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SESSION 2005

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HOUSE BILL 1539
Committee Substitute Favorable 5/25/05
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Short Title: UNC/Amend Umstead Act.

(Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

...

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

- a. The University's utilities and other services ~~now operated by it~~ operated by it prior to January 1, 2005.
- b. The sale of articles produced incident to the operation of instructional departments, articles incident to educational research, articles of merchandise incident to classroom work, meals, books, or to articles of merchandise ~~not exceeding twenty five cents (25¢) in value~~ when sold to members of the educational staff or staff auxiliary to education or to duly enrolled students or occasionally to immediate members of the families of members of the educational staff or of duly enrolled students.
- c. The sale of meals or merchandise to persons attending meetings or conventions as invited guests.
- d. The operation by the University of North Carolina of an inn or hotel and dining and other facilities usually connected with a hotel or inn.
- e. The hospital and Medical School of the University of North 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. Pursuant to G.S. 138-5, panel members shall receive the same per diem and
39 reimbursement for travel expenses as members of State boards and commissions. The
40 University of North Carolina shall be responsible for staffing and paying the expenses
41 of the panel. The panel shall consist of nine members as follows:

- 42 (1) Two members who are familiar with the interests of the business
- 43 community of the State appointed by the Governor.

1 (2) Two members who are familiar with the interests of the business
2 community of the State appointed by the General Assembly upon the
3 recommendation of the Speaker of the House of Representatives under
4 G.S. 120-121.

5 (3) Two members who are familiar with the interests of the business
6 community of the State appointed by the General Assembly upon the
7 recommendation of the President Pro Tempore of the Senate under
8 G.S. 120-121.

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

11 The panel may make the determination whether a proposed or ongoing activity
12 undertaken under sub-subdivisions m. or n. of subdivision (8) of subsection (b) of this
13 section is unauthorized competition. The panel may also make a determination whether
14 a proposed or ongoing activity undertaken under sub-subdivision o. of subdivision (8)
15 of subsection (b) of this section is either unauthorized or unfair competition.

16 (i1) The Board of Governors shall establish and publish procedures to be used by
17 the panel created under subsection (i) of this section in making determinations. The
18 procedures shall:

19 (1) Include that a determination may be initiated based on a request from
20 any nongovernmental entity in the State that is in or proposes to be in
21 the same or a similar or competing business or based on a request from
22 the constituent institution or other university system entity engaging in
23 or proposing to engage in the activity.

24 (2) Require the panel to maintain a registry of all parties that request to
25 receive notification of the panel's proceedings. The notification may be
26 electronic and shall be given to all parties that have requested to be
27 notified at least seven days prior to the panel's meeting. The notice
28 shall include the name of the constituent institution or other university
29 system entity engaging in or proposing to engage in the activity and
30 the nature of the activity. The panel shall provide the documents
31 relating to any agenda item to anyone requesting them in advance of
32 the panel's proceedings.

33 (3) Provide that the agendas for the panel's meetings, the minutes of the
34 meetings and the determinations of the panel shall be posted on The
35 University of North Carolina Web site.

36 (i2) The University of North Carolina and its employees may rely on a
37 determination made by the panel created under subsection (i) of this section as to
38 whether an activity violates this section, and a determination that an activity is
39 authorized shall be an absolute defense in any prosecution for any activity undertaken
40 before a contrary determination is made by a court or by an opinion of the Attorney
41 General. The panel shall not have the power to overrule a prior determination of the
42 Attorney General.

43 (j) The proceeds of any activity undertaken under sub-subdivisions m., n., or o.,
44 of subdivision (8) of subsection (b) of this section shall be placed in an institutional trust

1 fund pursuant to G.S. 116-36.1 and shall be used to continue to conduct the activity that
2 generated the proceeds or to further the mission of the constituent institution or other
3 University entity engaging in the activity."

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

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

- 6 (1) Moneys, or the proceeds of other forms of property, received by an
7 institution as gifts, devises, or bequests that are neither presumed nor
8 designated to be gifts, devises, or bequests to the endowment fund of
9 the institution;
- 10 (2) Moneys received by an institution pursuant to grants from, or contracts
11 with, the United States government or any agency or instrumentality
12 thereof;
- 13 (3) Moneys received by an institution pursuant to grants from, or contracts
14 with, any State agencies, any political subdivisions of the State, any
15 other states or nations or political subdivisions thereof, or any private
16 entities whereby the institution undertakes, subject to terms and
17 conditions specified by the entity providing the moneys, to conduct
18 research, training or public service programs, or to provide financial
19 aid to students;
- 20 (4) Moneys collected by an institution to support extracurricular activities
21 of students of the institution;
- 22 (5) Moneys received from or for the operation by an institution of
23 activities established for the benefit of scholarship funds or student
24 activity programs;
- 25 (6) Moneys received from or for the operation by an institution of any of
26 its self-supporting auxiliary enterprises, including institutional student
27 auxiliary enterprise funds for the operation of housing, food, health,
28 and laundry services;
- 29 (7) Moneys received by an institution in respect to fees and other
30 payments for services rendered by medical, dental or other health care
31 professionals under an organized practice plan approved by the
32 institution or under a contractual agreement between the institution and
33 a hospital or other health care provider;
- 34 (8) The net proceeds from the disposition effected pursuant to Chapter
35 146, Article 7, of any interest in real property owned by or under the
36 supervision and control of an institution if the interest in real property
37 had first been acquired by gift, devise, or bequest or through
38 expenditure of moneys defined in this subsection (g) as "trust funds,"
39 except the net proceeds from the disposition of an interest in real
40 property first acquired by the institution through expenditure of
41 moneys received as a grant from a State agency;
- 42 (9) Moneys received from the operation and maintenance of institutional
43 forests and forest farmlands, provided, that such moneys shall be used,

1 when used, by the institution for support of forest-related research,
2 teaching, and public service programs.

3 (10) Moneys received from an activity authorized by G.S. 66-58(b)(8)m.,
4 n., and o."

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

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