

CHAPTER 540A

INSTITUTIONAL FUNDS MANAGEMENT

[SP]
 Repeal of former §540A.1 – 540A.9 and enactment of
 §540A.101 – 540A.109 apply to institutional funds in existence
 on or after July 1, 2008; 2008 Acts, ch 1066, §11

540A.1	through 540A.9	Repealed by 2008 Acts, ch 1066, §10, 11; 2008 Acts, ch 1191, §138.	540A.105	Delegation of management and investment functions.
540A.101	Short title.		540A.106	Release or modification of restrictions on management, investment, or purpose.
540A.102	Definitions.		540A.107	Reviewing compliance.
540A.103	Standard of conduct — managing and investing institutional fund.		540A.108	Electronic signatures.
540A.104	Appropriation for expenditure or accumulation of endowment fund — rules of construction.		540A.109	Uniformity of application and construction.

540A.1 through 540A.9 Repealed by 2008 Acts, ch 1066, § 10, 11; 2008 Acts, ch 1191, § 138.

Repeal of sections applies to institutional funds in existence on or after July 1, 2008; 2008 Acts, ch 1066, §11

540A.101 Short title.

This chapter may be cited as the “*Uniform Prudent Management of Institutional Funds Act*”. 2008 Acts, ch 1066, §1, 11

[SP] Section applies to institutional funds in existence on or after July 1, 2008; 2008 Acts, ch 1066, §11

540A.102 Definitions.

For purposes of this chapter, 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 a governmental purpose, or any other purpose the achievement of which is beneficial to the community.
2. “*Endowment fund*” means an institutional fund or any part of an institutional fund, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument. “*Endowment fund*” does not include assets that an institution designates 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 any of the following:
 - a. A person, other than an individual, organized and operated exclusively for charitable purposes.
 - b. A government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose.
 - 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. “*Institutional fund*” does not include any of the following:
 - a. Program-related assets.
 - b. A fund held for an institution by a trustee that is not an institution.
 - 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 investment.

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.

2008 Acts, ch 1066, §2, 11

[SP] Section applies to institutional funds in existence on or after July 1, 2008; 2008 Acts, ch 1066, §11

540A.103 Standard of conduct — managing and investing institutional fund.

1. Subject to the intent of a donor expressed in a gift instrument, an institution shall consider the charitable purposes of the institution and the purposes of the institutional fund in managing and investing an institutional fund.

2. 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 an ordinarily prudent person in a like position would exercise under similar circumstances.

3. All of the following shall apply to an institution managing and investing an institutional fund:

a. An institution 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.

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

4. Subject to the intent of a donor expressed in a gift instrument, an institution may pool two or more institutional funds for purposes of management and investment.

5. Except as otherwise provided by a gift instrument, all of the following rules shall apply:

a. In managing and investing an institutional fund, the following factors, if relevant, shall be considered:

(1) General economic conditions.

(2) The possible effect of inflation or deflation.

(3) The expected tax consequences, if any, of investment decisions or strategies.

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

(5) The expected total return from income and the appreciation of investments.

(6) Other resources of the institution.

(7) The needs of the institution and the fund to make distributions and to preserve capital.

(8) An asset’s special relationship or special value, if any, to the charitable purposes of the institution.

b. Management and investment decisions about an individual asset 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.

c. Except as otherwise provided by law, an institution may invest in any kind of property or type of investment consistent with this section.

d. 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.

e. 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.

f. A person that 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 skills or that expertise in managing and investing institutional funds.

2008 Acts, ch 1066, §3, 11

[SP] Section applies to institutional funds in existence on or after July 1, 2008; 2008 Acts, ch 1066, §11

540A.104 Appropriation for expenditure or accumulation of endowment fund — rules of construction.

1. Subject to the intent of a donor expressed in the gift instrument and to subsection 4, 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 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, all of the following factors:

- a. The duration and preservation of the endowment fund.
- b. The purposes of the institution and the endowment fund.
- c. General economic conditions.
- d. The possible effect of inflation or deflation.
- e. The expected total return from income and the appreciation of investments.
- f. Other resources of the institution.
- g. The investment policy of the institution.

2. In order to limit the authority to appropriate for expenditure or accumulate under subsection 1, a gift instrument must specifically state the limitation.

3. 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 do all of the following:

a. Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund.

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

4. a. If a gift instrument uses the terms or phrases described in subsection 3, the gift instrument may also contain language substantially similar to the following:

A direction or authorization herein to use only “income”, “interest”, “dividends”, or “rents, issues, or profits”, or to “preserve the principal intact” or words of similar import, does not limit the expenditures from the endowment fund only to income, interest, dividends, or rents, issues, or profits. Expenditures may also come from other assets in the endowment fund. All expenditures from the endowment fund created hereunder shall be prudent in light of the uses, benefits, purposes, and duration of the endowment fund. In determining the amounts to be expended annually or to be accumulated, account shall be taken of the following factors: the duration and preservation of the endowment fund, the purposes of the endowment fund; general economic conditions; the possible effect of inflation or deflation; the expected total return from income and the appreciation of investments; other recourses available to carry out the charitable purposes of this gift; and the governing investment policies. Because these factors govern expenditures and accumulations from the endowment fund created hereunder, terms such as those in the first sentence of this subsection shall be interpreted, absent other express language to the contrary, as creating an endowment fund of permanent duration, and such words do not limit the authority to expend or accumulate funds in accordance with the factors listed above.

b. The absence of the foregoing language or words of similar import in a gift instrument does not invalidate the gift instrument or any gift, or portion of a gift, thereunder.

2008 Acts, ch 1066, §4, 11

[SP] Section applies to institutional funds in existence on or after July 1, 2008; 2008 Acts, ch 1066, §11

540A.105 Delegation of management and investment functions.

1. Subject to any specific limitation set forth in a gift instrument or in 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 doing all of the following:

- a. Selecting an agent.
- b. Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund.
- c. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.
2. 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.
3. An institution that complies with subsection 1 is not liable for the decisions or actions of an agent to which the function was delegated.
4. 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.
5. An institution may delegate management and investment functions to its committees, officers, or employees as authorized by the laws of this state.

2008 Acts, ch 1066, §5, 11

[SP] Section applies to institutional funds in existence on or after July 1, 2008; 2008 Acts, ch 1066, §11

540A.106 Release or modification of restrictions on management, investment, or purpose.

1. 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, 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.

2. The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or if, because of circumstances not anticipated by the donor, the restriction will defeat or substantially impair the accomplishment of the purposes of the institutional fund. The institution shall notify the attorney general of the application, and the attorney general shall be given an opportunity to be heard. Any modification must be made in accordance with the donor's probable intention.

3. If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, or impossible to fulfill, 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 institution shall notify the attorney general of the application and the attorney general shall be given the opportunity to be heard. If the donor or the donor's designee having the right to enforce the restrictions under subsection 5 provides the institution with an address, then the institution shall also notify the donor or such designee of the application by United States mail addressed to the last address so provided and the donor or such designee shall have an opportunity to be heard.

4. If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, or impossible to fulfill, the institution may release or modify the restriction, in whole or part, sixty days after notifying the attorney general, if all of the following conditions are met:

- a. The institutional fund subject to the restriction has a total value of less than fifty thousand dollars.
- b. More than twenty years have elapsed since the fund was established.
- c. The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

5. a. A donor whose aggregate gifts to an endowment fund exceeds one hundred thousand dollars may maintain an action in the district court of the county in which the institution's principal office is located to enforce restrictions respecting the purposes of the

fund established by the donor in a gift instrument. A gift made in property shall be valued at fair market value on the date of the gift.

b. A donor may designate in a gift instrument or other record signed by the donor and delivered to the institution one or more persons, by name or by description, whether or not born at the time of such designation, to enforce the restrictions respecting the purposes of the fund during the donor's lifetime if the donor is judicially declared incompetent.

c. A donor may designate in a gift instrument or other record signed by the donor and delivered to the institution one or more persons, by name or by description, whether or not born at the time of such designation, to enforce the restrictions respecting the purposes of the fund for fifty years beginning on the date of the donor's death. If the donor prevails in any action in district court to enforce restrictions respecting the purposes of the fund in a gift instrument, the district court may order the institution to reimburse the donor's costs, including reasonable counsel fees, incurred in connection with the action, if the court finds that the institution acted in bad faith or with gross negligence.

d. The provisions in this subsection 5 may be altered by contrary provisions in a gift instrument.

6. Nothing in subsection 5 affects the authority of the attorney general to enforce any restriction in a gift instrument.

7. This section does not limit the application of the judicial power of cy pres or the right of an institution to modify a restriction on the management, investment, purpose, or use of a fund as may be permitted under the gift instrument or by law.

2008 Acts, ch 1066, §6, 11

[SP] Section applies to institutional funds in existence on or after July 1, 2008; 2008 Acts, ch 1066, §11

540A.107 Reviewing compliance.

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

2008 Acts, ch 1066, §7, 11

[SP] Section applies to institutional funds in existence on or after July 1, 2008; 2008 Acts, ch 1066, §11

540A.108 Electronic signatures.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede section 101 of that Act, 15 U.S.C. § 7001(a), or authorize electronic delivery of any of the notices described in section 103 of that Act, 15 U.S.C. § 7003(b).

2008 Acts, ch 1066, §8, 11

[SP] Section applies to institutional funds in existence on or after July 1, 2008; 2008 Acts, ch 1066, §11

540A.109 Uniformity of application and construction.

This chapter shall be applied and construed with consideration given to the need to promote uniformity of the law with respect to the uniform prudent management of institutional funds Act among states which enact this law.

2008 Acts, ch 1066, §9, 11

[SP] Section applies to institutional funds in existence on or after July 1, 2008; 2008 Acts, ch 1066, §11