



General Assembly

January Session, 2007

Raised Bill No. 6954

LCO No. 1460

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Referred to Committee on Banks

Introduced by:

(BA)

AN ACT ADOPTING THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT.

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

1 Section 1. (NEW) (*Effective October 1, 2007*) Sections 1 to 10,
2 inclusive, of this act may be cited as the "Uniform Prudent
3 Management of Institutional Funds Act".

4 Sec. 2. (NEW) (*Effective October 1, 2007*) As used in sections 1 to 10,
5 inclusive, of this act, unless the context otherwise requires:

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

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

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

18 (4) "Institution" means:

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

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

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

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

28 (A) Program-related assets;

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

31 (C) A fund in which a beneficiary that is not an institution has an
32 interest other than an interest that could arise upon violation or failure
33 of the purposes of the fund;

34 (6) "Person" means an individual, corporation, business trust, estate,
35 trust, partnership, limited liability company, association, joint venture,
36 public corporation, government or governmental subdivision, agency
37 or instrumentality or any other legal or commercial entity;

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

41 (8) "Record" means information that is inscribed on a tangible

42 medium or that is stored in an electronic or other medium and is
43 retrievable in perceivable form.

44 Sec. 3. (NEW) (*Effective October 1, 2007*) (a) Subject to the intent of a
45 donor expressed in a gift instrument, an institution, in managing and
46 investing an institutional fund, shall consider the charitable purposes
47 of the institution and the purposes of the institutional fund.

48 (b) In addition to complying with the duty of loyalty imposed by
49 law other than sections 1 to 10, inclusive, of this act, each person
50 responsible for managing and investing an institutional fund shall
51 manage and invest the fund in good faith and with the care an
52 ordinarily prudent person in a like position would exercise under
53 similar circumstances.

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

55 (1) May incur only costs that are appropriate and reasonable in
56 relation to the assets, the purposes of the institution and the skills
57 available to the institution; and

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

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

62 (e) Except as otherwise provided by a gift instrument, the following
63 shall apply to an institution:

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

66 (A) General economic conditions;

67 (B) The possible effect of inflation or deflation;

68 (C) The expected tax consequences, if any, of investment decisions

69 or strategies;

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

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

74 (F) Other resources of the institution;

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

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

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

84 (3) Except as otherwise provided by law other than sections 1 to 10,
85 inclusive, of this act, an institution may invest in any kind of property
86 or type of investment consistent with the standards of this section.

87 (4) An institution shall diversify the investments of an institutional
88 fund unless the institution reasonably determines that because of
89 special circumstances the purposes of the fund are better served
90 without diversification.

91 (5) Within a reasonable time after receiving property, an institution
92 shall make and implement decisions concerning the retention or
93 disposition of the property or to rebalance a portfolio in order to bring
94 the institutional fund into compliance with the purposes, terms,
95 distribution requirements and other circumstances of the institution
96 and the requirements of sections 1 to 10, inclusive, of this act.

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

101 Sec. 4. (NEW) (*Effective October 1, 2007*) (a) Subject to the intent of a
102 donor expressed in a gift instrument, an institution may appropriate
103 for expenditure or accumulate so much of an endowment fund as the
104 institution determines to be prudent for the uses, benefits, purposes
105 and duration for which the endowment fund is established. Unless
106 stated otherwise in a gift instrument, the assets in an endowment fund
107 are donor-restricted assets until appropriated for expenditure by the
108 institution. In making a determination to appropriate or accumulate,
109 the institution shall act in good faith, with the care that an ordinarily
110 prudent person in a like position would exercise under similar
111 circumstances and shall consider, if relevant, the following factors:

- 112 (1) The duration and preservation of the endowment fund;
- 113 (2) The purposes of the institution and the endowment fund;
- 114 (3) General economic conditions;
- 115 (4) The possible effect of inflation or deflation;
- 116 (5) The expected total return from income and the appreciation of
117 investments;
- 118 (6) Other resources of the institution; and
- 119 (7) The investment policy of the institution.

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

123 (c) Terms in a gift instrument designating a gift as an endowment or
124 a direction or authorization in the gift instrument to use only "income",

125 "interest", "dividends", or "rents, issues, or profits", or "to preserve the
126 principal intact", or similar words:

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

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

132 Sec. 5. (NEW) (*Effective October 1, 2007*) (a) Subject to any specific
133 limitation set forth in a gift instrument or in law other than sections 1
134 to 10, inclusive, of this act, an institution may delegate to an external
135 agent the management and investment of an institutional fund to the
136 extent that an institution could prudently delegate under the
137 circumstances. An institution shall act in good faith, with the care that
138 an ordinarily prudent person in a like position would exercise under
139 similar circumstances, in:

140 (1) Selecting an agent;

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

143 (3) Periodically reviewing the agent's actions in order to monitor the
144 agent's performance and compliance with the scope and terms of the
145 delegation.

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

149 (c) An institution that complies with subsection (a) of this section is
150 not liable for the decisions or actions of an agent to which the function
151 was delegated.

152 (d) By accepting delegation of a management or investment

153 function from an institution that is subject to the laws of this state, an
154 agent submits to the jurisdiction of the courts of this state in all
155 proceedings arising from or related to the delegation or the
156 performance of the delegated function.

157 (e) An institution may delegate management and investment
158 functions to its committees, officers or employees as authorized by law
159 other than sections 1 to 10, inclusive, of this act.

160 Sec. 6. (NEW) (*Effective October 1, 2007*) (a) With the donor's consent
161 in a record, an institution may release or modify, in whole or in part, a
162 restriction contained in a gift instrument on the management,
163 investment or purpose of an institutional fund. A release or
164 modification may not allow a fund to be used for a purpose other than
165 a charitable purpose of the institution.

166 (b) If a restriction contained in a gift instrument on the management
167 or investment of an institutional fund becomes impracticable or
168 wasteful or impairs the management or investment of the fund or if
169 because of circumstances not anticipated by the donor a modification
170 of a restriction will further the purposes of the fund, the court, upon
171 application of the institution, may modify the restriction. The
172 institution shall notify the Attorney General, who shall be given an
173 opportunity to be heard. To the extent practicable, any modification
174 shall be made in accordance with the donor's probable intention.

175 (c) If a particular charitable purpose or a restriction contained in a
176 gift instrument on the use of an institutional fund becomes unlawful,
177 impracticable, impossible to achieve or wasteful, the court, upon
178 application of an institution, may modify the purpose of the fund or
179 the restriction on the use of the fund in a manner consistent with the
180 charitable purposes expressed in the gift instrument. The institution
181 shall notify the Attorney General, who shall be given an opportunity to
182 be heard.

183 (d) If an institution determines that a restriction contained in a gift

184 instrument on the management, investment or purpose of an
185 institutional fund is unlawful, impracticable, impossible to achieve or
186 wasteful, the institution, sixty days after notification to the Attorney
187 General, may release or modify the restriction, in whole or part, if:

188 (1) The institutional fund subject to the restriction has a total value
189 of less than twenty-five thousand dollars;

190 (2) More than twenty years have elapsed since the fund was
191 established; and

192 (3) The institution uses the property in a manner the institution
193 reasonably determines to be consistent with the charitable purposes
194 expressed in the gift instrument.

195 Sec. 7. (NEW) (*Effective October 1, 2007*) Compliance with sections 1
196 to 10, inclusive, of this act is determined in light of the facts and
197 circumstances existing at the time a decision is made or action is taken
198 and not by hindsight.

199 Sec. 8. (NEW) (*Effective October 1, 2007*) Sections 1 to 10, inclusive, of
200 this act apply to institutional funds existing on or established after
201 October 1, 2007. As applied to institutional funds existing on October
202 1, 2007, sections 1 to 10, inclusive, of this act governs only decisions
203 made or actions taken after such date.

204 Sec. 9. (NEW) (*Effective October 1, 2007*) Sections 1 to 10, inclusive, of
205 this act modify, limit and supersede the Electronic Signatures in Global
206 and National Commerce Act, 15 USC Section 7001 et seq., but do not
207 modify, limit or supersede Section 101 of that act, 15 USC Section
208 7001(a), or authorize electronic delivery of any of the notices described
209 in Section 103 of that act, 15 USC Section 7003(b).

210 Sec. 10. (NEW) (*Effective October 1, 2007*) In applying and construing
211 sections 1 to 9, inclusive, of this act, consideration shall be given to the
212 need to promote uniformity of the law with respect to its subject
213 matter among states that enact it.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	New section
Sec. 2	<i>October 1, 2007</i>	New section
Sec. 3	<i>October 1, 2007</i>	New section
Sec. 4	<i>October 1, 2007</i>	New section
Sec. 5	<i>October 1, 2007</i>	New section
Sec. 6	<i>October 1, 2007</i>	New section
Sec. 7	<i>October 1, 2007</i>	New section
Sec. 8	<i>October 1, 2007</i>	New section
Sec. 9	<i>October 1, 2007</i>	New section
Sec. 10	<i>October 1, 2007</i>	New section

Statement of Purpose:

To adopt the Uniform Prudent Management of Institutional Funds Act.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]