

SENATE BILL No. 411

March 31, 2009, Introduced by Senator SWITALSKI and referred to the Committee on Judiciary.

A bill to establish duties and obligations of nonprofit, charitable institutions in the management and use of funds held for charitable purposes; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "uniform prudent management of institutional funds act".

3 Sec. 2. As used in this act:

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

8 (b) "Endowment fund" means an institutional fund or part of an
9 institutional fund that, under the terms of a gift instrument, is

1 not wholly expendable by the institution on a current basis.
2 Endowment fund does not include assets that an institution
3 designates as an endowment fund for its own use.

4 (c) "Gift instrument" means a record or records, including an
5 institutional solicitation, under which property is granted to,
6 transferred to, or held by an institution as an institutional fund.

7 (d) "Institution" means any of the following:

8 (i) A person, other than an individual, organized and operated
9 exclusively for charitable purposes.

10 (ii) A government or governmental subdivision, agency, or
11 instrumentality, to the extent that it holds funds exclusively for
12 a charitable purpose.

13 (iii) A trust that had both charitable and noncharitable
14 interests, after all noncharitable interests have terminated.

15 (e) "Institutional fund" means a fund held by an institution
16 exclusively for charitable purposes. Institutional fund does not
17 include any of the following:

18 (i) Program-related assets.

19 (ii) A fund held for an institution by a trustee that is not an
20 institution, unless the fund is held by the trustee as a component
21 trust or fund of a community trust or foundation.

22 (iii) A fund in which a beneficiary that is not an institution
23 has an interest, other than an interest that could arise on
24 violation or failure of the purposes of the fund.

25 (f) "Person" means an individual, corporation, business trust,
26 estate, trust, partnership, limited liability company, association,
27 joint venture, public corporation, government or governmental

1 subdivision, agency, or instrumentality, or any other legal or
2 commercial entity.

3 (g) "Program-related asset" means an asset held by an
4 institution primarily to accomplish a charitable purpose of the
5 institution and not primarily for investment.

6 (h) "Record" means information that is inscribed on a tangible
7 medium or that is stored in an electronic or other medium and is
8 retrievable in perceivable form.

9 Sec. 3. (1) Subject to the intent of a donor expressed in a
10 gift instrument, an institution, in managing and investing an
11 institutional fund, shall consider the charitable purposes of the
12 institution and the purposes of the institutional fund.

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

18 (3) In managing and investing an institutional fund, both of
19 the following apply:

20 (a) An institution may incur only costs that are appropriate
21 and reasonable in relation to the assets, the purposes of the
22 institution, and the skills available to the institution.

23 (b) An institution shall make a reasonable effort to verify
24 facts relevant to the management and investment of the fund.

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

27 (5) Except as otherwise provided by a gift instrument, all of

1 the following rules apply:

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

4 (i) General economic conditions.

5 (ii) The possible effect of inflation or deflation.

6 (iii) The expected tax consequences, if any, of investment
7 decisions or strategies.

8 (iv) The role that each investment or course of action plays
9 within the overall investment portfolio of the fund.

10 (v) The expected total return from income and the appreciation
11 of investments.

12 (vi) Other resources of the institution.

13 (vii) The needs of the institution and the fund to make
14 distributions and to preserve capital.

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

17 (b) Management and investment decisions about an individual
18 asset shall not be made in isolation but rather in the context of
19 the institutional fund's portfolio of investments as a whole and as
20 a part of an overall investment strategy having risk and return
21 objectives reasonably suited to the fund and to the institution.

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

25 (d) An institution shall diversify the investments of an
26 institutional fund unless the institution reasonably determines
27 that, because of special circumstances, the purposes of the fund

1 are better served without diversification.

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

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

14 Sec. 4. (1) Subject to the intent of a donor expressed in the
15 gift instrument, an institution may appropriate for expenditure or
16 accumulate so much of an endowment fund as the institution
17 determines is prudent for the uses, benefits, purposes, and
18 duration for which the endowment fund is established. Unless stated
19 otherwise in the gift instrument, the assets in an endowment fund
20 are donor-restricted assets until appropriated for expenditure by
21 the institution. In making a determination to appropriate or
22 accumulate, the institution shall act in good faith, with the care
23 that an ordinarily prudent person in a like position would exercise
24 under similar circumstances, and shall consider, if relevant, all
25 of the following factors:

26 (a) The duration and preservation of the endowment fund.

27 (b) The purposes of the institution and the endowment fund.

1 (c) General economic conditions.

2 (d) The possible effect of inflation or deflation.

3 (e) The expected total return from income and the appreciation
4 of investments.

5 (f) Other resources of the institution.

6 (g) The investment policy of the institution.

7 (2) To limit the authority to appropriate for expenditure or
8 accumulate under subsection (1), a gift instrument must
9 specifically state the limitation.

10 (3) Terms in a gift instrument designating a gift as an
11 endowment, or a direction or authorization in the gift instrument
12 to use only "income", "interest", "dividends", "rents, issues, or
13 profits", or "to preserve the principal intact", or words of
14 similar import, do both of the following:

15 (a) Create an endowment fund of permanent duration unless
16 other language in the gift instrument limits the duration or
17 purpose of the fund.

18 (b) Do not otherwise limit the authority to appropriate for
19 expenditure or accumulate under subsection (1).

20 Sec. 5. (1) Subject to any specific limitation set forth in a
21 gift instrument or in law other than this act, an institution may
22 delegate to an external agent the management and investment of an
23 institutional fund to the extent that an institution could
24 prudently delegate under the circumstances. An institution shall
25 act in good faith, with the care that an ordinarily prudent person
26 in a like position would exercise under similar circumstances, in
27 doing any of the following:

1 (a) Selecting an agent.

2 (b) Establishing the scope and terms of the delegation,
3 consistent with the purposes of the institution and the
4 institutional fund.

5 (c) Periodically reviewing the agent's actions in order to
6 monitor the agent's performance and compliance with the scope and
7 terms of the delegation.

8 (2) In performing a delegated function, an agent owes a duty
9 to the institution to exercise reasonable care to comply with the
10 scope and terms of the delegation.

11 (3) An institution that complies with subsection (1) is not
12 liable for the decisions or actions of an agent to which the
13 function was delegated.

14 (4) By accepting delegation of a management or investment
15 function from an institution that is subject to the laws of this
16 state, an agent submits to the jurisdiction of the courts of this
17 state in all proceedings arising from or related to the delegation
18 or the performance of the delegated function.

19 (5) An institution may delegate management and investment
20 functions to its committees, officers, or employees as authorized
21 by law of this state other than this act.

22 Sec. 6. (1) If the donor consents in a record, an institution
23 may release or modify, in whole or in part, a restriction contained
24 in a gift instrument on the management, investment, or purpose of
25 an institutional fund. A donor may give prior consent to an
26 institution for release or modification of a restriction or
27 charitable purpose in a gift instrument that also includes a

1 restriction or stated charitable purpose subject to this section. A
2 release or modification shall not allow a fund to be used for a
3 purpose other than a charitable purpose of the institution.

4 (2) A court, on application of an institution, may modify a
5 restriction contained in a gift instrument regarding the management
6 or investment of an institutional fund if the restriction has
7 become impracticable or wasteful, if it impairs the management or
8 investment of the fund, or if, because of circumstances not
9 anticipated by the donor, a modification of a restriction will
10 further the purposes of the fund. The institution shall notify the
11 attorney general of the application, and the attorney general shall
12 be given an opportunity to be heard. To the extent practicable, any
13 modification shall be made in accordance with the donor's probable
14 intention.

15 (3) If a particular charitable purpose or a restriction
16 contained in a gift instrument on the use of an institutional fund
17 becomes unlawful, impracticable, impossible to achieve, or
18 wasteful, a court, upon application of an institution, may modify
19 the purpose of the fund or the restriction on the use of the fund
20 in a manner consistent with the charitable purposes expressed in
21 the gift instrument. The institution shall notify the attorney
22 general of the application, and the attorney general shall be given
23 an opportunity to be heard.

24 (4) If an institution determines that a restriction contained
25 in a gift instrument on the management, investment, or purpose of
26 an institutional fund is unlawful, impracticable, impossible to
27 achieve, or wasteful, the institution, 60 days after notification

1 to the attorney general, may release or modify the restriction, in
2 whole or in part, if all of the following apply:

3 (a) The institutional fund subject to the restriction has a
4 total value of less than \$25,000.00.

5 (b) More than 20 years have elapsed since the fund was
6 established.

7 (c) The institution uses the property in a manner consistent
8 with the charitable purposes expressed in the gift instrument.

9 (5) This section does not affect the right of a governing body
10 of an institution to exercise the power to modify restrictions
11 contained in a gift instrument as conferred by the institution's
12 governing instruments or by a gift instrument.

13 Sec. 7. Compliance with this act shall be determined in light
14 of the facts and circumstances existing at the time a decision is
15 made or action is taken and not by hindsight.

16 Sec. 8. This act applies to institutional funds existing on or
17 established after the effective date of this act. As applied to
18 institutional funds existing on the effective date of this act,
19 this act governs only decisions made or actions taken on or after
20 that date.

21 Sec. 9. This act modifies, limits, and supersedes the
22 electronic signatures in the global and national commerce act, 15
23 USC 7001 to 7031, but does not modify, limit, or supersede 15 USC
24 7001(a) or authorize electronic delivery of any of the notices
25 described in 15 USC 7003(b).

26 Sec. 10. In applying and construing this uniform act,
27 consideration shall be given to the need to promote uniformity of

1 the law with respect to its subject matter among states that enact
2 it.

3 Sec. 11. This act applies only to matters included within the
4 meaning of the terms "institution", "institutional fund", and
5 "person" as defined in this act. This act does not apply to or
6 affect the validity, construction, interpretation, effect,
7 administration, or management of any other trust, estate, or
8 applicable governing instrument.

9 Enacting section 1. The uniform management of institutional
funds act, 1976 PA 157, MCL 451.1201 to 451.1210, is repealed.