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By: **Delegate Simmons**

Introduced and read first time: February 2, 2006

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts - Fiduciaries - Directions from Advisors**

3 FOR the purpose of establishing that, unless the governing instrument provides  
4 otherwise, a certain advisor is a fiduciary when exercising a certain authority;  
5 establishing that, except in a case of willful misconduct or gross negligence by a  
6 fiduciary, if the governing instrument provides that the fiduciary is to follow the  
7 direction of an advisor, the fiduciary is not liable for a loss resulting directly or  
8 indirectly from an act the fiduciary made in accordance with the direction of the  
9 advisor; establishing that, except in a case of willful misconduct or gross  
10 negligence by a fiduciary, if the governing instrument provides that the  
11 fiduciary is prohibited from making a certain investment decision without the  
12 consent of a certain advisor, the fiduciary is not liable for a loss resulting  
13 directly or indirectly from a failure to act as a result of the failure of the advisor  
14 to provide consent after having been requested to do so by the fiduciary;  
15 defining certain terms; providing for the application of this Act; and generally  
16 relating to fiduciaries and directions from certain advisors.

17 BY adding to  
18 Article - Estates and Trusts  
19 Section 15-114.1  
20 Annotated Code of Maryland  
21 (2001 Replacement Volume and 2005 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
23 MARYLAND, That the Laws of Maryland read as follows:

24 **Article - Estates and Trusts**

25 15-114.1.

26 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
27 INDICATED.

28 (2) "ADVISOR" MEANS A PERSON WHO IS GIVEN AUTHORITY BY THE  
29 TERMS OF A GOVERNING INSTRUMENT TO DIRECT, CONSENT TO, OR DISAPPROVE

1 ACTUAL OR PROPOSED INVESTMENT, DISTRIBUTION, OR OTHER DECISIONS BY A  
2 FIDUCIARY.

3 (3) "INVESTMENT DECISION" INCLUDES A DECISION MADE WITH  
4 RESPECT TO THE RETENTION, PURCHASE, SALE, EXCHANGE, OR TENDER OF AN  
5 INVESTMENT, OR OTHER TRANSACTION AFFECTING THE OWNERSHIP OF OR RIGHTS  
6 IN AN INVESTMENT.

7 (B) UNLESS THE GOVERNING INSTRUMENT PROVIDES OTHERWISE, AN  
8 ADVISOR IS A FIDUCIARY WHEN EXERCISING THE AUTHORITY OF THE ADVISOR TO  
9 DIRECT, CONSENT TO, OR DISAPPROVE AN ACTUAL OR PROPOSED INVESTMENT,  
10 DISTRIBUTION, OR OTHER DECISION BY A FIDUCIARY.

11 (C) EXCEPT IN A CASE OF WILLFUL MISCONDUCT OR GROSS NEGLIGENCE BY  
12 A FIDUCIARY, IF A GOVERNING INSTRUMENT PROVIDES THAT THE FIDUCIARY IS TO  
13 FOLLOW THE DIRECTION OF AN ADVISOR, THE FIDUCIARY IS NOT LIABLE FOR A LOSS  
14 RESULTING DIRECTLY OR INDIRECTLY FROM AN ACT THE FIDUCIARY MADE IN  
15 ACCORDANCE WITH THE DIRECTION OF THE ADVISOR.

16 (D) EXCEPT IN A CASE OF WILLFUL MISCONDUCT OR GROSS NEGLIGENCE BY  
17 A FIDUCIARY, IF A GOVERNING INSTRUMENT PROVIDES THAT THE FIDUCIARY IS  
18 PROHIBITED FROM MAKING AN INVESTMENT DECISION WITHOUT THE CONSENT OF  
19 AN ADVISOR, THE FIDUCIARY IS NOT LIABLE FOR A LOSS RESULTING DIRECTLY OR  
20 INDIRECTLY FROM A FAILURE TO ACT AS A RESULT OF THE FAILURE OF THE  
21 ADVISOR TO PROVIDE CONSENT AFTER HAVING BEEN REQUESTED TO DO SO BY THE  
22 FIDUCIARY.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
24 construed to apply only prospectively and may not be applied or interpreted to have  
25 any effect on or application to any action by a fiduciary before the effective date of this  
26 Act.

27 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
28 October 1, 2006.