Senate Engrossed

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

CHAPTER 30

SENATE BILL 1228

AN ACT

REPEALING TITLE 10, CHAPTER 41, ARIZONA REVISED STATUTES; AMENDING TITLE 10, ARIZONA REVISED STATUTES, BY ADDING A NEW CHAPTER 41; RELATING TO MANAGEMENT OF CHARITABLE FUNDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Repeal

Title 10, chapter 41, Arizona Revised Statutes, is repealed.

Sec. 2. Title 10, Arizona Revised Statutes, is amended by adding a new chapter 41, to read:

CHAPTER 41

MANAGEMENT OF CHARITABLE FUNDS

ARTICLE 1. GENERAL PROVISIONS

10-11801. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ENDOWMENT FUND" MEANS AN INSTITUTIONAL FUND OR PART OF AN INSTITUTIONAL FUND THAT, UNDER THE TERMS OF A GIFT INSTRUMENT, IS NOT WHOLLY EXPENDABLE BY THE INSTITUTION ON A CURRENT BASIS. ENDOWMENT FUND DOES NOT INCLUDE ASSETS THAT AN INSTITUTION DESIGNATES AS AN ENDOWMENT FUND FOR ITS OWN USE.

2. "GIFT INSTRUMENT" MEANS A RECORD OR RECORDS, INCLUDING AN INSTITUTIONAL SOLICITATION, UNDER WHICH PROPERTY IS GRANTED TO, TRANSFERRED TO OR HELD BY AN INSTITUTION AS AN INSTITUTIONAL FUND.

3. "INSTITUTION" MEANS ANY OF THE FOLLOWING:

(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 MONIES EXCLUSIVELY FOR A CHARITABLE PURPOSE.

(c) A TRUST THAT HAD BOTH CHARITABLE AND NONCHARITABLE INTERESTS, AFTER ALL NONCHARITABLE INTERESTS HAVE TERMINATED.

4. "INSTITUTIONAL FUND" MEANS A FUND HELD BY AN INSTITUTION EXCLUSIVELY FOR CHARITABLE PURPOSES. INSTITUTIONAL FUND DOES NOT INCLUDE PROGRAM-RELATED ASSETS, A FUND HELD FOR AN INSTITUTION BY A TRUSTEE THAT IS NOT AN INSTITUTION OR A FUND IN WHICH A BENEFICIARY THAT IS NOT AN INSTITUTION HAS AN INTEREST, OTHER THAN AN INTEREST THAT COULD ARISE ON VIOLATION OR FAILURE OF THE PURPOSES OF THE FUND.

5. "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.

6. "PROGRAM-RELATED ASSET" MEANS AN ASSET HELD BY AN INSTITUTION PRIMARILY TO ACCOMPLISH A CHARITABLE PURPOSE OF THE INSTITUTION AND NOT PRIMARILY FOR INVESTMENT.

7. "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND THAT IS RETRIEVABLE IN PERCEIVABLE FORM.

10-11802. Managing and investing institutional funds; standard of conduct

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 IN THIS CHAPTER, EACH PERSON RESPONSIBLE FOR MANAGING AND INVESTING AN INSTITUTIONAL FUND SHALL MANAGE AND INVEST THE 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 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 REASONABLE EFFORTS 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, 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 IN 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 NEEDS OF THE INSTITUTION AND THE FUND TO MAKE DISTRIBUTIONS AND TO 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 NOT BE MADE IN ISOLATION BUT SHALL BE MADE 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 OTHER THAN THIS CHAPTER, 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 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 CHAPTER.

6. A PERSON THAT HAS SPECIAL SKILLS OR EXPERTISE, OR THAT IS SELECTED IN RELIANCE ON 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.

10-11803. Appropriation for expenditure or accumulation of endowment fund; 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.
7. THE INVESTMENT POLICY OF THE INSTITUTION.

B. TO LIMIT THE AUTHORITY TO APPROPRIATE FOR EXPENDITURE OR ACCUMULATE UNDER SUBSECTION A, 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 FUND.
2. DO NOT OTHERWISE LIMIT THE AUTHORITY TO APPROPRIATE FOR EXPENDITURE OR ACCUMULATE UNDER SUBSECTION A.

10-11804. Delegation of management and investment functions

A. SUBJECT TO ANY SPECIFIC LIMITATION SET FORTH IN A GIFT INSTRUMENT OR IN LAW OTHER THAN THIS CHAPTER, 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 ALL OF THE FOLLOWING:

1. SELECTING AN AGENT.

2. ESTABLISHING THE SCOPE AND TERMS OF THE DELEGATION, CONSISTENT WITH THE PURPOSES OF THE INSTITUTION AND THE INSTITUTIONAL FUND.

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 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 CHAPTER.

10-11805. <u>Release or modification of restrictions on management, investment or purpose</u>

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

B. ON APPLICATION OF AN INSTITUTION, THE COURT 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 FUND OR IF, BECAUSE OF CIRCUMSTANCES NOT ANTICIPATED BY THE DONOR, A MODIFICATION OF A RESTRICTION WILL FURTHER THE PURPOSES OF THE FUND. THE INSTITUTION SHALL NOTIFY THE ATTORNEY GENERAL OF THE APPLICATION, AND THE ATTORNEY GENERAL SHALL BE GIVEN AN OPPORTUNITY TO BE HEARD. TO THE EXTENT PRACTICABLE, ANY MODIFICATION SHALL 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, ON APPLICATION OF AN INSTITUTION, THE COURT MAY MODIFY THE PURPOSE OF THE FUND OR THE RESTRICTION ON THE USE OF THE FUND IN A MANNER CONSISTENT WITH THE CHARITABLE PURPOSES

1 EXPRESSED IN THE GIFT INSTRUMENT. THE INSTITUTION SHALL NOTIFY THE ATTORNEY
2 GENERAL OF THE APPLICATION, AND THE ATTORNEY GENERAL SHALL BE GIVEN AN
3 OPPORTUNITY TO BE HEARD.
4 D. IF AN INSTITUTION DETERMINES THAT A RESTRICTION CONTAINED IN A GIFT
5 INSTRUMENT ON THE MANAGEMENT, INVESTMENT OR PURPOSE OF AN INSTITUTIONAL FUND
6 IS UNLAWFUL, IMPRACTICABLE, IMPOSSIBLE TO ACHIEVE OR WASTEFUL, THE
7 INSTITUTION, AFTER SIXTY DAYS AFTER NOTIFICATION TO THE ATTORNEY GENERAL, MAY
8 RELEASE OR MODIFY THE RESTRICTION, IN WHOLE OR PART, IF ALL OF THE FOLLOWING
9 APPLY:
10 1. THE INSTITUTIONAL FUND SUBJECT TO THE RESTRICTION HAS A TOTAL VALUE
11 OF LESS THAN FIFTY THOUSAND DOLLARS.
12 2. MORE THAN TWENTY YEARS HAVE ELAPSED SINCE THE FUND WAS ESTABLISHED.
13 3. THE INSTITUTION USES THE PROPERTY IN A MANNER CONSISTENT WITH THE
14 CHARITABLE PURPOSES EXPRESSED IN THE GIFT INSTRUMENT.
15 Sec. 3. Applicability
16 This act applies to institutional funds existing on or established
17 after the effective date of this act. As applied to institutional funds
18 existing on the effective date of this act, this act governs only decisions
19 made or actions taken on or after that date.

APPROVED BY THE GOVERNOR APRIL 14, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 14, 2008.