

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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**HOUSE BILL 1539
Committee Substitute Favorable 5/25/05**

Short Title: UNC/Amend Umstead Act.

(Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE UMSTEAD ACT RELATING TO ACTIVITIES OF THE
2 UNIVERSITY OF NORTH CAROLINA AND TO CREATE A PANEL TO
3 DETERMINE WHETHER UNIVERSITY ACTIVITIES VIOLATE THE ACT.
4

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 66-58(b)(8) reads as rewritten:

7 "(b) The provisions of subsection (a) of this section shall not apply to:

8 ...

9 (8) The University of North Carolina with regard to:

- 10 a. The University's utilities and other services ~~now operated by~~
11 ~~it~~ operated by it prior to January 1, 2005.
- 12 b. The sale of articles produced incident to the operation of
13 instructional departments, articles incident to educational
14 research, articles of merchandise incident to classroom work,
15 meals, books, or to articles of merchandise ~~not exceeding~~
16 ~~twenty five cents (25¢) in value~~ when sold to members of the
17 educational staff or staff auxiliary to education or to duly
18 enrolled students or occasionally to immediate members of the
19 families of members of the educational staff or of duly enrolled
20 students.
- 21 c. The sale of meals or merchandise to persons attending meetings
22 or conventions as invited guests.
- 23 d. The operation by the University of North Carolina of an inn or
24 hotel and dining and other facilities usually connected with a
25 hotel or inn.
- 26 e. The hospital and Medical School of the University of North
27 Carolina.

- 1 f. The Coliseum of North Carolina State University at Raleigh,
- 2 and the other schools and colleges for higher education
- 3 maintained or supported by the State.
- 4 g. The Centennial Campus of North Carolina State University at
- 5 Raleigh.
- 6 h. The Horace Williams Campus of the University of North
- 7 Carolina at Chapel Hill.
- 8 i. A Millennial Campus of a constituent institution of The
- 9 University of North Carolina.
- 10 j. The comprehensive student health services or the
- 11 comprehensive student infirmaries maintained by the
- 12 constituent institutions of the University of North Carolina.
- 13 k. Agreements by the North Carolina School of the Arts to the use
- 14 of that school's facilities, equipment, and services of students,
- 15 faculty, and staff for the creation of commercial materials and
- 16 productions that may be unrelated to educational purposes, so
- 17 long as the proceeds from those agreements are used for the
- 18 benefit of the educational mission of the North Carolina School
- 19 of the Arts.
- 20 l. Activities that further the mission of the University as stated in
- 21 G.S. 116-1.
- 22 m. Activities that primarily serve students or employees of the
- 23 University.
- 24 n. Activities that primarily provide University related services or
- 25 market University related merchandise to alumni of the
- 26 University.
- 27 o. Activities that enable the community in which the constituent
- 28 institution or other University entity is located, or the people of
- 29 the State to utilize the University's facilities, equipment, or
- 30 expertise.

31 ..."

32 **SECTION 2.** G.S. 66-58 is amended by adding the following new
 33 subsections:

34 "(i) The Board of Governors of The University of North Carolina shall establish a
 35 panel to determine whether The University of North Carolina is authorized pursuant to
 36 sub-subdivisions m., n., and o., of subdivision (8) of subsection (b) of this section to
 37 undertake an activity in competition with an existing or proposed nongovernmental
 38 entity. The panel shall consist of nine members as follows:

39 (1) Two members who are familiar with the interests of the business
 40 community of the State appointed by the Governor.

41 (2) Two members who are familiar with the interests of the business
 42 community of the State appointed by the Speaker of the House of
 43 Representatives.

1 (3) Two members who are familiar with the interests of the business
2 community of the State appointed by the President Pro Tempore of the
3 Senate.

4 (4) Three members who are not employees of The University of North
5 Carolina appointed by the Board of Governors.

6 The panel may make the determination whether a proposed or ongoing activity
7 undertaken under sub-subdivisions m. or n. of subdivision (8) of subsection (b) of this
8 section is unauthorized competition. The panel may also make a determination whether
9 a proposed or ongoing activity undertaken under sub-subdivision o. of subdivision (8)
10 of subsection (b) of this section is either unauthorized or unfair competition. The Board
11 of Governors shall establish and publish procedures to be used by the panel in making
12 determinations. The procedures shall include that a determination may be initiated based
13 on a complaint from any nongovernmental entity in the State that is in or proposes to be
14 in the same or a similar or competing business or based on a request from the
15 constituent institution or other university system entity engaging in or proposing to
16 engage in the activity. The University of North Carolina and its employees may rely on
17 a determination by the panel as to whether an activity violates this section, and a
18 determination that an activity is authorized shall be an absolute defense in any
19 prosecution for any activity undertaken before a contrary determination is made by a
20 court or by an opinion of the Attorney General. The panel shall not have the power to
21 overrule a prior determination of the Attorney General.

22 (j) The proceeds of any activity undertaken under sub-subdivisions m., n., or o.,
23 of subdivision (8) of subsection (b) of this section shall be placed in an institutional trust
24 fund pursuant to G.S. 116-36.1 and shall be used to continue to conduct the activity that
25 generated the proceeds or to further the mission of the constituent institution or other
26 University entity engaging in the activity."

27 **SECTION 3.** G.S. 116-36.1(g) reads as rewritten:

28 "(g) As used in this section, "trust funds" means:

- 29 (1) Moneys, or the proceeds of other forms of property, received by an
30 institution as gifts, devises, or bequests that are neither presumed nor
31 designated to be gifts, devises, or bequests to the endowment fund of
32 the institution;
- 33 (2) Moneys received by an institution pursuant to grants from, or contracts
34 with, the United States government or any agency or instrumentality
35 thereof;
- 36 (3) Moneys received by an institution pursuant to grants from, or contracts
37 with, any State agencies, any political subdivisions of the State, any
38 other states or nations or political subdivisions thereof, or any private
39 entities whereby the institution undertakes, subject to terms and
40 conditions specified by the entity providing the moneys, to conduct
41 research, training or public service programs, or to provide financial
42 aid to students;
- 43 (4) Moneys collected by an institution to support extracurricular activities
44 of students of the institution;

- 1 (5) Moneys received from or for the operation by an institution of
2 activities established for the benefit of scholarship funds or student
3 activity programs;
- 4 (6) Moneys received from or for the operation by an institution of any of
5 its self-supporting auxiliary enterprises, including institutional student
6 auxiliary enterprise funds for the operation of housing, food, health,
7 and laundry services;
- 8 (7) Moneys received by an institution in respect to fees and other
9 payments for services rendered by medical, dental or other health care
10 professionals under an organized practice plan approved by the
11 institution or under a contractual agreement between the institution and
12 a hospital or other health care provider;
- 13 (8) The net proceeds from the disposition effected pursuant to Chapter
14 146, Article 7, of any interest in real property owned by or under the
15 supervision and control of an institution if the interest in real property
16 had first been acquired by gift, devise, or bequest or through
17 expenditure of moneys defined in this subsection (g) as "trust funds,"
18 except the net proceeds from the disposition of an interest in real
19 property first acquired by the institution through expenditure of
20 moneys received as a grant from a State agency;
- 21 (9) Moneys received from the operation and maintenance of institutional
22 forests and forest farmlands, provided, that such moneys shall be used,
23 when used, by the institution for support of forest-related research,
24 teaching, and public service programs.
- 25 (10) Moneys received from an activity authorized by G.S. 66-58(b)(8)m.,
26 n., and o."

27 **SECTION 4.** The panel established by Section 2 of this bill shall report to
28 the Joint Legislative Economic Development Oversight Committee as proposed by
29 House Bill 1365 of the 2005 Session of the General Assembly, if that bill is enacted.
30 The panel shall report to the Committee by May 1, of each year on the number and
31 types of determinations made during the preceding year.

32 **SECTION 5.** This act is effective when it becomes law.