

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(c) of that Act, 15
16 U.S.C. Section 7001(c), or authorize electronic delivery of any
17 of the notices described in Section 103(b) of that Act, 15
18 U.S.C. Section 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 (760 ILCS 50/Act rep.)

2 Section 10.1. Repeal. The following Act is repealed:

3 The Uniform Management of Institutional Funds Act.

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

6 (805 ILCS 110/41) (from Ch. 32, par. 170)

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

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

1 (805 ILCS 110/43) (from Ch. 32, par. 172)

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

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

23 (805 ILCS 110/46e) (from Ch. 32, par. 180)

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

1 supervision of any ecclesiastical body, or diocesan, or like
2 ecclesiastical officer, after the same has become incorporated
3 under Sections 46a to 46h, inclusive, of this Act, and their
4 successors, shall have perpetual succession with power to adopt
5 a common seal, which may be altered and changed at pleasure,
6 contract, and be contracted with, sue and be sued, plead and be
7 impleaded, by the corporate name of such congregation, in all
8 courts, whatever; to receive, hold, dispose of, mortgage, and
9 convey any kind of property; to make and adopt by-laws for
10 their government, not inconsistent with Sections 46a to 46h,
11 inclusive, of this Act, or with the rules and regulations of
12 the sect or denomination having the charge or patronage of the
13 corporation; and shall alone have power to make all contracts
14 needful in the management of the temporal affairs of such
15 congregation, church, or society: but no conveyance, or
16 mortgage shall be made to affect, or destroy the intent of any
17 grant, legacy, or donation, that may be made to any person, or
18 trustee, for the use of such congregation, church, or society,
19 or for the use of any sect, or denomination. However, this
20 limitation on the disposition of real or personal property does
21 not apply to the extent that a restriction imposed by a donor
22 on the use of an institutional fund may be released by the
23 governing board of an institution under the "Uniform Prudent
24 Management of Institutional Funds Act", ~~approved September 15,~~
25 ~~1973~~. The trustees of any corporation, organized under Sections
26 46a to 46h, inclusive, of this Act, which is, or may be, under

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

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

10 (805 ILCS 110/46f) (from Ch. 32, par. 181)

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

1 the use of an institutional fund may be released by the
2 governing board of an institution under the "Uniform Prudent
3 Management of Institutional Funds Act", ~~approved September 15,~~
4 ~~1973~~. If no use or trust is so expressed, no such property
5 shall be used except for the benefit of the corporation,
6 church, society, sect, or denomination for which it was
7 intended, or for any religious, educational or eleemosynary
8 purpose approved by such corporation, church, society, or
9 ecclesiastical body, diocesan, or like ecclesiastical officer.

10 (Source: P.A. 84-549.)

11 (805 ILCS 110/46g) (from Ch. 32, par. 182)

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

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

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

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

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

20 (805 ILCS 110/46j) (from Ch. 32, par. 185)

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

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

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

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

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

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

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

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

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