining undivided interest in an estate or
2 trust asset in which the fiduciary, in his fiduciary capacity, holds
3 an undivided interest;

4 c. To invest and reinvest assets of the estate or trust under
5 the provisions of the will, deed or other instrument or as
6 otherwise provided by law and to exchange assets for investments
7 and other property upon terms as may seem advisable to the
8 fiduciary;

9 d. To effect and keep in force fire, rent, title, liability,
10 casualty or other insurance to protect the property of the estate
11 or trust and to protect the fiduciary;

12 e. With respect to any property or any interest therein owned
13 by an estate or trust, including any real property belonging to the
14 fiduciary's decedent at death, except where the property or any
15 interest therein is specifically disposed of:

16 (1) To take possession of and manage the property and to
17 collect the rents therefrom, and pay taxes, mortgage interest and
18 other charges against the property;

19 (2) To sell the property at public or private sale, and on terms
20 as in the opinion of the fiduciary shall be most advantageous to
21 those interested therein;

22 (3) With respect to fiduciaries other than a trustee, to lease
23 the property for a term not exceeding 3 years, and in the case of
24 a trustee to lease the property for a term not exceeding 10 years,
25 even though the term extends beyond the duration of the trust,
26 and in either case including the right to explore for and remove
27 mineral or other natural resources, and in connection with
28 mineral leases to enter into pooling and unitization agreements;

29 (4) To mortgage the property;

30 (5) To grant easements to adjoining owners and utilities;

31 (6) A fiduciary acting under a will may exercise any of the
32 powers granted by this subparagraph e. notwithstanding the
33 effects upon the will of the birth of a child after its execution;

34 f. To make repairs to the property of the estate or trust for
35 the purpose of preserving the property or rendering it rentable or
36 saleable;

37 g. To grant options for the sale of any property of the estate
38 or trust for a period not exceeding 6 months;

39 h. With respect to any mortgage held by the estate or trust to
40 continue it upon and after maturity, with or without renewal or
41 extension, upon terms as may seem advisable to the fiduciary and
42 to foreclose, as an incident to collection of any bond or note, any
43 mortgage and purchase the mortgaged property or acquire the
44 property by deed from the mortgagor in lieu of foreclosure;

45 i. In the case of the survivor or survivors of two or more
46 fiduciaries to administer the estate or trust without the
47 appointment of a successor to the fiduciary or fiduciaries who
48 have ceased to act and to exercise or perform all of the powers

1 ~~given unless contrary to the express provision of the will, deed or~~
2 ~~other instrument;~~

3 j. As a new, alternate, successor, substitute or additional
4 fiduciary or fiduciaries, to have or succeed to all of the powers,
5 duties and discretion of the original fiduciary or fiduciaries, with
6 respect to the estate or trust, as were given to the original
7 fiduciary or fiduciaries named in or appointed by a will, deed or
8 other instrument, unless the exercise of the powers, duties or
9 discretion of the original fiduciary or fiduciaries is expressly
10 prohibited by the will, deed or other instrument to any successor
11 or substitute fiduciary or fiduciaries;

12 k. Where there are three or more fiduciaries qualified to act,
13 to take any action with respect to the estate or trust which a
14 majority of the fiduciaries shall determine; a fiduciary who fails
15 to act through absence or disability, or a dissenting fiduciary who
16 joins in carrying out the decision of a majority of the fiduciaries
17 if his dissent is expressed promptly in writing to his cofiduciaries,
18 shall not be liable for the consequences of any majority decision,
19 provided that liability for failure to join in administering the
20 trust or to prevent a breach of trust may not thus be avoided;

21 l. To employ and compensate attorneys for services rendered
22 to the estate or trust or to a fiduciary in the performance of his
23 duties;

24 m. To compromise, contest or otherwise settle any claim in
25 favor of the estate, trust or fiduciary or in favor of third persons
26 and against the estate, trust or fiduciary, including transfer
27 inheritance, estate, income and other taxes;

28 n. To vote in person or by proxy, discretionary or otherwise,
29 shares of stock or other securities held by the estate or trust;

30 o. To pay calls, assessments and any other sums chargeable or
31 accruing against or on account of shares of stock, bonds,
32 debentures or other corporate securities in the hands of a
33 fiduciary, whenever the payments may be legally enforceable
34 against the fiduciary or any property of the estate or trust or the
35 fiduciary deems payment expedient and for the best interests of
36 the estate or trust;

37 p. To sell or exercise stock subscription or conversion rights,
38 participate in foreclosures, reorganizations, consolidations,
39 mergers or liquidations, and to consent to corporate sales or
40 leases and encumbrances, and, in the exercise of those powers,
41 the fiduciary is authorized to deposit stocks, bonds or other
42 securities with any custodian, agent, protective or other similar
43 committee, or trustee under a voting trust agreement, under
44 terms and conditions respecting the deposit thereof as the
45 fiduciary may approve;

46 q. To execute and deliver agreements, assignments, bills of
47 sale, contracts, deeds, notes, receipts and any other instrument
48 necessary or appropriate for the administration of the estate or

1 trust;

2 r. In the case of a trustee, to hold two or more trusts or parts
3 of trusts created by the same instrument, as an undivided whole,
4 without separation as between the trusts or parts of the trusts,
5 provided that separate trusts or parts of trusts shall have
6 undivided interests and provided further that no holding shall
7 defer the vesting of any estate in possession or otherwise;

8 s. To distribute in kind any property of the estate or trust as
9 provided in article 1 of chapter 23 of this title;

10 t. To join with the surviving spouse, the executor of his or her
11 will or the administrator of his or her estate in the execution and
12 filing of a joint income tax return for any period prior to the
13 death of a decedent for which he has not filed a return or a gift
14 tax return on gifts made by the decedent's surviving spouse, and
15 to consent to treat the gifts as being made one-half by the
16 decedent, for any period prior to a decedent's death, and to pay
17 taxes thereon as are chargeable to the decedent;

18 u. To acquire or dispose of an asset, including real or personal
19 property in this or another State, for cash or on credit, at public
20 or private sale, and to manage, develop, improve, exchange,
21 partition, change the character of, or abandon an estate asset;

22 v. To continue any business constituting the whole or any part
23 of the estate for so long a period of time as the fiduciary may
24 deem advisable and advantageous for the estate and persons
25 interested therein; [and]

26 w. In the case of a qualified bank as defined in section 1 of
27 P.L.1948, c.67 (C.17:9A-1), to purchase, sell and maintain for any
28 fiduciary account, securities issued by an investment company
29 which is operated and maintained in accordance with the
30 "Investment Company Act of 1940," 15 U.S.C.80a-1 et seq., and
31 for which the qualified bank is providing services as an
32 investment advisor, investment manager, custodian or otherwise,
33 provided that:

34 (1) the investment is otherwise in accordance with applicable
35 fiduciary standards;

36 (2) unless the investment of trust assets in an investment
37 company to which the qualified bank provides services as an
38 investment manager, custodian or otherwise is provided for by
39 the instrument creating the fiduciary account:

40 (a) all current income beneficiaries are provided with 30 days
41 written notice of the qualified bank's intent to so invest the
42 assets prior to the initial investment; and

43 (b) the qualified bank does not receive written objection
44 thereto from any such beneficiary within the 30 day period; and

45 (3) unless otherwise specifically permitted by the trust
46 instrument creating the fiduciary account:

47 (a) the investment advisory fees, commissions or similar fees
48 to which the qualified bank is entitled as fiduciary shall be

1 reduced by the amount of any investment advisory fees,
2 commissions or similar fees paid to the qualified bank by the
3 investment company; or

4 (b) the investment advisory fees, commissions or similar fees
5 paid to the qualified bank by the investment company are
6 received in lieu of any investment advisory fees, commissions or
7 similar fees that the qualified bank would otherwise be entitled
8 to receive for the investment management of the fiduciary
9 account.

10 Such investment shall not be deemed self-dealing or a fiduciary
11 conflict; nor shall the fact that other beneficiaries of fiduciary
12 accounts of the qualified bank have similar investments be
13 deemed to be an improper commingling of assets by the qualified
14 bank.

15 For purposes of this subsection, "fiduciary account" shall
16 include a trust, estate, agency or other account in which funds,
17 property, or both, are held by a qualified bank pursuant to section
18 28 of P.L.1948, c.67 (C.17:9A-28), or an account for which a
19 qualified bank acts as investment advisor or manager; and

20 x. The powers set forth in this section are in addition to any
21 other powers granted by law, and by a will, deed or other
22 instrument.

23 (cf: N.J.S.3B:14-23)

24 3. This act shall take effect immediately.

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STATEMENT

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29 The bill would permit, under certain circumstances, a qualified
30 bank to purchase, sell and maintain for any fiduciary account,
31 securities issued by an investment company which is operated and
32 maintained in accordance with the Investment Company Act of
33 1940, 15 U.S.C.80a-1 et seq., and for which the qualified bank is
34 providing services as an investment advisor, investment manager,
35 custodian or otherwise. In addition, the bill requires that, unless
36 otherwise specifically provided in the instrument creating the
37 fiduciary account, a qualified bank is to reduce the fees or
38 commissions to which it is entitled as fiduciary by the amount of
39 any fees or commissions paid to the qualified bank by the
40 investment company or to receive fees or commissions paid to
41 the qualified bank by the investment company in lieu of any
42 similar fees or commissions the qualified bank would be entitled
43 to earn from the fiduciary account for managing the funds.

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BANKING AND FINANCE

47

48 Permits a qualified bank to enter into certain transactions with
49 respect to fiduciary accounts they manage.

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2 commissions or similar fees paid to the qualified bank by the
3 investment company; or

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5 paid to the qualified bank by the investment company are
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BANKING AND FINANCE

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48 Permits a qualified bank to enter into certain transactions with
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ASSEMBLY FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5215

STATE OF NEW JERSEY

DATED: DECEMBER 5, 1991

The Assembly Financial Institutions Committee reports favorably Assembly Bill No. 5215.

This bill would permit, under certain circumstances, a qualified bank to purchase, sell and maintain for any fiduciary account, securities issued by an investment company which is operated and maintained in accordance with the "Investment Company Act of 1940," 15 U.S.C. 80a-1 et seq., and for which the qualified bank is providing services as an investment advisor, investment manager, custodian or otherwise. In addition, the bill requires that, unless otherwise specifically provided in the instrument creating the fiduciary account, a qualified bank is to reduce the fees or commissions to which it is entitled as fiduciary by the amount of any fees or commissions paid to the qualified bank by the investment company or to receive fees or commissions paid to the qualified bank by the investment company in lieu of any similar fees or commissions the qualified bank would be entitled to earn from the fiduciary account for managing the funds.

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5215

STATE OF NEW JERSEY

DATED: JANUARY 9, 1992

The Senate Labor, Industry and Professions Committee reports favorably Assembly, No. 5215.

This bill permits, under certain circumstances, a qualified bank (a State or federally chartered bank or State chartered savings bank with trust powers in this State) to purchase, sell and maintain for any fiduciary account, securities issued by an investment company which is operated and maintained in accordance with the "Investment Company Act of 1940," 15 U.S.C. 80a-1 et seq., and for which the qualified bank is providing services as an investment advisor, investment manager, custodian or otherwise. In addition, the bill requires that, unless otherwise specifically provided in the instrument creating the fiduciary account, a qualified bank is to reduce the fees or commissions to which it is entitled as fiduciary by the amount of any fees or commissions paid to the qualified bank by the investment company or to receive fees or commissions paid to the qualified bank by the investment company in lieu of any similar fees or commissions the qualified bank would be entitled to earn from the fiduciary account for managing the funds.