



**Substitute Senate Bill No. 1143**

**Public Act No. 07-91**

**AN ACT CONCERNING MORTGAGE, SMALL LOAN AND MONEY TRANSMITTER LICENSEES, MORTGAGE LOANS AND EMERGENCY ORDERS OF THE BANKING COMMISSIONER AND ADOPTING THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 36a-485 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

As used in this section and sections 36a-486 to 36a-498a, inclusive, as amended by this act, unless the context otherwise requires:

(1) "Advance fee" means any consideration paid or given, directly or indirectly, to a mortgage lender, first mortgage broker or originator required to be licensed or registered pursuant to sections 36a-485 to 36a-498a, inclusive, as amended by this act, prior to the closing of a first mortgage loan to any person, including, but not limited to, loan fees, points, broker's fees or commissions, transaction fees or similar prepaid finance charges;

(2) "Advertise" or "advertisement" means the use of media, mail, computer, telephone, personal contact or any other means to offer the opportunity for a first mortgage loan;

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(3) "First mortgage broker" means a person who, for a fee, commission or other valuable consideration, directly or indirectly, negotiates, solicits, arranges, places or finds a first mortgage loan that is to be made by a mortgage lender, whether or not the mortgage lender is required to be licensed under sections 36a-485 to 36a-498a, inclusive, as amended by this act;

(4) "First mortgage correspondent lender" means a person engaged in the business of making first mortgage loans in such person's own name where the loans are not held by such person for more than ninety days and are funded by another person through a warehouse agreement, table funding agreement or similar agreement;

(5) "First mortgage lender" means a person engaged in the business of making first mortgage loans: (A) In such person's own name utilizing such person's own funds, or (B) by funding loans through a table funding agreement;

(6) "First mortgage loan" means a loan or an extension of credit, including, but not limited to, an extension of credit pursuant to a contract or an assigned contract for the sale of goods or services, made to a natural person, the proceeds of which are to be used primarily for personal, family or household purposes, and which is secured by a first mortgage upon any interest in one-to-four-family residential owner-occupied real property located in this state which is not subject to any prior mortgages and includes the renewal or refinancing of an existing first mortgage loan;

(7) "Mortgage lender" means a first mortgage lender, a first mortgage correspondent lender, or both;

(8) "Originator" means an individual who is employed or retained by or otherwise acts on behalf of, a mortgage lender or first mortgage broker that is licensed or required to be licensed under sections 36a-

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485 to 36a-498a, inclusive, as amended by this act, for, or with the expectation of, a fee, commission or other valuable consideration, to take an application for or negotiate, solicit, arrange or find a first mortgage loan. "Originator" does not include (1) an officer, if the licensee is a corporation; a general partner, if the licensee is a partnership; a member, if the licensee is a limited liability company; or a sole proprietor, if the licensee is a sole proprietorship, or (2) an individual whose responsibilities are limited to clerical and administrative tasks and who does not solicit borrowers, take applications or negotiate the terms of loans;

(9) "Residential property" means improved real property used or occupied, or intended to be used or occupied, for residential purposes;

(10) "Simulated check" means a document that imitates or resembles a check but is not a negotiable instrument;

(11) "Table funding agreement" means an agreement wherein a person agrees to fund mortgage loans to be made in another person's name and to purchase such loans after they are made; and

(12) "Warehouse agreement" means an agreement to provide credit to a person to enable the person to have funds to make mortgage loans and hold such loans pending sale to other persons.

Sec. 2. Subsection (d) of section 36a-488 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(d) It shall be considered a violation of section 36a-53a if a licensee files an application for registration of an originator or for renewal of such registration with knowledge that such application contains a material misstatement by an originator.

Sec. 3. Section 36a-490 of the general statutes is repealed and the

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following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) Each license shall state the location at which the business is to be conducted and shall state fully the name of the licensee. If the licensee desires to make first mortgage loans in more than one location or to act as a first mortgage broker in more than one location, the licensee shall procure a license for each location where the business is to be conducted. Each license shall be maintained at the location for which the license was issued and shall be available for public inspection. Such license shall not be transferable or assignable. [Any change of location of a licensee shall require only prior written notice to the commissioner.] No licensee shall use any name other than the name stated on the license issued by the commissioner.

(b) A licensee may change the name or location specified on its license if (1) at least twenty-one calendar days prior to such change, the licensee notifies the commissioner, in writing, on a form satisfactory to the commissioner, and provides a bond rider or endorsement to the surety bond on file with the commissioner that reflects the new name or location, and (2) the commissioner does not disapprove such change, in writing, or request further information within such twenty-one-day period. The licensee shall promptly notify the commissioner, in writing, of any other change in the information provided in the application for license or most recent renewal of such license.

(c) Each license shall remain in force and effect until it has been surrendered, revoked, suspended or expires in accordance with the provisions of sections 36a-485 to 36a-498a, inclusive, as amended by this act.

Sec. 4. Section 36a-510 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

As used in sections 36a-510 to 36a-524, inclusive, as amended by this

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act, unless the context otherwise requires:

(1) "Advance fee" means any consideration paid or given, directly or indirectly, to a mortgage lender, secondary mortgage broker or originator required to be licensed or registered pursuant to sections 36a-510 to 36a-524, inclusive, as amended by this act, prior to the closing of a secondary mortgage loan to any person, including, but not limited to, loan fees, points, broker's fees or commissions, transaction fees, or similar prepaid finance charges;

(2) "Advertise" or "advertisement" means the use of media, mail, computer, telephone, personal contact or any other means to offer the opportunity for a secondary mortgage loan;

(3) "Licensee" means any person who is required to be licensed pursuant to section 36a-511;

(4) "Mortgage lender" means a secondary mortgage lender or a secondary mortgage correspondent lender, or both;

(5) "Originator" means an individual who is employed or retained by, or otherwise acts on behalf of, a mortgage lender or secondary mortgage broker that is licensed or required to be licensed under sections 36a-510 to 36a-524, inclusive, as amended by this act, for, or with the expectation of, a fee, commission or other valuable consideration, to take an application for or negotiate, solicit, arrange or find a secondary mortgage loan. "Originator" does not include (1) an officer, if the licensee is a corporation; a general partner, if the licensee is a partnership; a member, if the licensee is a limited liability company; or a sole proprietor, if the licensee is a sole proprietorship, or (2) an individual whose responsibilities are limited to clerical and administrative tasks and who does not solicit borrowers, take applications or negotiate the terms of loans;

(6) "Principal amount of the loan" means the gross loan amount the

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borrower is obligated to repay including any prepaid finance charge and other charges which are financed. The provisions of this subdivision apply to all loans negotiated before, on and after June 14, 1993;

(7) "Secondary mortgage broker" means a person who, for a fee, commission or other valuable consideration, directly or indirectly, negotiates, solicits, arranges, places or finds a secondary mortgage loan that is to be made by a mortgage lender, whether or not the mortgage lender is required to be licensed under sections 36a-510 to 36a-524, inclusive, as amended by this act;

(8) "Secondary mortgage correspondent lender" means a person engaged in the business of making secondary mortgage loans in such person's own name where the loans are not held by such person for more than ninety days and are funded by another person through a warehouse agreement, table funding agreement or similar agreement;

(9) "Secondary mortgage lender" means a person engaged in the business of making secondary mortgage loans: (A) In such person's own name utilizing such person's own funds, or (B) by funding loans through a table funding agreement;

(10) "Secondary mortgage loan" means (A) a loan or an extension of credit, including, but not limited to, an extension of credit pursuant to a contract or an assigned contract for the sale of goods or services, made to a person, the proceeds of which are to be used primarily for personal, family or household purposes, and which is secured in whole or in part by a mortgage upon any interest in one-to-four-family residential owner-occupied real property located in this state, provided such real property is subject to one or more prior mortgages, and (B) the renewal or refinancing of any existing loan or extension of credit described in subparagraph (A) of this subdivision;

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(11) "Simulated check" means a document that imitates or resembles a check but is not a negotiable instrument;

(12) "Table funding agreement" has the meaning given to that term in subdivision (11) of section 36a-485; and

(13) "Warehouse agreement" has the meaning given to that term in subdivision (12) of section 36a-485.

Sec. 5. Subsection (f) of section 36a-513 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(f) It shall be considered a violation of section 36a-53a if a licensee files an application for registration of an originator or for renewal of such registration with knowledge that such application contains a material misstatement by an originator.

Sec. 6. Section 36a-515 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) Each license shall state the location at which the business is to be conducted and shall state fully the name of the licensee. If the licensee desires to make secondary mortgage loans in more than one location or to act as a mortgage broker in more than one location, the licensee shall procure a license for each location where the business is to be conducted. Each license shall be maintained at the location for which the license was issued and shall be available for public inspection. Such license shall not be transferable or assignable. [Any change of location of a licensee shall require only prior written notice to the commissioner.] No licensee shall use any name other than the name stated on the license issued by the commissioner.

(b) A licensee may change the name or location specified on its license if (1) at least twenty-one calendar days prior to such change, the

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licensee notifies the commissioner, in writing, on a form satisfactory to the commissioner, and (2) the commissioner does not disapprove such change, in writing, or request further information within such twenty-one-day period. The licensee shall promptly notify the commissioner, in writing, of any other change in the information provided in the application for license or most recent renewal of such license.

(c) Each license and registration shall remain in force and effect until it has been surrendered, revoked, suspended or expires in accordance with the provisions of sections 36a-510 to 36a-524, inclusive, as amended by this act.

Sec. 7. Section 36a-570 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

The commissioner may adopt such regulations, in accordance with chapter 54, and make such findings as may be necessary for the conduct of the small loan business and its association with other businesses, the conduct of the associated businesses and the enforcement of the provisions of sections 36a-555 to 36a-573, inclusive.

Sec. 8. Section 36a-596 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

As used in sections 36a-595 to 36a-610, inclusive, as amended by this act:

(1) "Electronic payment instrument" means a card or other tangible object for the transmission of money or monetary value or payment of money which contains a microprocessor chip, magnetic stripe, or other means for the storage of information, that is prefunded and for which the value is decremented upon each use, but does not include a card or other tangible object that is redeemable by the issuer in the issuer's goods or services.

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(2) "Holder" means a person, other than a purchaser, who is either in possession of a Connecticut payment instrument and is the named payee thereon or in possession of a Connecticut payment instrument issued or endorsed to such person or bearer or in blank. "Holder" does not include any person who is in possession of a lost, stolen or forged Connecticut payment instrument.

(3) "Licensee" means any person licensed pursuant to sections 36a-595 to 36a-610, inclusive, as amended by this act.

(4) "Material litigation" means any litigation that, according to generally accepted accounting principles, is deemed significant to a person's financial health and would be required to be referenced in a person's annual audited financial statements, report to shareholders or similar documents.

(5) "Monetary value" means a medium of exchange, whether or not redeemable in money.

(6) "Money order" means any check, draft, money order or other payment instrument. "Money order" does not include a travelers check or electronic payment instrument.

(7) "Money transmission" means engaging in the business of receiving money or monetary value for current or future transmission or the business of transmitting money or monetary value within the United States or to locations outside the United States by any and all means including, but not limited to, payment instrument, wire, facsimile or electronic transfer or issuing stored value.

(8) "Net worth" means the excess of assets over liabilities as determined by generally accepted accounting principles.

(9) "Outstanding" means, in the case of a money order, travelers check, electronic payment instrument or stored value, that: (A) It is

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sold or issued in the United States; (B) a report of it has been received by a licensee from its agents or subagents; and (C) it has not yet been paid by the issuer.

(10) "Payment instrument" means a money order, travelers check or electronic payment instrument that evidences either an obligation for the transmission of money or monetary value or payment of money, or the purchase or the deposit of funds for the purchase of such money order, travelers check or electronic payment instrument. A payment instrument is a "Connecticut payment instrument" if it is sold in this state.

(11) "Permissible investment" means: (A) Cash in United States currency; (B) time deposits, as defined in section 36a-2, or other debt instruments of a bank; (C) bills of exchange or bankers acceptances which are eligible for purchase by member banks of the Federal Reserve System; (D) commercial paper of prime quality; (E) interest-bearing bills, notes, bonds, debentures or other obligations issued or guaranteed by: (i) The United States or any of its agencies or instrumentalities, or (ii) any state, or any agency, instrumentality, political subdivision, school district or legally constituted authority of any state if such investment is of prime quality; (F) interest-bearing bills or notes, or bonds, debentures or preferred stocks, traded on any national securities exchange or on a national over-the-counter market, if such debt or equity investments are of prime quality; (G) receivables due from selling agents consisting of the proceeds of the sale of payment instruments which are not past due or doubtful of collection; (H) gold; and (I) any other investments approved by the commissioner. Notwithstanding the provisions of this subdivision, if the commissioner at any time finds that an investment of a licensee is unsatisfactory for investment purposes, the investment shall not qualify as a permissible investment.

(12) "Prime quality" of an investment means that it is within the top

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four rating categories in any rating service recognized by the commissioner unless the commissioner determines for any licensee that only those investments in the top three rating categories qualify as "prime quality".

(13) "Purchaser" means a person who buys or has bought a Connecticut payment instrument.

(14) "Stored value" means monetary value that is evidenced by an electronic record. For the purposes of this subdivision, "electronic record" means information that is stored in an electronic medium and is retrievable in perceivable form.

(15) "Travelers check" means a payment instrument for the payment of money that contains a provision for a specimen signature of the purchaser to be completed at the time of a purchase of the instrument and a provision for a countersignature of the purchaser to be completed at the time of negotiation.

Sec. 9. Section 36a-602 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) As a condition for the issuance and retention of the license, applicants for a license and licensees shall file with the commissioner a surety bond, the form of which shall be approved by the Attorney General, issued by a bonding company or insurance company authorized to do business in this state. The bond shall be in favor of the commissioner, cover claims that arise during the period the license remains in full force and effect and the succeeding two years after such license has been surrendered, revoked or suspended or has expired, in accordance with the provisions of sections 36a-595 to 36a-610, inclusive, as amended by this act, and be in the principal sum of (1) three hundred thousand dollars for any applicant and any licensee that engages in the business of issuing Connecticut payment instruments

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with an average daily balance of outstanding Connecticut payment instruments during the two previous reporting quarters of three hundred thousand dollars or less or any licensee that engages in the business of money transmission with an average weekly amount of money or monetary value received or transmitted, whichever amount is greater, during the two previous reporting quarters of one hundred fifty thousand dollars or less; (2) five hundred thousand dollars for any licensee that engages in the business of issuing Connecticut payment instruments with an average daily balance of outstanding Connecticut payment instruments during the two previous reporting quarters of greater than three hundred thousand dollars but less than five hundred thousand dollars or any licensee that engages in the business of money transmission with an average weekly amount of money or monetary value received or transmitted, whichever amount is greater, during the two previous reporting quarters of greater than one hundred fifty thousand dollars but less than two hundred fifty thousand dollars; and (3) one million dollars for any licensee that engages in the business of issuing Connecticut payment instruments with an average daily balance of outstanding Connecticut payment instruments during the two previous reporting quarters equal to or greater than five hundred thousand dollars or any licensee that engages in the business of money transmission with an average weekly amount of money or monetary value received or transmitted, whichever amount is greater, during the two previous reporting quarters of two hundred fifty thousand dollars or greater. The proceeds of the bond, even if commingled with other assets of the licensee, shall be deemed by operation of law to be held in trust for the benefit of any claimants against the licensee to serve the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission or payment of money or monetary value in connection with the sale and issuance of Connecticut payment instruments or transmission of money or monetary value in the event of the bankruptcy of the licensee, and shall be immune from

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attachment by creditors or judgment creditors. The commissioner may proceed on such bond against the principal or surety thereon, or both, to collect any civil penalty imposed upon the licensee pursuant to subsection (a) of section 36a-50. In the event a license has been surrendered, revoked or suspended or has expired, in accordance with the provisions of sections 36a-595 to 36a-610, inclusive, as amended by this act, the commissioner, in the commissioner's discretion, may lower the required principal sum of the bond based on the licensee's level of business and outstanding Connecticut payment instruments.

(b) The surety company may cancel the bond at any time by a written notice to the licensee, stating the date cancellation shall take effect. Such notice shall be sent by certified mail to the licensee at least thirty days prior to the date of cancellation. A surety bond shall not be cancelled unless the surety company notifies the commissioner in writing not less than thirty days prior to the effective date of cancellation. The commissioner shall automatically suspend the license on the date the cancellation takes effect, unless the surety bond has been replaced or renewed, all of the principal sum of such surety bond has been invested as provided in subsection (c) of this section, or the surety bond has been replaced in part and the remaining part of the principal sum of such surety bond has been invested as provided in subsection (c) of this section or unless the licensee has ceased business and has voluntarily surrendered the license. The commissioner shall give the licensee notice of the automatic suspension pending proceedings for revocation or refusal to renew such license and an opportunity for a hearing on such actions in accordance with section 36a-51.

(c) In lieu of all or part of the principal sum of such surety bonds, applicants for a license and licensees may invest such sum as provided in this subsection. The book or market value, whichever is lower, of such investments shall be equal to the amount of the bond required by

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subsection (a) of this section less the amount of the bond filed with the commissioner by the applicant or licensee. Such applicants and licensees shall keep such investments with such banks, Connecticut credit unions or federal credit unions as such applicants or licensees may designate and the commissioner may approve, and subject to such conditions as the commissioner deems necessary for the protection of consumers and in the public interest. As used in this subsection, "investments" means: (1) Dollar deposits; and (2) interest-bearing bills, notes, bonds, debentures or other obligations issued or guaranteed by (A) the United States or any of its agencies or instrumentalities, or (B) any state, or any agency, instrumentality, political subdivision, school district or legally constituted authority of any state if such investment is of prime quality. The investments shall secure the same obligation as would a surety bond filed under this section. The investments shall be held at such banks or credit unions to cover claims during the period the license remains in full force and effect and the succeeding two years after such license has been surrendered, revoked or suspended or has expired in accordance with the provisions of sections 36a-595 to 36a-610, inclusive, as amended by this act. The licensee shall be permitted to collect interest on such investments and at any time to exchange, examine [,] and compare such investments. The investments made pursuant to this section, even if commingled with other assets of the licensee, shall be deemed by operation of law to be held in trust for the benefit of any claimants against the licensee to serve the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission or payment of money or monetary value in connection with the sale and issuance of Connecticut payment instruments or transmission of money or monetary value in the event of the bankruptcy of the licensee, and shall be immune from attachment by creditors or judgment creditors.

Sec. 10. Section 36a-603 of the general statutes is repealed and the

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following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) Each licensee shall at all times maintain permissible investments having a value, computed in accordance with generally accepted accounting principles, at least equal to the aggregate amount of its outstanding Connecticut payment instruments and stored value.

(b) As used in subsection (a) of this section, "value" means the lower of book or market value, except that with regard to debt obligations which the licensee as a matter of policy retains until maturity, "value" means the greater of book or market value unless the commissioner orders that for some or all investments of a particular licensee, "value" means the lower of book or market value.

(c) Permissible investments, even if commingled with other assets of the licensee, shall be deemed by operation of law to be held in trust for the benefit of any claimants against the licensee to serve the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission or payment of money or monetary value in connection with the sale and issuance of Connecticut payment instruments or transmission of money or monetary value in the event of the bankruptcy of the licensee, and shall be immune from attachment by creditors or judgment creditors.

Sec. 11. Subdivision (4) of subsection (a) of section 36a-607 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(4) A licensee shall be liable for the loss caused to any purchaser or holder of the licensee's Connecticut payment instruments by the failure of an agent or subagent of the licensee to forward to the licensee the amount due from the proceeds of a sale or delivery of the licensee's Connecticut payment instruments, or money or monetary value received for transmission.

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Sec. 12. Section 36a-758 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

Any [financial institution, as defined in subdivision (1) of section 36a-41, or any other] person who makes any first mortgage loan, [(1) for the purchase of real property to be secured by a first mortgage on real property located in this state, or (2) to refinance an existing indebtedness secured by a mortgage, which loan is to be secured by a first mortgage on real property located in this state shall, at the time of the execution] as defined in section 36a-485, as amended by this act, or any secondary mortgage loan, as defined in section 36a-510, as amended by this act, shall, at the time of consummation of such loan or at the termination of any right to rescind the loan transaction under 12 CFR 226, as from time to time amended, whichever is later, pay the loan proceeds to the mortgagor, to the mortgagor's attorney, [or] to the mortgagee's attorney or to any other person specified in any settlement statement, any written agreement between the mortgagor and the mortgagee or any written instruction of the mortgagor, by a certified, bank treasurer's or cashier's check or by means of wire transfer.

Sec. 13. Subsection (a) of section 36a-51 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The commissioner may suspend, revoke or refuse to renew any license issued by the commissioner under any provision of the general statutes by sending a notice to the licensee by registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt. The notice shall be deemed received by the licensee on the earlier of the date of actual receipt or seven days after mailing or sending. Any such notice shall include: (1) A statement of the time, place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the general statutes, regulations,

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rules or orders involved; (4) a short and plain statement of the matters asserted; and (5) a statement indicating that the licensee may file a written request for a hearing on the matters asserted within fourteen days of receipt of the notice. If the commissioner finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in the notice, the commissioner may order summary suspension of a license in accordance with subsection (c) of section 4-182 and require the licensee to take or refrain from taking such action as in the opinion of the commissioner will effectuate the purposes of this section, pending proceedings for suspension, revocation or refusal to renew.

Sec. 14. Subsection (b) of section 36a-52 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) If the commissioner finds that the public welfare requires immediate action, the commissioner may incorporate a finding to that effect in the notice sent in accordance with subsection (a) of this section and issue a temporary order requiring the person to cease and desist from the activity which constitutes such alleged violation and to take or refrain from taking such action as in the opinion of the commissioner will effectuate the purposes of this section. Such temporary order shall become effective on receipt and, unless set aside or modified by a court, shall remain in effect until the effective date of a permanent order or dismissal of the matters asserted in the notice.

Sec. 15. Subdivision (1) of subsection (b) of section 36a-53 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) (1) Whenever the commissioner finds as the result of an investigation that any related person of any Connecticut bank, Connecticut holding company, Connecticut credit union or

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Connecticut credit union service organization (A) has violated or is violating any provision of the general statutes within the jurisdiction of the commissioner, or any regulation, rule or order adopted or issued thereunder, or any condition imposed in writing by the commissioner, (B) has breached or is breaching any written agreement with the commissioner, (C) has engaged or participated in or is engaging or participating in any unsafe or unsound practice in connection with any bank, Connecticut holding company, Connecticut credit union, federal credit union or credit union service organization, (D) has been or is charged in any information, indictment or complaint with the commission of or participation in a crime which is punishable by imprisonment for a term exceeding one year under state or federal law, and continued service or participation by such related person may pose a threat to the interests of depositors or members, or threatens to impair public confidence in any bank, Connecticut holding company, Connecticut credit union, federal credit union or Connecticut credit union service organization, (E) has used or is using such related person's position in a manner contrary to the interest of any bank, Connecticut holding company, Connecticut credit union, federal credit union or credit union service organization, or its depositors or members, or (F) has been or is negligent in the performance of such related person's duties, after having been warned in writing by the commissioner to discontinue any such continuing delinquency, the commissioner may send notice to such related person by registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt. The notice shall be deemed received by the related person on the earlier of the date of actual receipt or seven days after mailing or sending. Any such notice shall include: (i) A statement of the time, place and nature of the hearing; (ii) a statement of the legal authority and jurisdiction under which the hearing is to be held; (iii) a reference to the particular sections of the general statutes, regulations, rules or orders alleged to have been violated; (iv) a short and plain statement of the matters

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asserted; and (v) a statement indicating that such related person may file a written request for a hearing on the matters asserted within fourteen days of receipt of the notice. If a hearing is requested within the time specified in the notice, the commissioner shall hold a hearing upon the matters asserted in the notice unless such related person fails to appear at the hearing. After the hearing, if the commissioner finds that any of the grounds set forth in subparagraphs (A) to (F), inclusive, of this subdivision exist with respect to such related person, the commissioner shall order the removal of such related person from office and from any participation in the management of the Connecticut bank, Connecticut holding company, Connecticut credit union or Connecticut credit union service organization. If such related person fails to appear at the hearing, the commissioner shall order the removal of such related person from office and from any participation in the management of the Connecticut bank, Connecticut holding company, Connecticut credit union or Connecticut credit union service organization. If the commissioner finds that the protection of the Connecticut bank, Connecticut holding company or its subsidiary that is a Connecticut bank, Connecticut credit union or Connecticut credit union service organization, or the interest of its depositors, depositors of its subsidiary that is a Connecticut bank or members requires immediate action, the commissioner may suspend any such related person from office and from further participation in the management of the Connecticut bank, Connecticut holding company, Connecticut credit union or Connecticut credit union service organization and require such related person to take or refrain from taking such action as in the opinion of the commissioner will effectuate the purposes of this subsection, by incorporating a finding to that effect in such notice. The suspension or prohibition shall become effective upon receipt of such notice and, unless stayed by a court, shall remain in effect until the entry of a permanent order or the dismissal of the matters asserted.

Sec. 16. Subsection (c) of section 36a-53 of the general statutes is

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repealed and the following is substituted in lieu thereof (*Effective from passage*):

(c) Whenever it appears to the commissioner that any Connecticut bank, Connecticut holding company, Connecticut credit union, Connecticut credit union service organization or any related person of any such entity (1) is violating, has violated or is about to violate any provision of the general statutes within the jurisdiction of the commissioner, or any regulation, rule or order adopted or issued thereunder, or any condition imposed in writing by the commissioner, (2) is breaching, has breached or is about to breach any written agreement with the commissioner, (3) is engaging, has engaged or is about to engage, in an unsafe or unsound practice, or (4) is using, has used or is about to use such related person's position in a manner contrary to the interest of any bank, Connecticut holding company, Connecticut credit union, federal credit union or credit union service organization, the commissioner may send notice and take action against the Connecticut bank, Connecticut holding company, Connecticut credit union, Connecticut credit union service organization or related person in accordance with section 36a-52. If the commissioner finds that the actual or threatened violation, breach, unsafe or unsound practice or practices or use specified in such notice is likely to cause insolvency or substantial dissipation of assets or earnings of the Connecticut bank, Connecticut holding company, Connecticut credit union or Connecticut credit union service organization, or is likely to otherwise seriously prejudice the interests of its depositors or members, the commissioner may incorporate a finding to that effect in such notice and issue a temporary order requiring the Connecticut bank, Connecticut holding company, Connecticut credit union, Connecticut credit union service organization or related person to cease and desist from any such violation, breach, practice or use and to take or refrain from taking such action as in the opinion of the commissioner will effectuate the

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purposes of this subsection. The temporary order shall become effective upon receipt and, unless set aside or modified by a court, shall remain in effect until the effective date of a permanent order or the dismissal of the matters asserted.

Sec. 17. Subsection (a) of section 36a-494 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) (1) The commissioner may suspend, revoke or refuse to renew any license or take any other action, in accordance with the provisions of section 36a-51, as amended by this act, for any reason which would be sufficient grounds for the commissioner to deny an application for a license under sections 36a-485 to 36a-498a, inclusive, as amended by this act, or if the commissioner finds that the licensee or any proprietor, director, officer, member, partner, shareholder, trustee, employee or agent of such licensee has done any of the following: (A) Made any material misstatement in the application; (B) committed any fraud, misappropriated funds or misrepresented, concealed, suppressed, intentionally omitted or otherwise intentionally failed to disclose any of the material particulars of any first mortgage loan transaction, including disclosures required by subdivision (6) of subsection (a) of section 36a-493, or part III of chapter 669 or regulations adopted pursuant thereto, to anyone entitled to such information; (C) violated any of the provisions of this title or of any regulations adopted pursuant thereto, or any other law or regulation applicable to the conduct of its business; or (D) failed to perform any agreement with a licensee or a borrower.

(2) The commissioner may suspend, revoke or refuse to renew any registration of an originator or take any other action, in accordance with the provisions of section 36a-51, as amended by this act, for any reason which would be sufficient grounds for the commissioner to deny an application for a registration under sections 36a-485 to 36a-

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498a, inclusive, as amended by this act, or if the commissioner finds that the registrant has committed any fraud, misappropriated funds, misrepresented any of the material particulars of any first mortgage loan transaction or has violated any of the provisions of this title or of any regulations adopted pursuant to such title or any other law or regulation applicable to the conduct of such registrant's business.

Sec. 18. Subsection (a) of section 36a-517 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) (1) The commissioner may suspend, revoke or refuse to renew any license or take any other action, in accordance with section 36a-51, as amended by this act, for any reason which would be sufficient grounds for the commissioner to deny an application for a license under sections 36a-510 to 36a-524, inclusive, as amended by this act, or if the commissioner finds that the licensee or any proprietor, director, officer, member, partner, shareholder, trustee, employee or agent of such licensee has done any of the following: (A) Made any material misstatement in the application; (B) committed any fraud, misappropriated funds or misrepresented, concealed, suppressed, intentionally omitted or otherwise intentionally failed to disclose any of the material particulars of any secondary mortgage loan transaction, including disclosures required by part III of chapter 669 or regulations adopted pursuant thereto, to anyone entitled to such information; (C) violated any of the provisions of this title, or of any regulations adopted pursuant thereto or any other law or regulation applicable to the conduct of its business; or (D) failed to perform any agreement with a licensee or a borrower.

(2) The commissioner may suspend, revoke or refuse to renew any registration of an originator or take any other action, in accordance with the provisions of section 36a-51, as amended by this act, for any reason which would be sufficient grounds for the commissioner to

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deny an application for a registration under sections 36a-510 to 36a-524, inclusive, as amended by this act, or if the commissioner finds that the registrant has committed any fraud, misappropriated funds, misrepresented any of the material particulars of any secondary mortgage loan transaction or has violated any of the provisions of this title or of any regulations adopted pursuant to such title or any other law or regulation applicable to the conduct of such registrant's business.

Sec. 19. Subsection (a) of section 36a-543 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The commissioner may suspend, revoke or refuse to renew any sales finance company license or take any other action, in accordance with section 36a-51, as amended by this act, if the commissioner finds that: (1) The licensee, knowingly or without the exercise of due care to prevent such violation, has violated any provision of sections 36a-535 to 36a-546, inclusive, as amended by this act, or of any other law regulating installment sales financing, or has failed to comply with any demand or requirement, made by the commissioner under and within the authority of sections 36a-535 to 36a-546, inclusive, as amended by this act; or (2) there has been any material misstatement or failure to give a true reply to a question in the application for the license; or (3) the licensee has defrauded any retail buyer to the buyer's damage; or wilfully failed to perform any written agreement with any retail buyer; or (4) any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the commissioner's denial of such license originally; or (5) in the case of a licensee other than a natural person, (A) any officer, director, trustee, member or partner of such licensee has been guilty of any act or omission which would be cause for revoking or suspending a license of such party as an individual; or (B) any other agent or employee of

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such licensee has been guilty of such act or omission and the licensee has approved or had knowledge thereof and, after such approval or knowledge, has retained the benefit, proceeds, profit or advantage of such act or omission or otherwise ratified it.

Sec. 20. Section 36a-572 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

The commissioner may [, in accordance with section 36a-51,] suspend, revoke or refuse to renew any license issued under the provisions of section 36a-556 or take any other action, in accordance with section 36a-51, as amended by this act, if the commissioner finds that the licensee has violated any provision of sections 36a-555 to 36a-573, inclusive, as amended by this act, or any regulation or order lawfully made pursuant to and within the authority of said sections, or if the commissioner finds that any fact or condition exists which, if it had existed at the time of the original application for the license, clearly would have warranted a denial of such license.

Sec. 21. Subsection (a) of section 36a-587 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The commissioner may suspend, revoke or refuse to renew any license issued pursuant to section 36a-581 or take any other action, in accordance with the provisions of section 36a-51, as amended by this act, for any reason which would be sufficient grounds for the commissioner to deny an application for a license under sections 36a-580 to 36a-589, inclusive, or if the commissioner finds that the licensee or any owner, director, officer, member, partner, shareholder, trustee, employee or agent of such licensee has done any of the following: (1) Made any material misstatement in the application; (2) committed any fraud, engaged in dishonest activities or made any misrepresentation; (3) violated any provision of sections 36a-580 to 36a-589, inclusive, or

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any regulation promulgated under said sections; or (4) demonstrated incompetency or untrustworthiness to act as a licensed check cashing service.

Sec. 22. Subsection (b) of section 36a-608 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) The commissioner may suspend or revoke a license or take any other action, in accordance with section 36a-51, as amended by this act, on any ground on which the commissioner might refuse to issue an original license, for any violation of sections 36a-595 to 36a-610, inclusive, or of any regulation adopted under said sections, for noncompliance with an order which the commissioner may issue under said sections to a licensee, or for failure of the licensee to pay a judgment ordered by any court within or outside this state within thirty days after the judgment becomes final or within thirty days after expiration or termination of a stay of execution of the judgment.

Sec. 23. Subsection (a) of section 36a-657 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The commissioner may suspend, revoke or refuse to renew any license or take any other action, in accordance with the provisions of section 36a-51, as amended by this act, for any reason which would be sufficient grounds for the commissioner to deny an application for a license under sections 36a-655 to 36a-665, inclusive, or if the commissioner finds that the licensee or any proprietor, director, officer, member, partner, shareholder, trustee, employee or agent of such licensee has done any of the following: (1) Made any material misstatement in the application; (2) committed any fraud or misappropriated funds; (3) violated any of the provisions of sections 36a-655 to 36a-665, inclusive, or any other law or regulation applicable

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to the conduct of its business; or (4) failed to perform any agreement with a debtor.

Sec. 24. Subsection (a) of section 36a-804 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The commissioner may suspend, revoke or refuse to renew any license or take any other action, in accordance with the provisions of section 36a-51, as amended by this act, for any reason which would be sufficient grounds for the commissioner to deny an application for a license under sections 36a-800 to 36a-810, inclusive, or if the commissioner finds that the licensee or any proprietor, director, officer, member, partner, shareholder, trustee, employee or agent of such licensee has done any of the following: (1) Made any material misstatement in the application; (2) committed any fraud or misrepresentation or misappropriated funds; or (3) violated any of the provisions of sections 36a-800 to 36a-810, inclusive, or of any regulations adopted pursuant thereto, or any other law or regulation applicable to the conduct of its business.

Sec. 25. Subsection (c) of section 36b-15 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(c) The commissioner may by order summarily postpone or suspend registration or require a registrant to take or refrain from taking such action that in the opinion of the commissioner will effectuate the purposes of sections 36b-2 to 36b-33, inclusive, as amended by this act, pending final determination of any proceeding under this section. Upon the entry of the order, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or an investment adviser agent, that it has been entered and of the reasons therefor and

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that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

Sec. 26. Subsection (a) of section 36b-27 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Whenever it appears to the commissioner after an investigation that any person has violated, is violating or is about to violate any of the provisions of sections 36b-2 to 36b-33, inclusive, as amended by this act, or any regulation, rule or order adopted or issued under said sections, or that the further sale or offer to sell securities would constitute a violation of said sections or any such regulation, rule or order, or that any person has engaged in a dishonest or unethical practice in the securities or commodities business within the meaning of sections 36b-31-15a to 36b-31-15d, inclusive, of the regulations of Connecticut state agencies, the commissioner may, in the commissioner's discretion, order (1) the person, (2) any other person that directly or indirectly controls such person and that is, was or would be a cause of the violation of such sections or any such regulation, rule or order, due to an act or omission such other person knew or should have known would contribute to such violation, or (3) any other person that has materially aided, is materially aiding or is about to materially aid in such violation, to cease and desist from the violations or the causing of or aiding in the violations of the provisions of said sections or of the regulations, rules or orders thereunder, or from the further sale or offer to sell securities constituting or which would constitute a violation of the provisions of said sections or of the regulations, rules or orders thereunder, or from further engaging in

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such dishonest or unethical practice and to take or refrain from taking such action that in the opinion of the commissioner will effectuate the purposes of sections 36b-2 to 36b-33, inclusive, as amended by this act. After such an order is issued, the person named in the order may, within fourteen days after receipt of the order, file a written request for a hearing. Any such hearing shall be held in accordance with the provisions of chapter 54.

Sec. 27. Subsection (e) of section 51-81c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2007*):

(e) The advisory panel shall: (1) Consult with and make recommendations to the tax-exempt organization administering the program regarding the implementation and administration of the program, including the methods of allocation and the allocation of funds to be disbursed under the program; (2) review and evaluate, and monitor the impact of the program; and (3) report on the program to the joint standing [committee] committees of the General Assembly having cognizance of matters relating to the judiciary and to banks and to the Chief Court Administrator, as may from time to time be requested by such committees or administrator.

Sec. 28. (NEW) (*Effective October 1, 2007*) Sections 28 to 37, inclusive, of this act may be cited as the "Uniform Prudent Management of Institutional Funds Act".

Sec. 29. (NEW) (*Effective October 1, 2007*) As used in sections 28 to 37, inclusive, of this act, unless the context otherwise requires:

(1) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of governmental purposes and any other purpose the achievement of which is beneficial to the community;

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(2) "Endowment fund" means an institutional fund or any part thereof not wholly expendable by the institution on a current basis under the terms of a gift instrument. The term does not include assets of an institution designated by the institution as an endowment fund for its own use;

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

(4) "Institution" means:

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

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

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

(5) "Institutional fund" means a fund held by an institution exclusively for charitable purposes. The term does not include:

(A) Program-related assets;

(B) A fund held for an institution by a trustee that is not an institution; or

(C) 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;

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture,

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public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity;

(7) "Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for appreciation or the production of income; and

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

Sec. 30. (NEW) (*Effective October 1, 2007*) (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 sections 28 to 37, inclusive, of this act, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care 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; and

(2) Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

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

(e) Except as otherwise provided by a gift instrument, the following

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shall apply to an institution:

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

(A) General economic conditions;

(B) The possible effect of inflation or deflation;

(C) The expected tax consequences, if any, of investment decisions or strategies;

(D) The role that each investment or course of action plays within the overall investment portfolio of the fund;

(E) The expected total return from income and the appreciation of investments;

(F) Other resources of the institution;

(G) The needs of the institution and the fund to make distributions and to preserve capital; and

(H) An asset's special relationship or special value, if any, to the charitable purposes of the institution.

(2) Management and investment decisions about an individual asset shall be made not in isolation but rather 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.

(3) Except as otherwise provided by law other than sections 28 to 37, inclusive, of this act, an institution may invest in any kind of property or type of investment consistent with the standards of this section.

(4) An institution shall diversify the investments of an institutional

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fund unless the institution reasonably determines that because of special circumstances the purposes of the fund are better served without diversification.

(5) Within a reasonable time after receiving property, an institution shall make and implement 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, distribution requirements and other circumstances of the institution and the requirements of sections 28 to 37, inclusive, of this act.

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

Sec. 31. (NEW) (*Effective October 1, 2007*) (a) Subject to the intent of a donor expressed in a gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines to be prudent for the uses, benefits, purposes and duration for which the endowment fund is established. Unless stated otherwise in a gift instrument, the assets in an endowment fund are 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:

- (1) The duration and preservation of the endowment fund;
- (2) The purposes of the institution and the endowment fund;
- (3) General economic conditions;
- (4) The possible effect of inflation or deflation;

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(5) The expected total return from income and the appreciation of investments;

(6) Other resources of the institution; and

(7) The investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section, 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 similar words:

(1) Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(2) Do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section.

Sec. 32. (NEW) (*Effective October 1, 2007*) (a) Subject to any specific limitation set forth in a gift instrument or in law other than sections 28 to 37, inclusive, of this act, 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:

(1) Selecting an agent;

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

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(3) 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 owes 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) of this section is not 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 this state, an agent submits to the jurisdiction of the courts of this state 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 law other than sections 28 to 37, inclusive, of this act.

Sec. 33. (NEW) (*Effective October 1, 2007*) (a) With the donor's consent 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 or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b) If a restriction contained in a gift instrument on the management or investment of an institutional fund becomes impracticable or wasteful or 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, a court, upon application of the institution, may modify the restriction. The

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institution shall notify the Attorney General, who shall be given an opportunity to be heard. To the extent practicable, any 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, a 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 institution shall notify the Attorney General, who shall be given an opportunity to be heard.

(d) Nothing in this section shall be construed as amending or altering existing standards in the general statutes for approximation, cy pres or equitable deviation actions.

Sec. 34. (NEW) (*Effective October 1, 2007*) Compliance with sections 28 to 37, inclusive, of this act is determined in light of the facts and circumstances existing at the time a decision is made or an action is taken.

Sec. 35. (NEW) (*Effective October 1, 2007*) Sections 28 to 37, inclusive, of this act apply to institutional funds existing on or established after October 1, 2007. As applied to institutional funds existing on October 1, 2007, sections 28 to 37, inclusive, of this act govern only decisions made or actions taken after such date.

Sec. 36. (NEW) (*Effective October 1, 2007*) Sections 28 to 37, inclusive, of this act modify, limit and supersede the Electronic Signatures in Global and National Commerce Act, 15 USC Section 7001 et seq., but do not modify, limit or supersede Section 101 of said act, 15 USC Section 7001(a), or authorize electronic delivery of any of the notices described in Section 103 of said act, 15 USC Section 7003(b).

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Sec. 37. (NEW) (*Effective October 1, 2007*) In applying and construing sections 28 to 36, inclusive, of this act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 38. Section 36a-758a of the general statutes is repealed. (*Effective October 1, 2007*)

Approved June 5, 2007