
By: **Senator Garagiola**

Introduced and read first time: February 3, 2006

Assigned to: Judicial Proceedings

Committee Report: Favorable

Senate action: Adopted with floor amendments

Read second time: March 2, 2006

CHAPTER _____

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 by the fiduciary made in accordance with the direction of
 9 the 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 establishing that certain limitations on liability established by this Act do not
 16 apply under certain circumstances; defining certain terms; providing for the
 17 application of this Act; and generally relating to fiduciaries and directions from
 18 certain advisors.

19 BY adding to

20 Article - Estates and Trusts

21 Section 15-114.1

22 Annotated Code of Maryland

23 (2001 Replacement Volume and 2005 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

25 MARYLAND, That the Laws of Maryland read as follows:

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Article - Estates and Trusts

2 15-114.1.

3 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
4 INDICATED.

5 (2) "ADVISOR" MEANS A PERSON WHO IS GIVEN AUTHORITY BY THE
6 TERMS OF A GOVERNING INSTRUMENT TO DIRECT, CONSENT TO, OR DISAPPROVE
7 ACTUAL OR PROPOSED INVESTMENT, DISTRIBUTION, OR OTHER DECISIONS BY A
8 FIDUCIARY.

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

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

16 (C) EXCEPT IN A CASE OF WILLFUL MISCONDUCT OR GROSS NEGLIGENCE BY
17 A FIDUCIARY, IF A GOVERNING INSTRUMENT PROVIDES THAT THE FIDUCIARY IS TO
18 FOLLOW THE DIRECTION OF AN ADVISOR, THE FIDUCIARY IS NOT LIABLE FOR A LOSS
19 RESULTING DIRECTLY OR INDIRECTLY FROM AN ACT OR FAILURE TO ACT BY THE
20 FIDUCIARY MADE IN ACCORDANCE WITH THE DIRECTION OF THE ADVISOR.

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

28 (E) THE LIMITATIONS ON LIABILITY ESTABLISHED UNDER SUBSECTIONS (C)
29 AND (D) OF THIS SECTION DO NOT APPLY TO A FIDUCIARY THAT EXERCISES
30 CONTROL OVER THE ADVISOR.

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

35 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
36 June 1, 2006.

