

HOUSE BILL 200

N2

EMERGENCY BILL

(91r0345)

ENROLLED BILL

—*Judiciary/Judicial Proceedings*—

Introduced by **Delegate Carter**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Maryland Uniform Prudent Management of Institutional Funds Act**

3 FOR the purpose of repealing certain provisions of law relating to the management of
4 institutional funds; establishing the Maryland Uniform Prudent Management of
5 Institutional Funds Act; establishing a standard of conduct in managing and
6 investing a certain institutional fund; authorizing a certain institution to
7 appropriate for expenditure or accumulate so much of a certain endowment
8 fund as the institution determines is prudent for certain purposes; establishing
9 a certain presumption of imprudence; requiring notice of a certain appropriation
10 by an institution to the Attorney General under certain circumstances;
11 requiring the institution to consider certain factors in making a certain
12 determination; providing certain rules of construction; providing for the
13 delegation of certain management and investment functions; establishing how
14 certain restrictions on the management, investment, or purpose of an

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber committee amendments.

Bold italics indicate conference committee amendments.



1 institutional fund may be released or modified; requiring that compliance with
2 this Act be determined in a certain manner; providing for the application of this
3 Act; establishing that this Act modifies, limits, and supersedes certain
4 provisions of federal law; defining certain terms; making this Act an emergency
5 measure; and generally relating to the management of institutional funds.

6 BY repealing

7 Article – Estates and Trusts
8 Section 15–401 through 15–409
9 Annotated Code of Maryland
10 (2001 Replacement Volume and 2008 Supplement)

11 BY adding to

12 Article – Estates and Trusts
13 Section 15–401 through 15–410 to be under the amended subtitle “Subtitle 4.
14 Maryland Uniform Prudent Management of Institutional Funds Act”
15 Annotated Code of Maryland
16 (2001 Replacement Volume and 2008 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article – Estates and Trusts**

20 Subtitle 4. Maryland Uniform **PRUDENT** Management of Institutional Funds Act.

21 [15–401.

22 (a) In this subtitle the following words or phrases have the meanings
23 indicated.

24 (b) “Endowment fund” means an institutional fund, or any part of it not
25 wholly expendable by the institution on a current basis under the terms of the
26 applicable gift instrument.

27 (c) “Gift instrument” means a will, deed, grant, conveyance, agreement,
28 memorandum, writing, or other governing document, including the terms of any
29 institutional solicitations from which an institutional fund results, under which
30 property is transferred to or held by an institution as an institutional fund.

31 (d) “Governing board” means the body responsible for the management of an
32 institution or of an institutional fund.

33 (e) “Historic dollar value” means the aggregate fair value in dollars of (1) an
34 endowment fund at the time it became an endowment fund, (2) each subsequent
35 donation to the fund at the time it is made, and (3) each accumulation made pursuant
36 to a direction in the applicable gift instrument at the time the accumulation is added

1 to the fund. The determination of historic dollar value made in good faith by the
2 institution is conclusive.

3 (f) “Institutional” means an incorporated or unincorporated organization
4 organized and operated exclusively for educational, religious, charitable, or other
5 eleemosynary purposes, or a governmental organization to the extent that it holds
6 funds exclusively for any of these purposes.

7 (g) “Institutional fund” means a fund held by an institution for its exclusive
8 use, benefit, or purposes but does not include (1) a fund held for an institution by a
9 trustee that is not an institution or (2) a fund in which a beneficiary that is not an
10 institution has an interest, other than possible rights that could arise upon violation
11 or failure of the purposes of the fund.]

12 [15–402.

13 The governing board may appropriate for expenditure for the uses and purposes
14 for which an endowment fund is established so much of the net appreciation, realized
15 and unrealized, in the fair value of the assets of an endowment fund over the historic
16 dollar value of the fund as is prudent under the standard established by § 15–406.
17 This section does not limit the authority of the governing board to expend funds as
18 permitted under other law, the terms of the applicable gift instrument, or the charter
19 of the institution.]

20 [15–403.

21 Section 15–402 does not apply if the applicable gift instrument indicates the
22 intention of the donor that net appreciation shall not be expended. A restriction upon
23 the expenditure of net appreciation may not be implied from a designation of a gift as
24 an endowment, or from a direction or authorization in the applicable gift instrument
25 to use only “income”, “interest”, “dividends”, or “rents, issues or profits”, or “to preserve
26 the principal intact”, or a direction which contains other words of similar import. This
27 rule of construction applies to gift instruments executed or in effect before or after the
28 effective date of this act.]

29 [15–404.

30 In an addition to an investment otherwise authorized by law or by the
31 applicable gift instrument, and without restriction to investments a fiduciary may
32 make, the governing board, subject to any specific limitations set forth in the
33 applicable gift instrument or in the applicable law other than law relating to
34 investments by a fiduciary, may:

35 (1) Invest and reinvest an institutional fund in any real or personal
36 property deemed advisable by the governing board, whether or not it produces a
37 current return, including mortgages, stocks, bonds, debentures, and other securities of

1 profit or nonprofit corporations, shares in or obligations of associations, partnerships,
2 or individuals, and obligations of any government or subdivision or instrumentality
3 thereof;

4 (2) Retain property contributed by a donor to an institutional fund for
5 as long as the governing board deems advisable;

6 (3) Include all or any part of an institutional fund in any pooled or
7 common fund maintained by the institution; and

8 (4) Invest all or any part of an institutional fund in any other pooled
9 or common fund available for investment, including shares or interests in regulated
10 investment companies, mutual funds, common trust funds, investment partnerships,
11 real estate investment trust, or similar organizations in which funds are commingled
12 and investment determinations are made by persons other than the governing board.]

13 [15-405.

14 Except as otherwise provided by the applicable gift instrument or by applicable
15 law relating to governmental institutions or funds, the governing board may (1)
16 delegate to its committees, officers, or employees of the institution or the fund, or
17 agents, including investment counsel, the authority to act in place of the board in
18 investment and reinvestment of institutional funds, (2) contract with independent
19 investment advisors, investment counsel or managers, banks, or trust companies, so to
20 act, and (3) authorize the payment of compensation for investment advisory or
21 management services.]

22 [15-406.

23 In the administration of the powers to appropriate appreciation, to make and
24 retain investments, and to delegate investment management of institutional funds,
25 members of a governing board shall exercise ordinary business care and prudence
26 under the facts and circumstances prevailing at the time of the action or decision. In
27 so doing they shall consider long and short term needs of the institution in carrying
28 out its educational, religious, charitable, or other eleemosynary purposes, its present
29 and anticipated financial requirements, expected total return on its investments, price
30 level trends, and general economic conditions.]

31 [15-407.

32 (a) With the written consent of the donor, the governing board may release,
33 in whole or in part, a restriction imposed by the applicable gift instrument on the use
34 or investment of an institutional fund.

35 (b) If written consent of the donor cannot be obtained by reason of his death,
36 disability, unavailability, or impossibility of identification, the governing board may

1 apply in the name of the institution to the circuit court for the county where the office
2 of the governing board is located, for release of a restriction imposed by the applicable
3 gift instrument on the use or investment of an institutional fund. The Attorney
4 General shall be notified of the application and given an opportunity to be heard. If
5 the court finds that the restriction is obsolete, inappropriate, or impracticable, it may
6 by order release the restriction in whole or in part. A release under this subsection
7 may not change an endowment fund to a fund that is not an endowment fund.

8 (c) A release under this section may not allow a fund to be used for purposes
9 other than the educational, religious, charitable, or other eleemosynary purposes of
10 the institution affected.

11 (d) This section does not limit the application of the doctrine of cy pres.]

12 [15-408.

13 This subtitle shall be so applied and construed as to effectuate its general
14 purpose to make uniform the law with respect to the subject of this subtitle among
15 those states which enact it.]

16 [15-409.

17 This subtitle may be cited as the "Maryland Uniform Management of
18 Institutional Funds Act".]

19 **15-401.**

20 (A) **IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
21 **INDICATED.**

22 (B) **"CHARITABLE PURPOSE" MEANS THE RELIEF OF POVERTY, THE**
23 **ADVANCEMENT OF EDUCATION OR RELIGION, THE PROMOTION OF HEALTH, THE**
24 **PROMOTION OF A GOVERNMENTAL PURPOSE, OR ANY OTHER PURPOSE THE**
25 **ACHIEVEMENT OF WHICH IS BENEFICIAL TO THE COMMUNITY.**

26 (C) (1) **"ENDOWMENT FUND" MEANS AN INSTITUTIONAL FUND OR**
27 **PART OF AN INSTITUTIONAL FUND THAT, UNDER THE TERMS OF A GIFT**
28 **INSTRUMENT, IS NOT WHOLLY EXPENDABLE BY THE INSTITUTION ON A**
29 **CURRENT BASIS.**

30 (2) **"ENDOWMENT FUND" DOES NOT INCLUDE ASSETS THAT AN**
31 **INSTITUTION DESIGNATES AS AN ENDOWMENT FUND FOR THE USE OF THE**
32 **INSTITUTION.**

1 (D) **“GIFT INSTRUMENT”** MEANS A RECORD, INCLUDING AN
2 INSTITUTIONAL SOLICITATION, UNDER WHICH PROPERTY IS GRANTED TO,
3 TRANSFERRED TO, OR HELD BY AN INSTITUTION AS AN INSTITUTIONAL FUND.

4 (E) **“INSTITUTION”** MEANS:

5 (1) A PERSON, OTHER THAN AN INDIVIDUAL, ORGANIZED AND
6 OPERATED EXCLUSIVELY FOR CHARITABLE PURPOSES;

7 (2) A GOVERNMENT OR GOVERNMENTAL SUBDIVISION, AGENCY,
8 OR INSTRUMENTALITY, TO THE EXTENT THAT THE SUBDIVISION, AGENCY, OR
9 INSTRUMENTALITY HOLDS FUNDS EXCLUSIVELY FOR A CHARITABLE PURPOSE;
10 OR

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

13 (F) (1) **“INSTITUTIONAL FUND”** MEANS A FUND HELD BY AN
14 INSTITUTION EXCLUSIVELY FOR CHARITABLE PURPOSES.

15 (2) **“INSTITUTIONAL FUND”** DOES NOT INCLUDE:

16 (I) **PROGRAM-RELATED ASSETS;**

17 (II) A FUND HELD FOR AN INSTITUTION BY A TRUSTEE THAT
18 IS NOT AN INSTITUTION; OR

19 (III) A FUND IN WHICH A BENEFICIARY THAT IS NOT AN
20 INSTITUTION HAS AN INTEREST, OTHER THAN AN INTEREST THAT COULD ARISE
21 ON VIOLATION OR FAILURE OF THE PURPOSES OF THE FUND.

22 (G) **“PERSON”** MEANS AN INDIVIDUAL, CORPORATION, BUSINESS
23 TRUST, ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY,
24 ASSOCIATION, JOINT VENTURE, PUBLIC CORPORATION, GOVERNMENT OR
25 GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR ANY OTHER
26 LEGAL OR COMMERCIAL ENTITY.

27 (H) **“PROGRAM-RELATED ASSET”** MEANS AN ASSET HELD BY AN
28 INSTITUTION PRIMARILY TO ACCOMPLISH A CHARITABLE PURPOSE OF THE
29 INSTITUTION AND NOT PRIMARILY FOR INVESTMENT.

30 (I) **“RECORD”** MEANS INFORMATION THAT IS INSCRIBED ON A
31 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM
32 AND IS RETRIEVABLE IN PERCEIVABLE FORM.

1 **15-402.**

2 (A) SUBJECT TO THE INTENT OF A DONOR EXPRESSED IN A GIFT
3 INSTRUMENT, AN INSTITUTION, IN MANAGING AND INVESTING AN
4 INSTITUTIONAL FUND, SHALL CONSIDER THE CHARITABLE PURPOSES OF THE
5 INSTITUTION AND THE PURPOSES OF THE INSTITUTIONAL FUND.

6 (B) IN ADDITION TO COMPLYING WITH THE DUTY OF LOYALTY IMPOSED
7 BY LAW OTHER THAN THIS SUBTITLE, EACH PERSON RESPONSIBLE FOR
8 MANAGING AND INVESTING AN INSTITUTIONAL FUND SHALL MANAGE AND
9 INVEST THE FUND ~~IN GOOD FAITH AND WITH THE CARE AN ORDINARILY~~
10 ~~PRUDENT PERSON IN A LIKE POSITION WOULD EXERCISE UNDER SIMILAR~~
11 ~~CIRCUMSTANCES~~ EXERCISING ORDINARY BUSINESS CARE AND PRUDENCE
12 UNDER THE FACTS AND CIRCUMSTANCES PREVAILING AT THE TIME OF THE
13 ACTION OR DECISION.

14 (C) IN MANAGING AND INVESTING AN INSTITUTIONAL FUND, AN
15 INSTITUTION:

16 (1) MAY INCUR ONLY COSTS THAT ARE APPROPRIATE AND
17 REASONABLE IN RELATION TO THE ASSETS, THE PURPOSES OF THE
18 INSTITUTION, AND THE SKILLS AVAILABLE TO THE INSTITUTION; AND

19 (2) SHALL MAKE A REASONABLE EFFORT TO VERIFY FACTS
20 RELEVANT TO THE MANAGEMENT AND INVESTMENT OF THE FUND.

21 (D) AN INSTITUTION MAY POOL TWO OR MORE INSTITUTIONAL FUNDS
22 FOR PURPOSES OF MANAGEMENT AND INVESTMENT.

23 (E) (1) THE PROVISIONS OF THIS SUBSECTION APPLY EXCEPT AS
24 OTHERWISE PROVIDED BY A GIFT INSTRUMENT.

25 (2) IN MANAGING AND INVESTING AN INSTITUTIONAL FUND, THE
26 FOLLOWING FACTORS, IF RELEVANT, SHALL BE CONSIDERED:

27 (I) GENERAL ECONOMIC CONDITIONS;

28 (II) THE POSSIBLE EFFECT OF INFLATION OR DEFLATION;

29 (III) THE EXPECTED TAX CONSEQUENCES, IF ANY, OF
30 INVESTMENT DECISIONS OR STRATEGIES;

1 (IV) THE ROLE THAT EACH INVESTMENT OR COURSE OF
2 ACTION PLAYS WITHIN THE OVERALL INVESTMENT PORTFOLIO OF THE FUND;

3 (V) THE EXPECTED TOTAL RETURN FROM INCOME AND THE
4 APPRECIATION OF INVESTMENTS;

5 (VI) OTHER RESOURCES OF THE INSTITUTION;

6 (VII) THE NEEDS OF THE INSTITUTION AND THE FUND TO
7 MAKE DISTRIBUTIONS AND TO PRESERVE CAPITAL; AND

8 (VIII) THE SPECIAL RELATIONSHIP OR SPECIAL VALUE OF
9 THE ASSET, IF ANY, TO THE CHARITABLE PURPOSES OF THE INSTITUTION.

10 (3) MANAGEMENT AND INVESTMENT DECISIONS ABOUT AN
11 INDIVIDUAL ASSET SHALL BE MADE NOT IN ISOLATION BUT IN THE CONTEXT OF
12 THE PORTFOLIO OF INVESTMENTS OF THE INSTITUTIONAL FUND AS A WHOLE
13 AND AS A PART OF AN OVERALL INVESTMENT STRATEGY HAVING RISK AND
14 RETURN OBJECTIVES REASONABLY SUITED TO THE FUND AND TO THE
15 INSTITUTION.

16 (4) EXCEPT AS OTHERWISE PROVIDED BY LAW OTHER THAN THIS
17 SUBTITLE, AN INSTITUTION MAY INVEST IN ANY KIND OF PROPERTY OR TYPE OF
18 INVESTMENT CONSISTENT WITH THIS SECTION.

19 (5) AN INSTITUTION SHALL DIVERSIFY THE INVESTMENTS OF AN
20 INSTITUTIONAL FUND UNLESS THE INSTITUTION REASONABLY DETERMINES
21 THAT, BECAUSE OF SPECIAL CIRCUMSTANCES, THE PURPOSES OF THE FUND
22 ARE BETTER SERVED WITHOUT DIVERSIFICATION.

23 (6) WITHIN A REASONABLE TIME AFTER RECEIVING PROPERTY,
24 AN INSTITUTION SHALL MAKE AND CARRY OUT DECISIONS CONCERNING THE
25 RETENTION OR DISPOSITION OF THE PROPERTY OR TO REBALANCE A
26 PORTFOLIO, IN ORDER TO BRING THE INSTITUTIONAL FUND INTO COMPLIANCE
27 WITH THE PURPOSES, TERMS, AND DISTRIBUTION REQUIREMENTS OF THE
28 INSTITUTION AS NECESSARY TO MEET OTHER CIRCUMSTANCES OF THE
29 INSTITUTION AND THE REQUIREMENTS OF THIS SUBTITLE.

30 (7) A PERSON THAT HAS SPECIAL SKILLS OR EXPERTISE, OR IS
31 SELECTED IN RELIANCE ON THE REPRESENTATION BY THE PERSON THAT THE
32 PERSON HAS SPECIAL SKILLS OR EXPERTISE, HAS A DUTY TO USE THOSE SKILLS
33 OR THAT EXPERTISE IN MANAGING AND INVESTING INSTITUTIONAL FUNDS.

1 (A) (1) ~~AN~~ SUBJECT TO THE INTENT OF A DONOR EXPRESSED IN THE
2 GIFT INSTRUMENT, AN INSTITUTION MAY APPROPRIATE FOR EXPENDITURE OR
3 ACCUMULATE SO MUCH OF AN ENDOWMENT FUND AS THE INSTITUTION
4 DETERMINES IS PRUDENT FOR THE USES, BENEFITS, PURPOSES, AND DURATION
5 FOR WHICH THE ENDOWMENT FUND IS ESTABLISHED.

6 (2) UNLESS STATED OTHERWISE IN THE GIFT INSTRUMENT, THE
7 ASSETS IN AN ENDOWMENT FUND ARE DONOR-RESTRICTED ASSETS UNTIL
8 APPROPRIATED FOR EXPENDITURE BY THE INSTITUTION.

9 (3) IN MAKING A DETERMINATION TO APPROPRIATE FOR
10 EXPENDITURE OR ACCUMULATE UNDER PARAGRAPH (1) OF THIS SUBSECTION,
11 THE INSTITUTION SHALL ~~ACT IN GOOD FAITH, WITH THE CARE THAT AN~~
12 ~~ORDINARILY PRUDENT PERSON IN A LIKE POSITION WOULD EXERCISE UNDER~~
13 ~~SIMILAR CIRCUMSTANCES~~ EXERCISE ORDINARY BUSINESS CARE AND
14 PRUDENCE UNDER THE FACTS AND CIRCUMSTANCES PREVAILING AT THE TIME
15 OF THE ACTION OR DECISION, AND SHALL CONSIDER, IF RELEVANT, THE
16 FOLLOWING FACTORS:

17 (I) THE DURATION AND PRESERVATION OF THE
18 ENDOWMENT FUND;

19 (II) THE PURPOSES OF THE INSTITUTION AND THE
20 ENDOWMENT FUND;

21 (III) GENERAL ECONOMIC CONDITIONS;

22 (IV) THE POSSIBLE EFFECT OF INFLATION OR DEFLATION;

23 (V) THE EXPECTED TOTAL RETURN FROM INCOME AND THE
24 APPRECIATION OF INVESTMENTS;

25 (VI) OTHER RESOURCES OF THE INSTITUTION; AND

26 (VII) THE INVESTMENT POLICY OF THE INSTITUTION.

27 (B) TO LIMIT THE AUTHORITY TO APPROPRIATE FOR EXPENDITURE OR
28 ACCUMULATE UNDER SUBSECTION (A) OF THIS SECTION, A GIFT INSTRUMENT
29 MUST SPECIFICALLY STATE THE LIMITATION.

30 (C) TERMS IN A GIFT INSTRUMENT DESIGNATING A GIFT AS AN
31 ENDOWMENT, OR A DIRECTION OR AUTHORIZATION IN THE GIFT INSTRUMENT
32 TO USE ONLY "INCOME", "INTEREST", "DIVIDENDS", OR "RENTS, ISSUES, OR

1 PROFITS”, OR “TO PRESERVE THE PRINCIPAL INTACT”, OR WORDS OF SIMILAR
2 IMPORT:

3 (1) CREATE AN ENDOWMENT FUND OF PERMANENT DURATION
4 UNLESS OTHER LANGUAGE IN THE GIFT INSTRUMENT LIMITS THE DURATION OR
5 PURPOSE OF THE FUND; AND

6 (2) DO NOT OTHERWISE LIMIT THE AUTHORITY TO APPROPRIATE
7 FOR EXPENDITURE OR ACCUMULATE UNDER SUBSECTION (A) OF THIS SECTION.

8 (D) (1) IN THIS SUBSECTION, FAIR MARKET VALUE SHALL BE
9 CALCULATED:

10 (I) IF AN ENDOWMENT FUND HAS EXISTED AT LEAST 3
11 YEARS, ON THE BASIS OF THE MARKET VALUE DETERMINED AT LEAST
12 QUARTERLY AND AVERAGED OVER A PERIOD OF NOT LESS THAN 3 YEARS
13 IMMEDIATELY PRECEDING THE YEAR IN WHICH THE APPROPRIATION FOR
14 EXPENDITURE IS MADE; OR

15 (II) IF AN ENDOWMENT FUND HAS EXISTED FOR FEWER
16 THAN 3 YEARS, FOR THE PERIOD THE ENDOWMENT FUND HAS EXISTED.

17 (2) THE APPROPRIATION FOR EXPENDITURE IN ANY YEAR OF AN
18 AMOUNT GREATER THAN 7 PERCENT OF THE FAIR MARKET VALUE OF AN
19 ENDOWMENT FUND CREATES A REBUTTABLE PRESUMPTION OF IMPRUDENCE.

20 (3) THE INSTITUTION SHALL NOTIFY THE ATTORNEY GENERAL
21 OF THE APPROPRIATION FOR EXPENDITURE IN ANY YEAR OF AN AMOUNT
22 GREATER THAN 7 PERCENT OF THE FAIR MARKET VALUE OF AN ENDOWMENT
23 FUND.

24 (4) THIS SUBSECTION DOES NOT:

25 (I) APPLY TO AN APPROPRIATION FOR EXPENDITURE
26 PERMITTED UNDER LAW OTHER THAN THIS SUBTITLE OR BY THE GIFT
27 INSTRUMENT; OR

28 (II) CREATE A PRESUMPTION OF PRUDENCE FOR AN
29 APPROPRIATION FOR EXPENDITURE OF AN AMOUNT LESS THAN OR EQUAL TO 7
30 PERCENT OF THE FAIR MARKET VALUE OF THE ENDOWMENT FUND.

31 15-404.

1 (A) (1) SUBJECT TO ANY SPECIFIC LIMITATION SET FORTH IN A GIFT
2 INSTRUMENT OR IN LAW OTHER THAN THIS SUBTITLE, AN INSTITUTION MAY
3 DELEGATE TO AN EXTERNAL AGENT THE MANAGEMENT AND INVESTMENT OF AN
4 INSTITUTIONAL FUND TO THE EXTENT THAT AN INSTITUTION COULD
5 PRUDENTLY DELEGATE UNDER THE CIRCUMSTANCES.

6 (2) AN INSTITUTION SHALL ~~ACT IN GOOD FAITH, WITH THE CARE~~
7 ~~THAT AN ORDINARILY PRUDENT PERSON IN A LIKE POSITION WOULD EXERCISE~~
8 ~~UNDER SIMILAR CIRCUMSTANCES~~ EXERCISE ORDINARY BUSINESS CARE AND
9 PRUDENCE UNDER THE FACTS AND CIRCUMSTANCES PREVAILING AT THE TIME
10 OF THE ACTION OR DECISION, IN:

11 (I) SELECTING AN AGENT;

12 (II) ESTABLISHING THE SCOPE AND TERMS OF THE
13 DELEGATION, CONSISTENT WITH THE PURPOSES OF THE INSTITUTION AND THE
14 INSTITUTIONAL FUND; AND

15 (III) PERIODICALLY REVIEWING THE ACTIONS OF THE
16 AGENT IN ORDER TO MONITOR THE PERFORMANCE AND COMPLIANCE OF THE
17 AGENT WITH THE SCOPE AND TERMS OF THE DELEGATION.

18 (B) IN PERFORMING A DELEGATED FUNCTION, AN AGENT OWES A DUTY
19 TO THE INSTITUTION TO EXERCISE REASONABLE CARE TO COMPLY WITH THE
20 SCOPE AND TERMS OF THE DELEGATION.

21 ~~(C) AN INSTITUTION THAT COMPLIES WITH SUBSECTION (A) OF THIS~~
22 ~~SECTION IS NOT LIABLE FOR THE DECISIONS OR ACTIONS OF AN AGENT TO~~
23 ~~WHICH THE FUNCTION WAS DELEGATED.~~

24 (C) THE STANDARD ESTABLISHED BY § 15-402(B) OF THIS SUBTITLE IS
25 NOT LIMITED OR EXTINGUISHED BY THE APPOINTMENT OF AN EXTERNAL
26 AGENT.

27 (D) BY ACCEPTING DELEGATION OF A MANAGEMENT OR INVESTMENT
28 FUNCTION FROM AN INSTITUTION THAT IS SUBJECT TO THE LAWS OF THE
29 STATE, AN AGENT SUBMITS TO THE JURISDICTION OF THE COURTS OF THE
30 STATE IN ALL PROCEEDINGS ARISING FROM OR RELATED TO THE DELEGATION
31 OR THE PERFORMANCE OF THE DELEGATED FUNCTION.

32 (E) AN INSTITUTION MAY DELEGATE MANAGEMENT AND INVESTMENT
33 FUNCTIONS TO THE COMMITTEES, OFFICERS, OR EMPLOYEES OF THE
34 INSTITUTION AS AUTHORIZED BY LAW OTHER THAN THIS SUBTITLE.

1 ~~15-405.~~

2 (A) (1) IF THE DONOR CONSENTS IN A RECORD, AN INSTITUTION MAY
3 RELEASE OR MODIFY, IN WHOLE OR IN PART, A RESTRICTION CONTAINED IN A
4 GIFT INSTRUMENT ON THE MANAGEMENT, INVESTMENT, OR PURPOSE OF AN
5 INSTITUTIONAL FUND.

6 (2) A RELEASE OR MODIFICATION MAY NOT ALLOW A FUND TO BE
7 USED FOR A PURPOSE OTHER THAN A CHARITABLE PURPOSE OF THE
8 INSTITUTION.

9 (B) (1) ~~A IF WRITTEN CONSENT OF THE DONOR CANNOT BE~~
10 ~~OBTAINED BY REASON OF THE DEATH, DISABILITY, UNAVAILABILITY, OR~~
11 ~~IMPOSSIBILITY OF IDENTIFICATION OF THE DONOR, A COURT OF COMPETENT~~
12 ~~JURISDICTION, ON APPLICATION OF AN INSTITUTION, MAY MODIFY A~~
13 ~~RESTRICTION CONTAINED IN A GIFT INSTRUMENT REGARDING THE~~
14 ~~MANAGEMENT OR INVESTMENT OF AN INSTITUTIONAL FUND IF THE~~
15 ~~RESTRICTION HAS BECOME IMPRACTICABLE OR WASTEFUL, IF THE~~
16 ~~RESTRICTION IMPAIRS THE MANAGEMENT OR INVESTMENT OF THE FUND~~
17 ~~OBSOLETE, INAPPROPRIATE, OR IMPRACTICABLE, OR IF, BECAUSE OF~~
18 ~~CIRCUMSTANCES NOT ANTICIPATED BY THE DONOR, A MODIFICATION OF A~~
19 ~~RESTRICTION WILL CLEARLY FURTHER THE PURPOSES OF THE FUND.~~

20 (2) (I) THE INSTITUTION SHALL NOTIFY THE ATTORNEY
21 GENERAL OF THE INSTITUTION'S APPLICATION UNDER PARAGRAPH (1) OF THIS
22 SUBSECTION, AND THE ATTORNEY GENERAL SHALL BE GIVEN AN OPPORTUNITY
23 TO BE HEARD.

24 (II) TO THE EXTENT PRACTICABLE, ANY MODIFICATION
25 MADE UNDER PARAGRAPH (1) OF THIS SUBSECTION MUST BE MADE IN
26 ACCORDANCE WITH THE DONOR'S PROBABLE INTENTION.

27 (C) (1) IF A PARTICULAR CHARITABLE PURPOSE OR A RESTRICTION
28 CONTAINED IN A GIFT INSTRUMENT ON THE USE OF AN INSTITUTIONAL FUND
29 BECOMES UNLAWFUL, IMPRACTICABLE, ~~IMPOSSIBLE TO ACHIEVE, OR~~
30 ~~WASTEFUL OR IMPOSSIBLE TO ACHIEVE AND WRITTEN CONSENT OF THE DONOR~~
31 ~~CANNOT BE OBTAINED BY REASON OF THE DEATH, DISABILITY,~~
32 ~~UNAVAILABILITY, OR IMPOSSIBILITY OF IDENTIFICATION OF THE DONOR, A~~
33 ~~COURT OF COMPETENT JURISDICTION, ON APPLICATION OF AN INSTITUTION,~~
34 ~~MAY MODIFY THE PURPOSE OF THE FUND OR THE RESTRICTION ON THE USE OF~~
35 ~~THE FUND IN A MANNER CONSISTENT WITH THE CHARITABLE PURPOSES~~
36 ~~EXPRESSED IN THE GIFT INSTRUMENT IF THE DONOR MANIFESTED A GENERAL~~
37 ~~CHARITABLE INTENT.~~

1 (2) THE INSTITUTION SHALL NOTIFY THE ATTORNEY GENERAL
2 OF THE INSTITUTION'S APPLICATION UNDER PARAGRAPH (1) OF THIS
3 SUBSECTION, AND THE ATTORNEY GENERAL SHALL BE GIVEN AN OPPORTUNITY
4 TO BE HEARD.

5 (D) IF AN INSTITUTION DETERMINES THAT A RESTRICTION CONTAINED
6 IN A GIFT INSTRUMENT ON THE MANAGEMENT, INVESTMENT, OR PURPOSE OF
7 AN INSTITUTIONAL FUND IS UNLAWFUL, IMPRACTICABLE, ~~IMPOSSIBLE TO~~
8 ~~ACHIEVE, OR WASTEFUL~~ OR IMPOSSIBLE TO ACHIEVE, THE INSTITUTION, 60
9 DAYS AFTER NOTIFICATION TO THE ATTORNEY GENERAL, MAY RELEASE OR
10 MODIFY THE RESTRICTION, IN WHOLE OR IN PART, IF:

11 (1) THE INSTITUTIONAL FUND SUBJECT TO THE RESTRICTION
12 HAS A TOTAL VALUE OF LESS THAN \$50,000;

13 (2) MORE THAN 20 YEARS HAVE ELAPSED SINCE THE FUND WAS
14 ESTABLISHED; AND

15 (3) THE INSTITUTION USES THE PROPERTY IN A MANNER
16 CLEARLY CONSISTENT WITH THE CHARITABLE PURPOSES EXPRESSED IN THE
17 GIFT INSTRUMENT.

18 **15-406.**

19 COMPLIANCE WITH THIS SUBTITLE SHALL BE DETERMINED IN LIGHT OF
20 THE FACTS AND CIRCUMSTANCES EXISTING AT THE TIME A DECISION IS MADE
21 OR ACTION IS TAKEN.

22 **15-407.**

23 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THIS
24 SUBTITLE APPLIES TO INSTITUTIONAL FUNDS EXISTING ON OR ESTABLISHED
25 AFTER THE EFFECTIVE DATE OF CHAPTER____ (S.B.____/H.B.____)
26 (9LR1493/9LR0345) OF THE ACTS OF THE GENERAL ASSEMBLY OF 2009.

27 (B) AS APPLIED TO INSTITUTIONAL FUNDS EXISTING ON THE
28 EFFECTIVE DATE OF CHAPTER____ (S.B.____/H.B.____)
29 (9LR1493/9LR0345) OF THE ACTS OF THE GENERAL ASSEMBLY OF 2009, THIS
30 SUBTITLE GOVERNS ONLY DECISIONS MADE OR ACTIONS TAKEN ON OR AFTER
31 THAT DATE.

32 **15-408.**

1 **THIS SUBTITLE MODIFIES, LIMITS, AND SUPERSEDES THE ELECTRONIC**
 2 **SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT, 15 U.S.C. § 7001 ET**
 3 **SEQ., BUT DOES NOT MODIFY, LIMIT, OR SUPERSEDE ~~§ 101~~ § 101(C) OF THAT**
 4 **ACT, 15 U.S.C. ~~§ 7001(A)~~ § 7001(C), OR AUTHORIZE ELECTRONIC DELIVERY OF**
 5 **THE NOTICES DESCRIBED IN ~~§ 103~~ § 103(B) OF THAT ACT, 15 U.S.C. § 7003(B).**

6 **15-409.**

7 **IN APPLYING AND CONSTRUING THIS SUBTITLE, WHICH IS A UNIFORM**
 8 **ACT, CONSIDERATION SHALL BE GIVEN TO THE NEED TO PROMOTE UNIFORMITY**
 9 **OF THE LAW WITH RESPECT TO THE SUBJECT MATTER OF THE LAW AMONG THE**
 10 **STATES THAT ENACT THE LAW.**

11 **15-410.**

12 **THIS SUBTITLE MAY BE CITED AS THE “MARYLAND UNIFORM PRUDENT**
 13 **MANAGEMENT OF INSTITUTIONAL FUNDS ACT”.**

14 **SECTION 2. AND BE IT FURTHER ENACTED,** That this Act is an emergency
 15 measure, is necessary for the immediate preservation of the public health or safety,
 16 has been passed by a ye and nay vote supported by three-fifths of all the members
 17 elected to each of the two Houses of the General Assembly, and shall take effect from
 18 the date it is enacted.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.