

CHAPTER 164

PROBATE, TRUSTS, AND FIDUCIARIES

HOUSE BILL 08-1173

BY REPRESENTATIVE(S) McGihon, Carroll M., Green, and Labuda;
also SENATOR(S) Shaffer.**AN ACT****CONCERNING THE ENACTMENT OF THE "UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT".***Be it enacted by the General Assembly of the State of Colorado:***SECTION 1.** Part 11 of article 1 of title 15, Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:**PART 11
UNIFORM PRUDENT MANAGEMENT
OF INSTITUTIONAL FUNDS ACT****15-1-1101. Short title.** THIS PART 11 SHALL BE KNOWN AND MAY BE CITED AS THE "UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT".**15-1-1102. Definitions.** AS USED IN THIS PART 11, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "CHARITABLE PURPOSE" MEANS THE RELIEF OF POVERTY, THE ADVANCEMENT OF EDUCATION OR RELIGION, THE PROMOTION OF HEALTH, OR ANY OTHER CHARITABLE OR ELEEMOSYNARY PURPOSE.

(2) "ENDOWMENT FUND" MEANS 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 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,

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

TRANSFERRED TO, OR HELD BY AN INSTITUTION AS AN INSTITUTIONAL FUND.

(4) "INSTITUTION" MEANS:

(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; OR

(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. THE TERM DOES NOT INCLUDE FUNDS HELD BY THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION CREATED BY ARTICLE 51 OF TITLE 24, C.R.S., OR FUNDS HELD BY A SCHOOL DISTRICT RETIREMENT SYSTEM ESTABLISHED PURSUANT TO PART 2 OF ARTICLE 64 OF TITLE 22, C.R.S., OR:

(A) PROGRAM-RELATED ASSETS;

(B) A FUND HELD FOR AN INSTITUTION BY A TRUSTEE THAT IS NOT AN INSTITUTION; OR

(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.

15-1-1103. Standard of conduct in managing and investing institutional fund. (a) SUBJECT TO THE INTENT OF A DONOR EXPRESSED IN A GIFT INSTRUMENT, AN INSTITUTION, IN MANAGING AND INVESTING AN INSTITUTIONAL FUND, SHALL CONSIDER THE CHARITABLE PURPOSES OF THE INSTITUTION AND THE PURPOSES OF THE INSTITUTIONAL FUND.

(b) IN ADDITION TO COMPLYING WITH THE DUTY OF LOYALTY IMPOSED BY LAW OTHER THAN THIS PART 11, EACH PERSON RESPONSIBLE FOR MANAGING AND INVESTING AN INSTITUTIONAL FUND SHALL MANAGE AND INVEST THE INSTITUTIONAL

FUND IN GOOD FAITH AND WITH THE CARE AN ORDINARILY PRUDENT PERSON IN A LIKE POSITION WOULD EXERCISE UNDER SIMILAR CIRCUMSTANCES.

(c) IN MANAGING AND INVESTING AN INSTITUTIONAL FUND, AN INSTITUTION:

(1) 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; AND

(2) SHALL MAKE A REASONABLE EFFORT TO VERIFY FACTS RELEVANT TO THE MANAGEMENT AND INVESTMENT OF THE INSTITUTIONAL FUND.

(d) AN INSTITUTION MAY POOL TWO OR MORE INSTITUTIONAL FUNDS FOR PURPOSES OF MANAGEMENT AND INVESTMENT.

(e) EXCEPT AS OTHERWISE PROVIDED BY A GIFT INSTRUMENT, THE FOLLOWING RULES APPLY:

(1) IN MANAGING AND INVESTING AN INSTITUTIONAL FUND, THE FOLLOWING FACTORS, IF RELEVANT, MUST BE CONSIDERED:

(A) GENERAL ECONOMIC CONDITIONS;

(B) THE POSSIBLE EFFECT OF INFLATION OR DEFLATION;

(C) THE EXPECTED TAX CONSEQUENCES, IF ANY, OF INVESTMENT DECISIONS OR STRATEGIES;

(D) THE ROLE THAT EACH INVESTMENT OR COURSE OF ACTION PLAYS WITHIN THE OVERALL INVESTMENT PORTFOLIO OF THE INSTITUTIONAL FUND;

(E) THE EXPECTED TOTAL RETURN FROM INCOME AND THE APPRECIATION OF INVESTMENTS;

(F) OTHER RESOURCES OF THE INSTITUTION;

(G) THE NEEDS OF THE INSTITUTION AND THE INSTITUTIONAL FUND TO MAKE DISTRIBUTIONS AND TO PRESERVE CAPITAL; AND

(H) AN ASSET'S SPECIAL RELATIONSHIP OR SPECIAL VALUE, IF ANY, TO THE CHARITABLE PURPOSES OF THE INSTITUTION.

(2) MANAGEMENT AND INVESTMENT DECISIONS ABOUT AN INDIVIDUAL ASSET MUST BE MADE NOT IN ISOLATION BUT RATHER 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 INSTITUTIONAL FUND AND TO THE INSTITUTION.

(3) EXCEPT AS OTHERWISE PROVIDED BY LAW OTHER THAN THIS PART 11, AN INSTITUTION MAY INVEST IN ANY KIND OF PROPERTY OR TYPE OF INVESTMENT CONSISTENT WITH THIS SECTION.

(4) AN INSTITUTION SHALL DIVERSIFY THE INVESTMENTS OF AN INSTITUTIONAL FUND UNLESS THE INSTITUTION REASONABLY DETERMINES THAT, BECAUSE OF SPECIAL CIRCUMSTANCES, THE PURPOSES OF THE INSTITUTIONAL FUND ARE BETTER SERVED WITHOUT DIVERSIFICATION.

(5) 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 PART 11.

(6) 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.

15-1-1104. Appropriation for expenditure of accumulation of endowment fund - rules of construction. (a) SUBJECT TO THE INTENT OF A DONOR EXPRESSED IN THE GIFT INSTRUMENT, 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, THE FOLLOWING FACTORS:

- (1) THE DURATION AND PRESERVATION OF THE ENDOWMENT FUND;
- (2) THE PURPOSES OF THE INSTITUTION AND THE ENDOWMENT FUND;
- (3) GENERAL ECONOMIC CONDITIONS;
- (4) THE POSSIBLE EFFECT OF INFLATION OR DEFLATION;
- (5) THE EXPECTED TOTAL RETURN FROM INCOME AND THE APPRECIATION OF INVESTMENTS;
- (6) OTHER RESOURCES OF THE INSTITUTION; AND
- (7) THE INVESTMENT POLICY OF THE INSTITUTION.

(b) TO LIMIT THE AUTHORITY TO APPROPRIATE FOR EXPENDITURE OR ACCUMULATE UNDER SUBSECTION (a) OF THIS SECTION, A GIFT INSTRUMENT MUST SPECIFICALLY STATE THE LIMITATION.

(c) 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:

(1) CREATE AN ENDOWMENT FUND OF PERMANENT DURATION UNLESS OTHER LANGUAGE IN THE GIFT INSTRUMENT LIMITS THE DURATION OR PURPOSE OF THE ENDOWMENT FUND; AND

(2) DO NOT OTHERWISE LIMIT THE AUTHORITY TO APPROPRIATE FOR EXPENDITURE OR ACCUMULATE UNDER SUBSECTION (a) OF THIS SECTION.

15-1-1105. Delegation of management and investment functions.

(a) SUBJECT TO ANY SPECIFIC LIMITATION SET FORTH IN A GIFT INSTRUMENT OR IN LAW OTHER THAN THIS PART 11, 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:

(1) SELECTING AN AGENT;

(2) ESTABLISHING THE SCOPE AND TERMS OF THE DELEGATION, CONSISTENT WITH THE PURPOSES OF THE INSTITUTION AND THE INSTITUTIONAL FUND; AND

(3) PERIODICALLY REVIEWING THE AGENT'S ACTIONS IN ORDER TO MONITOR THE AGENT'S PERFORMANCE AND COMPLIANCE WITH THE SCOPE AND TERMS OF THE DELEGATION.

(b) 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.

(c) AN INSTITUTION THAT COMPLIES WITH SUBSECTION (a) OF THIS SECTION IS NOT LIABLE FOR THE DECISIONS OR ACTIONS OF AN AGENT TO WHICH THE FUNCTION WAS DELEGATED.

(d) 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.

(e) AN INSTITUTION MAY DELEGATE MANAGEMENT AND INVESTMENT FUNCTIONS TO ITS COMMITTEES, OFFICERS, OR EMPLOYEES AS AUTHORIZED BY LAW OF THIS STATE OTHER THAN THIS PART 11.

15-1-1106. Release or modification of restrictions on management, investment, or purpose.

(a) 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 MAY NOT ALLOW AN

INSTITUTIONAL FUND TO BE USED FOR A PURPOSE OTHER THAN A CHARITABLE PURPOSE OF THE INSTITUTION.

(b) 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 WASTEFUL, IF IT IMPAIRS THE MANAGEMENT OR INVESTMENT OF THE INSTITUTIONAL FUND, OR IF, BECAUSE OF CIRCUMSTANCES NOT ANTICIPATED BY THE DONOR, A MODIFICATION OF A RESTRICTION WILL FURTHER THE PURPOSES OF THE INSTITUTIONAL FUND. THE INSTITUTION SHALL NOTIFY THE ATTORNEY GENERAL OF THE APPLICATION, AND THE ATTORNEY GENERAL MUST BE GIVEN AN OPPORTUNITY TO BE HEARD. TO THE EXTENT PRACTICABLE, ANY MODIFICATION MUST BE MADE IN ACCORDANCE WITH THE DONOR'S PROBABLE INTENTION.

(c) IF A PARTICULAR CHARITABLE PURPOSE OR A RESTRICTION CONTAINED IN A GIFT INSTRUMENT ON THE USE OF AN INSTITUTIONAL FUND BECOMES UNLAWFUL, IMPRACTICABLE, IMPOSSIBLE TO ACHIEVE, OR WASTEFUL, THE COURT, UPON APPLICATION OF AN INSTITUTION, MAY MODIFY THE PURPOSE OF THE INSTITUTIONAL FUND OR THE RESTRICTION ON THE USE OF THE INSTITUTIONAL 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 MUST BE GIVEN AN OPPORTUNITY TO BE HEARD.

(d) 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, IMPOSSIBLE TO ACHIEVE, OR WASTEFUL, THE INSTITUTION, SIXTY DAYS AFTER NOTIFICATION TO THE ATTORNEY GENERAL, MAY RELEASE OR MODIFY THE RESTRICTION, IN WHOLE OR PART, IF:

(1) THE INSTITUTIONAL FUND, SUBJECT TO THE RESTRICTION, HAS A TOTAL VALUE OF LESS THAN ONE HUNDRED THOUSAND DOLLARS; EXCEPT THAT THE DOLLAR LIMIT ESTABLISHED IN THIS PARAGRAPH (1) SHALL BE ADJUSTED FOR INFLATION IN ACCORDANCE WITH THE ANNUAL PERCENTAGE CHANGE IN THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, CONSUMER PRICE INDEX FOR DENVER-BOULDER-GREELEY, ALL ITEMS, ALL URBAN CONSUMERS, OR ITS SUCCESSOR INDEX. ON OR BEFORE JANUARY 1, 2010, AND EACH EVEN-NUMBERED YEAR THEREAFTER, THE ATTORNEY GENERAL SHALL CALCULATE THE ADJUSTED DOLLAR AMOUNT FOR THE NEXT TWO-YEAR CYCLE USING INFLATION FOR THE PRIOR TWO CALENDAR YEARS AS OF THE DATE OF THE CALCULATION. THE ADJUSTED EXEMPTION SHALL BE ROUNDED UPWARD TO THE NEAREST ONE HUNDRED DOLLAR INCREMENT. THE ATTORNEY GENERAL SHALL CERTIFY THE AMOUNT OF THE ADJUSTMENT FOR THE NEXT TWO-YEAR CYCLE AND SHALL PUBLISH THE AMOUNT ON THE ATTORNEY GENERAL'S WEB SITE.

(2) MORE THAN TWENTY YEARS HAVE ELAPSED SINCE THE INSTITUTIONAL FUND WAS ESTABLISHED; AND

(3) THE INSTITUTION USES THE PROPERTY IN A MANNER CONSISTENT WITH THE CHARITABLE PURPOSES EXPRESSED IN THE GIFT INSTRUMENT.

15-1-1107. Reviewing compliance. COMPLIANCE WITH THIS PART 11 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.

15-1-1108. Application to existing institutional funds. THIS PART 11 APPLIES TO INSTITUTIONAL FUNDS EXISTING ON OR ESTABLISHED AFTER THE EFFECTIVE DATE OF THIS PART 11. AS APPLIED TO INSTITUTIONAL FUNDS EXISTING ON THE EFFECTIVE DATE OF THIS PART 11, THIS PART 11 GOVERNS ONLY DECISIONS MADE OR ACTIONS TAKEN ON OR AFTER SAID DATE.

15-1-1109. Relation to "Electronic Signatures in Global and National Commerce Act". THIS PART 11 MODIFIES, LIMITS, AND SUPERSEDES THE "ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT", 15 U.S.C. SEC. 7001 ET SEQ., BUT DOES NOT MODIFY, LIMIT, OR SUPERSEDE SECTION 101 (a) OF THAT ACT, 15 U.S.C. SEC. 7001 (a), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES DESCRIBED IN SECTION 103 (b) OF THAT ACT, 15 U.S.C. SEC. 7003 (b).

15-1-1110. Uniformity of application and construction. IN APPLYING AND CONSTRUING THIS PART 11, CONSIDERATION MUST BE GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

SECTION 2. Inclusion of official comments. There shall be included in the publication of the "Uniform Prudent Management of Institutional Funds Act", as nonstatutory matter, following each section of the part, the full text of the official comments to that section contained in the official volume containing the 2006 official text of the "Uniform Prudent Management of Institutional Funds Act" issued by the national conference of commissioners on uniform state laws, with any changes in the official comments or Colorado comments to correspond to Colorado changes in the uniform act. The comments shall be prepared by the revisor of statutes and approved for publication by the committee on legal services.

SECTION 3. Effective date. This act shall take effect September 1, 2008.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 21, 2008