

February 11, 2009

H 133. PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS. Filed 2/11/09. *TO ENACT THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT AND TO MAKE RELATED AMENDMENTS TO THE NORTH CAROLINA UNIFORM TRUST CODE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.*

Repeals GS Chapter 36B, *Uniform Management of Institutional Funds Act*, and enacts new GS Chapter 36E, to be cited as the *Uniform Prudent Management of Institutional Funds Act*.

Defines terms that apply in the proposed GS Chapter 36E regarding endowments for charitable purposes to an institutional fund (defined as a fund held by an institution exclusively for charitable purposes). Establishes criteria for the standard of conduct in managing and investing an institutional fund. Directs that an institution may (1) appropriate for expenditure, or (2) accumulate so much of an endowment fund, as the institution determines to be prudent. However, provides that the appropriation for expenditure or accumulation is subject to the intent of the donor expressed in the gift instrument conveying the property. Provides criteria to be considered by an institution in making a determination to appropriate or accumulate endowment funds. Directs that in making the determination, the institution must act in good faith. Provides that a gift instrument must specifically state any limitations on the institution's authority to appropriate or accumulate the endowment. Provides rules of construction regarding terms used in the gift instrument.

Provides that an institution may prudently delegate to an external agent the management and investment of an institutional fund, subject to any specific limitation set forth in a gift instrument or in other law. Directs that the institution must act in good faith and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances in the process of delegating management and investment functions. Provides guidelines regarding the standard of duty and care for an agent that accepts the delegation of a management or investment function.

Provides that a donor may consent in a record to permit an institution to release or modify restrictions contained in a gift instrument; however, a release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution. Provides additional criteria regarding options for the release or modification of restrictions contained in a gift instrument through application by an institution to superior court.

Specifies that a determination as to whether there is compliance with the proposed new chapter will be made in light of the facts existing at the time that a decision is made or an action is taken, and not by hindsight.

Directs that the provisions of this proposed new chapter apply to institutional funds existing on or established after the effective date of this act (effective when it becomes law).

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

Provides that the provisions of this proposed new chapter control to the extent that the provisions are inconsistent with the provisions of GS Chapter 36C, 36D, 37A, or 55A. Also provides that the provisions of this proposed new chapter do not apply to the University of North Carolina or to funds other than endowment funds held by a government or governmental subdivision, agency, or instrumentality.

Enacts GS 36C-4-405.2 regarding spending rules applicable to charitable trusts.

Amends GS 36C-4-413 identifying the criteria under which a trustee of a charitable trust is authorized to release or modify a restriction contained in the trust instrument.

Directs the Revisor of Statutes to have all relevant portions of the official comments to the Uniform Prudent Management of Institutional Funds Act and all explanatory comments of the drafters of this proposed act printed along with the proposed act.

Intro. by Ross.

GS 36E, 36C