

AN ACT concerning institutional funds.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 1. Short title. This Act may be cited as the Uniform Prudent Management of Institutional Funds Act.

Section 2. Definitions. In this Act:

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

(2) "Endowment fund" means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates 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 governmental subdivision, agency,

or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; or

(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, 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 investment.

(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.

Section 3. Standard of conduct in managing and investing institutional fund.

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

(b) In addition to complying with the duty of loyalty imposed by law other than this 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 rules apply:

(1) In managing and investing an institutional fund,

the following factors, if relevant, must 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 must 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 this Act, an institution may invest in any kind of property or type of investment consistent with this Section.

(4) An institution shall diversify the investments of

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

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

(6) A person that 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 skills or that expertise in managing and investing institutional funds.

Section 4. Appropriation for expenditure or accumulation of endowment fund; rules of construction.

(a) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an

endowment fund 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;
- (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), a gift instrument must specifically state the limitation.

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

- (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).

Section 5. Delegation of management and investment functions.

(a) Subject to any specific limitation set forth in a gift instrument or in law other than 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

(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) 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 of this State other than this Act.

Section 6. Release or modification of restrictions on management, investment, or purpose.

(a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, 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) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the Attorney General of the

application, and the Attorney General must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

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

(d) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, 60 days after notification to the Attorney General, may release or modify the restriction, in whole or part, if:

(1) the institutional fund subject to the restriction has a total value of less than \$50,000;

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

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

Section 7. Reviewing compliance. Compliance with this Act is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

Section 8. Application to existing institutional funds. This Act applies to institutional funds existing on or established after the effective date of this Act. As applied to institutional funds existing on the effective date of this Act, this Act governs only decisions made or actions taken on or after that date.

Section 9. Relation to Electronic Signatures in Global and National Commerce Act. This Act modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. Section 7003(b).

Section 10. Uniformity of application and construction. In applying and construing this uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(760 ILCS 50/Act rep.)

Section 10.1. Repeal. The following Act is repealed:

The Uniform Management of Institutional Funds Act.

Section 10.2. The Religious Corporation Act is amended by changing Sections 41, 43, 46e, 46f, 46g, and 46j as follows:

(805 ILCS 110/41) (from Ch. 32, par. 170)

Sec. 41. Upon the incorporation of any congregation, church or society, all real and personal property held by any person or trustees for the use of the members thereof, shall immediately vest in such corporation and be subject to its control, and may be used, mortgaged, sold and conveyed the same as if it had been conveyed to such corporation by deed; but no such conveyance or mortgage shall be made so as to affect or destroy the intent or effect of any grant, legacy or donation that may be made to such person or trustee for the use of such congregation, church or society. However, this limitation on the disposition of real or personal property does not apply to the extent that a restriction imposed by a donor on the use of an institutional fund may be released by the governing board of an institution under the "Uniform Prudent Management of Institutional Funds Act", ~~approved September 15, 1973.~~

(Source: P.A. 83-388.)

(805 ILCS 110/43) (from Ch. 32, par. 172)

Sec. 43. The trustees shall have the care, custody and control of the real and personal property of the corporation, subject to the direction of the congregation, church or society, and may, when directed by the congregation, church or society, erect houses or buildings and improvements, and repair and alter the same, and may, when so directed, mortgage, incumber, sell and convey any real or personal estate of such corporation, and enter into all lawful contracts in the name of and in behalf of such corporation: but no mortgage, incumbrance, sale or conveyance shall be made of any such estate, so as to defeat or destroy the effect of any gift, grant or legacy which may be made to such corporation; but all such gifts, grants and legacies shall be appropriated and used as directed or intended by the person or persons making the same. However, this limitation on the disposition of real or personal property does not apply to the extent that a restriction imposed by a donor on the use of an institutional fund may be released by the governing board of an institution under the "Uniform Prudent Management of Institutional Funds Act", ~~approved September 15, 1973.~~

(Source: P.A. 83-388.)

(805 ILCS 110/46e) (from Ch. 32, par. 180)

Sec. 46e. The trustees of every such congregation, church, or society, under the patronage, control, direction, or

supervision of any ecclesiastical body, or diocesan, or like ecclesiastical officer, after the same has become incorporated under Sections 46a to 46h, inclusive, of this Act, and their successors, shall have perpetual succession with power to adopt a common seal, which may be altered and changed at pleasure, contract, and be contracted with, sue and be sued, plead and be impleaded, by the corporate name of such congregation, in all courts, whatever; to receive, hold, dispose of, mortgage, and convey any kind of property; to make and adopt by-laws for their government, not inconsistent with Sections 46a to 46h, inclusive, of this Act, or with the rules and regulations of the sect or denomination having the charge or patronage of the corporation; and shall alone have power to make all contracts needful in the management of the temporal affairs of such congregation, church, or society: but no conveyance, or mortgage shall be made to affect, or destroy the intent of any grant, legacy, or donation, that may be made to any person, or trustee, for the use of such congregation, church, or society, or for the use of any sect, or denomination. However, this limitation on the disposition of real or personal property does not apply to the extent that a restriction imposed by a donor on the use of an institutional fund may be released by the governing board of an institution under the "Uniform Prudent Management of Institutional Funds Act", ~~approved September 15, 1973~~. The trustees of any corporation, organized under Sections 46a to 46h, inclusive, of this Act, which is, or may be, under

the control, patronage, direction or, supervision of any ecclesiastical body, diocesan, or like officer, shall hold and control, invest or reinvest the real and personal property of such corporation, and contract with reference thereto, according to the "Uniform Management of Institutional Funds Act", or the rules, regulations, constitution, articles of association, by-laws, or canons of such ecclesiastical body, diocesan, or like ecclesiastical officer.

(Source: P.A. 83-388.)

(805 ILCS 110/46f) (from Ch. 32, par. 181)

Sec. 46f. The trustees of any corporation formed for religious purposes under Sections 46a to 46h, inclusive, of this Act, may receive land in the name of such corporation by gift, legacy or purchase, and make, erect and build thereon, such houses, buildings, or other improvements, as may be necessary for the convenience and comfort of such congregation, church, society, or corporation, and may lay out and maintain thereon a burying ground, and may maintain and build thereon schools, orphan asylums, or such other improvements or buildings as may be necessary for the educational and eleemosynary purposes of such congregation, church, society, or corporation: but such property shall not be used except in the manner expressed in the gift, grant or bequest. However, this limitation on the disposition of real property does not apply to the extent that a restriction imposed by a donor on

the use of an institutional fund may be released by the governing board of an institution under the "Uniform Prudent Management of Institutional Funds Act", ~~approved September 15, 1973.~~ If no use or trust is so expressed, no such property shall be used except for the benefit of the corporation, church, society, sect, or denomination for which it was intended, or for any religious, educational or eleemosynary purpose approved by such corporation, church, society, or ecclesiastical body, diocesan, or like ecclesiastical officer. (Source: P.A. 84-549.)

(805 ILCS 110/46g) (from Ch. 32, par. 182)

Sec. 46g. Any ecclesiastical body, or diocesan, or like ecclesiastical officer, may elect, or nominate, or appoint, according to the usages, customs, rules, regulations, articles of association, constitution, by-laws or canons of such ecclesiastical body, diocesan or like ecclesiastical officer, or any sect or denomination, 2 or more members of such sect, or denomination, residing respectively in any ecclesiastical districts, or dioceses, over which such ecclesiastical body, or diocesan, or like ecclesiastical officer shall have jurisdiction, as trustees, who may become incorporated under Sections 46a to 46k, inclusive, of this Act, and may take, hold, regulate, control and dispose of any real, personal or mixed property in and outside of this State, devoted to eleemosynary, educational, cemetery or religious purposes (not

exclusively belonging to, or used by, any particular congregation, church or society which as an organization, incorporated or unincorporated, is in the opinion of its trustees, wardens, vestrymen or other officers whose powers and duties are similar to trustees financially able to own and maintain such property) for the use of all of the members of the sect, or denomination within said districts, or dioceses, or for the use and benefit of such ecclesiastical body, diocesan, or like ecclesiastical officer, or of any parishes, congregations, societies, churches, missions, benevolent, charitable or educational institutions existing under or related to the same, according to Sections 46a to 46k, inclusive, of this Act, according to the "Uniform Prudent Management of Institutional Funds Act", ~~approved September 15, 1973,~~ or according to the usages, customs, rules, regulations, articles of association, constitution, by-laws or canons of such ecclesiastical body, diocesan, or like ecclesiastical officer. The presiding officer or authorized representative of such ecclesiastical body or diocesan, or like ecclesiastical officer, shall, by virtue of his office, be a trustee of any such corporation and the number, term of office and qualifications of said trustees, their removal and succession and their powers, duties and manner of appointment, shall be regulated in the manner provided in Sections 46a to 46k, inclusive, of this Act. An affidavit showing the appointment of such trustees made and executed by the presiding officer, or

duly authorized representative of such ecclesiastical body, or diocesan, or like ecclesiastical officer, or such other person as may be designated by said trustees for such purpose, in substantially the same manner and form as provided in Section 46b of this Act shall be filed in the office of the recorder in the county in which the principal office or place of worship of such corporation is intended to be situated and also a duplicate copy in the office of the Secretary of State, whenever any district or diocese, under the jurisdiction or patronage of such ecclesiastical body, or diocesan, or like ecclesiastical officer, comprises more than any one county of this State or extends outside of the State.

It shall be the duty of the recorder and the Secretary of State to record such affidavits and said affidavits or copies thereof, duly certified by the recorder and Secretary of State, shall be received as evidence of the due incorporation of the organization. No affidavit of appointment after the first need be filed for record.

(Source: P.A. 83-358.)

(805 ILCS 110/46j) (from Ch. 32, par. 185)

Sec. 46j. Any church, congregation, society or corporation, heretofore or hereafter formed for religious purposes or for the purpose of religious worship under any of the provisions of this Act or under any law of this State incorporating or for the incorporation of religious

corporations or societies, may receive land by gift, legacy or purchase and make, erect, and build thereon such houses, buildings, or other improvements as may be necessary for the convenience, comfort and welfare of such church, congregation, society or corporation, and may lay out and maintain thereon a cemetery or cemeteries, or a burying ground or grounds and may maintain and build thereon schools, orphan asylums, or such other improvements or buildings as may be necessary for the educational, eleemosynary, cemetery and religious purposes of such congregation, church, society or corporation; but no such property shall be used except in the manner expressed in the gift, grant or legacy. However, this limitation on the disposition of real property does not apply to the extent that a restriction imposed by a donor on the use of an institutional fund may be released by the governing board of an institution under the "Uniform Prudent Management of Institutional Funds Act", ~~approved September 15, 1973~~. Or if no use or trust is so expressed, no such property shall be used except for the benefit of the congregation, corporation, church or society, for which it was intended, or for such religious, educational or eleemosynary purpose as may be approved by such congregation, church, society or corporation or the ecclesiastical body having jurisdiction or patronage of or charge over such congregation, corporation, church or society.

Any corporation, heretofore or hereafter formed for religious purposes under any of the provisions of this Act or

under any other law of this State incorporating or for the incorporation of religious corporations or societies, which now or hereafter owns, operates, maintains or controls a cemetery or cemeteries, or a burial ground or grounds, is hereby authorized and empowered to accept by gift, grant, contribution, payment, or legacy, or pursuant to contract, any sum of money, funds, securities or property of any kind, or the income or avails thereof, and to hold the same in trust in perpetuity for the care of such cemetery or cemeteries, burial ground or grounds, or for the care of any lot, grave or crypt therein; or for the special care of any lot, grave or crypt or of any family mausoleum or memorial, marker, or monument in such cemetery or cemeteries, burial ground or grounds. No gift, grant, legacy, payment or other contribution shall be invalid by reason of any indefiniteness or uncertainty as to the beneficiary designated in the instrument creating the gift, grant, legacy, payment or other contribution. If any gift, grant, legacy, payment or other contribution consists of non-income producing property, such corporation is authorized and empowered to sell such property and to invest the funds obtained in accordance with the provisions of the "Uniform Prudent Management of Institutional Funds Act", ~~approved September 15, 1973,~~ or the provisions of the next succeeding paragraph.

The trust funds authorized by this Section shall be held intact and, unless otherwise restricted by the terms of the

gift, grant, legacy, contribution, payment, contract or other payment shall be invested, from time to time reinvested, and kept invested by such corporation in such investments as are authorized by the "Uniform Prudent Management of Institutional Funds Act", and according to such standards as are prescribed, for trustees under that Act and the "Trusts and Trustees Act", approved September 10, 1973, as amended, and the net income only from such investments shall be allocated and used for the purposes set forth in the paragraph immediately preceding; but the trust funds authorized by this Section may be commingled and may also be commingled with any other trust funds received by such corporation for the care of the cemetery or cemeteries, or burial ground or grounds, or for the care or special care of any lot, grave, crypt, private mausoleum, memorial, marker, or monument whether received by gift, grant, legacy, contribution, payment, contract or other conveyance heretofore or hereafter made to such corporation.

The trust funds authorized by this Section, and the income therefrom, shall be exempt from taxation and exempt from the operation of the laws against perpetuities and accumulations.

(Source: P.A. 83-1362.)

Section 11. Effective date. This Act takes effect upon becoming law.