

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2583

STATE OF NEW JERSEY
213th LEGISLATURE

ADOPTED MARCH 9, 2009

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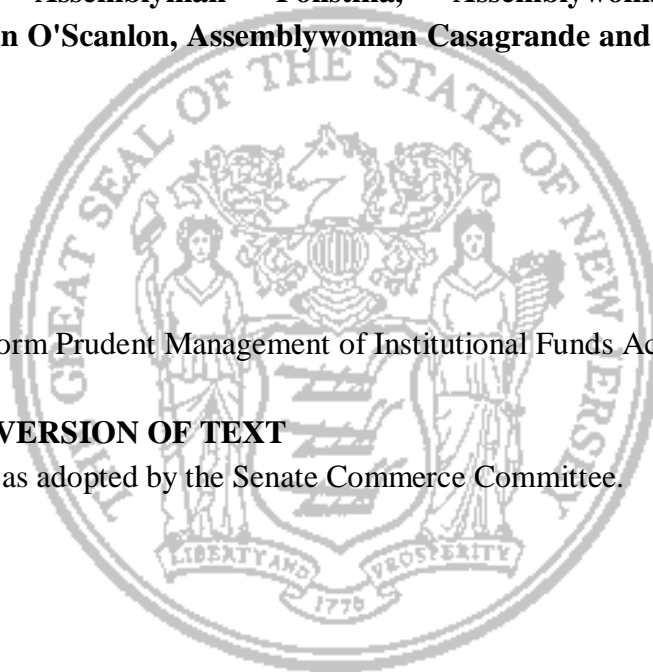
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SYNOPSIS

The "Uniform Prudent Management of Institutional Funds Act."

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Commerce Committee.



(Sponsorship Updated As Of: 5/22/2009)

1 AN ACT concerning management and use of certain funds held by
2 charitable institutions, supplementing Title 15 of the Revised
3 Statutes, and repealing P.L.1975, c.26.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. This act shall be known and may be cited as the “Uniform
9 Prudent Management of Institutional Funds Act.”

10

11 2. As used in this act:

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

16 “Endowment fund” means an institutional fund or any part
17 thereof that, under the terms of a gift instrument, is not wholly
18 expendable by the institution on a current basis. The term does not
19 include assets that an institution designates as an endowment fund
20 for its own use.

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

24 “Institution” means: a person, other than an individual, organized
25 and operated exclusively for charitable purposes; a government or
26 governmental subdivision, agency, or instrumentality, to the extent
27 that it holds funds exclusively for a charitable purpose; and a trust
28 that had both charitable and noncharitable interests, after all
29 noncharitable interests have terminated.

30 “Institutional fund” means a fund held by an institution
31 exclusively for charitable purposes. The term does not include:
32 program-related assets; a fund held for an institution by a trustee
33 that is not an institution; or a fund in which a beneficiary that is not
34 an institution has an interest, other than an interest that could arise
35 upon violation or failure of the purposes of the fund.

36 “Person” means an individual, corporation, business trust, estate,
37 trust, partnership, limited liability company, association, joint
38 venture, for-profit corporation, non-profit corporation, government
39 or governmental subdivision, agency, or instrumentality, or any
40 other legal or commercial entity.

41 “Program-related asset” means an asset held by an institution
42 primarily to accomplish a charitable purpose of the institution and
43 not primarily for investment.

44 “Record” means information that is inscribed on a tangible
45 medium or that is stored in an electronic or other medium and is
46 retrievable in perceivable form.

- 1 3. a. Subject to the intent of a donor expressed in a gift
2 instrument, an institution, in managing and investing an institutional
3 fund, shall consider the charitable purposes of the institution and
4 the purposes of the institutional fund.
- 5 b. In addition to complying with the duty of loyalty imposed by
6 law other than this act, each person responsible for managing and
7 investing an institutional fund shall manage and invest the fund in
8 good faith and with the care an ordinarily prudent person in a like
9 position would exercise under similar circumstances.
- 10 c. In managing and investing an institutional fund, an
11 institution:
- 12 (1) may incur only costs that are appropriate and reasonable in
13 relation to the assets, the purposes of the institution, and the skills
14 available to the institution; and
- 15 (2) shall make a reasonable effort to verify facts relevant to the
16 management and investment of the fund.
- 17 d. An institution may pool two or more institutional funds for
18 purposes of management and investment.
- 19 e. Except as otherwise provided by a gift instrument, the
20 following apply:
- 21 (1) In managing and investing an institutional fund, the
22 following factors, if relevant, shall be considered:
- 23 (a) general economic conditions;
- 24 (b) the possible effect of inflation or deflation;
- 25 (c) the expected tax consequences, if any, of investment
26 decisions or strategies;
- 27 (d) the role that each investment or course of action plays within
28 the overall investment portfolio of the fund;
- 29 (e) the expected total return from income and the appreciation
30 of investments;
- 31 (f) other resources of the institution;
- 32 (g) the needs of the institution and the fund to make
33 distributions and to preserve capital; and
- 34 (h) an asset's special relationship or special value, if any, to the
35 charitable purposes of the institution.
- 36 (2) Management and investment decisions about an individual
37 asset shall be made in the context of the institutional fund's
38 portfolio of investments as a whole and as a part of an overall
39 investment strategy having risk and return objectives reasonably
40 suited to the fund and to the institution, and shall not be made in
41 isolation from these considerations.
- 42 (3) Except as otherwise provided by law other than this act, an
43 institution may invest in any kind of property or type of investment
44 consistent with this section.
- 45 (4) An institution shall diversify the investments of an
46 institutional fund unless the institution reasonably determines that,

1 because of special circumstances, the purposes of the fund are better
2 served without diversification.

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

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

14
15 4. a. Subject to the intent of a donor expressed in the
16 applicable gift instrument, an institution may appropriate for
17 expenditure or accumulate so much of an endowment fund as the
18 institution determines is prudent for the uses, benefits, purposes,
19 and duration for which the endowment fund is established. Unless
20 stated otherwise in the gift instrument, the assets in an endowment
21 fund are donor-restricted assets until appropriated for expenditure
22 by the institution. In making a determination to appropriate or
23 accumulate, the institution shall act in good faith, with the care that
24 an ordinarily prudent person in a like position would exercise under
25 similar circumstances, and shall consider, if relevant, the following
26 factors:

- 27 (1) the duration and preservation of the endowment fund;
28 (2) the purposes of the institution and the endowment fund;
29 (3) general economic conditions;
30 (4) the possible effect of inflation or deflation;
31 (5) the expected total return from income and the appreciation
32 of investments;
33 (6) other resources of the institution; and
34 (7) the investment policy of the institution.

35 b. To limit the authority to appropriate for expenditure or
36 accumulate under subsection a. of this section, a gift instrument
37 shall specifically state the limitation.

38 c. Terms in a gift instrument designating a gift as an
39 endowment, or a direction or authorization in the gift instrument to
40 use only "income," "interest," "dividends," or "rents, issues, or
41 profits," or "to preserve the principal intact," or words of similar
42 import:

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

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

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

- 8 (1) selecting an agent;
9 (2) establishing the scope and terms of the delegation, consistent
10 with the purposes of the institution and the institutional fund; and
11 (3) periodically reviewing the agent's actions in order to
12 monitor the agent's performance and compliance with the scope and
13 terms of the delegation.

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

17 c. An institution that complies with subsection a. of this section
18 shall not be liable for the decisions or actions of an agent to which
19 the function was delegated.

20 d. By accepting delegation of a management or investment
21 function from an institution that is subject to the laws of this State,
22 an agent shall submit to the jurisdiction of the courts of this State in
23 all proceedings arising from or related to the delegation or the
24 performance of the delegated function.

25 e. An institution may delegate management and investment
26 functions to its committees, officers, or employees as authorized by
27 law of this State other than this act.

28
29 6. a. If the donor consents in a record, an institution may
30 release or modify, in whole or in part, a restriction contained in a
31 gift instrument on the management, investment, or purpose of an
32 institutional fund, so long as the release or modification does not
33 allow a fund to be used for a purpose other than a charitable
34 purpose of the institution.

35 b. The court, upon application of an institution, may modify a
36 restriction contained in a gift instrument regarding the management
37 or investment of an institutional fund if the restriction has become
38 impracticable or wasteful, if it impairs the management or
39 investment of the fund, or if, because of circumstances not
40 anticipated by the donor, a modification of a restriction will further
41 the purposes of the fund. The institution shall give notice to the
42 Attorney General in accordance with the Rules of Court of the
43 application, and the Attorney General shall be given an opportunity
44 to be heard. To the extent practicable, any modification shall be
45 made in accordance with the donor's probable intention.

46 c. If a particular charitable purpose or a restriction contained in
47 a gift instrument on the use of an institutional fund becomes

1 unlawful, impracticable, impossible to achieve, or wasteful, the
2 court, upon application of an institution, may modify the purpose of
3 the fund or the restriction on the use of the fund in a manner
4 consistent with the charitable purpose of the institution or charitable
5 intent of the donor. The institution shall give notice to the Attorney
6 General of the application in accordance with the Rules of Court,
7 and the Attorney General shall be given an opportunity to be heard.

8 d. If an institution determines that a restriction contained in a
9 gift instrument on the management, investment, or purpose of an
10 institutional fund is unlawful, impracticable, impossible to achieve,
11 or wasteful, the institution may, following 60 days notice to the
12 Attorney General, release or modify the restriction, in whole or in
13 part, if:

14 (1) the institutional fund subject to the restriction has a total
15 value of less than \$250,000;

16 (2) more than 20 years have elapsed since the fund was
17 established; and

18 (3) the institution uses the property in a manner consistent with
19 the charitable purpose expressed in the gift instrument.

20

21 7. Compliance with this act shall be determined in light of the
22 facts and circumstances existing at the time a decision is made or
23 action is taken, and not by hindsight.

24

25 8. This act shall apply to institutional funds existing on or
26 established after the effective date of this act. As applied to
27 institutional funds existing on the effective date of this act, this act
28 governs only decisions made or actions taken on or after that date.

29

30 9. This act modifies, limits, and supersedes the “Electronic
31 Signatures in Global and National Commerce Act,” Pub.L.106-229
32 (15 U.S.C. s.7001 et seq.), but does not modify, limit, or supersede
33 Section 101(a) of that act (15 U.S.C. s.7001(a)), or authorize
34 electronic delivery of any of the notices described in Section 103(b)
35 of that act (15 U.S.C. s.7003(b)).

36

37 10. This act shall be so applied and construed as to effectuate its
38 general purpose to make uniform the law with respect to the subject
39 of this act among the states which enact it.

40

41 11. P.L.1975, c.26 (C.15:18-15 through 24) is repealed.

42

43 12. This act shall take effect immediately.