

1
2
3
4
5
6
7
8
9
10
11
12
13

14
15
16
17
18

H.287

Introduced by Representatives Botzow of Pownal, Kitzmiller of Montpelier,
Bissonnette of Winooski, Branagan of Georgia, Bray of New
Haven, Clerkin of Hartford, Dickinson of St. Albans Town,
Donovan of Burlington, Lorber of Burlington, Marcotte of
Coventry, Potter of Clarendon, Shand of Weathersfield, Smith
of Mendon, Sweaney of Windsor, Turner of Milton and Wilson
of Manchester

Referred to Committee on

Date:

Subject: Uniform Prudent Management of Institutional Funds Act

Statement of purpose: This bill proposes to adopt the Uniform Prudent
Management of Institutional Funds Act.

An act relating to Uniform Prudent Management of Institutional Funds Act

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. REPEAL

Chapter 119 of Title 14 (Uniform Management of Institutional Funds Act)

is repealed.

1 Sec. 2. 14 V.S.A. chapter 120 is added to read:

2 CHAPTER 120. UNIFORM PRUDENT MANAGEMENT OF
3 INSTITUTIONAL FUNDS ACT

4 § 3411. SHORT TITLE

5 This chapter may be cited as the Uniform Prudent Management of
6 Institutional Funds Act.

7 § 3412. DEFINITIONS

8 In this chapter:

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

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

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

20 (4) “Institution” means:

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

3 (B) a government or governmental subdivision, agency, or
4 instrumentality, to the extent that it holds funds exclusively for a charitable
5 purpose; or

6 (C) a trust that had both charitable and noncharitable interests, after
7 all noncharitable interests have terminated.

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

10 (A) program-related assets;

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

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

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

1 (7) “Program-related asset” means an asset held by an institution
2 primarily to accomplish a charitable purpose of the institution and not
3 primarily for investment.

4 (8) “Record” means information that is inscribed on a tangible medium
5 or that is stored in an electronic or other medium and is retrievable in
6 perceivable form.

7 § 3413. STANDARD OF CONDUCT IN MANAGING AND INVESTING
8 INSTITUTIONAL FUND

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

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

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

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

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

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

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

7 (1) In managing and investing an institutional fund, the following
8 factors, if relevant, must be considered:

9 (A) general economic conditions;

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

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

13 (D) the role that each investment or course of action plays within the
14 overall investment portfolio of the fund;

15 (E) the expected total return from income and the appreciation of
16 investments;

17 (F) other resources of the institution;

18 (G) the needs of the institution and the fund to make distributions and
19 to preserve capital; and

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

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

6 (3) Except as otherwise provided by law other than this chapter, an
7 institution may invest in any kind of property or type of investment consistent
8 with this section.

9 (4) An institution shall diversify the investments of an institutional fund
10 unless the institution reasonably determines that, because of special
11 circumstances, the purposes of the fund are better served without
12 diversification.

13 (5) Within a reasonable time after receiving property, an institution shall
14 make and carry out decisions concerning the retention or disposition of the
15 property or to rebalance a portfolio in order to bring the institutional fund into
16 compliance with the purposes, terms, and distribution requirements of the
17 institution as necessary to meet other circumstances of the institution and the
18 requirements of this chapter.

19 (6) A person that has special skills or expertise, or is selected in reliance
20 upon the person's representation that the person has special skills or expertise,

1 has a duty to use those skills or that expertise in managing and investing
2 institutional funds.

3 § 3414. APPROPRIATION FOR EXPENDITURE OR ACCUMULATION
4 OF ENDOWMENT FUND; RULES OF CONSTRUCTION

5 (a) Subject to the intent of a donor expressed in the gift instrument [and to
6 subsection (d) of this section], an institution may appropriate for expenditure
7 or accumulate so much of an endowment fund as the institution determines is
8 prudent for the uses, benefits, purposes, and duration for which the endowment
9 fund is established. Unless stated otherwise in the gift instrument, the assets in
10 an endowment fund are donor-restricted assets until appropriated for
11 expenditure by the institution. In making a determination to appropriate or
12 accumulate, the institution shall act in good faith, with the care that an
13 ordinarily prudent person in a like position would exercise under similar
14 circumstances, and shall consider, if relevant, the following factors:

15 (1) the duration and preservation of the endowment fund;

16 (2) the purposes of the institution and the endowment fund;

17 (3) general economic conditions;

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

19 (5) the expected total return from income and the appreciation of
20 investments;

21 (6) other resources of the institution; and

1 (7) the investment policy of the institution.

2 (b) To limit the authority to appropriate for expenditure or accumulate
3 under subsection (a) of this section, a gift instrument must specifically state the
4 limitation.

5 (c) Terms in a gift instrument designating a gift as an endowment, or a
6 direction or authorization in the gift instrument to use only “income,”
7 “interest,” “dividends,” or “rents, issues, or profits,” or “to preserve the
8 principal intact,” or words of similar import:

9 (1) create an endowment fund of permanent duration unless other
10 language in the gift instrument limits the duration or purpose of the fund; and

11 (2) do not otherwise limit the authority to appropriate for expenditure or
12 accumulate under subsection (a) of this section.

13 [(d) The appropriation for expenditure in any year of an amount greater
14 than seven percent of the fair market value of an endowment fund, calculated
15 on the basis of market values determined at least quarterly and averaged over a
16 period of not less than three years immediately preceding the year in which the
17 appropriation for expenditure is made, creates a rebuttable presumption of
18 imprudence. For an endowment fund in existence for fewer than three years,
19 the fair market value of the endowment fund must be calculated for the period
20 the endowment fund has been in existence. This subsection does not:

1 (1) apply to an appropriation for expenditure permitted under law other
2 than this chapter or by the gift instrument; or

3 (2) create a presumption of prudence for an appropriation for
4 expenditure of an amount less than or equal to seven percent of the fair market
5 value of the endowment fund.]

6 [§ 3415. DELEGATION OF MANAGEMENT AND INVESTMENT

7 FUNCTIONS

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

14 (1) selecting an agent;

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

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

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

1 the delegation.

2 (c) An institution that complies with subsection (a) of this section is not
3 liable for the decisions or actions of an agent to which the function was
4 delegated.

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

9 (e) An institution may delegate management and investment functions to its
10 committees, officers, or employees as authorized by law of this state other than
11 this chapter.]

12 § 3416. RELEASE OR MODIFICATION OF RESTRICTIONS ON

13 MANAGEMENT, INVESTMENT, OR PURPOSE

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

19 (b) The court, upon application of an institution, may modify a restriction
20 contained in a gift instrument regarding the management or investment of an
21 institutional fund if the restriction has become impracticable or wasteful, if it

1 impairs the management or investment of the fund, or if, because of
2 circumstances not anticipated by the donor, a modification of a restriction will
3 further the purposes of the fund. The institution shall notify the [attorney
4 general] of the application, and the [attorney general] must be given an
5 opportunity to be heard. To the extent practicable, any modification must be
6 made in accordance with the donor's probable intention.

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

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

20 (1) the institutional fund subject to the restriction has a total value of
21 less than [\$25,000.00];

1 (2) more than [20] years have elapsed since the fund was established;

2 and

3 (3) the institution uses the property in a manner consistent with the

4 charitable purposes expressed in the gift instrument.

5 § 3417. REVIEWING COMPLIANCE

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

9 § 3418. APPLICATION TO EXISTING INSTITUTIONAL FUNDS

10 This chapter applies to institutional funds existing on or established after
11 [the effective date of this chapter]. As applied to institutional funds existing on
12 [the effective date of this chapter,] this chapter governs only decisions made or
13 actions taken on or after that date.

14 § 3419. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
15 NATIONAL COMMERCE ACT

16 This chapter modifies, limits, and supersedes the Electronic Signatures in
17 Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does
18 not modify, limit, or supersede Section 101 of that act, 15 U.S.C. Section
19 7001(a), or authorize electronic delivery of any of the notices described in
20 Section 103 of that act, 15 U.S.C. Section 7003(b).

1 § 3420. UNIFORMITY OF APPLICATION AND CONSTRUCTION

2 In applying and construing this uniform act, consideration must be given to
3 the need to promote uniformity of the law with respect to its subject matter
4 among states that enact it.

5 Sec. 3. EFFECTIVE DATE

6 This act shall take effect upon passage.