

ENGROSSED HOUSE
BILL NO. 1946

By: Weaver of the House

and

Hendrick of the Senate

An Act relating to trusts; creating definitions; creating the prudent investor rule and the prudent investment standard; providing certain trustee requirements of prudent investor standard; authorizing trustee to invest in and consider certain investments; providing for special investment skills; providing for delegation of certain investment or management functions; providing for investment in securities of related investment companies; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 161.1 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Trustee" means a personal representative, trustee, guardian, donee of a power during minority, committee of the property of an incompetent person, and conservator of the property of a conservatee;

2. "Trust" means any fiduciary entity with property owned by a trustee as defined in this section;

3. "Governing instrument" means a court order; and

4. "Portfolio" means all property of every kind and character held by a trustee as defined in this section.

B. Prudent investor rule.

A trustee shall have a duty to invest and manage property held in a fiduciary capacity in accordance with the prudent investor standard defined by this section, except as otherwise provided by the express terms and provisions of a governing instrument. This section shall apply to any investment made or held on or after January 1, 1996, by a trustee.

C. Prudent investor standard.

1. The prudent investor rule shall require a standard of conduct, not outcome or performance. Compliance with the prudent investor rule shall be determined in light of facts and circumstances prevailing at the time of the decision or action of a trustee. A trustee shall not be liable to a beneficiary to the extent that the trustee acted in substantial compliance with the prudent investor standard or in reasonable reliance on the express terms and provisions of the governing instrument.

2. A trustee shall exercise reasonable care, skill and caution to make and implement investment and management decisions as a prudent investor would for the entire portfolio, taking into account the purposes and terms and provisions of the governing instrument.

3. The prudent investor standard shall require a trustee:

- a. to pursue an overall investment strategy to enable the trustee to make appropriate present and future distributions to or for the benefit of the beneficiaries under the governing instrument, in accordance with risk and return objectives reasonably suited to the entire portfolio,

- b. to consider, to the extent relevant to the decision or action, the size of the portfolio, the nature and estimated duration of the fiduciary relationship, the liquidity and distribution requirements of the governing instrument, general economic conditions, the possible effect of inflation or deflation, the expected tax consequences of investment decisions or strategies and of distributions of income and principal, the role that each investment or course of action plays within the overall portfolio, the expected total return of the portfolio, including both income and appreciation of capital, and the needs of beneficiaries, to the extent reasonably known to the trustee, for present and future distributions authorized or required by the governing instrument,
- c. to diversify assets unless the trustee reasonably determines that it is in the interests of the beneficiaries not to diversify, taking into account the purposes and terms and provisions of the governing instruments, and
- d. within a reasonable time after the creation of the fiduciary relationship, to determine whether to retain or dispose of initial assets.

4. The prudent investor standard authorizes a trustee:

- a. to invest in any type of investment consistent with the requirements of this paragraph, since no particular investment is inherently prudent or imprudent for purposes of the prudent investor standard,
- b. to consider related trusts, the income and resources of beneficiaries to the extent reasonably known to the trustee, and also the special relationship or value of

- an asset to some or all of the beneficiaries if consistent with the trustee's duty of impartiality,
- c. to delegate investment and management functions if consistent with the duty to exercise skill, including special investment skills, and
 - d. to incur costs only to the extent they are appropriate and reasonable in relation to the purposes of the governing instrument, the assets held by the trustee and the skills of the trustee.

5. Special investment skills.

For a bank, trust company or paid professional investment advisor, whether or not registered under any federal securities or investment law, which serves as a trustee, and any other trustee representing that the trustee has special investment skills, the exercise of skill contemplated by the prudent investor standard shall require the trustee to exercise such diligence in investing and managing assets as would customarily be exercised by prudent investors of discretion and intelligence having special investment skills.

D. Delegation of investment or management functions.

1. Delegation of an investment or management function shall require a trustee to exercise care, skill and caution in:

- a. selecting a delegee suitable to exercise the delegated function, taking into account the nature and value of the assets subject to such delegation and the expertise of the delegee,
- b. establishing the scope and terms of the delegation consistent with the purposes of the governing instrument,
- c. periodically reviewing the delegee's exercise of the delegated function and compliance with the scope and terms of the delegation, and

d. controlling the overall cost by reason of the delegation.

2. The delegee shall have a duty to the trustee and to the trust to comply with the scope and terms of the delegation and to exercise the delegated function with reasonable care, skill and caution. An attempted exoneration of the delegee from liability for failure to meet such duty is contrary to public policy and void.

3. By accepting the delegation of a trustee's function from the trustee of a trust that is subject to the laws of this state, the delegee submits to the jurisdiction of the courts of this state even if a delegation agreement provides otherwise, and the delegee may be made a party to any proceeding in such courts that places in issue the decisions or actions of the delegee.

E. Investment in securities of related investment companies.

A trustee holding funds for investment may invest the same in securities of any management type investment company or trust registered pursuant to the federal Investment Company Act of 1940, as amended, notwithstanding that the trustee or an affiliate of the trustee acts as investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager or provides other services to the investment company or trust. Unless the will, lifetime trust or order appointing the trustee provides otherwise, the trustee shall elect annually either:

- a. to receive or have its affiliate receive compensation for providing such services to the investment company or trust for the portion of the trust invested in the investment company or trust, or
- b. to take annual corporate trustees' commissions with respect to such portion.

SECTION 2. This act shall become effective November 1, 1995.

Passed the House of Representatives the 2nd day of March, 1995.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1995.

President of the Senate