

G#AZ96196

House Engrossed Senate Bill

FILED

State of Arizona
Senate
Forty-second Legislature
Second Regular Session
1996

**Jane Dee Hull
Secretary of State**

CHAPTER 107

SENATE BILL 1008

AN ACT

AMENDING SECTION 14-7302, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 6; RELATING TO THE REVISED ARIZONA PRUDENT INVESTOR ACT.

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 14-7302, Arizona Revised Statutes, is amended to
3 read:

4 14-7302. Trustee's standard of care and performance

5 Except as otherwise provided by the terms of the trust AND EXCEPT AS
6 PROVIDED BY CHAPTER 7, ARTICLE 6 OF THIS TITLE, the trustee shall observe the
7 standard in dealing with the trust assets that would be observed by a prudent
8 man dealing with the property of another, and if the trustee has special
9 skills or is named trustee on the basis of representations of special skills
10 or expertise, he is under a duty to use those skills.

11 Sec. 2. Title 14, chapter 7, Arizona Revised Statutes, is amended by
12 adding article 6, to read:

13 ARTICLE 6. REVISED ARIZONA PRUDENT INVESTOR ACT

14 14-7601. Prudent investor rule

15 A. EXCEPT AS PROVIDED IN SUBSECTION B, A TRUSTEE WHO INVESTS AND
16 MANAGES TRUST ASSETS OWES A DUTY TO THE BENEFICIARIES OF THE TRUST TO COMPLY
17 WITH THE PRUDENT INVESTOR RULE REQUIREMENTS OF THIS ARTICLE.

18 B. THE PRUDENT INVESTOR RULE IS A DEFAULT RULE, AND MAY BE EXPANDED,
19 RESTRICTED, ELIMINATED OR OTHERWISE ALTERED BY THE PROVISIONS OF A TRUST.

1 C. A TRUSTEE IS NOT LIABLE TO A BENEFICIARY TO THE EXTENT THAT THE
2 TRUSTEE ACTED IN REASONABLE RELIANCE ON THE PROVISIONS OF THE TRUST.

3 14-7602. Standard of care; portfolio strategy; risk and return
4 objectives

5 A. A TRUSTEE SHALL INVEST AND MANAGE TRUST ASSETS AS A PRUDENT
6 INVESTOR WOULD, BY CONSIDERING THE PURPOSES, TERMS, DISTRIBUTION REQUIREMENTS
7 AND OTHER CIRCUMSTANCES OF THE TRUST. IN SATISFYING THIS STANDARD THE
8 TRUSTEE SHALL EXERCISE REASONABLE CARE, SKILL AND CAUTION.

9 B. A TRUSTEE'S INVESTMENT AND MANAGEMENT DECISIONS RESPECTING
10 INDIVIDUAL ASSETS SHALL NOT BE EVALUATED IN ISOLATION BUT IN THE CONTEXT OF
11 THE TRUST PORTFOLIO AS A WHOLE AND AS A PART OF AN OVERALL INVESTMENT
12 STRATEGY HAVING RISK AND RETURN OBJECTIVES REASONABLY SUITED TO THE TRUST.

13 C. AMONG CIRCUMSTANCES THAT A TRUSTEE SHALL CONSIDER IN INVESTING AND
14 MANAGING TRUST ASSETS ARE ANY OF THE FOLLOWING THAT ARE RELEVANT TO THE TRUST
15 OR ITS BENEFICIARIES:

- 16 1. GENERAL ECONOMIC CONDITIONS.
- 17 2. THE POSSIBLE EFFECT OF INFLATION OR DEFLATION.
- 18 3. THE EXPECTED TAX CONSEQUENCES OF INVESTMENT DECISIONS OR
19 STRATEGIES.
- 20 4. THE ROLE THAT EACH INVESTMENT OR COURSE OF ACTION PLAYS WITHIN THE
21 OVERALL TRUST PORTFOLIO, WHICH MAY INCLUDE FINANCIAL ASSETS, INTERESTS IN
22 CLOSELY HELD ENTERPRISES, TANGIBLE AND INTANGIBLE PERSONAL PROPERTY AND REAL
23 PROPERTY.
- 24 5. THE EXPECTED TOTAL RETURN FROM INCOME AND THE APPRECIATION OF
25 CAPITAL.
- 26 6. OTHER RESOURCES OF THE BENEFICIARIES.
- 27 7. NEEDS FOR LIQUIDITY, REGULARITY OF INCOME AND PRESERVATION OR
28 APPRECIATION OF CAPITAL.
- 29 8. AN ASSET'S SPECIAL RELATIONSHIP OR SPECIAL VALUE, IF ANY, TO THE
30 PURPOSES OF THE TRUST OR TO ONE OR MORE OF THE BENEFICIARIES.

31 D. A TRUSTEE SHALL MAKE A REASONABLE EFFORT TO VERIFY FACTS RELEVANT
32 TO THE INVESTMENT AND MANAGEMENT OF TRUST ASSETS.

33 E. A TRUSTEE MAY INVEST IN ANY KIND OF PROPERTY OR TYPE OF INVESTMENT
34 CONSISTENT WITH THE STANDARDS OF THIS ARTICLE.

35 F. A TRUSTEE WHO HAS SPECIAL SKILLS OR EXPERTISE, OR WHO IS NAMED
36 TRUSTEE IN RELIANCE ON THE TRUSTEE'S REPRESENTATION THAT THE TRUSTEE HAS
37 SPECIAL SKILLS OR EXPERTISE, HAS A DUTY TO USE THOSE SPECIAL SKILLS OR
38 EXPERTISE.

39 14-7603. Diversification

40 A TRUSTEE SHALL DIVERSIFY THE INVESTMENTS OF THE TRUST UNLESS THE
41 TRUSTEE REASONABLY DETERMINES THAT, BECAUSE OF SPECIAL CIRCUMSTANCES, THE
42 PURPOSES OF THE TRUST ARE BETTER SERVED WITHOUT DIVERSIFYING.

1 14-7604. Duties at inception of trusteeship

2 WITHIN A REASONABLE TIME AFTER ACCEPTING A TRUSTEESHIP OR RECEIVING
3 TRUST ASSETS, A TRUSTEE SHALL REVIEW THE TRUST ASSETS AND MAKE AND IMPLEMENT
4 DECISIONS CONCERNING THE RETENTION AND DISPOSITION OF ASSETS, IN ORDER TO
5 BRING THE TRUST PORTFOLIO INTO COMPLIANCE WITH THE PURPOSES, TERMS,
6 DISTRIBUTION REQUIREMENTS AND OTHER CIRCUMSTANCES OF THE TRUST AND WITH THE
7 REQUIREMENTS OF THIS ARTICLE.

8 14-7605. Loyalty

9 A TRUSTEE SHALL INVEST AND MANAGE THE TRUST ASSETS SOLELY IN THE
10 INTEREST OF THE BENEFICIARIES.

11 14-7606. Impartiality

12 IF A TRUST HAS TWO OR MORE BENEFICIARIES, THE TRUSTEE SHALL ACT
13 IMPARTIALLY IN INVESTING AND MANAGING THE TRUST ASSETS, TAKING INTO ACCOUNT
14 ANY DIFFERING INTERESTS OF THE BENEFICIARIES.

15 14-7607. Investment costs

16 IN INVESTING AND MANAGING TRUST ASSETS, A TRUSTEE SHALL ONLY INCUR
17 COSTS THAT ARE APPROPRIATE AND REASONABLE IN RELATION TO THE ASSETS, THE
18 PURPOSES OF THE TRUST AND THE SKILLS OF THE TRUSTEE.

19 14-7608. Reviewing compliance

20 COMPLIANCE WITH THIS ARTICLE IS DETERMINED IN LIGHT OF THE FACTS AND
21 CIRCUMSTANCES EXISTING AT THE TIME OF A TRUSTEE'S DECISION OR ACTION AND NOT
22 BY HINDSIGHT.

23 14-7609. Delegation of investment and management functions

24 A. A TRUSTEE MAY DELEGATE INVESTMENT AND MANAGEMENT FUNCTIONS THAT A
25 PRUDENT TRUSTEE OF COMPARABLE SKILLS COULD PROPERLY DELEGATE UNDER THE
26 CIRCUMSTANCES. THE TRUSTEE SHALL EXERCISE REASONABLE CARE, SKILL AND CAUTION
27 IN:

28 1. SELECTING AN AGENT.

29 2. ESTABLISHING THE SCOPE AND TERMS OF THE DELEGATION, CONSISTENT WITH
30 THE PURPOSES AND TERMS OF THE TRUST.

31 3. PERIODICALLY REVIEWING THE AGENT'S ACTIONS IN ORDER TO MONITOR THE
32 AGENT'S PERFORMANCE AND COMPLIANCE WITH THE TERMS OF THE DELEGATION.

33 B. IN PERFORMING A DELEGATED FUNCTION, AN AGENT OWES A DUTY TO THE
34 TRUST TO EXERCISE REASONABLE CARE TO COMPLY WITH THE TERMS OF THE DELEGATION.

35 C. A TRUSTEE WHO COMPLIES WITH THE REQUIREMENTS OF SUBSECTION A IS NOT
36 LIABLE TO THE BENEFICIARIES OR TO THE TRUST FOR THE DECISIONS OR ACTIONS OF
37 THE AGENT TO WHOM THE FUNCTION WAS DELEGATED.

38 D. BY ACCEPTING THE DELEGATION OF A TRUST FUNCTION FROM THE TRUSTEE
39 OF A TRUST THAT IS SUBJECT TO THE LAWS OF THIS STATE, AN AGENT SUBMITS TO THE
40 JURISDICTION OF THE COURTS OF THIS STATE.

41 14-7610. Prudent investor rule; language to invoke standard

42 A. THE FOLLOWING TERMS OR COMPARABLE LANGUAGE IN THE PROVISIONS OF A
43 TRUST, UNLESS OTHERWISE LIMITED OR MODIFIED, AUTHORIZES ANY INVESTMENT OR
44 STRATEGY PERMITTED UNDER THIS ARTICLE:

- 1 1. INVESTMENTS PERMISSIBLE BY LAW FOR INVESTMENT OF TRUST FUNDS.
- 2 2. LEGAL INVESTMENTS.
- 3 3. AUTHORIZED INVESTMENTS.
- 4 4. USING THE JUDGMENT AND CARE UNDER THE CIRCUMSTANCES THEN PREVAILING
- 5 THAT PERSONS OF PRUDENCE, DISCRETION AND INTELLIGENCE EXERCISE IN THE
- 6 MANAGEMENT OF THEIR OWN AFFAIRS, NOT IN REGARD TO SPECULATION BUT IN REGARD
- 7 TO THE PERMANENT DISPOSITION OF THEIR FUNDS, CONSIDERING THE PROBABLE INCOME
- 8 AS WELL AS THE PROBABLE SAFETY OF THEIR CAPITAL.
- 9 5. PRUDENT MAN RULE.
- 10 6. PRUDENT TRUSTEE RULE.
- 11 7. PRUDENT PERSON RULE.
- 12 8. PRUDENT INVESTOR RULE.
- 13 14-7611. Application to existing trusts
- 14 A. THIS ARTICLE APPLIES TO TRUSTS EXISTING ON AND CREATED AFTER THE
- 15 EFFECTIVE DATE OF THIS ARTICLE.
- 16 B. AS APPLIED TO TRUSTS EXISTING ON THE EFFECTIVE DATE OF THIS
- 17 ARTICLE, THIS ARTICLE GOVERNS ONLY DECISIONS OR ACTIONS OCCURRING AFTER THAT
- 18 DATE.
- 19 Sec. 3. Short title
- 20 Title 14, chapter 7, article 6, Arizona Revised Statutes, as added by
- 21 this act, may be cited as the "Revised Arizona Prudent Investor Act".

APPROVED BY THE GOVERNOR APRIL 9, 1996

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 9, 1996