

# Uniform Prudent Management of Institution Funds Act (UPMIFA)

The Uniform Prudent Management of Institutional Funds Act (UPMIFA) provides states a modern law for charitable funds and endowment spending which were operating in most jurisdictions under the 1972 Uniform Management of Institutional Funds Act (UMIFA). UPMIFA provides modern articulations of the prudence standards for the management and investment of charitable funds and for endowment spending. Over forty jurisdictions now have the Uniform Prudent Investor Act (UPIA) that updates their rules on investment decision making for trusts. It is important that these rules and duties also be applied to charities organized as nonprofit corporations. UPMIFA allows non-profit organizations to efficiently and inexpensively terminate obsolete and wasteful funds and transfer those dollars to more urgently needed charitable purposes.

Under the Act, the rules on investment conduct and expenditure of funds are expressly provided, giving much clearer guidance to portfolio managers. Costs must be managed prudently in relationship to the assets, the purposes of the institution and the skills available to the institution. Total return expenditure is expressly authorized under comprehensive prudent standards relating to the whole economic situation of the charitable institution. These positive changes for charitable organizations eliminates old, outdated rules such as historic dollar value and helps provide opportunities for charities to do more for communities, education, healthcare and the arts.

The Act was promulgated by the Uniform Law Commission in 2006. The model uniform Act with official commentary (which also serves as legislative history) can be found at: [http://www.law.upenn.edu/bll/archives/ulc/umoifa/2006final\\_Act.htm](http://www.law.upenn.edu/bll/archives/ulc/umoifa/2006final_Act.htm)

Thirteen states enacted the UPMIFA into law during its initial (2007) legislative year:

- Connecticut: SB 1143; C.S.G.A. § 36a-486 to 36a-498a
- Delaware: SB 139; 12 Del. C. § 4701 to 4710
- Idaho: SB 1016; I.C. § 33-5001 to 5010
- Indiana: HB 1505; IC § 30-2-12-1 to 30-2-12-18
- Montana: SB 424; M.C.A. § 72-30-101 to 110
- Nebraska: LB 136
- Nevada: SB 70
- Oklahoma: HB 1596; 60 Okla. Stat. Ann. § 300.11 to 300.21
- Oregon: HB 2905
- Tennessee: SB 0691; T.C.A. § 35-10-1 to 35-10-10
- Texas: HB 860; V.T.C.A. § 163.001 to 163.011
- South Dakota: SB 89; SDCL § 55-14A-1 to 55-14A-10
- Utah: SB 60; U.C.A. 1953 § 51-8-101 to 51-8-604

The legislation in this SSL Volume is based on Nebraska law.

Submitted as:

Nebraska

[LB 136](#)

Status: Enacted into law on August 31, 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be known and be cited as the “Uniform Prudent  
2 Management of Institutional Funds Act.”

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4           Section 2. For purposes of the Uniform Prudent Management of Institutional Funds Act:

5           (1) Charitable purpose means the relief of poverty, the advancement of education or  
6 religion, the promotion of health, the promotion of a governmental purpose, or any other purpose  
7 the achievement of which is beneficial to the community.

8           (2) Endowment fund means an institutional fund or part thereof that, under the terms of a  
9 gift instrument, is not wholly expendable by the institution on a current basis. The term does not  
10 include assets that an institution designates as an endowment fund for its own use.

11           (3) Gift instrument means a record or records, including an institutional solicitation, under  
12 which property is granted to, transferred to, or held by an institution as an institutional fund.

13           (4) Institution means:

14                   (A) a person, other than an individual, organized and operated exclusively for  
15 charitable purposes;

16                   (B) a government or governmental subdivision, agency, or instrumentality, to the  
17 extent that it holds funds exclusively for a charitable purpose; and

18                   (C) a trust that had both charitable and noncharitable interests, after all  
19 noncharitable interests have terminated.

20           (5) Institutional fund means a fund held by an institution exclusively for charitable  
21 purposes. The term does not include:

22                   (A) program-related assets;

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

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

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

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

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

33  
34           Section 3.

35           (a) Subject to the intent of a donor expressed in a gift instrument, an institution, in  
36 managing and investing an institutional fund, shall consider the charitable purposes of the  
37 institution and the purposes of the institutional fund.

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

42           (c) In managing and investing an institutional fund, an institution:

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

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

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

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

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

52 (A) general economic conditions;

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

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

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

58 (E) the expected total return from income and the appreciation of  
59 investments;

60 (F) other resources of the institution;

61 (G) the needs of the institution and the fund to make distributions and to  
62 preserve capital; and

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

65 (2) Management and investment decisions about an individual asset must be made  
66 not in isolation but rather in the context of the institutional fund's portfolio of investments as a  
67 whole and as a part of an overall investment strategy having risk and return objectives reasonably  
68 suited to the fund and to the institution.

69 (3) Except as otherwise provided by law other than the {state] Uniform Prudent  
70 Management of Institutional Funds Act, an institution may invest in any kind of property or type  
71 of investment consistent with this section.

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

75 (5) Within a reasonable time after receiving property, an institution shall make and  
76 carry out decisions concerning the retention or disposition of the property or to rebalance a  
77 portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and  
78 distribution requirements of the institution as necessary to meet other circumstances of the  
79 institution and the requirements of the Act.

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

#### 83 84 Section 4.

85 (a) Subject to the intent of a donor expressed in the gift instrument, an institution may  
86 appropriate for expenditure or accumulate so much of an endowment fund as the institution  
87 determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund  
88 is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are  
89 donor-restricted assets until appropriated for expenditure by the institution. In making a  
90 determination to appropriate or accumulate, the institution shall act in good faith, with the care  
91 that an ordinarily prudent person in a like position would exercise under similar circumstances,  
92 and shall consider, if relevant, the following factors:

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

- 94 (2) the purposes of the institution and the endowment fund;  
95 (3) general economic conditions;  
96 (4) the possible effect of inflation or deflation;  
97 (5) the expected total return from income and the appreciation of investments;  
98 (6) other resources of the institution; and  
99 (7) the investment policy of the institution.

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

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

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

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

109

#### 110 Section 5.

111 (a) Subject to any specific limitation set forth in a gift instrument or in law other than the  
112 Uniform Prudent Management of Institutional Funds Act, an institution may delegate to an  
113 external agent the management and investment of an institutional fund to the extent that an  
114 institution could prudently delegate under the circumstances. An institution shall act in good faith,  
115 with the care that an ordinarily prudent person in a like position would exercise under similar  
116 circumstances, in:

117 (1) selecting an agent;

118 (2) establishing the scope and terms of the delegation, consistent with the purposes  
119 of the institution and the institutional fund; and

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

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

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

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

130 (e) An institution may delegate management and investment functions to its committees,  
131 officers, or employees as authorized by law of this state other than the [state] Uniform Prudent  
132 Management of Institutional Funds Act.

133

#### 134 Section 6.

135 (a) If the donor consents in a record, an institution may release or modify, in whole or in  
136 part, a restriction contained in a gift instrument on the management, investment, or purpose of an  
137 institutional fund. A release or modification may not allow a fund to be used for a purpose other  
138 than a charitable purpose of the institution.

139 (b) The court, upon application of an institution, may modify a restriction contained in a  
140 gift instrument regarding the management or investment of an institutional fund if the restriction  
141 has become impracticable or wasteful, if it impairs the management or investment of the fund, or  
142 if, because of circumstances not anticipated by the donor, a modification of a restriction will

143 further the purposes of the fund. The institution shall notify the Attorney General of the  
144 application, and the Attorney General must be given an opportunity to be heard. To the extent  
145 practicable, any modification must be made in accordance with the donor's probable intention.

146 (c) If a particular charitable purpose or a restriction contained in a gift instrument on the  
147 use of an institutional fund becomes unlawful, impractical, impossible to achieve, or wasteful, the  
148 court, upon application of an institution, may modify the purpose of the fund or the restriction on  
149 the use of the fund in a manner consistent with the charitable purposes expressed in the gift  
150 instrument. The institution shall notify the Attorney General of the application, and the Attorney  
151 General must be given an opportunity to be heard.

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

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

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

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

161  
162 Section 7. Compliance with the Uniform Prudent Management of Institutional Funds Act is  
163 determined in light of the facts and circumstances existing at the time a decision is made or action  
164 is taken, and not by hindsight.

165  
166 Section 8. The Uniform Prudent Management of Institutional Funds Act applies to  
167 institutional funds existing on or established after the effective date of this Act. As applied to  
168 institutional funds existing on the effective date of this Act, the Act governs only decisions made  
169 or actions taken on or after that date.

170  
171 Section 9. The Uniform Prudent Management of Institutional Funds Act modifies, limits,  
172 and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001  
173 et seq., as the Act existed on the effective date of this Act, but does not modify, limit, or supersede  
174 section 101 of that Act, 15 U.S.C. 7001(a), or authorize electronic delivery of any of the notices  
175 described in section 103 of that Act, 15 U.S.C. 7003(b).

176  
177 Section 10. In applying and construing this Uniform Act, consideration must be given to  
178 the need to promote uniformity of the law with respect to its subject matter among states that enact  
179 it.