

1 AN ACT concerning institutional funds.

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

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

6 Section 2. Definitions. In this Act:

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

11 (2) "Endowment fund" means an institutional fund or part  
12 thereof that, under the terms of a gift instrument, is not  
13 wholly expendable by the institution on a current basis. The  
14 term does not include assets that an institution designates as  
15 an endowment fund for its own use.

16 (3) "Gift instrument" means a record or records, including  
17 an institutional solicitation, under which property is granted  
18 to, transferred to, or held by an institution as an  
19 institutional fund.

20 (4) "Institution" means:

21 (A) a person, other than an individual, organized and  
22 operated exclusively for charitable purposes;

23 (B) a government or governmental subdivision, agency,

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

3 (C) a trust that had both charitable and noncharitable  
4 interests, after all noncharitable interests have  
5 terminated.

6 (5) "Institutional fund" means a fund held by an  
7 institution exclusively for charitable purposes. The term does  
8 not include:

9 (A) program-related assets;

10 (B) a fund held for an institution by a trustee that is  
11 not an institution; or

12 (C) a fund in which a beneficiary that is not an  
13 institution has an interest, other than an interest that  
14 could arise upon violation or failure of the purposes of  
15 the fund.

16 (6) "Person" means an individual, corporation, business  
17 trust, estate, trust, partnership, limited liability company,  
18 association, joint venture, public corporation, government or  
19 governmental subdivision, agency, or instrumentality, or any  
20 other legal or commercial entity.

21 (7) "Program-related asset" means an asset held by an  
22 institution primarily to accomplish a charitable purpose of the  
23 institution and not primarily for investment.

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

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

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

7           (b) In addition to complying with the duty of loyalty  
8 imposed by law other than this Act, each person responsible for  
9 managing and investing an institutional fund shall manage and  
10 invest the fund in good faith and with the care an ordinarily  
11 prudent person in a like position would exercise under similar  
12 circumstances.

13           (c) In managing and investing an institutional fund, an  
14 institution:

15                 (1) may incur only costs that are appropriate and  
16 reasonable in relation to the assets, the purposes of the  
17 institution, and the skills available to the institution;  
18 and

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

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

23           (e) Except as otherwise provided by a gift instrument, the  
24 following rules apply:

25                 (1) In managing and investing an institutional fund,

1 the following factors, if relevant, must be considered:

2 (A) general economic conditions;

3 (B) the possible effect of inflation or deflation;

4 (C) the expected tax consequences, if any, of  
5 investment decisions or strategies;

6 (D) the role that each investment or course of  
7 action plays within the overall investment portfolio  
8 of the fund;

9 (E) the expected total return from income and the  
10 appreciation of investments;

11 (F) other resources of the institution;

12 (G) the needs of the institution and the fund to  
13 make distributions and to preserve capital; and

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

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

23 (3) Except as otherwise provided by law other than this  
24 Act, an institution may invest in any kind of property or  
25 type of investment consistent with this Section.

26 (4) An institution shall diversify the investments of

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

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

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

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

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

1 endowment fund are donor-restricted assets until appropriated  
2 for expenditure by the institution. In making a determination  
3 to appropriate or accumulate, the institution shall act in good  
4 faith, with the care that an ordinarily prudent person in a  
5 like position would exercise under similar circumstances, and  
6 shall consider, if relevant, the following factors:

7 (1) the duration and preservation of the endowment  
8 fund;

9 (2) the purposes of the institution and the endowment  
10 fund;

11 (3) general economic conditions;

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

13 (5) the expected total return from income and the  
14 appreciation of investments;

15 (6) other resources of the institution; and

16 (7) the investment policy of the institution.

17 (b) To limit the authority to appropriate for expenditure  
18 or accumulate under subsection (a), a gift instrument must  
19 specifically state the limitation.

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

25 (1) create an endowment fund of permanent duration  
26 unless other language in the gift instrument limits the

1 duration or purpose of the fund; and

2 (2) do not otherwise limit the authority to appropriate  
3 for expenditure or accumulate under subsection (a).

4 Section 5. Delegation of management and investment  
5 functions.

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

14 (1) selecting an agent;

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

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

21 (b) In performing a delegated function, an agent owes a  
22 duty to the institution to exercise reasonable care to comply  
23 with the scope and terms of the delegation.

24 (c) An institution that complies with subsection (a) is not  
25 liable for the decisions or actions of an agent to which the

1 function was delegated.

2 (d) By accepting delegation of a management or investment  
3 function from an institution that is subject to the laws of  
4 this State, an agent submits to the jurisdiction of the courts  
5 of this State in all proceedings arising from or related to the  
6 delegation or the performance of the delegated function.

7 (e) An institution may delegate management and investment  
8 functions to its committees, officers, or employees as  
9 authorized by law of this State other than this Act.

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

12 (a) If the donor consents in a record, an institution may  
13 release or modify, in whole or in part, a restriction contained  
14 in a gift instrument on the management, investment, or purpose  
15 of an institutional fund. A release or modification may not  
16 allow a fund to be used for a purpose other than a charitable  
17 purpose of the institution.

18 (b) The court, upon application of an institution, may  
19 modify a restriction contained in a gift instrument regarding  
20 the management or investment of an institutional fund if the  
21 restriction has become impracticable or wasteful, if it impairs  
22 the management or investment of the fund, or if, because of  
23 circumstances not anticipated by the donor, a modification of a  
24 restriction will further the purposes of the fund. The  
25 institution shall notify the Attorney General of the



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

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

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

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

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

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

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

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

11           Section 9. Relation to Electronic Signatures in Global and  
12 National Commerce Act. This Act modifies, limits, and  
13 supersedes the Electronic Signatures in Global and National  
14 Commerce Act, 15 U.S.C. Section 7001 et seq., but does not  
15 modify, limit, or supersede Section 101 of that Act, 15 U.S.C.  
16 Section 7001(a), or authorize electronic delivery of any of the  
17 notices described in Section 103 of that Act, 15 U.S.C. Section  
18 7003(b).

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

1 Section 11. (Blank).

2 (760 ILCS 50/Act rep.)

3 Section 12. Repeal. The following Act is repealed:

4 The Uniform Management of Institutional Funds Act.

5 Section 12.1. The Religious Corporation Act is amended by  
6 changing Sections 41, 43, 46e, 46f, 46g, and 46j as follows:

7 (805 ILCS 110/41) (from Ch. 32, par. 170)

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

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

2 (805 ILCS 110/43) (from Ch. 32, par. 172)

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

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

24 (805 ILCS 110/46e) (from Ch. 32, par. 180)

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

1 ~~1973~~. The trustees of any corporation, organized under Sections  
2 46a to 46h, inclusive, of this Act, which is, or may be, under  
3 the control, patronage, direction or, supervision of any  
4 ecclesiastical body, diocesan, or like officer, shall hold and  
5 control, invest or reinvest the real and personal property of  
6 such corporation, and contract with reference thereto,  
7 according to the "Uniform Management of Institutional Funds  
8 Act", or the rules, regulations, constitution, articles of  
9 association, by-laws, or canons of such ecclesiastical body,  
10 diocesan, or like ecclesiastical officer.

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

12 (805 ILCS 110/46f) (from Ch. 32, par. 181)

13 Sec. 46f. The trustees of any corporation formed for  
14 religious purposes under Sections 46a to 46h, inclusive, of  
15 this Act, may receive land in the name of such corporation by  
16 gift, legacy or purchase, and make, erect and build thereon,  
17 such houses, buildings, or other improvements, as may be  
18 necessary for the convenience and comfort of such congregation,  
19 church, society, or corporation, and may lay out and maintain  
20 thereon a burying ground, and may maintain and build thereon  
21 schools, orphan asylums, or such other improvements or  
22 buildings as may be necessary for the educational and  
23 eleemosynary purposes of such congregation, church, society,  
24 or corporation: but such property shall not be used except in  
25 the manner expressed in the gift, grant or bequest. However,

1 this limitation on the disposition of real property does not  
2 apply to the extent that a restriction imposed by a donor on  
3 the use of an institutional fund may be released by the  
4 governing board of an institution under the "Uniform Prudent  
5 Management of Institutional Funds Act", ~~approved September 15,~~  
6 ~~1973~~. If no use or trust is so expressed, no such property  
7 shall be used except for the benefit of the corporation,  
8 church, society, sect, or denomination for which it was  
9 intended, or for any religious, educational or eleemosynary  
10 purpose approved by such corporation, church, society, or  
11 ecclesiastical body, diocesan, or like ecclesiastical officer.  
12 (Source: P.A. 84-549.)

13 (805 ILCS 110/46g) (from Ch. 32, par. 182)

14 Sec. 46g. Any ecclesiastical body, or diocesan, or like  
15 ecclesiastical officer, may elect, or nominate, or appoint,  
16 according to the usages, customs, rules, regulations, articles  
17 of association, constitution, by-laws or canons of such  
18 ecclesiastical body, diocesan or like ecclesiastical officer,  
19 or any sect or denomination, 2 or more members of such sect, or  
20 denomination, residing respectively in any ecclesiastical  
21 districts, or dioceses, over which such ecclesiastical body, or  
22 diocesan, or like ecclesiastical officer shall have  
23 jurisdiction, as trustees, who may become incorporated under  
24 Sections 46a to 46k, inclusive, of this Act, and may take,  
25 hold, regulate, control and dispose of any real, personal or

1 mixed property in and outside of this State, devoted to  
2 eleemosynary, educational, cemetery or religious purposes (not  
3 exclusively belonging to, or used by, any particular  
4 congregation, church or society which as an organization,  
5 incorporated or unincorporated, is in the opinion of its  
6 trustees, wardens, vestrymen or other officers whose powers and  
7 duties are similar to trustees financially able to own and  
8 maintain such property) for the use of all of the members of  
9 the sect, or denomination within said districts, or dioceses,  
10 or for the use and benefit of such ecclesiastical body,  
11 diocesan, or like ecclesiastical officer, or of any parishes,  
12 congregations, societies, churches, missions, benevolent,  
13 charitable or educational institutions existing under or  
14 related to the same, according to Sections 46a to 46k,  
15 inclusive, of this Act, according to the "Uniform Prudent  
16 Management of Institutional Funds Act", ~~approved September 15,~~  
17 ~~1973~~, or according to the usages, customs, rules, regulations,  
18 articles of association, constitution, by-laws or canons of  
19 such ecclesiastical body, diocesan, or like ecclesiastical  
20 officer. The presiding officer or authorized representative of  
21 such ecclesiastical body or diocesan, or like ecclesiastical  
22 officer, shall, by virtue of his office, be a trustee of any  
23 such corporation and the number, term of office and  
24 qualifications of said trustees, their removal and succession  
25 and their powers, duties and manner of appointment, shall be  
26 regulated in the manner provided in Sections 46a to 46k,



1 inclusive, of this Act. An affidavit showing the appointment of  
2 such trustees made and executed by the presiding officer, or  
3 duly authorized representative of such ecclesiastical body, or  
4 diocesan, or like ecclesiastical officer, or such other person  
5 as may be designated by said trustees for such purpose, in  
6 substantially the same manner and form as provided in Section  
7 46b of this Act shall be filed in the office of the recorder in  
8 the county in which the principal office or place of worship of  
9 such corporation is intended to be situated and also a  
10 duplicate copy in the office of the Secretary of State,  
11 whenever any district or diocese, under the jurisdiction or  
12 patronage of such ecclesiastical body, or diocesan, or like  
13 ecclesiastical officer, comprises more than any one county of  
14 this State or extends outside of the State.

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

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

22 (805 ILCS 110/46j) (from Ch. 32, par. 185)

23 Sec. 46j. Any church, congregation, society or  
24 corporation, heretofore or hereafter formed for religious  
25 purposes or for the purpose of religious worship under any of

1 the provisions of this Act or under any law of this State  
2 incorporating or for the incorporation of religious  
3 corporations or societies, may receive land by gift, legacy or  
4 purchase and make, erect, and build thereon such houses,  
5 buildings, or other improvements as may be necessary for the  
6 convenience, comfort and welfare of such church, congregation,  
7 society or corporation, and may lay out and maintain thereon a  
8 cemetery or cemeteries, or a burying ground or grounds and may  
9 maintain and build thereon schools, orphan asylums, or such  
10 other improvements or buildings as may be necessary for the  
11 educational, eleemosynary, cemetery and religious purposes of  
12 such congregation, church, society or corporation; but no such  
13 property shall be used except in the manner expressed in the  
14 gift, grant or legacy. However, this limitation on the  
15 disposition of real property does not apply to the extent that  
16 a restriction imposed by a donor on the use of an institutional  
17 fund may be released by the governing board of an institution  
18 under the "Uniform Prudent Management of Institutional Funds  
19 Act", ~~approved September 15, 1973~~. Or if no use or trust is so  
20 expressed, no such property shall be used except for the  
21 benefit of the congregation, corporation, church or society,  
22 for which it was intended, or for such religious, educational  
23 or eleemosynary purpose as may be approved by such  
24 congregation, church, society or corporation or the  
25 ecclesiastical body having jurisdiction or patronage of or  
26 charge over such congregation, corporation, church or society.

1 Any corporation, heretofore or hereafter formed for  
2 religious purposes under any of the provisions of this Act or  
3 under any other law of this State incorporating or for the  
4 incorporation of religious corporations or societies, which  
5 now or hereafter owns, operates, maintains or controls a  
6 cemetery or cemeteries, or a burial ground or grounds, is  
7 hereby authorized and empowered to accept by gift, grant,  
8 contribution, payment, or legacy, or pursuant to contract, any  
9 sum of money, funds, securities or property of any kind, or the  
10 income or avails thereof, and to hold the same in trust in  
11 perpetuity for the care of such cemetery or cemeteries, burial  
12 ground or grounds, or for the care of any lot, grave or crypt  
13 therein; or for the special care of any lot, grave or crypt or  
14 of any family mausoleum or memorial, marker, or monument in  
15 such cemetery or cemeteries, burial ground or grounds. No gift,  
16 grant, legacy, payment or other contribution shall be invalid  
17 by reason of any indefiniteness or uncertainty as to the  
18 beneficiary designated in the instrument creating the gift,  
19 grant, legacy, payment or other contribution. If any gift,  
20 grant, legacy, payment or other contribution consists of  
21 non-income producing property, such corporation is authorized  
22 and empowered to sell such property and to invest the funds  
23 obtained in accordance with the provisions of the "Uniform  
24 Prudent Management of Institutional Funds Act", ~~approved~~  
25 ~~September 15, 1973,~~ or the provisions of the next succeeding  
26 paragraph.

1           The trust funds authorized by this Section shall be held  
2 intact and, unless otherwise restricted by the terms of the  
3 gift, grant, legacy, contribution, payment, contract or other  
4 payment shall be invested, from time to time reinvested, and  
5 kept invested by such corporation in such investments as are  
6 authorized by the "Uniform Prudent Management of Institutional  
7 Funds Act", and according to such standards as are prescribed,  
8 for trustees under that Act and the "Trusts and Trustees Act",  
9 approved September 10, 1973, as amended, and the net income  
10 only from such investments shall be allocated and used for the  
11 purposes set forth in the paragraph immediately preceding; but  
12 the trust funds authorized by this Section may be commingled  
13 and may also be commingled with any other trust funds received  
14 by such corporation for the care of the cemetery or cemeteries,  
15 or burial ground or grounds, or for the care or special care of  
16 any lot, grave, crypt, private mausoleum, memorial, marker, or  
17 monument whether received by gift, grant, legacy,  
18 contribution, payment, contract or other conveyance heretofore  
19 or hereafter made to such corporation.

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

23       (Source: P.A. 83-1362.)