

AN ACT

To amend sections 1715.51, 1715.52, 1715.55, 1715.56, 1715.57, 1715.58, 1715.59, 3345.05, and 5813.06; to amend, for the purpose of adopting new section numbers as indicated in parentheses, sections 1715.52 (1715.53), 1715.55 (1715.54), 1715.56 (1715.52), and 1715.57 (1715.55); to enact new sections 1715.56 and 1715.57; and to repeal sections 1715.53 and 1715.54 of the Revised Code for the purpose of adopting the Uniform Prudent Management of Institutional Funds Act by revising the Ohio Uniform Management of Institutional Funds Act.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1715.51, 1715.52, 1715.55, 1715.56, 1715.57, 1715.58, 1715.59, 3345.05, and 5813.06 be amended; sections 1715.52 (1715.53), 1715.55 (1715.54), 1715.56 (1715.52), and 1715.57 (1715.55) be amended for the purpose of adopting new section numbers as indicated in parentheses; and new sections 1715.56 and 1715.57 of the Revised Code be enacted to read as follows:

Sec. 1715.51. As used in sections 1715.51 to 1715.59 of the Revised Code:

(A) "Charitable purpose" means any purpose the achievement of which is beneficial to the community, including the relief of poverty, the advancement of education or religion, the promotion of health, and the promotion of a governmental purpose.

~~(B) "Institution" means an incorporated or unincorporated organization that is any of the following:~~

~~(1) A person, other than an individual, organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes or a;~~

~~(2) A governmental organization to the extent that it holds funds~~

exclusively for ~~any of those purposes~~ a charitable purpose:

(3) A trust that had both charitable and noncharitable interests and the noncharitable interests have terminated.

~~(B)(C)~~ "Institutional fund" means a fund that is held by an institution exclusively for its ~~exclusive use, benefit, or~~ charitable purposes. "Institutional fund" does not include ~~either~~ any of the following:

(1) Program related assets;

(2) A fund held for an institution by a trustee that is not an institution;

~~(2)(3)~~ (3) A fund in which a beneficiary that is not an institution has an interest other than ~~a right~~ an interest that may arise upon a violation of or the failure of the purposes of the fund.

~~(C)(D)~~ "Endowment fund" means an institutional fund; ~~or a~~ any part ~~of an institutional fund, thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.~~ "Endowment fund" does not include assets that an institution designates as an endowment fund for its own use.

~~(D)~~ "Governing board" means the body responsible for the management of an institution or an institutional fund.

~~(E)(1)~~ "Historic dollar value" means the aggregate fair value in dollars of the following:

~~(a) An endowment fund at the time it became an endowment fund;~~

~~(b) Each subsequent donation to an endowment fund at the time it is made;~~

~~(c) Each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to an endowment fund.~~

~~(2) A determination of historic dollar value made in good faith by an institution is conclusive.~~

~~(F)~~ "Gift instrument" means a ~~will, deed, grant, conveyance, agreement, memorandum, writing, or other governing document~~ record or records, including the terms of ~~any~~ an institutional ~~solicitations from which an institutional fund resulted~~ solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

~~(F)~~ "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, governmental organization, or any other legal or commercial entity.

~~(G)~~ "Program related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

~~(H)~~ "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.

~~Sec. 1715.56~~ 1715.52. In the administration of the powers to appropriate appreciation, to make and retain investments, and to delegate investment management of (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 any other duty of loyalty imposed by law, each person responsible for managing and investing an institutional funds, members of a governing board of an institution fund shall exercise ordinary business manage and invest the fund in good faith and with the care and prudence an ordinarily prudent person in a like position would exercise under the facts and similar circumstances prevailing at the time of the action or decision. In so doing, they shall consider the long and short term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, the expected total return on its investments, price level trends, and general

(C) In managing and investing an institutional fund, an institution 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 shall make a reasonable effort to verify facts relevant to the management and investment of the 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, all of the following apply:

(1) In managing and investing an institutional fund, the following factors, if relevant, shall 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 fund;

(e) The expected total return from income and the appreciation of investments;

(f) Other resources of the institution;

(g) The need of the institution and of the fund to make distributions and preserve capital;

(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 shall 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 fund and to the institution.

(3) Except as otherwise provided by law, 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 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 the rebalancing of a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution and as necessary to meet other circumstances of the institution and the requirements of sections 1715.51 to 1715.59 of the Revised Code.

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

Sec. ~~1715.52~~ 1715.53. The governing board of (A) Subject to the intent of a donor expressed in the gift instrument and to division (D) of this section, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses ~~and~~, benefits, purposes, and duration for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of. Unless stated otherwise in the gift instrument, the assets of the in an endowment fund over the historic dollar value of the fund as is 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 under the standard established by section 1715.56 of the Revised Code. This section does not limit the authority of a governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution 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;

(7) The investment policy of the institution.

(B) To limit the authority to appropriate for expenditure or accumulate under division (A) of this section, a gift instrument shall 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, create an endowment fund of permanent duration, unless other language in the gift instrument limits the duration or purpose of the fund, and do not otherwise limit the authority under division (A) of this section to appropriate for expenditure or accumulate.

(D)(1) The appropriation for expenditure in any year of an amount not greater than five per cent of the fair market value of an endowment fund, whether or not the total expenditure from it exceeds five per cent, calculated on the basis of market values that are determined at least quarterly and averaged over a period of not less than three years immediately preceding the year in which the appropriation for expenditure was made, creates an irrebuttable presumption of prudence. With respect to an endowment fund in existence for fewer than three years, the fair market value of the endowment fund shall be calculated for the period the endowment fund has been in existence.

(2) Nothing in division (D)(1) of this section shall be construed to restrict an appropriation for expenditure permitted by the gift instrument or to create a presumption of imprudence or prudence for that part, if any, of an appropriation for expenditure that exceeds five per cent of the fair market value of the endowment fund.

~~Sec. 4715.55 1715.54. Except as otherwise provided by the applicable~~
(A)(1) Subject to any specific limitation set forth in a gift instrument or by applicable in any other provision of law relating to governmental institutions or funds, the governing board of an institution may do all of the following:

(A) Delegate 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 doing all of the following:

(a) Selecting an agent;

(b) Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund;

(c) Periodically reviewing the agent's actions to monitor the agent's performance and compliance with the scope and terms of the delegation.

(2) An agent, in performing a delegated function, shall owe a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation. 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.

(3) An institution that complies with division (A)(1) of this section is not liable for the decisions or actions of an agent to which the function was delegated.

(B) An institution may delegate management and investment functions to its committees, officers, or employees of the institution or of an institutional fund, or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds;

(B) Contract with independent investment advisors, investment counsel or managers, banks, or trust companies, to act in the manner described in division (A) of this section;

(C) Authorize the payment of compensation for investment advisory or management services as otherwise provided by law.

Sec. 1715.57 1715.55. (A) With the written consent of the If a donor consents in a record, the governing board of an institution may release or modify, in whole or in part, a restriction imposed by the applicable contained in a gift instrument on the use or management, investment, or purpose of an institutional fund. A release or modification shall not, however, permit a fund to be used for a purpose other than a charitable purpose of the institution.

(B) If written consent of a donor as described in division (A) of this section cannot be obtained by reason of the donor's death, disability, unavailability, or impossibility of identification, the governing board of an institution may apply in the name of the institution to the The appropriate court for release of, upon application of an institution, may modify a

restriction imposed by the applicable contained in a gift instrument on regarding the use management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The attorney general is a necessary party to and shall be served with process in all proceedings pertaining to an application of that nature, and a judgment rendered in proceedings pertaining to an application of that nature without the service of process upon the attorney general is void. To the extent practicable, any modification shall be made in accordance with the donor's probable intention.

If the court finds in proceedings pertaining to an application of that nature that the restriction involved is obsolete, inappropriate, impracticable, or impossible, it may order the release of the restriction in whole or in part.

(C) A release of a restriction by a court order under division (B) of this section may not change an endowment fund to a fund that is not an endowment fund. A release of a restriction under division (A) or (B) of this section may not allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution involved. The court, upon application of an institution, may modify the charitable purpose of an institutional fund or a restriction contained in a gift instrument on the use of the fund if the particular charitable purpose or restriction becomes unlawful, impracticable, impossible to achieve, or wasteful. The attorney general is a necessary party to and shall be served with process in all proceedings pertaining to an application of that nature. Any modification shall be made in a manner consistent with the charitable purposes expressed in the gift instrument.

(D) This section does not limit the application of the doctrine of cy pres. 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 may, after providing sixty-days advanced notice to the attorney general's charitable law section by certified mail on a form prescribed by the attorney general, release or modify the restriction, in whole or in part, if all of the following conditions are met:

(1) The institutional fund subject to the restriction has a total value of less than two hundred fifty thousand dollars;

(2) More than ten years have elapsed since the fund was established;

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

(E) The attorney general may extend for a period of up to an additional sixty days the effective date of a release or modification of a restriction that is proposed under division (D) of this section and shall provide notice of that extension to the institution that proposed the release or modification. The notice shall set forth the reasons necessitating the extension. The attorney general shall notify the institution prior to the effective date of the proposed release or modification of any objection to the proposed release or modification of the restriction.

Sec. 1715.56. Compliance with sections 1715.51 to 1715.59 of the Revised Code shall be determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

Sec. 1715.57. (A) Sections 1715.51 to 1715.59 of the Revised Code shall be construed as modifying, limiting, and superseding the "Electronic Signatures in Global and National Commerce Act," 114 Stat. 464, 15 U.S.C. 7001 et seq., with the exception of section 101 of that act, 15 U.S.C. 7001(a).

(B) Sections 1715.51 to 1715.59 of the Revised Code shall not be construed as authorizing electronic delivery of any of the orders, notices, or documents described in section 103 of that act, 15 U.S.C. 7003(b).

Sec. 1715.58. In so far as is possible on and after ~~the effective date of this amendment~~ June 1, 2009, sections 1715.51 to 1715.59 of the Revised Code shall be applied and construed to effectuate the general purpose to make uniform the law with respect to the subject of those sections among the states that enact the uniform prudent management of institutional funds act.

Sec. 1715.59. Sections 1715.51 to 1715.59 of the Revised Code may be cited as the uniform prudent management of institutional funds act.

Sec. 3345.05. (A) All registration fees, nonresident tuition fees, academic fees for the support of off-campus instruction, laboratory and course fees when so assessed and collected, student health fees for the support of a student health service, all other fees, deposits, charges, receipts, and income from all or part of the students, all subsidy or other payments from state appropriations, and all other fees, deposits, charges, receipts, income, and revenue received by each state institution of higher education, the Ohio state university hospitals and their ancillary facilities, the Ohio agricultural research and development center, and the Ohio state university cooperative extension service shall be held and administered by the respective boards of trustees of the state institution of higher education; provided, that such fees, deposits, charges, receipts, income and revenue, to

the extent required by resolutions, trust agreements, indentures, leases, and agreements adopted, made, or entered into under Chapter 154. or section 3345.07, 3345.11, or 3345.12 of the Revised Code, shall be held, administered, transferred, and applied in accordance therewith.

(B) The Ohio board of regents shall require annual reporting by the Ohio agricultural research and development center and by each university and college receiving state aid in such form and detail as determined by the board in consultation with such center, universities and colleges, and the director of budget and management.

(C) Notwithstanding any provision of the Revised Code to the contrary, the title to investments made by the board of trustees of a state institution of higher education with funds derived from any of the sources described in division (A) of this section shall not be vested in the state or the political subdivision but shall be held in trust by the board. Such investments shall be made pursuant to an investment policy adopted by the board in public session that requires all fiduciaries to discharge their duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The policy also shall require at least the following:

(1) A stipulation that investment of at least twenty-five per cent of the average amount of the investment portfolio over the course of the previous fiscal year be invested in securities of the United States government or of its agencies or instrumentalities, the treasurer of state's pooled investment program, obligations of this state or any political subdivision of this state, certificates of deposit of any national bank located in this state, written repurchase agreements with any eligible Ohio financial institution that is a member of the federal reserve system or federal home loan bank, money market funds, or bankers acceptances maturing in two hundred seventy days or less which are eligible for purchase by the federal reserve system, as a reserve;

(2) Eligible funds above those that meet the conditions of division (C)(1) of this section may be pooled with other institutional funds and invested in accordance with section ~~1715.54~~ 1715.52 of the Revised Code.

(3) The establishment of an investment committee.

(D) The investment committee established under division (C)(3) of this section shall meet at least quarterly. The committee shall review and recommend revisions to the board's investment policy and shall advise the board on its investments made under division (C) of this section in an effort to assist it in meeting its obligations as a fiduciary as described in division

(C) of this section. The committee shall be authorized to retain the services of an investment advisor who meets both of the following qualifications:

(1) The advisor is either:

(a) Licensed by the division of securities under section 1707.141 of the Revised Code;

(b) Registered with the securities and exchange commission.

(2) The advisor either:

(a) Has experience in the management of investments of public funds, especially in the investment of state-government investment portfolios;

(b) Is an eligible institution referenced in section 135.03 of the Revised Code.

(E) As used in this section, "state institution of higher education" means a state institution of higher education as defined in section 3345.011 of the Revised Code.

Sec. 5813.06. (A) Nothing in sections 5813.01 to 5813.05 of the Revised Code affects the construction or interpretation of sections 1715.51 to 1715.59 of the Revised Code relating to the uniform prudent management of institutional funds act. Specifically, neither the percentage set forth in division (B) of section ~~1340.32~~ 5813.02 of the Revised Code nor the amount actually requested by a governing board pursuant to that section ~~5813.02~~ of the Revised Code shall be construed or interpreted to limit or expand what is a prudent amount that can be expended by a governing board of an institution under sections 1715.51 to 1715.59 of the Revised Code.

(B) If an institutional trust fund is also an institutional fund as defined in division ~~(B)~~ (C) of section 1715.51 of the Revised Code with the result that sections 1715.51 to 1715.59 of the Revised Code also are applicable to the institutional trust fund, then sections 1715.51 to 1715.59 of the Revised Code apply to the institutional trust fund, and sections 5813.01 to 5813.07 of the Revised Code do not apply to the institutional trust fund.

SECTION 2. That existing sections 1715.51, 1715.52, 1715.55, 1715.56, 1715.57, 1715.58, 1715.59, 3345.05, and 5813.06 and sections 1715.53 and 1715.54 of the Revised Code are hereby repealed.

SECTION 3. Sections 1 and 2 of this act shall take effect June 1, 2009, and apply only to the following:

(A) Institutional funds established after that date.

(B) Institutional funds existing on that date, but only with respect to decisions made or actions taken on or after that date.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Am. H. B. No. 522

127th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____