

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 136
FINAL READING

Introduced by Flood, 19

Read first time January 8, 2007

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to fund management; to adopt the Nebraska
2 Uniform Prudent Management of Institutional Funds Act; to
3 eliminate the Uniform Management of Institutional Funds
4 Act; and to outright repeal sections 58-601, 58-602,
5 58-603, 58-604, 58-605, 58-606, 58-607, 58-608, and
6 58-609, Reissue Revised Statutes of Nebraska.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. This act shall be known and be cited as the
2 Nebraska Uniform Prudent Management of Institutional Funds Act.

3 Sec. 2. For purposes of the Nebraska Uniform Prudent
4 Management of Institutional Funds Act:

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

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

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

17 (4) Institution means:

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

20 (B) a government or governmental subdivision, agency, or
21 instrumentality, to the extent that it holds funds exclusively for
22 a charitable purpose; and

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

25 (5) Institutional fund means a fund held by an

1 institution exclusively for charitable purposes. The term does not
2 include:

3 (A) program-related assets;

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

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

9 (6) Person means an individual, corporation, business
10 trust, estate, trust, partnership, limited liability company,
11 association, joint venture, public corporation, government or
12 governmental subdivision, agency, or instrumentality, or any other
13 legal or commercial entity.

14 (7) Program-related asset means an asset held by an
15 institution primarily to accomplish a charitable purpose of the
16 institution and not primarily for investment.

17 (8) Record means information that is inscribed on a
18 tangible medium or that is stored in an electronic or other medium
19 and is retrievable in perceivable form.

20 Sec. 3. (a) Subject to the intent of a donor expressed
21 in a gift instrument, an institution, in managing and investing an
22 institutional fund, shall consider the charitable purposes of the
23 institution and the purposes of the institutional fund.

24 (b) In addition to complying with the duty of loyalty
25 imposed by law other than the Nebraska Uniform Prudent Management

1 of Institutional Funds Act, each person responsible for managing
2 and investing an institutional fund shall manage and invest the
3 fund in good faith and with the care an ordinarily prudent person
4 in a like position would exercise under similar circumstances.

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

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

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

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

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

16 (1) In managing and investing an institutional fund, the
17 following factors, if relevant, must 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
21 decisions or strategies;

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

24 (E) the expected total return from income and the
25 appreciation of investments;

1 (F) other resources of the institution;
2 (G) the needs of the institution and the fund to make
3 distributions and to preserve capital; and
4 (H) an asset's special relationship or special value, if
5 any, to the charitable purposes of the institution.

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

12 (3) Except as otherwise provided by law other than the
13 Nebraska Uniform Prudent Management of Institutional Funds Act,
14 an institution may invest in any kind of property or type of
15 investment consistent with this section.

16 (4) An institution shall diversify the investments of
17 an institutional fund unless the institution reasonably determines
18 that, because of special circumstances, the purposes of the fund
19 are better served without diversification.

20 (5) Within a reasonable time after receiving property,
21 an institution shall make and carry out decisions concerning
22 the retention or disposition of the property or to rebalance a
23 portfolio, in order to bring the institutional fund into compliance
24 with the purposes, terms, and distribution requirements of the
25 institution as necessary to meet other circumstances of the

1 institution and the requirements of the act.

2 (6) A person that has special skills or expertise, or
3 is selected in reliance upon the person's representation that the
4 person has special skills or expertise, has a duty to use those
5 skills or that expertise in managing and investing institutional
6 funds.

7 Sec. 4. (a) Subject to the intent of a donor expressed in
8 the gift instrument, an institution may appropriate for expenditure
9 or accumulate so much of an endowment fund as the institution
10 determines is prudent for the uses, benefits, purposes, and
11 duration for which the endowment fund is established. Unless
12 stated otherwise in the gift instrument, the assets in an endowment
13 fund are donor-restricted assets until appropriated for expenditure
14 by the institution. In making a determination to appropriate or
15 accumulate, the institution shall act in good faith, with the care
16 that an ordinarily prudent person in a like position would exercise
17 under similar circumstances, and shall consider, if relevant, the
18 following factors:

- 19 (1) the duration and preservation of the endowment fund;
- 20 (2) the purposes of the institution and the endowment
21 fund;
- 22 (3) general economic conditions;
- 23 (4) the possible effect of inflation or deflation;
- 24 (5) the expected total return from income and the
25 appreciation of investments;

1 (6) other resources of the institution; and

2 (7) the investment policy of the institution.

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

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

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

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

16 Sec. 5. (a) Subject to any specific limitation set forth
17 in a gift instrument or in law other than the Nebraska Uniform
18 Prudent Management of Institutional Funds Act, an institution may
19 delegate to an external agent the management and investment of
20 an institutional fund to the extent that an institution could
21 prudently delegate under the circumstances. An institution shall
22 act in good faith, with the care that an ordinarily prudent person
23 in a like position would exercise under similar circumstances, in:

24 (1) selecting an agent;

25 (2) establishing the scope and terms of the delegation,

1 consistent with the purposes of the institution and the
2 institutional fund; and

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

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

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

12 (d) By accepting delegation of a management or investment
13 function from an institution that is subject to the law of this
14 state, an agent submits to the jurisdiction of the courts of this
15 state in all proceedings arising from or related to the delegation
16 or the performance of the delegated function.

17 (e) An institution may delegate management and investment
18 functions to its committees, officers, or employees as authorized
19 by law of this state other than the Nebraska Uniform Prudent
20 Management of Institutional Funds Act.

21 Sec. 6. (a) If the donor consents in a record, an
22 institution may release or modify, in whole or in part, a
23 restriction contained in a gift instrument on the management,
24 investment, or purpose of an institutional fund. A release or
25 modification may not allow a fund to be used for a purpose other

1 than a charitable purpose of the institution.

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

13 (c) If a particular charitable purpose or a restriction
14 contained in a gift instrument on the use of an institutional fund
15 becomes unlawful, impractical, impossible to achieve, or wasteful,
16 the court, upon application of an institution, may modify the
17 purpose of the fund or the restriction on the use of the fund in
18 a manner consistent with the charitable purposes expressed in the
19 gift instrument. The institution shall notify the Attorney General
20 of the application, and the Attorney General must be given an
21 opportunity to be heard.

22 (d) If an institution determines that a restriction
23 contained in a gift instrument on the management, investment,
24 or purpose of an institutional fund is unlawful, impracticable,
25 impossible to achieve, or wasteful, the institution, sixty days

1 after notification to the Attorney General, may release or modify
2 the restriction, in whole or part, if:

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

5 (2) more than twenty years have elapsed since the fund
6 was established; and

7 (3) the institution uses the property in a manner
8 consistent with the charitable purposes expressed in the gift
9 instrument.

10 Sec. 7. Compliance with the Nebraska Uniform Prudent
11 Management of Institutional Funds Act is determined in light of the
12 facts and circumstances existing at the time a decision is made or
13 action is taken, and not by hindsight.

14 Sec. 8. The Nebraska Uniform Prudent Management of
15 Institutional Funds Act applies to institutional funds existing
16 on or established after the effective date of this act. As applied
17 to institutional funds existing on the effective date of this act,
18 the act governs only decisions made or actions taken on or after
19 that date.

20 Sec. 9. The Nebraska Uniform Prudent Management of
21 Institutional Funds Act modifies, limits, and supersedes the
22 Electronic Signatures in Global and National Commerce Act, 15
23 U.S.C. 7001 et seq., as the act existed on the effective date of
24 this act, but does not modify, limit, or supersede section 101 of
25 that act, 15 U.S.C. 7001(a), or authorize electronic delivery of

1 any of the notices described in section 103 of that act, 15 U.S.C.
2 7003(b).

3 Sec. 10. In applying and construing this uniform act,
4 consideration must be given to the need to promote uniformity of
5 the law with respect to its subject matter among states that enact
6 it.

7 Sec. 11. The following sections are outright repealed:
8 Sections 58-601, 58-602, 58-603, 58-604, 58-605, 58-606, 58-607,
9 58-608, and 58-609, Reissue Revised Statutes of Nebraska.