

Connecticut UPMIFA

Sec. 45a-535. Short title: Uniform Prudent Management of Institutional Funds Act.

Sections 45a-535 to 45a-535i, inclusive, may be cited as the "Uniform Prudent Management of Institutional Funds Act".

Sec. 45a-535a. Definitions. As used in sections 45a-535 to 45a-535i, inclusive, 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;
- (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 or a fund held by a trustee for a charitable community trust. "Institutional fund" does not include:
 - (A) Program-related assets;
 - (B) A fund held for an institution by a trustee that is not an institution, other than a fund which is held for a charitable community trust; 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 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.

(P.A. 07-91, S. 29; P.A. 08-6, S. 3; P.A. 10-32, S. 135.)

History: P.A. 08-6 redefined "institutional fund" in Subdiv. (5) by adding references to a fund held for a charitable community trust, effective April 29, 2008; P.A. 10-32 made technical changes in Subdiv. (5), effective May 10, 2010. **Sec. 45a-535b. Standard of**

conduct in managing and investing institutional funds. (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 45a-535 to 45a-535i, inclusive, 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 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 45a-535 to 45a-535i, inclusive, 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 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 45a-535 to 45a-535i, inclusive.

(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.

(P.A. 07-91, S. 30.)

Sec. 45a-535c. Appropriation for expenditure or accumulation of endowment fund. Factors in making a determination to appropriate or accumulate. Rules of

construction. (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;
- (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.

(P.A. 07-91, S. 31.)

Sec. 45a-535d. Delegation of management and investment of institutional fund. (a) Subject to any specific limitation set forth in a gift instrument or in law other than sections 45a-535 to 45a-535i, inclusive, 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) 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 45a-535 to 45a-535i, inclusive.

(P.A. 07-91, S. 32.)

Sec. 45a-535e. Release or modification of restrictions contained in gift instrument on management, investment or purpose of institutional fund. (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 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 law for approximation, cy pres or equitable deviation actions.

(P.A. 07-91, S. 33; P.A. 09-102, S. 4.)

Sec. 45a-535f. Determination of compliance with act. Compliance with sections 45a-535 to 45a-535i, inclusive, is determined in light of the facts and circumstances existing at the time a decision is made or an action is taken.

(P.A. 07-91, S. 34.)

Sec. 45a-535g. Application to existing institutional funds. Sections 45a-535 to 45a-535i, inclusive, apply to institutional funds existing on or established after October 1, 2007. As applied to institutional funds existing on October 1, 2007, sections 45a-535 to 45a-535i, inclusive, govern only decisions made or actions taken after such date.

(P.A. 07-91, S. 35.)

Sec. 45a-535h. Relation of act to Electronic Signatures in Global and National Commerce Act. Sections 45a-535 to 45a-535i, inclusive, 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).

(P.A. 07-91, S. 36.)

Sec. 45a-535i. Uniformity of application and construction of act. In applying and construing sections 45a-535 to 45a-535h, inclusive, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(P.A. 07-91, S. 37.)