

HOUSE BILL NO. 321

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE RYAN

Introduced: 1/15/98

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to trusts, to the prudent investor rule, and to standards of care
2 applicable to personal representatives, conservators, and trustees; and providing for
3 an effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 13.16.350(a) is amended to read:

6 (a) A personal representative is a fiduciary who shall observe the standards of
7 care applicable to trustees under AS 13.36.200 - 13.36.275 [AS DESCRIBED BY
8 AS 13.36.075]. A personal representative is under a duty to settle and distribute the
9 estate of the decedent in accordance with the terms of any probated and effective will
10 and AS 13.06 - AS 13.36, and as expeditiously and efficiently as is consistent with the
11 best interests of the estate. A personal representative shall use the authority conferred
12 by AS 13.06 - AS 13.36, the terms of the will, if any, and any order in proceedings
13 to which the personal representative is party for the best interests of successors to the
14 estate.

1 * **Sec. 2.** AS 13.26.245 is amended to read:

2 **Sec. 13.26.245. General duty of conservator.** In the exercise of powers, a
3 conservator shall act as fiduciary and shall observe the standards of care applicable to
4 trustees under AS 13.36.200 - 13.36.275 [AS DESCRIBED BY AS 13.36.075].

5 * **Sec. 3.** AS 13.36 is amended by adding new sections to read:

6 **Article 3A. Uniform Prudent Investor Act.**

7 **Sec. 13.36.200. Prudent investor rule.** (a) Except as otherwise provided in
8 (b) of this section, a trustee who invests and manages trust assets owes a duty to the
9 beneficiaries of the trust to comply with the prudent investor rule set out in
10 AS 13.36.205 - 13.36.275.

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

15 **Sec. 13.36.205. Standard of care; portfolio strategy; risk and return**
16 **objectives.** (a) A trustee shall invest and manage trust assets as a prudent investor
17 would by considering the purposes, terms, distribution requirements, and other
18 circumstances of the trust. In satisfying this standard, the trustee shall exercise
19 reasonable care, skill, and caution.

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

24 (c) Among circumstances that a trustee shall consider in investing and
25 managing trust assets are those of the following that are relevant to the trust or its
26 beneficiaries:

- 27 (1) general economic conditions;
28 (2) the possible effect of inflation or deflation;
29 (3) the expected tax consequences of investment decisions or strategies;
30 (4) the role that each investment or course of action plays within the
31 overall trust portfolio, which may include financial assets, interests in closely held

1 enterprises, tangible and intangible personal property, and real property;

2 (5) the expected total return from income and the appreciation of
3 capital;

4 (6) other resources of the beneficiaries;

5 (7) needs for liquidity, regularity of income, and preservation or
6 appreciation of capital; and

7 (8) an asset's special relationship or special value, if any, to the
8 purposes of the trust or to one or more of the beneficiaries.

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

11 (e) A trustee may invest in any kind of property or type of investment
12 consistent with the standards of AS 13.36.200 - 13.36.275.

13 (f) A trustee who has special skills or expertise, or is named trustee in reliance
14 on the trustee's representation that the trustee has special skills or expertise, has a duty
15 to use those special skills or expertise.

16 **Sec. 13.36.210. Diversification.** A trustee shall diversify the investments of
17 the trust unless the trustee reasonably determines that, because of special
18 circumstances, the purposes of the trust are better served without diversifying.

19 **Sec. 13.36.215. Duties at inception of trusteeship.** Within a reasonable time
20 after accepting a trusteeship or receiving trust assets, a trustee shall review the trust
21 assets and make and implement decisions concerning the retention and disposition of
22 assets in order to bring the trust portfolio into compliance with the purposes, terms,
23 distribution requirements, and other circumstances of the trust and with the
24 requirements of AS 13.36.200 - 13.36.275.

25 **Sec. 13.36.220. Loyalty.** A trustee shall invest and manage the trust assets
26 solely in the interest of the beneficiaries.

27 **Sec. 13.36.225. Impartiality.** If a trust has two or more beneficiaries, the
28 trustee shall act impartially in investing and managing the trust assets, taking into
29 account any differing interests of the beneficiaries.

30 **Sec. 13.36.230. Investment costs.** In investing and managing trust assets, a
31 trustee may only incur costs that are appropriate and reasonable in relation to the

1 assets, the purposes of the trust, and the skills of the trustee.

2 **Sec. 13.36.235. Reviewing compliance.** Compliance with the prudent investor
3 rule is determined in light of the facts and circumstances existing at the time of a
4 trustee's decision or action and not by hindsight.

5 **Sec. 13.36.240. Delegation of investment and management functions.** (a)
6 A trustee may delegate investment and management functions that a prudent trustee
7 of comparable skills could properly delegate under the circumstances. The trustee
8 shall exercise reasonable care, skill, and caution in

9 (1) selecting an agent;

10 (2) establishing the scope and terms of the delegation, consistent with
11 the purposes and terms of the trust; and

12 (3) periodically reviewing the agent's actions in order to monitor the
13 agent's performance and compliance with the terms of the delegation.

14 (b) In performing a delegated function, an agent owes a duty to the trust to
15 exercise reasonable care to comply with the terms of the delegation.

16 (c) A trustee who complies with the requirements of (a) of this section is not
17 liable to the beneficiaries or to the trust for the decisions or actions of the agent to
18 whom the function was delegated.

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

22 **Sec. 13.36.260. Language invoking standard of AS 13.36.200 - 13.36.275.**
23 The following terms or comparable language in the provisions of a trust, unless
24 otherwise limited or modified, authorizes an investment or strategy permitted under
25 AS 13.36.200 - 13.36.275: "investments permissible by law for investment of trust
26 funds," "legal investments," "authorized investments," "using the judgment and care
27 under the circumstances then prevailing that persons of prudence, discretion, and
28 intelligence exercise in the management of their own affairs, not in regard to
29 speculation but in regard to the permanent disposition of their funds, considering the
30 probable income as well as the probable safety of their capital," "prudent man rule,"
31 "prudent trustee rule," "prudent person rule," and "prudent investor rule."

1 **Sec. 13.36.265. Application.** (a) AS 13.36.200 - 13.36.275 apply to trusts
2 existing on and created after the effective date of those sections. As applied to trusts
3 existing on the effective date of those sections, AS 13.36.200 - 13.36.275 govern only
4 decisions or actions occurring after that date.

5 (b) AS 13.36.200 - 13.36.275 govern only decisions or actions of personal
6 representatives under AS 13.16.350(a) or of conservators under AS 13.26.245 that
7 occur on or after the effective date of AS 13.36.200 - 13.36.275.

8 **Sec. 13.36.270. Uniformity of application and construction.** AS 13.36.200 -
9 13.36.275 shall be applied and construed to carry out their general purpose to make
10 uniform the law with respect to the subject of those sections among the states that
11 enact them.

12 **Sec. 13.36.275. Short title.** AS 13.36.200 - 13.36.275 may be cited as the
13 Alaska Uniform Prudent Investor Act.

14 * **Sec. 4.** AS 13.36.075 is repealed.

15 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).