

REFERENCE TITLE: charitable funds; management

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1228

Introduced by
Senator Leff

AN ACT

REPEALING TITLE 10, CHAPTER 41, ARIZONA REVISED STATUTES; AMENDING TITLE 10, ARIZONA REVISED STATUTES, BY ADDING A NEW CHAPTER 41; RELATING TO MANAGEMENT OF CHARITABLE FUNDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Repeal

3 Title 10, chapter 41, Arizona Revised Statutes, is repealed.

4 Sec. 2. Title 10, Arizona Revised Statutes, is amended by adding a new
5 chapter 41, to read:

6 CHAPTER 41

7 MANAGEMENT OF CHARITABLE FUNDS

8 ARTICLE 1. GENERAL PROVISIONS

9 10-11801. Definitions

10 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

15 2. "ENDOWMENT FUND" MEANS AN INSTITUTIONAL FUND OR PART OF AN
16 INSTITUTIONAL FUND THAT, UNDER THE TERMS OF A GIFT INSTRUMENT, IS NOT WHOLLY
17 EXPENDABLE BY THE INSTITUTION ON A CURRENT BASIS. ENDOWMENT FUND DOES NOT
18 INCLUDE ASSETS THAT AN INSTITUTION DESIGNATES AS AN ENDOWMENT FUND FOR ITS
19 OWN USE.

20 3. "GIFT INSTRUMENT" MEANS A RECORD OR RECORDS, INCLUDING AN
21 INSTITUTIONAL SOLICITATION, UNDER WHICH PROPERTY IS GRANTED TO, TRANSFERRED
22 TO OR HELD BY AN INSTITUTION AS AN INSTITUTIONAL FUND.

23 4. "INSTITUTION" MEANS ANY OF THE FOLLOWING:

24 (a) A PERSON, OTHER THAN AN INDIVIDUAL, ORGANIZED AND OPERATED
25 EXCLUSIVELY FOR CHARITABLE PURPOSES.

26 (b) A GOVERNMENT OR GOVERNMENTAL SUBDIVISION, AGENCY OR
27 INSTRUMENTALITY, TO THE EXTENT THAT IT HOLDS MONIES EXCLUSIVELY FOR A
28 CHARITABLE PURPOSE.

29 (c) A TRUST THAT HAD BOTH CHARITABLE AND NONCHARITABLE INTERESTS,
30 AFTER ALL NONCHARITABLE INTERESTS HAVE TERMINATED.

31 5. "INSTITUTIONAL FUND" MEANS A FUND HELD BY AN INSTITUTION
32 EXCLUSIVELY FOR CHARITABLE PURPOSES. INSTITUTIONAL FUND DOES NOT INCLUDE
33 PROGRAM-RELATED ASSETS, A FUND HELD FOR AN INSTITUTION BY A TRUSTEE THAT IS
34 NOT AN INSTITUTION OR A FUND IN WHICH A BENEFICIARY THAT IS NOT AN
35 INSTITUTION HAS AN INTEREST, OTHER THAN AN INTEREST THAT COULD ARISE ON
36 VIOLATION OR FAILURE OF THE PURPOSES OF THE FUND.

37 6. "PERSON" MEANS AN INDIVIDUAL, CORPORATION, BUSINESS TRUST, ESTATE,
38 TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, JOINT VENTURE,
39 PUBLIC CORPORATION, GOVERNMENT OR GOVERNMENTAL SUBDIVISION, AGENCY OR
40 INSTRUMENTALITY OR ANY OTHER LEGAL OR COMMERCIAL ENTITY.

41 7. "PROGRAM-RELATED ASSET" MEANS AN ASSET HELD BY AN INSTITUTION
42 PRIMARILY TO ACCOMPLISH A CHARITABLE PURPOSE OF THE INSTITUTION AND NOT
43 PRIMARILY FOR INVESTMENT.

1 3. EXCEPT AS OTHERWISE PROVIDED BY LAW OTHER THAN THIS CHAPTER, AN
2 INSTITUTION MAY INVEST IN ANY KIND OF PROPERTY OR TYPE OF INVESTMENT
3 CONSISTENT WITH THIS SECTION.

4 4. AN INSTITUTION SHALL DIVERSIFY THE INVESTMENTS OF AN INSTITUTIONAL
5 FUND UNLESS THE INSTITUTION REASONABLY DETERMINES THAT, BECAUSE OF SPECIAL
6 CIRCUMSTANCES, THE PURPOSES OF THE FUND ARE BETTER SERVED WITHOUT
7 DIVERSIFICATION.

8 5. WITHIN A REASONABLE TIME AFTER RECEIVING PROPERTY, AN INSTITUTION
9 SHALL MAKE AND CARRY OUT DECISIONS CONCERNING THE RETENTION OR DISPOSITION OF
10 THE PROPERTY OR TO REBALANCE A PORTFOLIO IN ORDER TO BRING THE INSTITUTIONAL
11 FUND INTO COMPLIANCE WITH THE PURPOSES, TERMS AND DISTRIBUTION REQUIREMENTS
12 OF THE INSTITUTION AS NECESSARY TO MEET OTHER CIRCUMSTANCES OF THE
13 INSTITUTION AND THE REQUIREMENTS OF THIS CHAPTER.

14 6. A PERSON THAT HAS SPECIAL SKILLS OR EXPERTISE, OR THAT IS SELECTED
15 IN RELIANCE ON THE PERSON'S REPRESENTATION THAT THE PERSON HAS SPECIAL SKILLS
16 OR EXPERTISE, HAS A DUTY TO USE THOSE SKILLS OR THAT EXPERTISE IN MANAGING
17 AND INVESTING INSTITUTIONAL FUNDS.

18 10-11803. Appropriation for expenditure or accumulation of
19 endowment fund; construction

20 A. SUBJECT TO THE INTENT OF A DONOR EXPRESSED IN THE GIFT INSTRUMENT,
21 AN INSTITUTION MAY APPROPRIATE FOR EXPENDITURE OR ACCUMULATE SO MUCH OF AN
22 ENDOWMENT FUND AS THE INSTITUTION DETERMINES IS PRUDENT FOR THE USES,
23 BENEFITS, PURPOSES AND DURATION FOR WHICH THE ENDOWMENT FUND IS ESTABLISHED.
24 UNLESS STATED OTHERWISE IN THE GIFT INSTRUMENT, THE ASSETS IN AN ENDOWMENT
25 FUND ARE DONOR-RESTRICTED ASSETS UNTIL APPROPRIATED FOR EXPENDITURE BY THE
26 INSTITUTION. IN MAKING A DETERMINATION TO APPROPRIATE OR ACCUMULATE, THE
27 INSTITUTION SHALL ACT IN GOOD FAITH, WITH THE CARE THAT AN ORDINARILY PRUDENT
28 PERSON IN A LIKE POSITION WOULD EXERCISE UNDER SIMILAR CIRCUMSTANCES, AND
29 SHALL CONSIDER, IF RELEVANT, THE FOLLOWING FACTORS:

- 30 1. THE DURATION AND PRESERVATION OF THE ENDOWMENT FUND.
- 31 2. THE PURPOSES OF THE INSTITUTION AND THE ENDOWMENT FUND.
- 32 3. GENERAL ECONOMIC CONDITIONS.
- 33 4. THE POSSIBLE EFFECT OF INFLATION OR DEFLATION.
- 34 5. THE EXPECTED TOTAL RETURN FROM INCOME AND THE APPRECIATION OF
35 INVESTMENTS.
- 36 6. OTHER RESOURCES OF THE INSTITUTION.
- 37 7. THE INVESTMENT POLICY OF THE INSTITUTION.

38 B. TO LIMIT THE AUTHORITY TO APPROPRIATE FOR EXPENDITURE OR ACCUMULATE
39 UNDER SUBSECTION A, A GIFT INSTRUMENT MUST SPECIFICALLY STATE THE LIMITATION.

40 C. TERMS IN A GIFT INSTRUMENT DESIGNATING A GIFT AS AN ENDOWMENT, OR A
41 DIRECTION OR AUTHORIZATION IN THE GIFT INSTRUMENT TO USE ONLY INCOME,
42 INTEREST, DIVIDENDS OR RENTS, ISSUES, OR PROFITS, OR TO PRESERVE THE
43 PRINCIPAL INTACT, OR WORDS OF SIMILAR IMPORT:

- 44 1. CREATE AN ENDOWMENT FUND OF PERMANENT DURATION UNLESS OTHER
45 LANGUAGE IN THE GIFT INSTRUMENT LIMITS THE DURATION OR PURPOSE OF THE FUND.

1 2. DO NOT OTHERWISE LIMIT THE AUTHORITY TO APPROPRIATE FOR EXPENDITURE
2 OR ACCUMULATE UNDER SUBSECTION A.

3 10-11804. Delegation of management and investment functions

4 A. SUBJECT TO ANY SPECIFIC LIMITATION SET FORTH IN A GIFT INSTRUMENT
5 OR IN LAW OTHER THAN THIS CHAPTER, AN INSTITUTION MAY DELEGATE TO AN EXTERNAL
6 AGENT THE MANAGEMENT AND INVESTMENT OF AN INSTITUTIONAL FUND TO THE EXTENT
7 THAT AN INSTITUTION COULD PRUDENTLY DELEGATE UNDER THE CIRCUMSTANCES. AN
8 INSTITUTION SHALL ACT IN GOOD FAITH, WITH THE CARE THAT AN ORDINARILY PRUDENT
9 PERSON IN A LIKE POSITION WOULD EXERCISE UNDER SIMILAR CIRCUMSTANCES, IN ALL
10 OF THE FOLLOWING:

11 1. SELECTING AN AGENT.

12 2. ESTABLISHING THE SCOPE AND TERMS OF THE DELEGATION, CONSISTENT WITH
13 THE PURPOSES OF THE INSTITUTION AND THE INSTITUTIONAL FUND.

14 3. PERIODICALLY REVIEWING THE AGENT'S ACTIONS IN ORDER TO MONITOR THE
15 AGENT'S PERFORMANCE AND COMPLIANCE WITH THE SCOPE AND TERMS OF THE
16 DELEGATION.

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

20 C. AN INSTITUTION THAT COMPLIES WITH SUBSECTION A IS NOT LIABLE FOR
21 THE DECISIONS OR ACTIONS OF AN AGENT TO WHICH THE FUNCTION WAS DELEGATED.

22 D. BY ACCEPTING DELEGATION OF A MANAGEMENT OR INVESTMENT FUNCTION FROM
23 AN INSTITUTION THAT IS SUBJECT TO THE LAWS OF THIS STATE, AN AGENT SUBMITS TO
24 THE JURISDICTION OF THE COURTS OF THIS STATE IN ALL PROCEEDINGS ARISING FROM
25 OR RELATED TO THE DELEGATION OR THE PERFORMANCE OF THE DELEGATED FUNCTION.

26 E. AN INSTITUTION MAY DELEGATE MANAGEMENT AND INVESTMENT FUNCTIONS TO
27 ITS COMMITTEES, OFFICERS OR EMPLOYEES AS AUTHORIZED BY LAW OF THIS STATE
28 OTHER THAN THIS CHAPTER.

29 10-11805. Release or modification of restrictions on
30 management, investment or purpose

31 A. IF THE DONOR CONSENTS IN A RECORD, AN INSTITUTION MAY RELEASE OR
32 MODIFY, IN WHOLE OR IN PART, A RESTRICTION CONTAINED IN A GIFT INSTRUMENT ON
33 THE MANAGEMENT, INVESTMENT OR PURPOSE OF AN INSTITUTIONAL FUND. A RELEASE OR
34 MODIFICATION MAY NOT ALLOW A FUND TO BE USED FOR A PURPOSE OTHER THAN A
35 CHARITABLE PURPOSE OF THE INSTITUTION.

36 B. ON APPLICATION OF AN INSTITUTION, THE COURT MAY MODIFY A
37 RESTRICTION CONTAINED IN A GIFT INSTRUMENT REGARDING THE MANAGEMENT OR
38 INVESTMENT OF AN INSTITUTIONAL FUND IF THE RESTRICTION HAS BECOME
39 IMPRACTICABLE OR WASTEFUL, IF IT IMPAIRS THE MANAGEMENT OR INVESTMENT OF THE
40 FUND OR IF, BECAUSE OF CIRCUMSTANCES NOT ANTICIPATED BY THE DONOR, A
41 MODIFICATION OF A RESTRICTION WILL FURTHER THE PURPOSES OF THE FUND. THE
42 INSTITUTION SHALL NOTIFY THE ATTORNEY GENERAL OF THE APPLICATION, AND THE
43 ATTORNEY GENERAL SHALL BE GIVEN AN OPPORTUNITY TO BE HEARD. TO THE EXTENT
44 PRACTICABLE, ANY MODIFICATION SHALL BE MADE IN ACCORDANCE WITH THE DONOR'S
45 PROBABLE INTENTION.

1 C. IF A PARTICULAR CHARITABLE PURPOSE OR A RESTRICTION CONTAINED IN A
2 GIFT INSTRUMENT ON THE USE OF AN INSTITUTIONAL FUND BECOMES UNLAWFUL,
3 IMPRACTICABLE, IMPOSSIBLE TO ACHIEVE OR WASTEFUL, ON APPLICATION OF AN
4 INSTITUTION, THE COURT MAY MODIFY THE PURPOSE OF THE FUND OR THE RESTRICTION
5 ON THE USE OF THE FUND IN A MANNER CONSISTENT WITH THE CHARITABLE PURPOSES
6 EXPRESSED IN THE GIFT INSTRUMENT. THE INSTITUTION SHALL NOTIFY THE ATTORNEY
7 GENERAL OF THE APPLICATION, AND THE ATTORNEY GENERAL SHALL BE GIVEN AN
8 OPPORTUNITY TO BE HEARD.

9 D. IF AN INSTITUTION DETERMINES THAT A RESTRICTION CONTAINED IN A GIFT
10 INSTRUMENT ON THE MANAGEMENT, INVESTMENT OR PURPOSE OF AN INSTITUTIONAL FUND
11 IS UNLAWFUL, IMPRACTICABLE, IMPOSSIBLE TO ACHIEVE OR WASTEFUL, THE
12 INSTITUTION, AFTER SIXTY DAYS AFTER NOTIFICATION TO THE ATTORNEY GENERAL, MAY
13 RELEASE OR MODIFY THE RESTRICTION, IN WHOLE OR PART, IF ALL OF THE FOLLOWING
14 APPLY:

15 1. THE INSTITUTIONAL FUND SUBJECT TO THE RESTRICTION HAS A TOTAL VALUE
16 OF LESS THAN FIFTY THOUSAND DOLLARS.

17 2. MORE THAN TWENTY YEARS HAVE ELAPSED SINCE THE FUND WAS ESTABLISHED.

18 3. THE INSTITUTION USES THE PROPERTY IN A MANNER CONSISTENT WITH THE
19 CHARITABLE PURPOSES EXPRESSED IN THE GIFT INSTRUMENT.

20 Sec. 3. Applicability

21 This act applies to institutional funds existing on or established
22 after the effective date of this act. As applied to institutional funds
23 existing on the effective date of this act, this act governs only decisions
24 made or actions taken on or after that date.