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HOUSE BILL NO. 1191

Offered January 24, 2000

A BILL to amend and reenact § 26-45.4 of the Code of Virginia, relating to standard of care; portfolio strategy; risk and return objectives.

Patron—Purkey

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 26-45.4 of the Code of Virginia is amended and reenacted as follows:**

§ 26-45.4. Standard of care; portfolio strategy; risk and return objectives.

A. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. *The trustee shall have a fiduciary obligation to ensure that any portfolio created with the assets of the trust is a diversified portfolio that balances risk, returns and suitability; takes into account taxes and inflation; and is tailored to the beneficiary's needs.*

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

C. Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

1. General economic conditions;

2. The possible effect of inflation or deflation;

3. The expected tax consequences of investment decisions or strategies;

4. The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

5. The expected total return from income and the appreciation of capital;

6. Other resources of the beneficiaries;

7. Needs for liquidity, regularity of income, and preservation or appreciation of capital; and

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

D. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

E. A trustee may invest in any kind of property or type of investment consistent with the standards of this Act.

F. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

G. A trustee may hold any policies of life insurance acquired by gift or pursuant to an express permission or direction in the governing instrument including an authority granted by subdivision (1) (r) of § 64.1-57 with no duty or need to (i) determine whether any such policy is or remains a proper investment, (ii) dispose of such policy in order to diversify the investments of the trust, or (iii) exercise policy options under any such contract not essential to the continuation of the life insurance provided by such contract. However, apart from these specific authorities, this subsection is not intended and shall not be construed to affect the application of the standard of judgment and care as set forth in this section. This subsection shall apply to all trusts, regardless of when established.

INTRODUCED

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