

Chapter 29 of the Acts of 2009

AN ACT PROVIDING FOR THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to forthwith provide for uniform prudent management of institutional funds, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. The General Laws are hereby amended by striking out chapter 180A and inserting in place thereof the following chapter:-

CHAPTER 180A. UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS

Section 1. As used in this chapter, the following words shall unless the context clearly requires otherwise, have the following meanings:-

“Charitable purpose”, the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose or the promotion of any other purpose the achievement of which is beneficial to the community.

“Endowment fund”, an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis; provided, however, that “endowment fund” shall not include assets that an institution designates as an endowment fund for its own use.

“Gift instrument”, a record, including an institutional solicitation, under which property is granted to, transferred to or held by an institution as an institutional fund.

“Institution”, (i) a person, other than an individual, organized and operated exclusively for charitable purposes; (ii) a government or governmental subdivision, agency or instrumentality to the extent that it holds funds exclusively for a charitable purpose; or (iii) a trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

“Institutional fund”, a fund held by an institution exclusively for charitable purposes or a fund held by trustee for a charitable community trust, but not including: (i) program-related assets; (ii) a fund held for an institution by a trustee that is not an institution, other than a fund which is held for a charitable community trust; or (iii) a fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

"Person", an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity.

"Program-related asset", an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

"Record", information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Section 2. (a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than this chapter, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In managing and investing an institutional fund, an institution:

- (1) may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution and the skills available to the institution;
- (2) except as otherwise provided by a gift instrument, shall allocate those costs on a reasonable basis to each institutional fund prior to any appropriation; and
- (3) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool 2 or more institutional funds for purposes of management and investment.

(e)(1) Except as otherwise provided by a gift instrument, the rules set forth in this subsection shall apply.

(2) In managing and investing an institutional fund, the following factors, if relevant, shall be considered:

- (i) general economic conditions;
- (ii) the possible effect of inflation or deflation;
- (iii) the expected tax consequences, if any, of investment decisions or strategies;
- (iv) the role that each investment or course of action plays within the overall investment portfolio of the fund;
- (v) the expected total return from income and the appreciation of investments;
- (vi) other resources of the institution;
- (vii) the needs of the institution and the fund to make distributions and to preserve capital; and
- (viii) an asset's special relationship or special value, if any, to the charitable purposes of the institution.

(3) Management and investment decisions about an individual asset shall not be made in isolation but shall be made in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

(4) Except as provided by any other general or special law, an institution may invest in any kind of property or type of investment consistent with this section.

(5) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund will be better served without diversification.

(6) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio in order to bring the institutional fund into compliance with the purposes, terms and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this chapter.

(7) A person who has special skills or expertise or who is selected in reliance upon the person's representation that the person possesses special skills or expertise shall have a duty to use those skills or that expertise in managing and investing institutional funds.

Section 3. (a) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund shall be donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

- (i) the duration and preservation of the endowment fund;
- (ii) the purposes of the institution and the endowment fund;
- (iii) general economic conditions;
- (iv) the possible effect of inflation or deflation;
- (v) the expected total return from income and the appreciation of investments;
- (vi) other resources of the institution; and
- (vii) the investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under subsection (a), a gift instrument shall specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income", "interest", "dividends" or "rents, issues or profits", or "to preserve the principal intact" or words of similar import shall:

- (i) create an endowment fund of permanent duration unless other language in the gift instrument limits the duration of the fund; and
- (ii) not, standing alone, limit the authority to appropriate for expenditure or accumulate under subsection (a).

Section 4. (a) Subject to any specific limitation set forth in a gift instrument or in other general or special law, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

- (i) selecting an agent;
- (ii) establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and
- (iii) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(b) In performing a delegated function, an agent shall owe a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(c) An institution that complies with subsection (a) shall not be liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the laws of the commonwealth, an agent submits to the jurisdiction of the courts of the commonwealth in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) An institution may delegate management and investment functions to its committees, officers or employees as authorized by any other general or special law.

Section 5. (a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, duration or purpose of an institutional fund. A release or modification shall not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management, investment or duration of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The attorney general shall be made a party to any such application and resulting proceeding. To the extent practicable, a modification shall be made in accordance with the donor's probable intention.

(c) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The attorney general shall be made a party to any such application and resulting proceeding.

(d) The supreme judicial court may by rule or order provide that an application otherwise subject to court approval pursuant to subsections (b) and (c), may be approved by the attorney general if the value of the fund is not greater than such amount as the court may provide or in such other situations as the court may so provide.

Section 6. Compliance with this chapter shall be determined in light of the facts and

circumstances existing at the time a decision is made or an action is taken and not by hindsight.

Section 7. This chapter shall apply to institutional funds existing on or established after June 30, 2009. As applied to institutional funds existing on June 30, 2009, this chapter shall govern only decisions made or actions taken on or after that date.

Section 8. This chapter modifies, limits and supersedes the electronic signatures in the Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit or supersede Section 101(c) of said act, 15 U.S.C. Section 7001(c) or authorize electronic delivery of any of the notices described in Section 103 of said act, 15 U.S.C. Section 7003(b).

Section 9. In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the Uniform Prudent Management of Institutional Funds Act. To the extent that any provision of the law, rule or regulation is in conflict with this chapter, specifically to the extent that any such conflict would operate to defeat or otherwise interfere with the purposes of this chapter, this chapter shall supersede and take precedence over any such law, rule or regulation. This act shall be construed to the maximum extent possible so as to not constitute an impairment of contract.

Approved July 2 2009

SENATE BILL SUMMARY

BILL NUMBER: S. 1783

TITLE: An Act Providing for the Uniform Prudent Management of Institutional Funds.

SPONSOR: Senator O'Leary

COMMITTEE: Judiciary

HEARING DATE: June 2, 2009

PRIOR HISTORY:

CURRENT LAW:

M.G.L. Chapter 180A (UMIFA) addresses management of institutional funds

SUMMARY OF THE PROPOSED LAW:

Provides Investment Guidance

UPMIFA modifies the prudence standard of the Uniform Management of Institutional Funds Act to require that investments be made in good faith and with the care of an ordinary prudent person. It would provide guiding criteria for nonprofits who manage endowment and institutional funds to ensure that investment decisions can account not only for donor restrictions on use of the funds, but also the preservation of the fund, as well as the overall investment strategy and charitable purpose of the organization.

Increases Flexibility by Allowing Limited Expenditure of the Original Gift

UPMIFA would also eliminate UMIFA's concept of "historic dollar value" which sets a floor on the expenditure of endowment funds based on their value at the time they were established. The value of endowments may fluctuate over time as inflation could erode the fund's overall purchasing power or an economic downturn could bring the fund below historic dollar value. This is capped at 7% of the total value.

Preserves Donor Restrictions

While donor restrictions would still govern the fund, this would allow organizations more flexibility to adjust their spending for fluctuations in the value of the fund due to economic circumstances. UPMIFA would also make changes to the law governing donor restrictions placed on endowments. Currently, if a donor restriction becomes impracticable or wasteful, a charity may either modify the restriction with the donor's consent or it may remove the restriction through court proceedings if obtaining donor consent is not possible.

UMIFA allows the court to apply the legal standards of *cy pres* -- allowing a release if the restriction is unlawful, impracticable, or wasteful -- to ensure that a release of restrictions furthers the purposes of the fund. UPMIFA would require application of this principle by law to ensure that any release of restrictions is pursuant to the charitable purposes of the gift.

The bill also allows modification of funds of less than \$100,000 and more than twenty years old without a court order if the chief regulator agrees. This saves on court costs for small funds.

The uniform language, drafted by the Uniform Law Commission, has been adopted by 34 other states.

Senate, No. 2078

[Senate, June 8, 2009 – New draft from the committee on The Judiciary on Senate, No. 1783]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT PROVIDING FOR THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The general laws, as appearing in the 2006 official edition, are hereby
2 amended by striking out chapter 180A and replacing it with the following section: -

3 Chapter 180A: Uniform Prudent Management of Institutional Funds

4 Section 1. Definitions.

5 The following words as used in this chapter shall have the following meanings unless a
6 different meaning is clearly apparent from the language or context: -

7 (1) "Charitable purpose" means the relief of poverty, the advancement of education or
8 religion, the promotion of health, the promotion of a governmental purpose, or any other purpose
9 the achievement of which is beneficial to the community.

10 (2) "Endowment fund" means an institutional fund or part thereof that, under the terms of
11 a gift instrument, is not wholly expendable by the institution on a current basis. The term does
12 not include assets that an institution designates as an endowment fund for its own use.

13 (3) "Gift instrument" means a record or records, including an institutional solicitation,
14 under which property is granted to, transferred to, or held by an institution as an institutional
15 fund.

16 (4) "Institution" means:

17 (A) a person, other than an individual, organized and operated exclusively for
18 charitable purposes;

19 (B) a government or governmental subdivision, agency, or instrumentality, to the
20 extent that it holds funds exclusively for a charitable purpose; or

21 (C) a trust that had both charitable and noncharitable interests, after all
22 noncharitable interests have terminated.

23 (5) "Institutional fund" means a fund held by an institution exclusively for charitable
24 purposes or a fund held by trustee for a charitable community trust.

25 The term does not include:

26 (A) program-related assets;

27 (B) a fund held for an institution by a trustee that is not an institution, other than a
28 fund which is held for a charitable community trust; or

29 (C) a fund in which a beneficiary that is not an institution has an interest, other
30 than an interest that could arise upon violation or failure of the purposes of the fund.

31 (6) "Person" means an individual, corporation, business trust, estate, trust, partnership,
32 limited liability company, association, joint venture, public corporation, government or
33 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

34 (7) "Program-related asset" means an asset held by an institution primarily to accomplish
35 a charitable purpose of the institution and not primarily for investment.

36 (8) "Record" means information that is inscribed on a tangible medium or that is stored in
37 an electronic or other medium and is retrievable in perceivable form.

38 Section 2. Standard of conduct in managing and investing institutional fund.

39 (A) Subject to the intent of a donor expressed in a gift instrument, an institution, in
40 managing and investing an institutional fund, shall consider the charitable purposes of the
41 institution and the purposes of the institutional fund.

42 (B) In addition to complying with the duty of loyalty imposed by law other than this
43 chapter, each person responsible for managing and investing an institutional fund shall manage
44 and invest the fund in good faith and with the care an ordinarily prudent person in a like position
45 would exercise under similar circumstances.

46 (C) In managing and investing an institutional fund, an institution:

47 (1) may incur only costs that are appropriate and reasonable in relation to the
48 assets, the purposes of the institution, and the skills available to the institution;

49 (2) except as otherwise provided by a gift instrument, shall allocate those costs on
50 a reasonable basis to each institutional fund prior to any appropriation; and

51 (3) shall make a reasonable effort to verify facts relevant to the management and
52 investment of the fund.

53 (D) An institution may pool two or more institutional funds for purposes of management
54 and investment.

55 (E) Except as otherwise provided by a gift instrument, the following rules apply:

56 (1) In managing and investing an institutional fund, the following factors, if
57 relevant, must be considered:

58 (a) general economic conditions;

59 (b) the possible effect of inflation or deflation;

60 (c) the expected tax consequences, if any, of investment decisions or
61 strategies;

62 (d) the role that each investment or course of action plays within the
63 overall investment portfolio of the fund;

64 (e) the expected total return from income and the appreciation of
65 investments;

66 (f) other resources of the institution;

67 (g) the needs of the institution and the fund to make distributions and to
68 preserve capital; and

69 (h) an asset's special relationship or special value, if any, to the charitable
70 purposes of the institution.

71 (2) Management and investment decisions about an individual asset must be made
72 not in isolation but rather in the context of the institutional fund's portfolio of
73 investments as a whole and as a part of an overall investment strategy having risk and
74 return objectives reasonably suited to the fund and to the institution.

75 (3) Except as otherwise provided by law other than this chapter, an institution
76 may invest in any kind of property or type of investment consistent with this section.

77 (4) An institution shall diversify the investments of an institutional fund unless the
78 institution reasonably determines that, because of special circumstances, the purposes of
79 the fund are better served without diversification.

80 (5) Within a reasonable time after receiving property, an institution shall make
81 and carry out decisions concerning the retention or disposition of the property or to
82 rebalance a portfolio, in order to bring the institutional fund into compliance with the
83 purposes, terms, and distribution requirements of the institution as necessary to meet
84 other circumstances of the institution and the requirements of this chapter.

85 (6) A person that has special skills or expertise, or is selected in reliance upon the
86 person's representation that the person has special skills or expertise, has a duty to use
87 those skills or that expertise in managing and investing institutional funds.

88 Section 3. Appropriation for expenditure or accumulation of endowment fund.

89 (A) Subject to the intent of a donor expressed in the gift instrument, an institution may
90 appropriate for expenditure or accumulate so much of an endowment fund as the institution
91 determines is prudent for the uses, benefits, purposes, and duration for which the endowment
92 fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment
93 fund are donor-restricted assets until appropriated for expenditure by the institution. In making a
94 determination to appropriate or accumulate, the institution shall act in good faith, with the care
95 that an ordinarily prudent person in a like position would exercise under similar circumstances,
96 and shall consider, if relevant, the following factors:

- 97 (1) the duration and preservation of the endowment fund;
- 98 (2) the purposes of the institution and the endowment fund;
- 99 (3) general economic conditions;
- 100 (4) the possible effect of inflation or deflation;
- 101 (5) the expected total return from income and the appreciation of investments;
- 102 (6) other resources of the institution; and
- 103 (7) the investment policy of the institution.

104 (B) To limit the authority to appropriate for expenditure or accumulate under subsection
105 (A), a gift instrument must specifically state the limitation.

106 (C) Terms in a gift instrument designating a gift as an endowment, or a direction or
107 authorization in the gift instrument to use only "income", "interest", "dividends", or "rents,
108 issues, or profits", or "to preserve the principal intact", or words of similar import:

109 (1) create an endowment fund of permanent duration unless other language in the
110 gift instrument limits the duration of the fund; and

111 (2) do not, standing alone, limit the authority to appropriate for expenditure or
112 accumulate under subsection (A).

113 Section 4. Delegation of management and investment functions.

114 (A) Subject to any specific limitation set forth in a gift instrument or in law other than
115 this chapter, an institution may delegate to an external agent the management and investment of
116 an institutional fund to the extent that an institution could prudently delegate under the
117 circumstances. An institution shall act in good faith, with the care that an ordinarily prudent
118 person in a like position would exercise under similar circumstances, in:

119 (1) selecting an agent;

120 (2) establishing the scope and terms of the delegation, consistent with the
121 purposes of the institution and the institutional fund; and

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

124 (B) In performing a delegated function, an agent owes a duty to the institution to exercise
125 reasonable care to comply with the scope and terms of the delegation.

126 (C) An institution that complies with subsection (A) is not liable for the decisions or
127 actions of an agent to which the function was delegated.

128 (D) By accepting delegation of a management or investment function from an institution
129 that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this
130 state in all proceedings arising from or related to the delegation or the performance of the
131 delegated function.

132 (E) An institution may delegate management and investment functions to its committees,
133 officers, or employees as authorized by law of this state other than this chapter.

134 Section 5. Release or modification of restrictions on management, investment, duration,
135 or purpose.

136 (A) If the donor consents in a record, an institution may release or modify, in whole or in
137 part, a restriction contained in a gift instrument on the management, investment, duration, or
138 purpose of an institutional fund. A release or modification may not allow a fund to be used for a
139 purpose other than a charitable purpose of the institution.

140 (B) The court, upon application of an institution, may modify a restriction contained in a
141 gift instrument regarding the management, investment, or duration of an institutional fund if the
142 restriction has become impracticable or wasteful, if it impairs the management or investment of
143 the fund, or if, because of circumstances not anticipated by the donor, a modification of a
144 restriction will further the purposes of the fund. The attorney general shall be made a party to any
145 such application and resulting proceeding. To the extent practicable, any modification must be
146 made in accordance with the donor's probable intention.

147 (C) If a particular charitable purpose or a restriction contained in a gift instrument on the
148 use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful,
149 the court, upon application of an institution, may modify the purpose of the fund or the
150 restriction on the use of the fund in a manner consistent with the charitable purposes expressed in
151 the gift instrument. The attorney general shall be made a party to any such application and
152 resulting proceeding.

153 (D) The supreme judicial court may by rule or order provide that any application
154 otherwise subject to court approval pursuant to subsections (B) and (C) above, may be approved
155 by the attorney general if the value of the fund is not greater than such amount as the court may
156 provide or in such other situations as the court may so provide.

157 Section 6. Reviewing compliance.

158 Compliance with this chapter is determined in light of the facts and circumstances
159 existing at the time a decision is made or action is taken, and not by hindsight.

160 Section 7. Application to existing institutional funds.

161 This chapter applies to institutional funds existing on or established after June 30, 2009.
162 As applied to institutional funds existing on June 30, 2009, this chapter governs only decisions
163 made or actions taken on or after that date.

164 Section 8. Relation to the electronic signatures in global and national commerce act

165 This chapter modifies, limits, and supersedes the electronic signatures in global and
166 national commerce act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede

167 Section 101 of that act, 15 U.S.C. Section 7001(a), or authorize electronic delivery of any of the
168 notices described in Section 103 of that act, 15 U.S.C. Section 7003(b).

169 Section 9. Uniformity of application and construction.

170 In applying and construing this uniform act, consideration must be given to the need to
171 promote uniformity of the law with respect to its subject matter among states that enact it. To the
172 extent that any provision of the law, rule or regulation is in conflict with this chapter, specifically
173 to the extent that any such conflict would operate to defeat or otherwise interfere with the
174 purposes of this chapter, this chapter shall supersede and take precedence over any such, law,
175 rule or regulation. This act shall be construed to the maximum extent possible so as to not
176 constitute an impairment of contract.

Copy of retract
with changes noted.

Senate, No. 2078

[Senate, June 8, 2009 – New draft from the committee on The Judiciary on Senate, No. 1783]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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10 (2) "Endowment fund" means an institutional fund or part thereof that, under the terms of
11 a gift instrument, is not wholly expendable by the institution on a current basis. The term does
12 not include assets that an institution designates as an endowment fund for its own use.

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20 extent that it holds funds exclusively for a charitable purpose; or

21 (C) a trust that had both charitable and noncharitable interests, after all
22 noncharitable interests have terminated;

23 (5) "Institutional fund" means a fund held by an institution exclusively for charitable
24 purposes or a fund held by trustee for a charitable community trust.

25 The term does not include:

26 (A) program-related assets;

27 (B) a fund held for an institution by a trustee that is not an institution, other than a
28 fund which is held for a charitable community trust; or

29 (C) a fund in which a beneficiary that is not an institution has an interest, other
30 than an interest that could arise upon violation or failure of the purposes of the fund.

31 (6) "Person" means an individual, corporation, business trust, estate, trust, partnership,
32 limited liability company, association, joint venture, public corporation, government or
33 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

34 (7) "Program-related asset" means an asset held by an institution primarily to accomplish
35 a charitable purpose of the institution and not primarily for investment.

36 (8) "Record" means information that is inscribed on a tangible medium or that is stored in
37 an electronic or other medium and is retrievable in perceivable form.

38 *Section 2. Standard of conduct in managing and investing institutional fund.*

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40 managing and investing an institutional fund, shall consider the charitable purposes of the
41 institution and the purposes of the institutional fund.

42 (B) In addition to complying with the duty of loyalty imposed by law other than this
43 chapter, each person responsible for managing and investing an institutional fund shall manage
44 and invest the fund in good faith and with the care an ordinarily prudent person in a like position
45 would exercise under similar circumstances.

46 (C) In managing and investing an institutional fund, an institution:

47 (1) may incur only costs that are appropriate and reasonable in relation to the
48 assets, the purposes of the institution, and the skills available to the institution;

49 (2) except as otherwise provided by a gift instrument, shall allocate those costs on
50 a reasonable basis to each institutional fund prior to any appropriation; and

51 (3) shall make a reasonable effort to verify facts relevant to the management and
52 investment of the fund.

53 (D) An institution may pool two or more institutional funds for purposes of management
54 and investment.

55 (E) Except as otherwise provided by a gift instrument, the following rules apply:

56 (1) In managing and investing an institutional fund, the following factors, if
57 relevant, must be considered:

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59 (b) the possible effect of inflation or deflation;

60 (c) the expected tax consequences, if any, of investment decisions or
61 strategies;

62 (d) the role that each investment or course of action plays within the
63 overall investment portfolio of the fund;

64 (e) the expected total return from income and the appreciation of
65 investments;

66 (f) other resources of the institution;

67 (g) the needs of the institution and the fund to make distributions and to
68 preserve capital; and

69 (h) an asset's special relationship or special value, if any, to the charitable
70 purposes of the institution.

71 (2) Management and investment decisions about an individual asset must be made
72 not in isolation but rather in the context of the institutional fund's portfolio of
73 investments as a whole and as a part of an overall investment strategy having risk and
74 return objectives reasonably suited to the fund and to the institution.

75 (3) Except as otherwise provided by law other than this chapter, an institution
76 may invest in any kind of property or type of investment consistent with this section.

77 (4) An institution shall diversify the investments of an institutional fund unless the
78 institution reasonably determines that, because of special circumstances, the purposes of
79 the fund are better served without diversification.

80 (5) Within a reasonable time after receiving property, an institution shall make
81 and carry out decisions concerning the retention or disposition of the property or to
82 rebalance a portfolio, in order to bring the institutional fund into compliance with the
83 purposes, terms, and distribution requirements of the institution as necessary to meet
84 other circumstances of the institution and the requirements of this chapter.

85 (6) A person that has special skills or expertise, or is selected in reliance upon the
86 person's representation that the person has special skills or expertise, has a duty to use
87 those skills or that expertise in managing and investing institutional funds.

88 Section 3. Appropriation for expenditure or accumulation of endowment fund.

"and to subsection (D)" removed

89 (A) Subject to the intent of a donor expressed in the gift instrument, an institution may
90 appropriate for expenditure or accumulate so much of an endowment fund as the institution
91 determines is prudent for the uses, benefits, purposes, and duration for which the endowment
92 fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment
93 fund are donor-restricted assets until appropriated for expenditure by the institution. In making a
94 determination to appropriate or accumulate, the institution shall act in good faith, with the care
95 that an ordinarily prudent person in a like position would exercise under similar circumstances,
96 and shall consider, if relevant, the following factors:

- 97 (1) the duration and preservation of the endowment fund;
- 98 (2) the purposes of the institution and the endowment fund;
- 99 (3) general economic conditions;
- 100 (4) the possible effect of inflation or deflation;
- 101 (5) the expected total return from income and the appreciation of investments;
- 102 (6) other resources of the institution; and
- 103 (7) the investment policy of the institution.

104 (B) To limit the authority to appropriate for expenditure or accumulate under subsection

105 (A), a gift instrument must specifically state the limitation.

↳ changed from (a)

106 (C) Terms in a gift instrument designating a gift as an endowment, or a direction or
107 authorization in the gift instrument to use only "income", "interest", "dividends", or "rents,
108 issues, or profits", or "to preserve the principal intact", or words of similar import:

109 (1) create an endowment fund of permanent duration unless other language in the
110 gift instrument limits the duration of the fund; and

111 (2) do not ^{replaced "otherwise"} [standing alone] limit the authority to appropriate for expenditure or
112 accumulate under subsection (A).

113 ^{→ removed subsection (D)} ^{↳ replaced (a)} Section 4. Delegation of management and investment functions.

114 (A) Subject to any specific limitation set forth in a gift instrument or in law other than
115 this chapter, an institution may delegate to an external agent the management and investment of
116 an institutional fund to the extent that an institution could prudently delegate under the
117 circumstances. An institution shall act in good faith, with the care that an ordinarily prudent
118 person in a like position would exercise under similar circumstances, in:

119 (1) selecting an agent;

120 (2) establishing the scope and terms of the delegation, consistent with the
121 purposes of the institution and the institutional fund; and

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

124 (B) In performing a delegated function, an agent owes a duty to the institution to exercise
125 reasonable care to comply with the scope and terms of the delegation.

126 (C) An institution that complies with subsection (A) is not liable for the decisions or
127 actions of an agent to which the function was delegated.

128 (D) By accepting delegation of a management or investment function from an institution
129 that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this
130 state in all proceedings arising from or related to the delegation or the performance of the
131 delegated function.

132 (E) An institution may delegate management and investment functions to its committees,
133 officers, or employees as authorized by law of this state other than this chapter.

134 Section 5. Release or modification of restrictions on management, investment, duration,
135 or purpose.

136 (A) If the donor consents in a record, an institution may release or modify, in whole or in
137 part, a restriction contained in a gift instrument on the management, investment, ^{added} [duration], or
138 purpose of an institutional fund. A release or modification may not allow a fund to be used for a
139 purpose other than a charitable purpose of the institution.

140 (B) The court, upon application of an institution, may modify a restriction contained in a
141 gift instrument regarding the management, investment, or ^{added} [duration] of an institutional fund if the
142 restriction has become impracticable or wasteful, if it impairs the management or investment of
143 the fund, or if, because of circumstances not anticipated by the donor, a modification of a
144 restriction will further the purposes of the fund. ^{reworded} [The attorney general shall be made a party to any
145 such application and resulting proceeding.] To the extent practicable, any modification must be
146 made in accordance with the donor's probable intention.

147 (C) If a particular charitable purpose or a restriction contained in a gift instrument on the
148 use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful,
149 the court, upon application of an institution, may modify the purpose of the fund or the
150 restriction on the use of the fund in a manner consistent with the charitable purposes expressed in
151 the gift instrument. ^{reworded} [The attorney general shall be made a party to any such application and
152 resulting proceeding.]

Old subsection (D) removed & replaced with the following:

153 (D) The supreme judicial court may by rule or order provide that any application
154 otherwise subject to court approval pursuant to subsections (B) and (C) above, may be approved
155 by the attorney general if the value of the fund is not greater than such amount as the court may
156 provide or in such other situations as the court may so provide.

157 Section 6. Reviewing compliance.

158 Compliance with this chapter is determined in light of the facts and circumstances
159 existing at the time a decision is made or action is taken, and not by hindsight.

160 Section 7. Application to existing institutional funds.

161 This chapter applies to institutional funds existing on or established after ^{date changed from} June 30, 2009. ^{July 1,}
162 As applied to institutional funds existing on ^{date changed from July 1, 2010} June 30, 2009, this chapter governs only decisions
163 made or actions taken on or after that date.

164 Section 8. Relation to the electronic signatures in global and national commerce act

165 This chapter modifies, limits, and supersedes the electronic signatures in global and
166 national commerce act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede

167 Section 101 of that act, 15 U.S.C. Section 7001(a), or authorize electronic delivery of any of the
168 notices described in Section 103 of that act, 15 U.S.C. Section 7003(b).

169 Section 9. Uniformity of application and construction.

170 In applying and construing this uniform act, consideration must be given to the need to
171 promote uniformity of the law with respect to its subject matter among states that enact it. [To the
172 extent that any provision of the law, rule or regulation is in conflict with this chapter, specifically
173 to the extent that any such conflict would operate to defeat or otherwise interfere with the
174 purposes of this chapter, this chapter shall supersede and take precedence over any such, law,
175 rule or regulation. This act shall be construed to the maximum extent possible so as to not
176 constitute an impairment of contract.]

added