

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to forthwith provide for uniform prudent management of institutional funds, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. The General Laws are hereby amended by striking out chapter 180A and inserting in place thereof the following chapter:-

**CHAPTER 180A.
UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS**

Section 1. As used in this chapter, the following words shall unless the context clearly requires otherwise, have the following meanings:-

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

“Endowment fund”, 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; provided, however, that “endowment fund” shall not include assets that an institution designates as an endowment fund for its own use.

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

“Institution”, (i) a person, other than an individual, organized and operated exclusively for charitable purposes; (ii) a government or governmental subdivision, agency or instrumentality to the extent that it holds funds exclusively for a charitable purpose; or (iii) a trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

“Institutional fund”, a fund held by an institution exclusively for charitable purposes or a fund held by trustee for a charitable community trust, but not including: (i) program-related assets; (ii) 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 (iii) 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.

“Person”, 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.

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

“Record”, 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 2. (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 chapter, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care that 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;
(2) except as otherwise provided by a gift instrument, shall allocate those costs on a reasonable basis to each institutional fund prior to any appropriation; and
(3) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool 2 or more institutional funds for purposes of management and investment.

(e)(1) Except as otherwise provided by a gift instrument, the rules set forth in this subsection shall apply.

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

(i) general economic conditions;
(ii) the possible effect of inflation or deflation;
(iii) the expected tax consequences, if any, of investment decisions or strategies;
(iv) the role that each investment or course of action plays within the overall investment portfolio of the fund;
(v) the expected total return from income and the appreciation of investments;
(vi) other resources of the institution;
(vii) the needs of the institution and the fund to make distributions and to preserve capital; and

(viii) an asset's special relationship or special value, if any, to the charitable purposes of the institution.

(3) Management and investment decisions about an individual asset shall not be made in isolation but shall be made 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.

(4) Except as provided by any other general or special law, an institution may invest in any kind of property or type of investment consistent with this section.

(5) 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 will be better served without diversification.

(6) 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 chapter.

(7) A person who has special skills or expertise or who is selected in reliance upon the person's representation that the person possesses special skills or expertise shall have a duty to use those skills or that expertise in managing and investing institutional funds.

Section 3. (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 shall be 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:

- (i) the duration and preservation of the endowment fund;
- (ii) the purposes of the institution and the endowment fund;
- (iii) general economic conditions;
- (iv) the possible effect of inflation or deflation;
- (v) the expected total return from income and the appreciation of investments;
- (vi) other resources of the institution; and
- (vii) the investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under subsection (a), 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 words of similar import shall:

- (i) create an endowment fund of permanent duration unless other language in the gift instrument limits the duration of the fund; and
- (ii) not, standing alone, limit the authority to appropriate for expenditure or accumulate under subsection (a).

Section 4. (a) Subject to any specific limitation set forth in a gift instrument or in other general or special law, 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:

- (i) selecting an agent;
- (ii) establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and
- (iii) 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 shall owe 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) shall not be 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 the commonwealth, an agent submits to the jurisdiction of the courts of the commonwealth 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 any other general or special law.

Section 5. (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, duration or purpose of an institutional fund. A release or modification shall 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, investment or duration 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 attorney general shall be made a party to

any such application and resulting proceeding. To the extent practicable, a 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, 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 attorney general shall be made a party to any such application and resulting proceeding.

(d) The supreme judicial court may by rule or order provide that an application otherwise subject to court approval pursuant to subsections (b) and (c), may be approved by the attorney general if the value of the fund is not greater than such amount as the court may provide or in such other situations as the court may so provide.

Section 6. Compliance with this chapter shall be determined in light of the facts and circumstances existing at the time a decision is made or an action is taken and not by hindsight.

Section 7. This chapter shall apply to institutional funds existing on or established after June 30, 2009. As applied to institutional funds existing on June 30, 2009, this chapter shall govern only decisions made or actions taken on or after that date.

Section 8. This chapter modifies, limits and supersedes the electronic signatures in the Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit or supersede Section 101(c) of said act, 15 U.S.C. Section 7001(c) or authorize electronic delivery of any of the notices described in Section 103 of said act, 15 U.S.C. Section 7003(b).

Section 9. In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the Uniform Prudent Management of Institutional Funds Act. To the extent that any provision of the law, rule or regulation is in conflict with this chapter, specifically to the extent that any such conflict would operate to defeat or otherwise interfere with the purposes of this chapter, this chapter shall supersede and take precedence over any such law, rule or regulation. This act shall be construed to the maximum extent possible so as to not constitute an impairment of contract.

Approved July 2, 2009
