

A SUMMARY OF HOUSE BILL 5645 AS INTRODUCED 3-10-98

House Bill 5645 would create a new act to be known as the Michigan Uniform Prudent Investor Act. The bill would repeal the Trust Fund Investments Act, Public Act 177 of 1937.

(According to the Michigan Law Revision Commission, beginning in 1991 the National Conference of Commissioners on Uniform State Laws (sometimes referred to as the Uniform Law Commission) began a three-year drafting project to codify Restatement of Trusts principles as a uniform law. That law came to be known as the Uniform Prudent Investor Act. The commission promulgated the final text of the act in 1994, and the American Bar Association gave its approval in 1995. As of July 1997, 19 states had adopted the act.

Generally, the uniform act is a rejection of the "prudent man rule," under which each individual investment is considered separately in determining whether a trustee had acted prudently. Under the uniform act, investments will no longer be considered "prudent" just because each individual investment is safe. Rather, a trustee must formulate an overall investment strategy that takes into account general economic conditions, tax consequences, inflation, the needs of the beneficiaries, and the duration of the trust.)

In keeping with the uniform act, House Bill 5645 would reverse common law rules that restrict the investment powers of trustees and like fiduciaries. The bill would require a trustee to invest as a prudent investor would, using reasonable care, skill and caution in light of the objectives and risk tolerance of the individual trust. It would allow fiduciaries to utilize modern portfolio theory to guide investment decisions. Diversification of assets would be an obligation. A fiduciary's performance would be evaluated based on the performance of the whole portfolio, and not upon the performance of each investment singly. The bill would allow the fiduciary to delegate investment decisions to qualified and supervised agents. It also would require sophisticated risk-return analysis to guide investment decisions.

A brief description of each section of House Bill 5645 follows.

- Section 1 would impose the obligation of prudence in the conduct of investment.
- Section 2 would set an objective standard for the prudent investor, establish the portfolio standard, establish the context of risk and return, list some of the factors affecting investment that a trustee would have to consider, and specify certain other behavior (the duty to monitor and the duty to investigate).

- Section 3 would integrate the requirement for diversification of investments with the concept of prudent investing.
- Section 4 would require that decisions to receive or dispose of assets be made within a reasonable time.
- Section 5 would establish the duty of loyalty, requiring the trustee to act exclusively for the beneficiaries, as opposed to acting for the trustee's own interest or that of third parties.
- Section 6 would require that if a trust has two or more beneficiaries, the trustee must act impartially and respect the interests of all the beneficiaries.
- Section 7 would specify that wasting beneficiaries' money is imprudent.
- Section 8 would establish that compliance with the prudent investor rule is determined in light of the facts at the time of a decision, and not by hindsight.
- Section 9 would reverse the rule that prohibits trustees from delegating investment and management functions.
- Section 10 would specify the formulaic language commonly used in trust instruments.
- Section 11 would specify that the bill would apply to trusts existing on and created after its effective date, but would govern only decisions or actions occurring after that date.
- Section 12 describes the uniformity of the bill.
- Section 13 would specify that the bill would be known as the Michigan Uniform Prudent Investor Act.
- Section 14 would repeal Public Act 177 of 1937, the Trust Fund Investments Act (MCL 555.201 to 555.203).

Analyst: J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.