

1 AN ACT in relation to the investment of trust assets.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 0.01. Short title. This Act may be cited as the
5 Uniform Prudent Investor Act.

6 Section 1. Prudent investor rule.

7 (a) Except as otherwise provided in subsection (b), a
8 trustee who invests and manages trust assets owes a duty to
9 the beneficiaries of the trust to comply with the prudent
10 investor rule set forth in this Act.

11 (b) The prudent investor rule, a default rule, may be
12 expanded, restricted, eliminated, or otherwise altered by the
13 provisions of a trust. A trustee is not liable to a
14 beneficiary to the extent that the trustee acted in
15 reasonable reliance on the provisions of the trust.

16 Section 2. Standard of care; portfolio strategy; risk
17 and return objectives.

18 (a) A trustee shall invest and manage trust assets as a
19 prudent investor would, by considering the purposes, terms,
20 distribution requirements, and other circumstances of the
21 trust. In satisfying this standard, the trustee shall
22 exercise reasonable care, skill, and caution.

23 (b) A trustee's investment and management decisions
24 respecting individual assets must be evaluated not in
25 isolation but in the context of the trust portfolio as a
26 whole and as a part of an overall investment strategy having
27 risk and return objectives reasonably suited to the trust.

28 (c) Among circumstances that a trustee shall consider in
29 investing and managing trust assets are such of the following
30 as are relevant to the trust or its beneficiaries:

- 1 (1) general economic conditions;
- 2 (2) the possible effect of inflation or deflation;
- 3 (3) the expected tax consequences of investment
- 4 decisions or strategies;
- 5 (4) the role that each investment or course of
- 6 action plays within the overall trust portfolio, which
- 7 may include financial assets, interests in closely held
- 8 enterprises, tangible and intangible personal property,
- 9 and real property;
- 10 (5) the expected total return from income and the
- 11 appreciation of capital;
- 12 (6) other resources of the beneficiaries;
- 13 (7) needs for liquidity, regularity of income, and
- 14 preservation or appreciation of capital; and
- 15 (8) an asset's special relationship or special
- 16 value, if any, to the purposes of the trust or to one or
- 17 more of the beneficiaries.

18 (d) A trustee shall make a reasonable effort to verify
19 facts relevant to the investment and management of trust
20 assets.

21 (e) A trustee may invest in any kind of property or type
22 of investment consistent with the standards of this Act.

23 (f) A trustee who has special skills or expertise, or is
24 named trustee in reliance upon the trustee's representation
25 that the trustee has special skills or expertise, has a duty
26 to use those special skills or expertise.

27 Section 3. Diversification. A trustee shall diversify
28 the investments of the trust unless the trustee reasonably
29 determines that, because of special circumstances, the
30 purposes of the trust are better served without diversifying.

31 Section 4. Duties at inception of trusteeship. Within a
32 reasonable time after accepting a trusteeship or receiving

1 trust assets, a trustee shall review the trust assets and
2 make and implement decisions concerning the retention and
3 disposition of assets, in order to bring the trust portfolio
4 into compliance with the purposes, terms, distribution
5 requirements, and other circumstances of the trust, and with
6 the requirements of this Act.

7 Section 5. Loyalty. A trustee shall invest and manage
8 the trust assets solely in the interest of the beneficiaries.

9 Section 6. Impartiality. If a trust has two or more
10 beneficiaries, the trustee shall act impartially in investing
11 and managing the trust assets, taking into account any
12 differing interests of the beneficiaries.

13 Section 7. Investment costs. In investing and managing
14 trust assets, a trustee may only incur costs that are
15 appropriate and reasonable in relation to the assets, the
16 purposes of the trust, and the skills of the trustee.

17 Section 8. Reviewing compliance. Compliance with the
18 prudent investor rule is determined in light of the facts and
19 circumstances existing at the time of a trustee's decision or
20 action and not by hindsight.

21 Section 9. Delegation of investment and management
22 functions.

23 (a) A trustee may delegate investment and management
24 functions that a prudent trustee of comparable skills could
25 properly delegate under the circumstances. The trustee shall
26 exercise reasonable care, skill, and caution in:

27 (1) selecting an agent;

28 (2) establishing the scope and terms of the
29 delegation, consistent with the purposes and terms of the

1 trust; and

2 (3) periodically reviewing the agent's actions in
3 order to monitor the agent's performance and compliance
4 with the terms of the delegation.

5 (b) In performing a delegated function, an agent owes a
6 duty to the trust to exercise reasonable care to comply with
7 the terms of the delegation.

8 (c) A trustee who complies with the requirements of
9 subsection (a) is not liable to the beneficiaries or to the
10 trust for the decisions or actions of the agent to whom the
11 function was delegated.

12 (d) By accepting the delegation of a trust function from
13 the trustee of a trust that is subject to the law of this
14 State, an agent submits to the jurisdiction of the courts of
15 this State.

16 Section 10. Language invoking standard of Act. The
17 following terms or comparable language in the provisions of a
18 trust, unless otherwise limited or modified, authorizes any
19 investment or strategy permitted under this Act: "investments
20 permissible by law for investment of trust funds," "legal
21 investments," "authorized investments," "using the judgment
22 and care under the circumstances then prevailing that persons
23 of prudence, discretion, and intelligence exercise in the
24 management of their own affairs, not in regard to speculation
25 but in regard to the permanent disposition of their funds,
26 considering the probable income as well as the probable
27 safety of their capital," "prudent man rule," "prudent
28 trustee rule," "prudent person rule," and "prudent investor
29 rule."

30 Section 11. Application to existing trusts. This Act
31 applies to trusts existing on and created after its effective
32 date. As applied to trusts existing on its effective date,

1 this Act governs only decisions or actions occurring after
2 that date.

3 Section 12. Uniformity of application and construction.
4 This Act shall be applied and construed to effectuate its
5 general purpose to make uniform the law with respect to the
6 subject of this Act among the States enacting it.

7 Section 13. Short title. (See Section 0.01 for short
8 title.)

9 Section 14. Severability. If any provision of this Act
10 or its application to any person or circumstance is held
11 invalid, the invalidity does not affect other provisions or
12 applications of this Act which can be given effect without
13 the invalid provision or application, and to this end the
14 provisions of this Act are severable.

15 Section 14.1. The Trusts and Trustees Act is amended by
16 changing Sections 5, 5.1, and 5.2 as follows:

17 (760 ILCS 5/5) (from Ch. 17, par. 1675)

18 Sec. 5. Investments. (a) Prudent Investor Rule. A
19 trustee administering a trust has a duty to invest and manage
20 the trust assets in accordance with the Uniform Prudent
21 Investor Act. as follows:

22 ~~(1) The trustee has a duty to invest and manage~~
23 ~~trust assets as a prudent investor would considering the~~
24 ~~purposes, terms, distribution requirements, and other~~
25 ~~circumstances of the trust. This standard requires the~~
26 ~~exercise of reasonable care, skill, and caution and is to~~
27 ~~be applied to investments not in isolation, but in the~~
28 ~~context of the trust portfolio as a whole and as a part~~
29 ~~of an overall investment strategy that should incorporate~~

1 risk-and-return-objectives--reasonably--suitable--to--the
2 trust.

3 (2)--No--specific-investment-or-course-of-action-is,
4 taken-alone,
5 prudent-or-imprudent.-The-trustee-may-invest
6 in-every-kind-of-property-and-type-of-investment,
7 subject
8 to-this-Section.-The-trustee's-investment--decisions--and
9 actions--are--to--be--judged--in--terms--of-the-trustee's
10 reasonable-business-judgment--regarding--the--anticipated
11 effect--on-the-trust-portfolio-as-a-whole-under-the-facts
12 and-circumstances-prevailing-at-the-time-of-the--decision
13 or-action.-The-prudent-investor-rule-is-a-test-of-conduct
14 and-not-of-resulting-performance.

15 (3)--The--trustee--has--a--duty--to--diversify--the
16 investments-of-the-trust-unless,
17 under-the-circumstances,
18 the-trustee-reasonably-believes-it-is-in-the-interests-of
19 the-beneficiaries-and-further-the-purposes-of-the--trust
20 not-to-diversify.

21 (4)--The--trustee--has--a--duty,
22 within-a-reasonable
23 time-after-the-acceptance-of-the-trusteeship,
24 --to--review
25 trust---assets---and--to--make--and--implement--decisions
26 concerning-the--retention--and--disposition--of--original
27 pre-existing--investments--in--order--to--conform--to-the
28 provisions-of-this-Section.-The--trustee's--decision--to
29 retain--or--dispose-of-an-asset-may-properly-be-influenced
30 by-the-asset's--special--relationship--or--value--to--the
31 purposes---of--the--trust--or--to--some--or--all--of--the
32 beneficiaries,
33 consistent--with--the--trustee's--duty--of
34 impartiality.

35 (5)--The--trustee-has-a-duty-to-pursue-an-investment
36 strategy-that-considers-both-the-reasonable-production-of
37 income--and--safety--of--capital,
38 --consistent--with---the
39 trustee's--duty--of--impartiality-and-the-purposes-of-the
40 trust.-Whether--investments---are---underproductive---or
41 overproductive-of-income-shall-be-judged-by-the-portfolio

1 as-a-whole-and-not-as-to-any-particular-asset.

2 (6)--The-circumstances-that-the-trustee-may-consider
3 in---making---investment---decisions---include,---without
4 limitation,---the-general-economic-conditions,---the-possible
5 effect---of---inflation,---the---expected-tax-consequences-of
6 investment---decisions---or---strategies,---the---role---each
7 investment---or---course-of-action-plays-within-the-overall
8 portfolio,---the---expected---total---return---(including---both
9 income---yield---and-appreciation-of-capital),---and-the-duty
10 to-incur---only---reasonable---and---appropriate---costs.---The
11 trustee---may-but-need-not-consider-related-trusts-and-the
12 assets-of-beneficiaries-when-making-investment-decisions.

13 (b)--The-provisions-of--this--Section--may--be--expanded,
14 restricted,--eliminated,--or--otherwise--altered--by--express
15 provisions--of--the--trust--instrument.---The--trustee-is-not
16 liable-to-a-beneficiary-for-the-trustee's-reasonable-and-good
17 faith-reliance-on-those-express-provisions.

18 (c)--Nothing-in-this-Section-abrogates-or--restricts--the
19 power--of--an-appropriate-court-in-proper-cases-(i)-to-direct
20 or-permit-the-trustee-to-deviate-from-the-terms-of-the--trust
21 instrument--or--(ii)-to-direct-or-permit-the-trustee-to-take,
22 or-to-restrain-the-trustee-from-taking,---any-action--regarding
23 the-making-or-retention-of-investments.

24 (d)--The--following--terms--or-comparable-language-in-the
25 investment--powers--and--related--provisions---of---a---trust
26 instrument,---unless--otherwise--limited--or--modified-by-that
27 instrument,---shall-be-construed-as-authorizing-any--investment
28 or--strategy--permitted--under--this--Section:---"investments
29 permissible--by--law--for--investment-of-trust-funds",---"legal
30 investments",---"authorized-investments",---"using--the--judgment
31 and--care-under-the-circumstances-then-prevailing-that-men-of
32 prudence,---discretion,---and--intelligence--exercise--in---the
33 management--of--their--own--affairs,---not--in--regard--to-the
34 speculation-but-in-regard-to--the--permanent--disposition--of

1 their--funds,--considering-the-probable-income-as-well-as-the
2 probable-safety-of-their-capital",--"prudent--man--rule",--and
3 "prudent-person-rule".

4 (e)--On--and--after-the-effective-date-of-this-amendatory
5 Act-of-1991,--this-Section-applies-to-all-existing-and--future
6 trusts,--but--only-as-to-actions-or-inactions-occurring-after
7 that-effective-date.

8 (Source: P.A. 87-715.)

9 (760 ILCS 5/5.1) (from Ch. 17, par. 1675.1)

10 Sec. 5.1. Duty not to delegate. (a) The trustee has a
11 duty not to delegate to others the performance of any acts
12 involving the exercise of judgment and discretion, except
13 that acts constituting investment functions may be delegated
14 in accordance with the Uniform Prudent Investor Act. that--a
15 prudent--investor--of--comparable-skills-might-delegate-under
16 the-circumstances.--The-trustee-may-delegate-these-investment
17 functions-to-an-investment-agent-as--provided--in--subsection
18 (b):

19 (b)--For---a--trustee--to--properly--delegate--investment
20 functions--under--subsection--(a),--all--of---the---following
21 requirements-apply:

22 (1)--The--trustee--must--exercise--reasonable--care,
23 skill,--and-caution-in-selecting-the-investment-agent,--in
24 establishing--the--scope--and--specific--terms---of---any
25 delegation,--and--in--periodically--reviewing-the-agent's
26 actions-in--order--to--monitor--overall--performance--and
27 compliance--with--the--scope--and--specific--terms-of-the
28 delegation.

29 (2)--The-trustee-must-conduct-an--inquiry--into--the
30 experience,--performance--history,--professional-licensing
31 or-registration,--if-any,--and-financial-stability--of--the
32 investment-agent.

33 (3)--The--investment--agent--shall-be-subject-to-the

jurisdiction-of-the-courts-of-the-State-of-Illinois.

(4)--The-investment-agent-shall-be--subject--to--the same-standards-that-are-applicable-to-the-trustee.

(5)--The--investment--agent--shall--be-liable-to-the beneficiaries-of-the-trust-and-to-the-designated--trustee to--the--same--extent--as--if-the-investment-agent-were-a designated--trustee--in--relation--to--the--exercise---or nonexercise-of-the-investment-function.

(6)--The--trustee--shall--send-written-notice-of-its intention-to-begin-delegating-investment-functions--under this--Section--to--the--beneficiaries-eligible-to-receive income-from-the-trust-on-the-date-of--initial--delegation at-least-30-days-before-the-delegation.-This-notice-shall thereafter, until-or-unless-the-beneficiaries-eligible-to receive-income-from-the-trust-at-the-time-are-notified-to the---contrary,---authorize---the---trustee--to--delegate investment-functions-pursuant-to-this-Section.

(c)--If-all-requirements-of-subsection-(b)-are-satisfied, the-trustee--shall--not--otherwise--be--responsible--for--the investment--decisions--or--actions-of-the-investment-agent-to which-the-investment-functions-are-delegated.

(d)--On-and-after-July-1, 1992, this-Section--applies--to all--existing--and--future--trusts, but-only-as-to-actions-or inactions-occurring-after-that-date.

(Source: P.A. 87-715; 87-895.)

(760 ILCS 5/5.2) (from Ch. 17, par. 1675.2)

Sec. 5.2. Investments in mutual funds. A trustee, including a trustee of a common trust fund, may invest and reinvest the trust estate in interests in any open-end or closed-end management type investment company or unit investment trust registered under the Investment Company Act of 1940 or any investment fund exempt from registration under the Investment Company Act of 1940, any of these investment

1 companies, unit investment trusts, or investment funds being
2 a "mutual fund" for purposes of this Section, or may retain,
3 sell, or exchange those interests, provided that the
4 portfolio of the mutual fund, as an entity, is appropriate
5 under the provisions of this Act and the Uniform Prudent
6 Investor Act. A--trustee--shall--not--be--prohibited--from
7 investing,--reinvesting,--retaining,--or--exchanging--any
8 interests--held--by--the--trust-estate-in-any-mutual-fund-for
9 which-the-trustee-or-an-affiliate-acts-as-advisor-or--manager
10 or-in-any-other-role-selely-on-the-basis-that-the-trustee-(or
11 its--affiliate)--provides--services--to--the--mutual-fund-and
12 receives-reasonable-remuneration-for-those-services;--Neither
13 a--trustee--nor--its-affiliate-shall-be-required-to-reduce-or
14 waive-its-compensation-for-services--provided--in--connection
15 with--the--investment,--management,--and-administration-of-the
16 trust-estate--because--the--trustee--invests,--reinvests,--or
17 retains--the--trust--estate--in-a-mutual-fund,--so-long-as-the
18 total-compensation-paid-by-the-trust-estate-as-trustee's-fees
19 and-mutual-fund-fees,--including-any--advisory--or--management
20 fees,--in-connection-with-the-investment-of-a-trust-estate-in
21 a-mutual--fund--is--reasonable;--provided,--however,--that--a
22 trustee--may--receive--Rule-12b-1-fees-equal-to-the-amount-of
23 these-fees-that-would-be-paid-to-any-other-party.

24 (Source: P.A. 90-297, eff. 8-1-97.)

25 Section 15. (Blank)

26 Section 16. (Blank)