

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

448C0769

SENATE JUDICIARY COMMITTEE
ENGROSSED NO. **SB203** - 2/16/99

Introduced by: Senator Everist and Representatives Michels and Wilson

1 FOR AN ACT ENTITLED, An Act to enact the Uniform Prudent Investor Act.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. (a) Except as otherwise provided in subsection (b), a trustee who invests and
4 manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent
5 investor rule set forth in this Act.

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

9 Section 2. (a) A trustee shall invest and manage trust assets as a prudent investor would, by
10 considering the purposes, terms, distribution requirements, and other circumstances of the trust.
11 In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

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

15 (c) Among circumstances that a trustee shall consider in investing and managing trust assets
16 are such of the following 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 decisions or strategies;
- 4 (4) The role that each investment or course of action plays within the overall trust
- 5 portfolio, which may include financial assets, interests in closely held enterprises,
- 6 tangible and intangible personal property, and real property;
- 7 (5) The expected total return from income and the appreciation of capital;
- 8 (6) Other resources of the beneficiaries;
- 9 (7) Needs for liquidity, regularity of income, and preservation or appreciation of capital;
- 10 and
- 11 (8) An asset's special relationship or special value, if any, to the purposes of the trust or
- 12 to one or more of the beneficiaries.

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

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

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

20 Section 3. A trustee shall diversify the investments of the trust unless the trustee reasonably
21 determines that, because of special circumstances, the purposes of the trust are better served
22 without diversifying.

23 Section 4. Within a reasonable time after accepting a trusteeship or receiving trust assets, a
24 trustee shall review the trust assets and make and implement decisions concerning the retention
25 and disposition of assets, in order to bring the trust portfolio into compliance with the purposes,

1 terms, distribution requirements, and other circumstances of the trust, and with the requirements
2 of this Act.

3 Section 5. A trustee shall invest and manage the trust assets solely in the interest of the
4 beneficiaries.

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

7 Section 7. In investing and managing trust assets, a trustee may only incur costs that are
8 appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of
9 the trustee.

10 Section 8. Compliance with the prudent investor rule is determined in light of the facts and
11 circumstances existing at the time of a trustee's decision or action and not by hindsight.

12 Section 9. (a) A trustee may delegate investment and management functions that a prudent
13 trustee of comparable skills could properly delegate under the circumstances. The trustee shall
14 exercise reasonable care, skill, and caution in:

- 15 (1) Selecting an agent;
- 16 (2) Establishing the scope and terms of the delegation, consistent with the purposes and
17 terms of the trust; and
- 18 (3) Periodically reviewing the agent's actions in order to monitor the agent's performance
19 and compliance with the terms of the delegation.

20 If the trustee obtains the written approval of a majority of the known beneficiaries or is
21 directed by the court, the trustee is not liable for the acts of the person to whom the authority
22 is delegated except in the cases of gross misconduct or gross negligence by the delegating trustee
23 in the selection, establishing the scope and terms of the delegation or reviewing the agent's
24 actions.

25 (b) In performing a delegated function, an agent owes a duty to the trust to exercise

1 reasonable care to comply with the terms of the delegation.

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

5 (d) By accepting the delegation of a trust function from the trustee of a trust that is subject
6 to the law of this state, an agent submits to the jurisdiction of the courts of this state.

7 Section 10. The following terms or comparable language in the provisions of a trust, unless
8 otherwise limited or modified, authorizes any investment or strategy permitted under this Act:
9 investments permissible by law for investment of trust funds; legal investments; authorized
10 investments; using the judgment and care under the circumstances then prevailing that persons
11 of prudence, discretion, and intelligence exercise in the management of their own affairs, not in
12 regard to speculation but in regard to the permanent disposition of their funds, considering the
13 probable income as well as the probable safety of their capital; prudent man rule; prudent trustee
14 rule; prudent person rule; and prudent investor rule.

15 Section 11. This Act applies to trusts existing on and created after its effective date. As
16 applied to trusts existing on its effective date, this Act governs only decisions or actions
17 occurring after that date.

18 Section 12. This Act shall be applied and construed to effectuate its general purpose to make
19 uniform the law with respect to the subject of this Act among the states enacting it.

20 Section 13. This Act may be cited as the South Dakota Uniform Prudent Investor Act.

21 Section 14. That § 55-5-6 be repealed.

22 ~~55-5-6. The trustee shall invest and manage trust assets as a prudent investor would~~
23 ~~considering the purposes, terms, distribution requirements, and other circumstances of the trust.~~
24 ~~This standard requires the exercise of reasonable care, skill, and caution and shall be applied to~~
25 ~~investments not in isolation, but in the context of the trust portfolio as a whole and as a part of~~

1 ~~an overall investment strategy that should incorporate risk and return objectives reasonably~~
2 ~~suitable to the trust.~~

3 Section 15. That §§ 55-5-7 to 55-5-16, inclusive, be repealed.

1 **BILL HISTORY**

2 1/28/99 First read in Senate and referred to Judiciary. S.J. 234

3 2/1/99 Scheduled for Committee hearing on this date.

4 2/10/99 Scheduled for Committee hearing on this date.

5 2/12/99 Scheduled for Committee hearing on this date.

6 2/12/99 Judiciary Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 474

7 2/12/99 Judiciary Place on Consent Calendar.