

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 174 Session of  
1999

INTRODUCED BY GREENLEAF, LEMMOND, O'PAKE, WHITE, BELL, HOLL AND  
WOZNIAK, JANUARY 20, 1999

REFERRED TO JUDICIARY, JANUARY 20, 1999

AN ACT

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

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

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

11 § 3316. Investment of funds.

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

18 (1) obligations of the United States or the United  
19 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

1 any, a guardian may accept, hold, invest in and retain  
2 investments as provided by Chapter [73 (relating to fiduciaries  
3 investments)] 72 (relating to prudent investor rule).

4 § 7134. Investments.

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

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

10 CHAPTER 72

11 PRUDENT INVESTOR RULE

12 7201. Definitions.

13 7202. Default rule.

14 7203. Prudent investor rule.

15 7204. Diversification.

16 7205. Retention of inception assets.

17 7206. Delegation.

18 7207. Retention of cash; temporary investments.

19 7208. Life insurance.

20 7209. Mutual funds.

21 7210. Common trust fund and mortgage investment fund.

22 7211. Further investment authority.

23 7212. Degree of care.

24 7213. Judgment of fiduciary's decisions.

25 7214. Language invoking chapter.

26 § 7201. Definitions.

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

30 "Fiduciary." Includes guardians and trustees, whether

1 domiciliary or ancillary, individual or corporate, subject to  
2 the jurisdiction of the orphans' court. The term shall not  
3 include a custodian under Chapter 53 (relating to Pennsylvania  
4 Uniform Transfers to Minors Act), an agent acting under a power  
5 of attorney, a personal representative, an administrator of a  
6 municipal pension or retirement plan or a person whose fiduciary  
7 duties are, by statute, governed by the principles of Chapter 73  
8 (relating to municipalities investments).

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

13 "Trust." Includes guardianships and trusts subject to the  
14 jurisdiction of the orphans' court and having property owned or  
15 managed by a fiduciary. The term shall not include  
16 custodianships, agencies created by a power of attorney,  
17 decedents' estates or municipal pension or retirement plans.  
18 § 7202. Default rule.

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

23 (b) Exception.--Where the instrument establishing a trust  
24 contains a restriction on the fiduciary's power of investment  
25 and the court having jurisdiction over the trust finds that  
26 adherence to the restriction is impractical or that the existing  
27 or reasonably foreseeable economic conditions are so far  
28 different from those prevailing at the creation of the trust  
29 that adherence to the restriction might deprive the respective  
30 beneficiaries of income and principal of the full benefits the

1   testator or settlor intended them to enjoy, the court may  
2   release the fiduciary from the restriction to the extent and on  
3   conditions, if any, as the court may deem appropriate.

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

13  § 7203. Prudent investor rule.

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

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

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

27           (1) the size of the trust;

28           (2) the nature and estimated duration of the fiduciary  
29   relationship;

30           (3) the liquidity and distribution requirements of the

1 trust;

2 (4) the expected tax consequences of investment  
3 decisions or strategies and of distributions of income and  
4 principal;

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

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

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

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

16 § 7204. Diversification.

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

23 § 7205. Retention of inception assets.

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

28 § 7206. Delegation.

29 (a) Permissible delegation.--A fiduciary may delegate  
30 investment and management functions that a prudent investor of

1 comparable skills might delegate under the circumstances.

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

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

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

23 (e) When cofiduciary may delegate to another cofiduciary.--A  
24 cofiduciary may delegate investment and management functions to  
25 another cofiduciary if the delegating cofiduciary reasonably  
26 believes that the other cofiduciary has greater investment  
27 skills than the delegating cofiduciary with respect to those  
28 functions. The delegating cofiduciary shall not be responsible  
29 for the investment decisions or actions of the other cofiduciary  
30 to which the investment functions are delegated if the

1 delegating cofiduciary exercises reasonable care, skill and  
2 caution in establishing the scope and specific terms of the  
3 delegation and in reviewing periodically the other cofiduciary's  
4 actions in order to monitor the cofiduciary's performance and  
5 compliance with the scope and specific terms of the delegation.

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

9 § 7207. Retention of cash; temporary investments.

10 (a) Uninvested cash.--A fiduciary may hold cash  
11 uninvested:

12 (1) which the fiduciary reasonably  
13 expects to:

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

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

18 or

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

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

25 (b) Temporary investments.--A fiduciary may make temporary  
26 investment of funds which the fiduciary is entitled to hold  
27 uninvested or which the fiduciary wishes to hold in liquid form  
28 in short-term interest-bearing obligations or deposits, or other  
29 short-term liquid investments, selected in each case in  
30 compliance with the standards of section 7203 (relating to



1 prudent investor rule), but without regard to any investment  
2 restrictions imposed by the governing instrument and may make a  
3 reasonable charge, in addition to all other compensation to  
4 which the fiduciary is entitled, for services rendered in making  
5 the temporary investment.

6 § 7208. Life insurance.

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

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

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

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

17 (4) diversify the contract.

18 § 7209. Mutual funds.

19 Notwithstanding that a bank or trust company or an affiliate  
20 provides services to the investment company or investment trust,  
21 including that of an investment advisor, custodian, transfer  
22 agent, registrar, sponsor, distributor or manager, and receives  
23 reasonable compensation for those services and notwithstanding  
24 any other provision of law, a bank or trust company acting as a  
25 fiduciary, agent or otherwise may invest and reinvest in a  
26 mutual fund if the portfolio of the mutual fund consists  
27 substantially of investments not prohibited by the governing  
28 instrument. With respect to any funds invested, the basis upon  
29 which compensation is calculated, expressed as a percentage of  
30 asset value or otherwise, shall be disclosed by prospectus,

1 account statement or otherwise to all persons to whom statements  
2 of the account are rendered.

3 § 7210. Common trust fund and mortgage investment fund.

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

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

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

17 § 7211. Further investment authority.

18 Unless a contrary intent is clearly expressed in the  
19 instrument, the authority to invest in specified types of  
20 investments includes authorization to invest in a mutual fund,  
21 or in any common or collective trust fund established and  
22 maintained by a corporate fiduciary, or by any affiliate of a  
23 corporate fiduciary within the meaning of section 1504 of the  
24 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §  
25 1504), or any successor provision, if the portfolio of the  
26 mutual fund or of the common or collective trust fund consists  
27 of the specified types of investments and is otherwise in  
28 conformity with the laws of this Commonwealth and of the United  
29 States.

30 § 7212. Degree of care.

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

5 § 7213. Judgment of fiduciary's decisions.

6 The rules of this chapter are standards of conduct and not of  
7 outcome or performance. Compliance with the rules of this  
8 chapter shall be determined in light of the facts and  
9 circumstances prevailing at the time of the fiduciary's decision  
10 or action and not by hindsight. A fiduciary is not liable to the  
11 extent the fiduciary acted in substantial compliance with the  
12 rules of this chapter or in reasonable reliance on the terms and  
13 provisions of the governing instrument. A fiduciary's investment  
14 and management decisions respecting individual assets shall be  
15 considered in the context of the trust portfolio as a whole and  
16 as part of an overall investment strategy, and not in isolation.  
17 No specific investment or course of action, taken alone, shall  
18 be considered inherently prudent or imprudent.

19 § 7214. Language invoking chapter.

20 The following terms or words or words of similar import in  
21 the provisions of a trust, unless otherwise limited or modified,  
22 shall authorize any investment or investment strategy permitted  
23 under this chapter: "investments permissible by law for  
24 investment of trust funds," "legal investments," "authorized  
25 investments," "using the judgment and care under the  
26 circumstances then prevailing that persons of prudence,  
27 discretion and intelligence exercise in the management of their  
28 own affairs, not in regard to speculation but in regard to the  
29 permanent disposition of their own funds, considering the  
30 probable income as well as the probable safety of their

1 capital," "prudent man rule", "prudent trustee rule", "prudent  
2 person rule" and "prudent investor rule".

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

5 CHAPTER 73

6 [FIDUCIARIES INVESTMENTS]

7 MUNICIPALITIES INVESTMENTS

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

9 § 7301. Definition of fiduciary.

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

18 \* \* \*

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

20 § 5548. Investment of trust funds.

21 (a) General rule.--Unless otherwise specifically directed in  
22 the trust instrument, the board of directors or other body of a  
23 nonprofit corporation incorporated for charitable purposes shall  
24 have power to invest any assets vested in the corporation by  
25 such instrument or the proceeds thereof separately or together  
26 with other assets of the corporation, in the manner authorized  
27 for fiduciaries by [the Fiduciaries Investment Act of 1949] 20  
28 Pa.C.S. Ch. 72 (relating to prudent investor rule), and to  
29 retain any investments heretofore so made. Any such nonprofit  
30 corporation may, by appropriate action of its board of directors

1 or other body, keep any investments or fractional interests in  
2 any investments, held by it or made by it, in the name of the  
3 corporation or in the name of a nominee of the corporation.

4 \* \* \*

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

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

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

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

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

28 Section 7. This act shall take effect as follows:

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

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

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