

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: S3/17/03

A Bill

Act 1109 of 2003
SENATE BILL 890

5 By: Senator Argue
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For An Act To Be Entitled

9 AN ACT TO AMEND THE UNIFORM MANAGEMENT OF
10 INSTITUTIONAL FUNDS ACT REGARDING THE MANAGEMENT,
11 INVESTMENT, AND EXPENDITURE OF ENDOWMENT FUNDS OF
12 INSTITUTIONS; AND FOR OTHER PURPOSES.
13

Subtitle

14 TO AMEND THE UNIFORM MANAGEMENT OF
15 INSTITUTIONAL FUNDS ACT REGARDING THE
16 MANAGEMENT, INVESTMENT, AND EXPENDITURE
17 OF ENDOWMENT FUNDS OF INSTITUTIONS.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. Arkansas Code § 28-69-602 is amended to read as follows:
24 28-69-602. Definitions.

25 As used in this subchapter:

26 (1) "Institution" means an incorporated or unincorporated
27 organization organized and operated exclusively for educational, religious,
28 charitable, or other eleemosynary purposes, or a governmental organization,
29 including, without limitation, a public institution of higher education, to
30 the extent that it holds funds exclusively for any of these purposes;

31 (2) "Institutional fund" means a fund held by an institution for
32 its exclusive use, benefit, or purposes, but does not include (i) a fund held
33 for an institution by a trustee that is not an institution or (ii) a fund in
34 which a beneficiary that is not an institution has an interest, other than
35 possible rights that could arise upon violation or failure of the purposes of
36 the fund;



1 (3) "Endowment fund" means an institutional fund, or any part
2 thereof, not wholly expendable by the institution on a current basis under
3 the terms of the applicable gift instrument;

4 (4) "Governing board" means the body responsible for the
5 management of an institution or of an institutional fund;

6 ~~(5) "Historic dollar value" means the aggregate fair value in~~
7 ~~dollars of (i) an endowment fund at the time it became an endowment fund,~~
8 ~~(ii) each subsequent donation to the fund at the time it is made, and (iii)~~
9 ~~each accumulation made pursuant to a direction in the applicable gift~~
10 ~~instrument at the time the accumulation is added to the fund. The~~
11 ~~determination of historic dollar value made in good faith by the institution~~
12 ~~is conclusive;~~

13 ~~(6)~~(5) "Gift instrument" means a will, deed, grant, conveyance,
14 agreement, memorandum, writing, or other governing document (including the
15 terms of any institutional solicitations from which an institutional fund
16 resulted) under which property is transferred to or held by an institution as
17 an institutional fund.

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19 SECTION 2. Arkansas Code § 28-69-603 is amended to read as follows:

20 28-69-603. ~~Appropriation of appreciation.~~ Expenditure of endowment
21 funds.

22 (a) ~~The governing board may appropriate for expenditure for the uses~~
23 ~~and purposes for which an endowment fund is established so much of the net~~
24 ~~appreciation, realized and unrealized, in the fair value of the assets of an~~
25 ~~endowment fund over the historic dollar value of the fund as is expend so~~
26 much of the endowment fund or an aggregation of the endowment fund as the
27 governing body determines to be prudent under the standard established by §
28 28-69-607 for the uses and purposes for which an endowment fund is
29 established. This section does not limit the authority of the governing
30 board to expend funds as permitted under other law, the terms of the
31 applicable gift instrument, or the charter of the institution.

32 (b) Except as otherwise specified, this section applies to endowment
33 funds established and instruments executed or in effect before or after the
34 effective date of this subsection.

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36 SECTION 3. Arkansas Code § 28-69-604 is amended to read as follows:

28-69-604. Rule of construction.

~~Section 28-69-603 does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended.~~

(a) A restriction upon the expenditure of ~~net appreciation~~ an endowment fund may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only "income," "interest," "dividends," "net appreciation in the fair value of the assets of an endowment fund over the historic dollar value of the endowment," or "rents, issues or profits," or "to preserve the principal intact," or a direction which contains other words of similar import.

(b) ~~This~~ The rule of construction under subsection (a) of this section applies to endowment funds and gift instruments executed or in effect before or after ~~March 20, 1992~~ the effective date of this subsection.

(c) The provisions of § 28-69-603(a) shall not apply to instruments if the instrument indicates by saying "I direct that the expenditure provisions of Arkansas Code § 28-69-603(a) not apply to this gift" or words of similar import reflecting a donor's specific intent that § 28-69-603(a) not apply to the gift.

SECTION 4. Arkansas Code § 28-69-607 is amended to read as follows:

28-69-607. Standard of conduct.

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

/s/ Argue

APPROVED: 4/7/2003