

P.L. 2009, CHAPTER 64, *approved June 10, 2009*
Senate Committee Substitute for
Senate, No. 2583

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:

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

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

4 “Record” means information that is inscribed on a tangible
5 medium or that is stored in an electronic or other medium and is
6 retrievable in perceivable form.

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8 3. a. Subject to the intent of a donor expressed in a gift
9 instrument, an institution, in managing and investing an institutional
10 fund, shall consider the charitable purposes of the institution and
11 the purposes of the institutional fund.

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

17 c. In managing and investing an institutional fund, an
18 institution:

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

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

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

26 e. Except as otherwise provided by a gift instrument, the
27 following apply:

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

30 (a) general economic conditions;

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

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

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

36 (e) the expected total return from income and the appreciation
37 of investments;

38 (f) other resources of the institution;

39 (g) the needs of the institution and the fund to make
40 distributions and to preserve capital; and

41 (h) an asset’s special relationship or special value, if any, to the
42 charitable purposes of the institution.

43 (2) Management and investment decisions about an individual
44 asset shall be made in the context of the institutional fund’s
45 portfolio of investments as a whole and as a part of an overall
46 investment strategy having risk and return objectives reasonably

1 suited to the fund and to the institution, and shall not be made in
2 isolation from these considerations.

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

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

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

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

21

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

34 (1) the duration and preservation of the endowment fund;

35 (2) the purposes of the institution and the endowment fund;

36 (3) general economic conditions;

37 (4) the possible effect of inflation or deflation;

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

40 (6) other resources of the institution; and

41 (7) the investment policy of the institution.

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

45 c. Terms in a gift instrument designating a gift as an
46 endowment, or a direction or authorization in the gift instrument to
47 use only "income," "interest," "dividends," or "rents, issues, or

1 profits,” or “to preserve the principal intact,” or words of similar
2 import:

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

6 (2) do not otherwise limit the authority to appropriate for
7 expenditure or accumulate under subsection a. of this section.
8

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

16 (1) selecting an agent;

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

19 (3) periodically reviewing the agent’s actions in order to
20 monitor the agent’s performance and compliance with the scope and
21 terms of the delegation.

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

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

28 d. By accepting delegation of a management or investment
29 function from an institution that is subject to the laws of this State,
30 an agent shall submit to the jurisdiction of the courts of this State in
31 all proceedings arising from or related to the delegation or the
32 performance of the delegated function.

33 e. An institution may delegate management and investment
34 functions to its committees, officers, or employees as authorized by
35 law of this State other than this act.
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37 6. a. If the donor consents in a record, an institution may
38 release or modify, in whole or in part, a restriction contained in a
39 gift instrument on the management, investment, or purpose of an
40 institutional fund, so long as the release or modification does not
41 allow a fund to be used for a purpose other than a charitable
42 purpose of the institution.

43 b. The court, upon application of an institution, may modify a
44 restriction contained in a gift instrument regarding the management
45 or investment of an institutional fund if the restriction has become
46 impracticable or wasteful, if it impairs the management or
47 investment of the fund, or if, because of circumstances not

1 anticipated by the donor, a modification of a restriction will further
2 the purposes of the fund. The institution shall give notice to the
3 Attorney General in accordance with the Rules of Court of the
4 application, and the Attorney General shall be given an opportunity
5 to be heard. To the extent practicable, any modification shall be
6 made in accordance with the donor's probable intention.

7 c. If a particular charitable purpose or a restriction contained in
8 a gift instrument on the use of an institutional fund becomes
9 unlawful, impracticable, impossible to achieve, or wasteful, the
10 court, upon application of an institution, may modify the purpose of
11 the fund or the restriction on the use of the fund in a manner
12 consistent with the charitable purpose of the institution or charitable
13 intent of the donor. The institution shall give notice to the Attorney
14 General of the application in accordance with the Rules of Court,
15 and the Attorney General shall be given an opportunity to be heard.

16 d. If an institution determines that a restriction contained in a
17 gift instrument on the management, investment, or purpose of an
18 institutional fund is unlawful, impracticable, impossible to achieve,
19 or wasteful, the institution may, following 60 days notice to the
20 Attorney General, release or modify the restriction, in whole or in
21 part, if:

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

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

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

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

32

33 8. This act shall apply to institutional funds existing on or
34 established after the effective date of this act. As applied to
35 institutional funds existing on the effective date of this act, this act
36 governs only decisions made or actions taken on or after that date.

37

38 9. This act modifies, limits, and supersedes the "Electronic
39 Signatures in Global and National Commerce Act," Pub.L.106-229
40 (15 U.S.C. s.7001 et seq.), but does not modify, limit, or supersede
41 Section 101(a) of that act (15 U.S.C. s.7001(a)), or authorize
42 electronic delivery of any of the notices described in Section 103(b)
43 of that act (15 U.S.C. s.7003(b)).

44

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

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

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3 12. This act shall take effect immediately.

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6

7

8 The “Uniform Prudent Management of Institutional Funds Act.”