

SENATE BILL NO. 217

BY SENATOR CLAITOR (On Recommendation of the Louisiana State Law Institute)

1 AN ACT

2 To amend and reenact Part V of Chapter 2 of Code Title II of Code Book III of Title 9 of the
3 Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:2337.1 through
4 2337.10, relative to the Uniform Prudent Management of Institutional Funds; to
5 provide for a new title for Part V; to provide for definitions for Part V; to provide for
6 the standard of conduct in managing and investing an institutional fund; to provide
7 for the appropriation for expenditure or the accumulation of an endowment fund; to
8 provide for the rules of construction; to provide for the delegation of management
9 and investment functions; to provide for the release or modification of restrictions
10 on management, investment, or purpose of an institutional fund; to provide for
11 reviewing compliance; to provide for the application of this Part upon existing
12 institutional funds; to provide for the relationship of this Part to the Electronic
13 Signatures in Global and National Commerce Act; to provide for the uniformity of
14 application and construction of this Part; to provide for an effective date; and to
15 provide for related matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. Part V of Chapter 2 of Code Title II of Code Book III of Title 9 of the
18 Louisiana Revised Statutes of 1950, comprised of R.S. 9:2337.1 through 2337.10 is
19 hereby amended and reenacted to read as follows:

20 PART V. UNIFORM **PRUDENT** MANAGEMENT OF INSTITUTIONAL
21 FUNDS ACT

22 §2337.1. Short title

23 This Part may be cited as the "Uniform **Prudent** Management of Institutional
24 Funds Act."

25 ~~§2337.1. Definitions~~

26 ~~As used in this Part:~~

27 ~~(1) "Institution" means an incorporated or unincorporated organization~~

1 ~~organized and operated exclusively for educational, religious, charitable, or other~~
 2 ~~eleemosynary purposes, or a governmental organization to the extent that it holds~~
 3 ~~funds exclusively for any of these purposes.~~

4 ~~(2) "Institutional fund" means a fund held by an institution for its exclusive~~
 5 ~~use, benefit, or purposes, but does not include (i) a fund held for an institution by a~~
 6 ~~trustee that is not an institution or (ii) a fund in which a beneficiary that is not an~~
 7 ~~institution has an interest, other than possible rights that could arise upon violation~~
 8 ~~or failure of the purposes of the fund.~~

9 ~~(3) "Endowment fund" means an institutional fund, or any part thereof, not~~
 10 ~~wholly expendable by the institution on a current basis under the terms of the~~
 11 ~~applicable gift instrument.~~

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

14 ~~(5) "Historic dollar value" means the aggregate fair value in dollars of (i) an~~
 15 ~~endowment fund at the time it became an endowment fund, (ii) each subsequent~~
 16 ~~donation to the fund at the time it is made, and (iii) each accumulation made~~
 17 ~~pursuant to a direction in the applicable gift instrument at the time the accumulation~~
 18 ~~is added to the fund. The determination of historic dollar value made in good faith~~
 19 ~~by the institution is conclusive.~~

20 ~~(6) "Gift instrument" means a will, deed, grant, donation, conveyance,~~
 21 ~~agreement, memorandum, writing, or other governing document (including the terms~~
 22 ~~of any institutional solicitations from which an institutional fund resulted) under~~
 23 ~~which property is transferred to or held by an institution as an institutional fund.~~

24 §2337.2. Definitions

25 For the purposes of this Part, the following terms shall have the
 26 meanings ascribed to them, unless the context clearly indicates otherwise:

27 (1) "Charitable purpose" means the relief of poverty, the advancement
 28 of education or religion, the promotion of health, the promotion of a
 29 governmental purpose, or any other purpose the achievement of which is
 30 beneficial to the community.

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

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

8 (4) "Institution" may mean any of the following:

9 (a) A person, other than an individual, organized and operated
10 exclusively for charitable purposes.

11 (b) A government or governmental subdivision, agency, or
12 instrumentality, to the extent that it holds funds exclusively for a charitable
13 purpose.

14 (c) A trust that had both charitable and noncharitable interests, after
15 all noncharitable interests have terminated.

16 (5) "Institutional fund" means a fund held by an institution exclusively
17 for charitable purposes. The term does not include any of the following:

18 (a) Program-related assets.

19 (b) A fund held for an institution by a trustee that is not an institution.

20 (c) A fund in which a beneficiary that is not an institution has an
21 interest, other than an interest that could arise upon violation or failure of the
22 purposes of the fund.

23 (6) "Person" means an individual, any legal or commercial entity,
24 including a corporation, business trust, partnership, limited liability company,
25 association, joint venture, public corporation, government or governmental
26 subdivision, agency, or instrumentality, the trustee of a trust, or the succession
27 representative of a succession.

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

1 **(8) "Record" means information that is inscribed on a tangible medium**
2 **or that is stored in an electronic or other medium and is retrievable in**
3 **perceivable form.**

4 ~~§2337.2. Appropriation of appreciation~~

5 ~~The governing board may appropriate for expenditure for the uses and~~
6 ~~purposes for which an endowment fund is established so much of the net~~
7 ~~appreciation, realized and unrealized, in the fair value of the assets of an endowment~~
8 ~~fund over the historic dollar value of the fund as is prudent under the standard~~
9 ~~established by Section 2337.6. This Section does not limit the authority of the~~
10 ~~governing board to expend funds as permitted under other law, the terms of the~~
11 ~~applicable gift instrument, or the charter of the institution.~~

12 **§2337.3. Standard of conduct in managing and investing institutional fund**

13 **A. Subject to the intent of a donor expressed in a gift instrument, an**
14 **institution, in managing and investing an institutional fund, shall consider the**
15 **charitable purposes of the institution and the purposes of the institutional fund.**

16 **B. In addition to complying with the duty of loyalty imposed by law**
17 **other than this Part, each person responsible for managing and investing an**
18 **institutional fund shall manage and invest the fund in good faith and with the**
19 **care an ordinarily prudent person in a like position would exercise under**
20 **similar circumstances.**

21 **C. In managing and investing an institutional fund, an institution shall**
22 **be bound by the following obligations:**

23 **(1) It may incur only costs that are appropriate and reasonable in**
24 **relation to the assets, the purposes of the institution, and the skills available to**
25 **the institution.**

26 **(2) It shall make a reasonable effort to verify facts relevant to the**
27 **management and investment of the fund.**

28 **D. An institution may pool two or more institutional funds for purposes**
29 **of management and investment.**

30 **E. Except as otherwise provided by a gift instrument, all of the following**

1 rules apply:

2 (1) In managing and investing an institutional fund, the following
3 factors, if relevant, shall be considered:

4 (a) General economic conditions.

5 (b) The possible effect of inflation or deflation.

6 (c) The expected tax consequences, if any, of investment decisions or
7 strategies.

8 (d) The role that each investment or course of action plays within the
9 overall investment portfolio of the fund.

10 (e) The expected total return from income and the appreciation of
11 investments.

12 (f) Other resources of the institution.

13 (g) The needs of the institution and the fund to make distributions and
14 to preserve capital.

15 (h) An asset's special relationship or special value, if any, to the
16 charitable purposes of the institution.

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

22 (3) Except as otherwise provided by law other than this Part, an
23 institution may invest in any kind of property or type of investment consistent
24 with this Section.

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

29 (5) Within a reasonable time after receiving property, an institution
30 shall make and carry out decisions concerning the retention or disposition of the

1 property or to rebalance a portfolio, in order to bring the institutional fund into
 2 compliance with the purposes, terms, and distribution requirements of the
 3 institution as necessary to meet other circumstances of the institution and the
 4 requirements of this Part.

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

9 ~~§2337.3. Interpretation~~

10 ~~Section 2337.2 does not apply if the applicable gift instrument indicates the~~
 11 ~~donor's intention that net appreciation shall not be expended. A restriction upon the~~
 12 ~~expenditure of net appreciation may not be implied from a designation of a gift as~~
 13 ~~an endowment, or from a direction or authorization in the applicable gift instrument~~
 14 ~~to use only "income," "interest," "dividends," "usufruct," or "rents, issues or profits,"~~
 15 ~~or "to preserve the principal intact," or "to preserve the naked ownership intact," or~~
 16 ~~a direction which contains other words of similar import. This interpretation applies~~
 17 ~~to gift instruments executed or in effect before or after the effective date of this Part.~~

18 **§2337.4. Appropriation for expenditure or accumulation of endowment fund;**
 19 **rules of construction**

20 **A. Subject to the intent of a donor expressed in the gift instrument, an**
 21 **institution may appropriate for expenditure or accumulate so much of an**
 22 **endowment fund as the institution determines is prudent for the uses, benefits,**
 23 **purposes, and duration for which the endowment fund is established. Unless**
 24 **stated otherwise in the gift instrument, the assets in an endowment fund are**
 25 **donor-restricted assets until appropriated for expenditure by the institution.**
 26 **In making a determination to appropriate or accumulate, the institution shall**
 27 **act in good faith, with the care that an ordinarily prudent person in a like**
 28 **position would exercise under similar circumstances, and shall consider, if**
 29 **relevant, all of the following factors:**

30 **(1) The duration and preservation of the endowment fund.**

1 (2) The purposes of the institution and the endowment fund.

2 (3) General economic conditions.

3 (4) The possible effect of inflation or deflation.

4 (5) The expected total return from income and the appreciation of
 5 investments.

6 (6) Other resources of the institution.

7 (7) The investment policy of the institution.

8 B. To limit the authority to appropriate for expenditure or accumulate
 9 under Subsection A of this Section, a gift instrument must specifically state the
 10 limitation.

11 C. Terms in a gift instrument designating a gift as an endowment, or a
 12 direction or authorization in the gift instrument to use only "income",
 13 "interest", "dividends", "usufruct", or "rents, issues, or profits", or "to
 14 preserve the principal intact", or "to preserve the naked ownership intact", or
 15 words of similar import have the following implications:

16 (1) Create an endowment fund of permanent duration unless other
 17 language in the gift instrument limits the duration or purpose of the fund.

18 (2) Do not otherwise limit the authority to appropriate for expenditure
 19 or accumulate under Subsection A of this Section.

20 ~~§2337.4. Authority to invest~~

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

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

1 subdivision or instrumentality thereof.

2 (2) ~~Retain property contributed by a donor to an institutional fund for as long~~
3 as the governing board deems advisable.

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

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

11 **§2337.5. Delegation of management and investment functions**

12 **A. Subject to any specific limitation set forth in a gift instrument or in**
13 **law other than this Part, an institution may delegate to an external agent the**
14 **management and investment of an institutional fund to the extent that an**
15 **institution could prudently delegate under the circumstances. An institution**
16 **shall act in good faith, with the care that an ordinarily prudent person in a like**
17 **position would exercise under similar circumstances, in taking any of the**
18 **following steps:**

19 **(1) Selecting an agent.**

20 **(2) Establishing the scope and terms of the delegation, consistent with**
21 **the purposes of the institution and the institutional fund.**

22 **(3) Periodically reviewing the agent's actions in order to monitor the**
23 **agent's performance and compliance with the scope and terms of the delegation.**

24 **B. In performing a delegated function, an agent owes a duty to the**
25 **institution to exercise reasonable care to comply with the scope and terms of the**
26 **delegation.**

27 **C. An institution that complies with Subsection A of this Section is not**
28 **liable for the decisions or actions of an agent to which the function was**
29 **delegated.**

30 **D. By accepting delegation of a management or investment function**

1 from an institution that is subject to the laws of this state, an agent submits to
 2 the jurisdiction of the courts of this state in all proceedings arising from or
 3 related to the delegation or the performance of the delegated function.

4 E. An institution may delegate management and investment functions
 5 to its committees, officers, or employees as authorized by law of this state other
 6 than this Part.

7 ~~§2337.5. Delegation of investment management~~

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

16 §2337.6. Release or modification of restrictions on management, investment, or
 17 purpose

18 A. If the donor consents in a record, an institution may release or
 19 modify, in whole or in part, a restriction contained in a gift instrument on the
 20 management, investment, or purpose of an institutional fund. A release or
 21 modification shall not allow a fund to be used for a purpose other than a
 22 charitable purpose of the institution.

23 B. The court, upon application of an institution, may modify a
 24 restriction contained in a gift instrument regarding the management or
 25 investment of an institutional fund if the restriction has become impracticable
 26 or wasteful, if it impairs the management or investment of the fund, or if,
 27 because of circumstances not anticipated by the donor, a modification of a
 28 restriction will further the purposes of the fund. Notification of interested
 29 parties shall be made in accordance with R.S. 9:2332. To the extent practicable,
 30 any modification shall be made in accordance with the donor's probable

1 intention.

2 C. If a particular charitable purpose or a restriction contained in a gift
 3 instrument on the use of an institutional fund becomes unlawful, impracticable,
 4 impossible to achieve, or wasteful, the court, upon application of an institution,
 5 may modify the purpose of the fund or the restriction on the use of the fund in
 6 a manner consistent with the charitable purposes expressed in the gift
 7 instrument. Notification of interested parties shall be made in accordance with
 8 R.S. 9:2332.

9 D. If all of the following occur, the institution, if there is no written
 10 objection within sixty days after giving notice as provided in Subsection E of
 11 this Section, may release or modify the restriction, in whole or part:

12 (1) The institutional fund subject to the restriction has a total value of
 13 less than one hundred thousand dollars.

14 (2) More than twenty years have elapsed since the fund was established.

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

17 (4) The institution determines that a restriction contained in the gift
 18 instrument on the management, investment, or purpose of the institutional fund
 19 is unlawful, impracticable, impossible to achieve, or wasteful.

20 E. Notice under Subsection D of this Section shall be made by the
 21 institution by certified mail upon all existing donors. If there is no existing
 22 donor, notice shall be made upon at least one person who has succeeded to any
 23 rights that a donor would have had to the return of the property if the donation
 24 had failed or upon a conditional donee who would have had any right to the
 25 property if the donation had failed. If, after a reasonable effort, the institution
 26 is unable to give notice to any existing donor or successor, or to a conditional
 27 donee, then notice by certified mail may be made upon the attorney general.

28 ~~§2337.6. Standard of care~~

29 ~~In the administration of the powers to appropriate appreciation, to make and~~
 30 ~~retain investments, and to delegate investment management of institutional funds;~~

1 ~~members of a governing board shall exercise ordinary business care and prudence~~
 2 ~~under the facts and circumstances prevailing at the time of the action or decision.~~
 3 ~~In so doing they shall consider long and short term needs of the institution in~~
 4 ~~carrying out its educational, religious, charitable, or other eleemosynary purposes its~~
 5 ~~present and anticipated financial requirements, expected total return on its~~
 6 ~~investments, price level trends, and general economic conditions.~~

7 **§2337.7. Reviewing compliance**

8 **Compliance with this Part is determined in light of the facts and**
 9 **circumstances existing at the time a decision is made or action is taken, and not**
 10 **by hindsight.**

11 ~~§2337.7. Release of use or investment restrictions~~

12 ~~A. With the written consent of the donor, the governing board may release,~~
 13 ~~in whole or in part, a restriction imposed by the applicable gift instrument on the use~~
 14 ~~or investment of an institutional fund.~~

15 ~~B. If written consent of the donor cannot be obtained by reason of his death,~~
 16 ~~disability, unavailability, or impossibility of identification, the governing board may~~
 17 ~~apply by petition in the name of the institution to a district court of competent~~
 18 ~~jurisdiction for release of a restriction imposed by the applicable gift instrument on~~
 19 ~~the use or investment of an institutional fund. Notification of interested parties shall~~
 20 ~~be made in accordance with R.S. 9:2332. If the court finds that the restriction is~~
 21 ~~obsolete, inappropriate, or impracticable, it may by order release the restriction in~~
 22 ~~whole or in part. A release under this Subsection may not change an endowment~~
 23 ~~fund to a fund that is not an endowment fund.~~

24 ~~C. A release under this Section may not allow a fund to be used for purposes~~
 25 ~~other than the educational, religious, charitable, or other eleemosynary purposes of~~
 26 ~~the institution affected.~~

27 ~~D. This Section does not limit the application of the doctrine of cy pres.~~

28 **§2337.8. Application to existing institutional funds**

29 **This Part applies to institutional funds existing on or established after**
 30 **July 1, 2010. As applied to institutional funds existing on the effective date of**

1 this Act, this Part governs only decisions made or actions taken on or after July
2 1, 2010.

3 §2337.9. Relation to Electronic Signatures in Global and National Commerce
4 Act

5 This Part modifies, limits, and supersedes the Electronic Signatures in
6 Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not
7 modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. Section 7001(c),
8 or authorize electronic delivery of any of the notices described in Section 103(b)
9 of that act, 15 U.S.C. Section 7003(b).

10 §2337.10. Uniformity of application and construction

11 In applying and construing this uniform act, consideration must be given
12 to the need to promote uniformity of the law with respect to its subject matter
13 among states that enact it.

14 Section 2. This Act shall become effective on July 1, 2010; if vetoed by the governor
15 and subsequently approved by the legislature, this Act shall become effective on July 1,
16 2010, or on the day following such approval by the legislature, whichever is later.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____