

By: Representative Perry

To: Judiciary A

HOUSE BILL NO. 773

1 AN ACT TO ENACT THE MISSISSIPPI UNIFORM PRUDENT INVESTOR ACT;
2 TO PROVIDE A GUIDELINE OR RULE BY WHICH A TRUSTEE WHO INVESTS AND
3 MANAGES TRUST ASSETS FULFILLS HIS DUTY TO THE BENEFICIARIES OF THE
4 TRUST; TO PROVIDE THAT THE PRUDENT INVESTOR RULE MAY BE ALTERED BY
5 THE PROVISIONS OF A TRUST; TO PROVIDE THAT A TRUSTEE IS NOT LIABLE
6 TO A BENEFICIARY WHEN ACTING IN RELIANCE ON THE PROVISIONS OF THE
7 TRUST; TO PROVIDE A STANDARD OF CARE IN MANAGING TRUST ASSETS,
8 INCLUDING STANDARDS FOR PORTFOLIO STRATEGIES AND RISK AND RETURN
9 OBJECTIVES; TO REQUIRE A TRUSTEE TO DIVERSIFY THE INVESTMENTS OF
10 THE TRUST IN MOST CASES; TO SET FORTH DUTIES OF THE TRUSTEE AT THE
11 INCEPTION OF THE TRUSTEESHIP; TO PROVIDE THAT A TRUSTEE ACT SOLELY
12 IN THE INTEREST OF THE BENEFICIARIES, AND WITH IMPARTIALITY IF A
13 TRUST HAS TWO OR MORE BENEFICIARIES; TO PROVIDE THAT A TRUSTEE MAY
14 INCUR ONLY APPROPRIATE AND REASONABLE COSTS IN MANAGING THE
15 ASSETS; TO ALLOW A TRUSTEE TO DELEGATE INVESTMENT AND MANAGEMENT
16 FUNCTIONS IF REASONABLE CARE, SKILL AND CAUTION ARE EXERCISED; TO
17 SPECIFY CERTAIN LANGUAGE THAT WILL INVOKE THE STANDARD OF THE ACT;
18 AND FOR RELATED PURPOSES.

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

20 SECTION 1. **Prudent Investor Rule.** (1) Except as otherwise
21 provided in subsection (2), a trustee who invests and manages
22 trust assets owes a duty to the beneficiaries of the trust to
23 comply with the prudent investor rule set forth in this act.

24 (2) The prudent investor rule, a default rule, may be
25 expanded, restricted, eliminated or otherwise altered by the
26 provisions of a trust. A trustee is not liable to a beneficiary
27 to the extent that the trustee acted in reasonable reliance on the
28 provisions of the trust.

29 SECTION 2. **Standard of care; portfolio strategy; risk and**
30 **return objectives.** (1) A trustee shall invest and manage trust
31 assets as a prudent investor would, by considering the purposes,
32 terms, distribution requirements and other circumstances of the
33 trust. In satisfying this standard, the trustee shall exercise
34 reasonable care, skill and caution.

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

40 (3) Among circumstances that a trustee shall consider in
41 investing and managing trust assets are such of the following as
42 are relevant to the trust or its beneficiaries:

43 (a) General economic conditions;

44 (b) The possible effect of inflation or deflation;

45 (c) The expected tax consequences of investment
46 decisions or strategies;

47 (d) The role that each investment or course of action
48 plays within the overall trust portfolio, which may include
49 financial assets, interests in closely held enterprises, tangible
50 and intangible personal property and real property;

51 (e) The expected total return from income and the
52 appreciation of capital;

53 (f) Other resources of the beneficiaries;

54 (g) Needs for liquidity, regularity of income and
55 preservation or appreciation of capital; and

56 (h) An asset's special relationship or special value,
57 if any, to the purposes of the trust or to one or more of the
58 beneficiaries.

59 (4) A trustee shall make a reasonable effort to verify facts
60 relevant to the investment and management of trust assets.

61 (5) A trustee may invest in any kind of property or type of
62 investment consistent with the standards of this act.

63 (6) A trustee who has special skills or expertise, or is
64 named trustee in reliance upon the trustee's representation that
65 the trustee has special skills or expertise, has a duty to use
66 those special skills or expertise.

67 SECTION 3. Diversification. A trustee shall diversify the

68 investments of the trust unless the trustee reasonably determines
69 that, because of special circumstances, the purposes of the trust
70 are better served without diversifying.

71 SECTION 4. Duties at inception of trusteeship. Within a
72 reasonable time after accepting a trusteeship or receiving trust
73 assets, a trustee shall review the trust assets and make and
74 implement decisions concerning the retention and disposition of
75 assets, in order to bring the trust portfolio into compliance with
76 the purposes, terms, distribution requirements, and other
77 circumstances of the trust, and with the requirements of this act.

78 SECTION 5. Loyalty. A trustee shall invest and manage the
79 trust assets solely in the interest of the beneficiaries.

80 SECTION 6. Impartiality. If a trust has two or more
81 beneficiaries, the trustee shall act impartially in investing and
82 managing the trust assets, taking into account any differing
83 interests of the beneficiaries.

84 SECTION 7. Investment costs. In investing and managing
85 trust assets, a trustee may only incur costs that are appropriate
86 and reasonable in relation to the assets, the purposes of the
87 trust, and the skills of the trustee.

88 SECTION 8. Reviewing compliance. Compliance with the
89 prudent investor rule is determined in light of the facts and
90 circumstances existing at the time of a trustee's decision or
91 action and not by hindsight.

92 SECTION 9. Delegation of investment and management
93 **functions.** (1) A trustee may delegate investment and management
94 functions that a prudent trustee of comparable skills could
95 properly delegate under the circumstances. The trustee shall
96 exercise reasonable care, skill and caution in:

97 (a) Selecting an agent;

98 (b) Establishing the scope and terms of the delegation,
99 consistent with the purposes and terms of the trust; and

100 (c) Periodically reviewing the agent's actions in order

101 to monitor the agent's performance and compliance with the terms
102 of the delegation.

103 (2) In performing a delegated function, an agent owes a duty
104 to the trust to exercise reasonable care to comply with the terms
105 of the delegation.

106 (3) A trustee who complies with the requirements of
107 subsection (1) is not liable to the beneficiaries or to the trust
108 for the decisions or actions of the agent to whom the function was
109 delegated.

110 (4) By accepting the delegation of a trust function from the
111 trustee of a trust that is subject to the law of this state, an
112 agent submits to the jurisdiction of the courts of this state.

113 SECTION 10. **Language invoking standard of act.** The
114 following terms or comparable language in the provisions of a
115 trust, unless otherwise limited or modified, authorizes any
116 investment or strategy permitted under this act: "Investments
117 permissible by law for investment of trust funds," "legal
118 investments," "authorized investments," "using the judgment and
119 care under the circumstances then prevailing that persons of
120 prudence, discretion, and intelligence exercise in the management
121 of their own affairs, not in regard to speculation but in regard
122 to the permanent disposition of their funds, considering the
123 probable income as well as the probable safety of their capital,"
124 "prudent man rule," "prudent trustee rule," "prudent person rule"
125 and "prudent investor rule."

126 SECTION 11. **Application to existing trusts.** This act
127 applies to trusts existing on and created after July 1, 1998. As
128 applied to trusts existing on its effective date, this act governs
129 only decisions or actions occurring after that date.

130 SECTION 12. **Uniformity of application and construction.**
131 This act shall be applied and construed to effectuate its general
132 purpose to make uniform the law with respect to the subject of
133 this act among the states enacting it.

134 SECTION 13. **Short title.** This act may be cited as the
135 "Mississippi Uniform Prudent Investor Act."

136 SECTION 14. **Severability.** If any provision of this act or
137 its application to any person or circumstance is held invalid, the
138 invalidity does not affect other provisions or applications of
139 this act which can be given effect without the invalid provision
140 or application, and to this end the provisions of this act are
141 severable.

142 SECTION 15. This act shall take effect and be in force from
143 and after July 1, 1999.