

HOUSE BILL 200

N2
HB 1467/08 – JUD

EMERGENCY BILL

9lr0345

By: **Delegate Carter**

Introduced and read first time: January 26, 2009

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 2009

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

20 BY repealing

21 Article – Estates and Trusts

22 Section 15–401 through 15–409

23 Annotated Code of Maryland

24 (2001 Replacement Volume and 2008 Supplement)

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.



1 BY adding to
2 Article – Estates and Trusts
3 Section 15–401 through 15–410 to be under the amended subtitle “Subtitle 4.
4 Maryland Uniform Prudent Management of Institutional Funds Act”
5 Annotated Code of Maryland
6 (2001 Replacement Volume and 2008 Supplement)

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

9 **Article – Estates and Trusts**

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

11 [15–401.

12 (a) In this subtitle the following words or phrases have the meanings
13 indicated.

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

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

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

23 (e) “Historic dollar value” means the aggregate fair value in dollars of (1) an
24 endowment fund at the time it became an endowment fund, (2) each subsequent
25 donation to the fund at the time it is made, and (3) each accumulation made pursuant
26 to a direction in the applicable gift instrument at the time the accumulation is added
27 to the fund. The determination of historic dollar value made in good faith by the
28 institution is conclusive.

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

33 (g) “Institutional fund” means a fund held by an institution for its exclusive
34 use, benefit, or purposes but does not include (1) a fund held for an institution by a
35 trustee that is not an institution or (2) a fund in which a beneficiary that is not an

1 institution has an interest, other than possible rights that could arise upon violation
2 or failure of the purposes of the fund.]

3 [15-402.

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

11 [15-403.

12 Section 15-402 does not apply if the applicable gift instrument indicates the
13 intention of the donor that net appreciation shall not be expended. A restriction upon
14 the expenditure of net appreciation may not be implied from a designation of a gift as
15 an endowment, or from a direction or authorization in the applicable gift instrument
16 to use only "income", "interest", "dividends", or "rents, issues or profits", or "to preserve
17 the principal intact", or a direction which contains other words of similar import. This
18 rule of construction applies to gift instruments executed or in effect before or after the
19 effective date of this act.]

20 [15-404.

21 In an addition to an investment otherwise authorized by law or by the
22 applicable gift instrument, and without restriction to investments a fiduciary may
23 make, the governing board, subject to any specific limitations set forth in the
24 applicable gift instrument or in the applicable law other than law relating to
25 investments by a fiduciary, may:

26 (1) Invest and reinvest an institutional fund in any real or personal
27 property deemed advisable by the governing board, whether or not it produces a
28 current return, including mortgages, stocks, bonds, debentures, and other securities of
29 profit or nonprofit corporations, shares in or obligations of associations, partnerships,
30 or individuals, and obligations of any government or subdivision or instrumentality
31 thereof;

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

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

36 (4) Invest all or any part of an institutional fund in any other pooled
37 or common fund available for investment, including shares or interests in regulated

1 investment companies, mutual funds, common trust funds, investment partnerships,
2 real estate investment trust, or similar organizations in which funds are commingled
3 and investment determinations are made by persons other than the governing board.]

4 [15-405.

5 Except as otherwise provided by the applicable gift instrument or by applicable
6 law relating to governmental institutions or funds, the governing board may (1)
7 delegate to its committees, officers, or employees of the institution or the fund, or
8 agents, including investment counsel, the authority to act in place of the board in
9 investment and reinvestment of institutional funds, (2) contract with independent
10 investment advisors, investment counsel or managers, banks, or trust companies, so to
11 act, and (3) authorize the payment of compensation for investment advisory or
12 management services.]

13 [15-406.

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

22 [15-407.

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

26 (b) If written consent of the donor cannot be obtained by reason of his death,
27 disability, unavailability, or impossibility of identification, the governing board may
28 apply in the name of the institution to the circuit court for the county where the office
29 of the governing board is located, for release of a restriction imposed by the applicable
30 gift instrument on the use or investment of an institutional fund. The Attorney
31 General shall be notified of the application and given an opportunity to be heard. If
32 the court finds that the restriction is obsolete, inappropriate, or impracticable, it may
33 by order release the restriction in whole or in part. A release under this subsection
34 may not change an endowment fund to a fund that is not an endowment fund.

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

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

1 [15-408.

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

5 [15-409.

6 This subtitle may be cited as the “Maryland Uniform Management of
7 Institutional Funds Act”.]

8 **15-401.**

9 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
10 INDICATED.

11 (B) “CHARITABLE PURPOSE” MEANS THE RELIEF OF POVERTY, THE
12 ADVANCEMENT OF EDUCATION OR RELIGION, THE PROMOTION OF HEALTH, THE
13 PROMOTION OF A GOVERNMENTAL PURPOSE, OR ANY OTHER PURPOSE THE
14 ACHIEVEMENT OF WHICH IS BENEFICIAL TO THE COMMUNITY.

15 (C) (1) “ENDOWMENT FUND” MEANS AN INSTITUTIONAL FUND OR
16 PART OF AN INSTITUTIONAL FUND THAT, UNDER THE TERMS OF A GIFT
17 INSTRUMENT, IS NOT WHOLLY EXPENDABLE BY THE INSTITUTION ON A
18 CURRENT BASIS.

19 (2) “ENDOWMENT FUND” DOES NOT INCLUDE ASSETS THAT AN
20 INSTITUTION DESIGNATES AS AN ENDOWMENT FUND FOR THE USE OF THE
21 INSTITUTION.

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

25 (E) “INSTITUTION” MEANS:

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

28 (2) A GOVERNMENT OR GOVERNMENTAL SUBDIVISION, AGENCY,
29 OR INSTRUMENTALITY, TO THE EXTENT THAT THE SUBDIVISION, AGENCY, OR
30 INSTRUMENTALITY HOLDS FUNDS EXCLUSIVELY FOR A CHARITABLE PURPOSE;
31 OR

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

3 (F) (1) "INSTITUTIONAL FUND" MEANS A FUND HELD BY AN
4 INSTITUTION EXCLUSIVELY FOR CHARITABLE PURPOSES.

5 (2) "INSTITUTIONAL FUND" DOES NOT INCLUDE:

6 (I) PROGRAM-RELATED ASSETS;

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

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

12 (G) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, BUSINESS
13 TRUST, ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY,
14 ASSOCIATION, JOINT VENTURE, PUBLIC CORPORATION, GOVERNMENT OR
15 GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR ANY OTHER
16 LEGAL OR COMMERCIAL ENTITY.

17 (H) "PROGRAM-RELATED ASSET" MEANS AN ASSET HELD BY AN
18 INSTITUTION PRIMARILY TO ACCOMPLISH A CHARITABLE PURPOSE OF THE
19 INSTITUTION AND NOT PRIMARILY FOR INVESTMENT.

20 (I) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
21 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM
22 AND IS RETRIEVABLE IN PERCEIVABLE FORM.

23 **15-402.**

24 (A) SUBJECT TO THE INTENT OF A DONOR EXPRESSED IN A GIFT
25 INSTRUMENT, AN INSTITUTION, IN MANAGING AND INVESTING AN
26 INSTITUTIONAL FUND, SHALL CONSIDER THE CHARITABLE PURPOSES OF THE
27 INSTITUTION AND THE PURPOSES OF THE INSTITUTIONAL FUND.

28 (B) IN ADDITION TO COMPLYING WITH THE DUTY OF LOYALTY IMPOSED
29 BY LAW OTHER THAN THIS SUBTITLE, EACH PERSON RESPONSIBLE FOR
30 MANAGING AND INVESTING AN INSTITUTIONAL FUND SHALL MANAGE AND
31 INVEST THE FUND ~~IN GOOD FAITH AND WITH THE CARE AN ORDINARILY~~
32 ~~PRUDENT PERSON IN A LIKE POSITION WOULD EXERCISE UNDER SIMILAR~~
33 ~~CIRCUMSTANCES~~ EXERCISING ORDINARY BUSINESS CARE AND PRUDENCE

1 UNDER THE FACTS AND CIRCUMSTANCES PREVAILING AT THE TIME OF THE
2 ACTION OR DECISION.

3 (C) IN MANAGING AND INVESTING AN INSTITUTIONAL FUND, AN
4 INSTITUTION:

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

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

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

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

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

16 (I) GENERAL ECONOMIC CONDITIONS;

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

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

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

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

24 (VI) OTHER RESOURCES OF THE INSTITUTION;

25 (VII) THE NEEDS OF THE INSTITUTION AND THE FUND TO
26 MAKE DISTRIBUTIONS AND TO PRESERVE CAPITAL; AND

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

29 (3) MANAGEMENT AND INVESTMENT DECISIONS ABOUT AN
30 INDIVIDUAL ASSET SHALL BE MADE NOT IN ISOLATION BUT IN THE CONTEXT OF

1 THE PORTFOLIO OF INVESTMENTS OF THE INSTITUTIONAL FUND AS A WHOLE
2 AND AS A PART OF AN OVERALL INVESTMENT STRATEGY HAVING RISK AND
3 RETURN OBJECTIVES REASONABLY SUITED TO THE FUND AND TO THE
4 INSTITUTION.

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

8 (5) AN INSTITUTION SHALL DIVERSIFY THE INVESTMENTS OF AN
9 INSTITUTIONAL FUND UNLESS THE INSTITUTION REASONABLY DETERMINES
10 THAT, BECAUSE OF SPECIAL CIRCUMSTANCES, THE PURPOSES OF THE FUND
11 ARE BETTER SERVED WITHOUT DIVERSIFICATION.

12 (6) WITHIN A REASONABLE TIME AFTER RECEIVING PROPERTY,
13 AN INSTITUTION SHALL MAKE AND CARRY OUT DECISIONS CONCERNING THE
14 RETENTION OR DISPOSITION OF THE PROPERTY OR TO REBALANCE A
15 PORTFOLIO, IN ORDER TO BRING THE INSTITUTIONAL FUND INTO COMPLIANCE
16 WITH THE PURPOSES, TERMS, AND DISTRIBUTION REQUIREMENTS OF THE
17 INSTITUTION AS NECESSARY TO MEET OTHER CIRCUMSTANCES OF THE
18 INSTITUTION AND THE REQUIREMENTS OF THIS SUBTITLE.

19 (7) A PERSON THAT HAS SPECIAL SKILLS OR EXPERTISE, OR IS
20 SELECTED IN RELIANCE ON THE REPRESENTATION BY THE PERSON THAT THE
21 PERSON HAS SPECIAL SKILLS OR EXPERTISE, HAS A DUTY TO USE THOSE SKILLS
22 OR THAT EXPERTISE IN MANAGING AND INVESTING INSTITUTIONAL FUNDS.

23 15-403.

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

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

32 (3) IN MAKING A DETERMINATION TO APPROPRIATE FOR
33 EXPENDITURE OR ACCUMULATE UNDER PARAGRAPH (1) OF THIS SUBSECTION,
34 THE INSTITUTION SHALL ~~ACT IN GOOD FAITH, WITH THE CARE THAT AN~~
35 ~~ORDINARILY PRUDENT PERSON IN A LIKE POSITION WOULD EXERCISE UNDER~~
36 ~~SIMILAR CIRCUMSTANCES~~ EXERCISE ORDINARY BUSINESS CARE AND

1 PRUDENCE UNDER THE FACTS AND CIRCUMSTANCES PREVAILING AT THE TIME
2 OF THE ACTION OR DECISION, AND SHALL CONSIDER, IF RELEVANT, THE
3 FOLLOWING FACTORS:

4 (I) THE DURATION AND PRESERVATION OF THE
5 ENDOWMENT FUND;

6 (II) THE PURPOSES OF THE INSTITUTION AND THE
7 ENDOWMENT FUND;

8 (III) GENERAL ECONOMIC CONDITIONS;

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

10 (V) THE EXPECTED TOTAL RETURN FROM INCOME AND THE
11 APPRECIATION OF INVESTMENTS;

12 (VI) OTHER RESOURCES OF THE INSTITUTION; AND

13 (VII) THE INVESTMENT POLICY OF THE INSTITUTION.

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

17 (C) TERMS IN A GIFT INSTRUMENT DESIGNATING A GIFT AS AN
18 ENDOWMENT, OR A DIRECTION OR AUTHORIZATION IN THE GIFT INSTRUMENT
19 TO USE ONLY "INCOME", "INTEREST", "DIVIDENDS", OR "RENTS, ISSUES, OR
20 PROFITS", OR "TO PRESERVE THE PRINCIPAL INTACT", OR WORDS OF SIMILAR
21 IMPORT:

22 (1) CREATE AN ENDOWMENT FUND OF PERMANENT DURATION
23 UNLESS OTHER LANGUAGE IN THE GIFT INSTRUMENT LIMITS THE DURATION OR
24 PURPOSE OF THE FUND; AND

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

27 (D) (1) IN THIS SUBSECTION, FAIR MARKET VALUE SHALL BE
28 CALCULATED:

29 (I) IF AN ENDOWMENT FUND HAS EXISTED AT LEAST 3
30 YEARS, ON THE BASIS OF THE MARKET VALUE DETERMINED AT LEAST
31 QUARTERLY AND AVERAGED OVER A PERIOD OF NOT LESS THAN 3 YEARS

1 IMMEDIATELY PRECEDING THE YEAR IN WHICH THE APPROPRIATION FOR
2 EXPENDITURE IS MADE; OR

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

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

8 (3) THE INSTITUTION SHALL NOTIFY THE ATTORNEY GENERAL
9 OF THE APPROPRIATION FOR EXPENDITURE IN ANY YEAR OF AN AMOUNT
10 GREATER THAN 7 PERCENT OF THE FAIR MARKET VALUE OF AN ENDOWMENT
11 FUND.

12 (4) THIS SUBSECTION DOES NOT:

13 (I) APPLY TO AN APPROPRIATION FOR EXPENDITURE
14 PERMITTED UNDER LAW OTHER THAN THIS SUBTITLE OR BY THE GIFT
15 INSTRUMENT; OR

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

19 **15-404.**

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

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

30 (I) SELECTING AN AGENT;

31 (II) ESTABLISHING THE SCOPE AND TERMS OF THE
32 DELEGATION, CONSISTENT WITH THE PURPOSES OF THE INSTITUTION AND THE
33 INSTITUTIONAL FUND; AND

1 (III) PERIODICALLY REVIEWING THE ACTIONS OF THE
2 AGENT IN ORDER TO MONITOR THE PERFORMANCE AND COMPLIANCE OF THE
3 AGENT WITH THE SCOPE AND TERMS OF THE DELEGATION.

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

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

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

13 (D) BY ACCEPTING DELEGATION OF A MANAGEMENT OR INVESTMENT
14 FUNCTION FROM AN INSTITUTION THAT IS SUBJECT TO THE LAWS OF THE
15 STATE, AN AGENT SUBMITS TO THE JURISDICTION OF THE COURTS OF THE
16 STATE IN ALL PROCEEDINGS ARISING FROM OR RELATED TO THE DELEGATION
17 OR THE PERFORMANCE OF THE DELEGATED FUNCTION.

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

21 15-405.

22 (A) (1) IF THE DONOR CONSENTS IN A RECORD, AN INSTITUTION MAY
23 RELEASE OR MODIFY, IN WHOLE OR IN PART, A RESTRICTION CONTAINED IN A
24 GIFT INSTRUMENT ON THE MANAGEMENT, INVESTMENT, OR PURPOSE OF AN
25 INSTITUTIONAL FUND.

26 (2) A RELEASE OR MODIFICATION MAY NOT ALLOW A FUND TO BE
27 USED FOR A PURPOSE OTHER THAN A CHARITABLE PURPOSE OF THE
28 INSTITUTION.

29 (B) (1) A IF WRITTEN CONSENT OF THE DONOR CANNOT BE
30 OBTAINED BY REASON OF THE DEATH, DISABILITY, UNAVAILABILITY, OR
31 IMPOSSIBILITY OF IDENTIFICATION OF THE DONOR, A COURT OF COMPETENT
32 JURISDICTION, ON APPLICATION OF AN INSTITUTION, MAY MODIFY A
33 RESTRICTION CONTAINED IN A GIFT INSTRUMENT REGARDING THE
34 MANAGEMENT OR INVESTMENT OF AN INSTITUTIONAL FUND IF THE
35 RESTRICTION HAS BECOME IMPRACTICABLE OR WASTEFUL, IF THE
36 RESTRICTION IMPAIRS THE MANAGEMENT OR INVESTMENT OF THE FUND

1 OBSOLETE, INAPPROPRIATE, OR IMPRACTICABLE, OR IF, BECAUSE OF
2 CIRCUMSTANCES NOT ANTICIPATED BY THE DONOR, A MODIFICATION OF A
3 RESTRICTION WILL CLEARLY FURTHER THE PURPOSES OF THE FUND.

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

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

11 (C) (1) IF A PARTICULAR CHARITABLE PURPOSE OR A RESTRICTION
12 CONTAINED IN A GIFT INSTRUMENT ON THE USE OF AN INSTITUTIONAL FUND
13 BECOMES UNLAWFUL, IMPRACTICABLE, ~~IMPOSSIBLE TO ACHIEVE, OR~~
14 ~~WASTEFUL~~ OR IMPOSSIBLE TO ACHIEVE AND WRITTEN CONSENT OF THE DONOR
15 CANNOT BE OBTAINED BY REASON OF THE DEATH, DISABILITY,
16 UNAVAILABILITY, OR IMPOSSIBILITY OF IDENTIFICATION OF THE DONOR, A
17 COURT OF COMPETENT JURISDICTION, ON APPLICATION OF AN INSTITUTION,
18 MAY MODIFY THE PURPOSE OF THE FUND OR THE RESTRICTION ON THE USE OF
19 THE FUND ~~IN A MANNER CONSISTENT WITH THE CHARITABLE PURPOSES~~
20 ~~EXPRESSED IN THE GIFT INSTRUMENT~~ IF THE DONOR MANIFESTED A GENERAL
21 CHARITABLE INTENT.

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

26 (D) IF AN INSTITUTION DETERMINES THAT A RESTRICTION CONTAINED
27 IN A GIFT INSTRUMENT ON THE MANAGEMENT, INVESTMENT, OR PURPOSE OF
28 AN INSTITUTIONAL FUND IS UNLAWFUL, IMPRACTICABLE, ~~IMPOSSIBLE TO~~
29 ~~ACHIEVE, OR WASTEFUL~~ OR IMPOSSIBLE TO ACHIEVE, THE INSTITUTION, 60
30 DAYS AFTER NOTIFICATION TO THE ATTORNEY GENERAL, MAY RELEASE OR
31 MODIFY THE RESTRICTION, IN WHOLE OR IN PART, IF:

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

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

1 **(3) THE INSTITUTION USES THE PROPERTY IN A MANNER**
2 **CLEARLY CONSISTENT WITH THE CHARITABLE PURPOSES EXPRESSED IN THE**
3 **GIFT INSTRUMENT.**

4 **15-406.**

5 **COMPLIANCE WITH THIS SUBTITLE SHALL BE DETERMINED IN LIGHT OF**
6 **THE FACTS AND CIRCUMSTANCES EXISTING AT THE TIME A DECISION IS MADE**
7 **OR ACTION IS TAKEN.**

8 **15-407.**

9 **(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THIS**
10 **SUBTITLE APPLIES TO INSTITUTIONAL FUNDS EXISTING ON OR ESTABLISHED**
11 **AFTER THE EFFECTIVE DATE OF CHAPTER_____ (S.B._____/H.B._____)**
12 **(9LR1493/9LR0345) OF THE ACTS OF THE GENERAL ASSEMBLY OF 2009.**

13 **(B) AS APPLIED TO INSTITUTIONAL FUNDS EXISTING ON THE**
14 **EFFECTIVE DATE OF CHAPTER_____ (S.B._____/H.B._____)**
15 **(9LR1493/9LR0345) OF THE ACTS OF THE GENERAL ASSEMBLY OF 2009, THIS**
16 **SUBTITLE GOVERNS ONLY DECISIONS MADE OR ACTIONS TAKEN ON OR AFTER**
17 **THAT DATE.**

18 **15-408.**

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

24 **15-409.**

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

29 **15-410.**

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

32 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency**
33 **measure, is necessary for the immediate preservation of the public health or safety,**

HOUSE BILL 200

1 has been passed by a yea and nay vote supported by three-fifths of all the members
2 elected to each of the two Houses of the General Assembly, and shall take effect from
3 the date it is enacted.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.