

FIRST REGULAR SESSION

HOUSE BILL NO. 1055

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PRATT.

2403L.01I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 469, RSMo, by adding thereto nine new sections relating to the uniform prudent management of institutional funds.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 469, RSMo, is amended by adding thereto nine new sections, to be known as sections 469.950, 469.952, 469.954, 469.956, 469.958, 469.960, 469.962, 469.964, and 469.966, to read as follows:

469.950. Sections 469.950 to 469.966 shall be known and may be cited as the "Uniform Prudent Management of Institutional Funds Act".

469.952. As used in sections 469.950 to 469.966, the following terms shall mean:

(1) "Charitable purpose", 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", 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. The term shall not include assets that an institution designates as an endowment fund for its own use;

(3) "Gift instrument", 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":

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 (b) A government or governmental subdivision, agency, or instrumentality to the
16 extent that it holds funds exclusively for a charitable purpose; or

17 (c) A trust that had both charitable and noncharitable interests after all
18 noncharitable interests have terminated;

19 (5) "Institutional fund", a fund held by an institution exclusively for charitable
20 purposes. It shall not include:

21 (a) Program-related assets;

22 (b) A fund held for an institution by a trustee that is not an institution; or

23 (c) A fund in which a beneficiary that is not an institution has an interest other than
24 an interest that could arise upon violation or failure of the purposes of the fund;

25 (6) "Person", an individual, corporation, business trust, estate, trust, partnership,
26 limited liability company, association, joint venture, public corporation, government or
27 governmental subdivision, agency, or instrumentality, or any other legal or commercial
28 entity;

29 (7) "Program-related asset", an asset held by an institution primarily to accomplish
30 a charitable purpose of the institution and not primarily for investment;

31 (8) "Record", information that is inscribed on tangible medium or that is stored
32 in an electronic or other medium and is retrievable in perceivable form.

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

4 2. In addition to complying with the duty of loyalty imposed by law other than in
5 sections 469.950 to 469.966, each person responsible for managing and investing an
6 institutional fund shall manage and invest the fund in good faith and with the care an
7 ordinary prudent person in a like position would exercise under similar circumstances.

8 3. In managing and investing an institutional fund, an institution:

9 (1) May incur only costs that are appropriate and reasonable in relation to the
10 assets, the purpose of the institution, and the skills available to the institution; and

11 (2) Shall make a reasonable effort to verify facts relevant to the management and
12 investment of the fund.

13 4. An institution may pool two or more institutional funds for the purposes of
14 management and investment.

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

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

18 (a) General economic conditions;

- 19 (b) The possible effect of inflation or deflation;
20 (c) The expected tax consequences, if any, of investment decisions or strategies;
21 (d) The role that each investment or course of action plays within the overall
22 investment portfolio of the fund;
23 (e) The expected total return from the income and the appreciation of investments;
24 (f) Other resources of the institution;
25 (g) The needs of the institution and the fund to make the distributions and to
26 preserve capital; and
27 (h) An asset's special relationship or special value, if any, to the charitable purposes
28 of the institution;
- 29 (2) Management and investment decisions about an individual asset shall not be
30 made in isolation but in the context of the institutional fund's portfolio of investments as
31 a whole and as a part of an overall investment strategy having risk and return objectives
32 reasonably suited to the fund and to the institution;
- 33 (3) Except as otherwise provided by law other than in sections 469.950 to 469.966,
34 an institution may invest in any kind of property or type of investment consistent with this
35 section;
- 36 (4) An institution shall diversify the investments of an institutional fund unless the
37 institution reasonably determines that because of special circumstances the purposes of the
38 fund are better served without diversification;
- 39 (5) Within a reasonable time after receiving property, an institution shall make and
40 carry out decisions concerning the retention or disposition of the property or to rebalance
41 a portfolio in order to bring the institutional fund into compliance with the purposes,
42 terms, and distribution requirements of the institution as necessary to meet other
43 circumstances of the institution and the requirements of sections 469.950 to 469.966;
- 44 (6) A person that has or represents to have special skills or expertise, or is selected
45 in reliance upon the person's representation that the person has special skills or expertise
46 and in reliance thereupon is selected and assigned institutional funds management and
47 investment functions, has a duty to use those skills or that expertise in managing and
48 investing institutional funds.

2 **469.956. 1.** Subject to the intent of the donor expressed in the gift instrument, an
3 institution may appropriate for expenditure or accumulate so much of an endowment fund
4 as the institution determines is prudent for the uses, benefits, purposes, and duration for
5 which the endowment fund is established. Unless otherwise stated in the gift instrument,
6 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,

7 the institution shall act in good faith with the care that an ordinary prudent person in a
8 like position would exercise under similar circumstances and shall consider, if relevant, the
9 following factors:

- 10 (1) The duration and preservation of the endowment fund;
- 11 (2) The purposes of the institution and the endowment fund;
- 12 (3) General economic conditions;
- 13 (4) The possible effect of inflation or deflation;
- 14 (5) The expected total return from income and the appreciation of investments;
- 15 (6) Other resources of the institution; and
- 16 (7) The investment policy of the institution.

17 2. To limit the authority to appropriate for expenditure or accumulate under
18 subsection 1 of this section, a gift instrument shall specifically state the limitation.

19 3. Terms in a gift instrument designating a gift as an endowment, or a direction or
20 authorization in the gift instrument to use only income, interest, dividends, or rents, issues
21 or profits, or to preserve the principal intact, or words that:

- 22 (1) Create an endowment fund of permanent duration unless other language in the
23 gift instrument limits the duration or purpose of the fund; and
- 24 (2) Do not otherwise limit the authority to appropriate for expenditure or
25 accumulate under subsection 1 of this section.

469.958. 1. Subject to any specific limitation set forth in a gift instrument or law
2 not within sections 469.950 to 469.966, an institution may delegate to an external agent the
3 management and investment of an institutional fund to the extent that an institution could
4 prudently delegate under the circumstances. An institution shall act in good faith with the
5 care that an ordinarily prudent person in a like position would exercise under similar
6 circumstances in:

- 7 (1) Selecting an agent;
- 8 (2) Establishing the scope and terms of the delegation consistent with the purposes
9 of the institution and the institutional fund; and
- 10 (3) Periodically reviewing the agent's actions in order to monitor the agent's
11 performance and compliance with the scope and terms of the delegation.

12 2. In performing a delegated function, an agent owes a duty to the institution to
13 exercise reasonable care to comply with the scope and terms of the delegation.

14 3. An institution that complies with subsection 1 of this section is not liable for the
15 decisions or actions of an agent to which the function was delegated.

16 4. By accepting delegation of a management or investment function from an
17 institution that is subject to the laws of this state, an agent submits to the jurisdiction of the

18 courts of this state in all proceedings arising from or related to the delegation or the
19 performance of the delegated function.

20 5. An institution may delegate management and investment functions to its
21 committees, officers, or employees as authorized by law other than provided for in sections
22 469.950 to 469.966.

2 469.960. 1. If the donor consents in a record, an institution may release or modify,
3 in whole or in part, a restriction contained in a gift instrument on the management,
4 investment, or purpose of an institutional fund. A release or modification may not allow
5 a fund to be used for a purpose other than a charitable purpose of the institution.

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

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

20 4. If an institution determines that a restriction contained in a gift instrument on
21 the management, investment, or purpose of an institutional fund is unlawful,
22 impracticable, impossible to achieve, or wasteful, the institution, sixty days after
23 notification to the attorney general, may release or modify the restrictions in whole or in
24 part if:

25 (1) The institutional fund subject to the restriction has a total value of less than
26 twenty-five thousand dollars;

27 (2) More than twenty years have lapsed since the fund was established; and

28 (3) The institution uses the property in a manner consistent with the charitable
purposes expressed in the gift instrument.

2 469.962. Sections 469.950 to 469.966 shall apply to institutional funds existing on
or established after August 28, 2009.

469.964. As authorized in 15 U.S.C. 7002, as amended, sections 469.950 to 469.966
2 modifies, limits, or supersedes the federal Electronic Signatures in Global and National
3 Commerce Act, 15 U.S.C. Section 7001, et seq., but do not modify, limit, or supersede 15
4 U.S.C. Section 7001(a), or authorize electronic delivery of any of the notices described in
5 15 U.S.C. Section 7003(b).

469.966. Compliance with sections 469.950 to 469.966 is determined in light of the
2 facts and circumstances existing at the time a decision is made or action is taken and not
3 by hindsight.

✓