

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 136

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 Act;
4 and to outright repeal sections 58-601, 58-602, 58-603,
5 58-604, 58-605, 58-606, 58-607, 58-608, and 58-609, Reissue
6 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, the
7 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 an
15 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 a
22 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 institution
26 exclusively for charitable purposes. The term does not include:

27 (A) program-related assets;

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

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

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

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

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

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

21 (b) In addition to complying with the duty of loyalty
22 imposed by law other than the Nebraska Uniform Prudent Management of
23 Institutional Funds Act, each person responsible for managing and
24 investing an institutional fund shall manage and invest the fund in
25 good faith and with the care an ordinarily prudent person in a like
26 position would exercise under similar circumstances.

27 (c) In managing and investing an institutional fund, an

1 institution:

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

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

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

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

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

13 (A) general economic conditions;

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

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

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

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

21 (F) other resources of the institution;

22 (G) the needs of the institution and the fund to make
23 distributions and to preserve capital; and

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

26 (2) Management and investment decisions about an individual
27 asset must be made not in isolation but rather in the context of the

1 institutional fund's portfolio of investments as a whole and as a
2 part of an overall investment strategy having risk and return
3 objectives reasonably suited to the fund and to the institution.

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

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

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

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

23 Sec. 4. (a) Subject to the intent of a donor expressed in
24 the gift instrument, an institution may appropriate for expenditure or
25 accumulate so much of an endowment fund as the institution determines
26 is prudent for the uses, benefits, purposes, and duration for which
27 the endowment fund is established. Unless stated otherwise in the

1 gift instrument, the assets in an endowment fund are donor-restricted
2 assets until appropriated for expenditure by the institution. In
3 making a determination to appropriate or accumulate, the institution
4 shall act in good faith, with the care that an ordinarily prudent
5 person in a like position would exercise under similar circumstances,
6 and shall consider, if relevant, the following factors:

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

8 (2) the purposes of the institution and the endowment
9 fund;

10 (3) general economic conditions;

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

12 (5) the expected total return from income and the
13 appreciation of investments;

14 (6) other resources of the institution; and

15 (7) the investment policy of the institution.

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

19 (c) Terms in a gift instrument designating a gift as an
20 endowment, or a direction or authorization in the gift instrument to
21 use only income, interest, dividends, or rents, issues, or profits,
22 or to preserve the principal intact, or words of similar import:

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

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

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

9 (1) selecting an agent;

10 (2) establishing the scope and terms of the delegation,
11 consistent with the purposes of the institution and the institutional
12 fund; and

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

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

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

22 (d) By accepting delegation of a management or investment
23 function from an institution that is subject to the law of this state,
24 an agent submits to the jurisdiction of the courts of this state in
25 all proceedings arising from or related to the delegation or the
26 performance of the delegated function.

27 (e) An institution may delegate management and investment

1 functions to its committees, officers, or employees as authorized by
2 law of this state other than the Nebraska Uniform Prudent Management
3 of Institutional Funds Act.

4 Sec. 6. (a) If the donor consents in a record, an
5 institution may release or modify, in whole or in part, a restriction
6 contained in a gift instrument on the management, investment, or
7 purpose of an institutional fund. A release or modification may not
8 allow a fund to be used for a purpose other than a charitable purpose
9 of the institution.

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

21 (c) If a particular charitable purpose or a restriction
22 contained in a gift instrument on the use of an institutional fund
23 becomes unlawful, impractical, impossible to achieve, or wasteful,
24 the court, upon application of an institution, may modify the purpose
25 of the fund or the restriction on the use of the fund in a manner
26 consistent with the charitable purposes expressed in the gift
27 instrument. The institution shall notify the Attorney General of the

1 application, and the Attorney General must be given an opportunity to
2 be heard.

3 (d) If an institution determines that a restriction
4 contained in a gift instrument on the management, investment, or
5 purpose of an institutional fund is unlawful, impracticable,
6 impossible to achieve, or wasteful, the institution, sixty days after
7 notification to the Attorney General, may release or modify the
8 restriction, in whole or part, if:

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

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

13 (3) the institution uses the property in a manner
14 consistent with the charitable purposes expressed in the gift
15 instrument.

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

20 Sec. 8. The Nebraska Uniform Prudent Management of
21 Institutional Funds Act applies to institutional funds existing on or
22 established after the effective date of this act. As applied to
23 institutional funds existing on the effective date of this act, the
24 act governs only decisions made or actions taken on or after that
25 date.

26 Sec. 9. The Nebraska Uniform Prudent Management of
27 Institutional Funds Act modifies, limits, and supersedes the

1 Electronic Signatures in Global and National Commerce Act, 15 U.S.C.
2 7001 et seq., as the act existed on the effective date of this act,
3 but does not modify, limit, or supersede section 101 of that act, 15
4 U.S.C. 7001(a), or authorize electronic delivery of any of the
5 notices described in section 103 of that act, 15 U.S.C. 7003(b).

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

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