

No. 2002-133

AN ACT

HB 2060

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, further providing for the prudent investor rule; codifying existing law setting forth the applicability of provisions relating to diversification; and making a repeal.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 7203(c)(6) of Title 20 of the Pennsylvania Consolidated Statutes is amended and the section is amended by adding a subsection to read:

§ 7203. Prudent investor rule.

* * *

(c) Considerations in making investment and management decisions.—In making investment and management decisions, a fiduciary shall consider, among other things, to the extent relevant to the decision or action:

* * *

(6) an asset’s special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries, *including, in the case of a charitable trust, the special relationship of the asset and its economic impact as a principal business enterprise on the community in which the beneficiary of the trust is located and the special value of the integration of the beneficiary’s activities with the community where that asset is located;*

* * *

(d) *Requirements for charitable trusts holding a controlling interest in certain publicly traded business corporations.—*

(1) Notwithstanding any other legal requirement or process which may include court review of the activities of a charitable trust, a fiduciary for a charitable trust with beneficiaries at a principal location within this Commonwealth holding a controlling interest in a publicly traded business corporation received as an asset from the settlor shall not consummate any investment or management decision executing a change in the trust’s control of that corporation, by sale, merger, consolidation or otherwise, without:

(i) serving notice upon the Attorney General at least 60 days prior to executing the change in control; and

(ii) directing that at least 30 days’ prior notice of the execution of the change in control be provided by the corporation to employees of the publicly traded business corporation held by the trust who are located in this Commonwealth.

(2) In addition to any other power or duty provided by law, the Attorney General also has the power to obtain judicial review pursuant to this subsection if the Attorney General concludes that the fiduciary should be prevented from executing such a change in control.

(3) In obtaining judicial approval under this subsection, the fiduciary must prove by clear and convincing evidence that executing the change in the trust's control of the corporation is necessary to maintain the economic viability of the corporation and prevent a significant diminution of trust assets or to avoid an impairment of the charitable purpose of the trust.

(4) In the event court approval is obtained pursuant to this subsection, the court shall ensure that the provisions of 15 Pa.C.S. Ch. 25 Subchs. I (relating to severance compensation for employees terminated following certain control-share acquisitions) and J (relating to business combination transactions - labor contracts) apply to the execution of a change in the trust's control effectuated by the fiduciary of a charitable trust with beneficiaries at a principal location within this Commonwealth holding a controlling interest in a publicly traded business corporation received as an asset from the settlor.

(5) A fiduciary of a charitable trust with beneficiaries at a principal location within this Commonwealth holding a controlling interest in a publicly traded business corporation received as an asset from the settlor shall not be subject to liability for the commercially reasonable sale of certain shares of the corporation not necessary to maintain control and for which no control premium is realized if the fiduciary reasonably determined that such sale was authorized in a manner consistent with the requirements of this section and other applicable provisions of this title.

Section 2. Section 7204 of Title 20 is reenacted and amended to read:

§ 7204. Diversification.

(a) Requirement.—Except as provided in section 7205 (relating to retention of inception assets), a fiduciary shall reasonably diversify investments, unless the fiduciary reasonably determines that it is in the interests of the beneficiaries not to diversify, taking into account the purposes, terms and other circumstances of the trust and the requirements of this chapter.

(b) Applicability.—Subsection (a) does not apply to any of the following:

(1) A trust which became irrevocable prior to December 25, 1999. This paragraph applies even if the action of the trustee occurs after December 25, 1999.

(2) A trust created by a revocable instrument executed prior to December 25, 1999, if such instrument is not amended after December 24, 1999. This paragraph applies even if the action of the trustee occurs after December 25, 1999.

Section 3. Section 6(b)(2) of the act of June 25, 1999 (P.L.212, No.28), entitled "An act amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, providing for fiduciaries' investment and management of property held in trust; making editorial changes; and making a conforming amendment to Title 15 (Corporations and Unincorporated Associations)," is repealed.

Section 4. The addition of 20 Pa.C.S. § 7203(d) shall apply retroactively to circumstances related to an investment or management decision executing a change in control where the review or approval of a Commonwealth agency or a court is pending on the effective date of this section.

Section 5. The General Assembly finds and declares that the amendment of 20 Pa.C.S. § 7204 is intended to clarify existing law and shall not be construed to change existing law.

Section 6. This act shall take effect immediately.

APPROVED—The 6th day of November, A.D. 2002.

MARK S. SCHWEIKER