

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1539
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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 serve students or employees of the University or
23 members of the immediate families or guests of students or
24 employees.
- 25 n. Activities that primarily provide University-related services or
26 market University-related merchandise to alumni of the
27 University and members of their immediate families.
- 28 o. Activities that enable the community in which the constituent
29 institution or other University entity is located, or the people of
30 the State to utilize the University's facilities, equipment, or
31 expertise. If the University proposes to engage in a new type of
32 activity under this subdivision, then the University shall provide
33 electronic notice of the proposal to the persons who have
34 requested to be included in the registry created pursuant to
35 subdivision (j)(2) of this section prior to engaging in the new
36 type of activity.

37 ..."

38 **SECTION 2.** G.S. 66-58 is amended by adding the following new
39 subsections to read:

40 "(i) The Board of Governors of The University of North Carolina shall establish a
41 panel to determine whether The University of North Carolina is authorized pursuant to
42 sub-subdivisions m., n., and o. of subdivision (8) of subsection (b) of this section to
43 undertake an activity in competition with an existing or proposed nongovernmental
44 entity. Pursuant to G.S. 138-5, panel members shall receive the same per diem and

1 reimbursement for travel expenses as members of State boards and commissions. The
2 University of North Carolina shall be responsible for staffing and paying the expenses
3 of the panel. The panel shall consist of nine members as follows:

- 4 (1) Two members who are familiar with the interests of the business
5 community of the State appointed by the Governor.
- 6 (2) Two members who are familiar with the interests of the business
7 community of the State appointed by the General Assembly upon the
8 recommendation of the Speaker of the House of Representatives under
9 G.S. 120-121.
- 10 (3) Two members who are familiar with the interests of the business
11 community of the State appointed by the General Assembly upon the
12 recommendation of the President Pro Tempore of the Senate under
13 G.S. 120-121.
- 14 (4) Three members who are not employees of The University of North
15 Carolina appointed by the Board of Governors.

16 The panel may make the determination whether a proposed or ongoing activity
17 undertaken under sub-subdivisions m. or n. of subdivision (8) of subsection (b) of this
18 section is unauthorized competition. The panel may also make a determination whether
19 a proposed or ongoing activity undertaken under sub-subdivision o. of subdivision (8)
20 of subsection (b) of this section is either unauthorized or unfair competition. The
21 University will be bound by a decision of the panel that a proposed or ongoing activity
22 is not justified by the exceptions set out in sub-subdivisions m., n., or o. of subdivision
23 (8) of subsection (b) of this section.

24 (j) The Board of Governors shall establish and publish procedures to be used by
25 the panel created under subsection (i) of this section in making determinations. The
26 procedures shall:

- 27 (1) Include that a determination may be initiated based on a request from
28 any nongovernmental entity in the State that is in or proposes to be in
29 the same or a similar or competing business or based on a request from
30 the constituent institution or other university system entity engaging in
31 or proposing to engage in the activity.
- 32 (2) Require the panel to maintain a registry of all parties that request to
33 receive notification of the panel's proceedings. The notification may be
34 electronic and shall be given to all parties that have requested to be
35 notified at least seven days prior to the panel's meeting. The notice
36 shall include the name of the constituent institution or other university
37 system entity engaging in or proposing to engage in the activity and
38 the nature of the activity. The panel shall provide the documents
39 relating to any agenda item to anyone requesting them in advance of
40 the panel's proceedings.
- 41 (3) Provide that the agendas for the panel's meetings, the minutes of the
42 meetings, and the determinations of the panel shall be posted on The
43 University of North Carolina Web site.

1 (k) The University of North Carolina and its employees may rely on a
2 determination made by the panel created under subsection (i) of this section as to
3 whether an activity violates this section, and a determination that an activity is
4 authorized shall be an absolute defense in any prosecution for any activity undertaken
5 before a contrary determination is made by a court or by an opinion of the Attorney
6 General. The panel shall not have the power to overrule a prior determination of the
7 Attorney General.

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

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

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

- 15 (1) Moneys, or the proceeds of other forms of property, received by an
16 institution as gifts, devises, or bequests that are neither presumed nor
17 designated to be gifts, devises, or bequests to the endowment fund of
18 the institution;
- 19 (2) Moneys received by an institution pursuant to grants from, or contracts
20 with, the United States government or any agency or instrumentality
21 thereof;
- 22 (3) Moneys received by an institution pursuant to grants from, or contracts
23 with, any State agencies, any political subdivisions of the State, any
24 other states or nations or political subdivisions thereof, or any private
25 entities whereby the institution undertakes, subject to terms and
26 conditions specified by the entity providing the moneys, to conduct
27 research, training or public service programs, or to provide financial
28 aid to students;
- 29 (4) Moneys collected by an institution to support extracurricular activities
30 of students of the institution;
- 31 (5) Moneys received from or for the operation by an institution of
32 activities established for the benefit of scholarship funds or student
33 activity programs;
- 34 (6) Moneys received from or for the operation by an institution of any of
35 its self-supporting auxiliary enterprises, including institutional student
36 auxiliary enterprise funds for the operation of housing, food, health,
37 and laundry services;
- 38 (7) Moneys received by an institution in respect to fees and other
39 payments for services rendered by medical, dental or other health care
40 professionals under an organized practice plan approved by the
41 institution or under a contractual agreement between the institution and
42 a hospital or other health care provider;
- 43 (8) The net proceeds from the disposition effected pursuant to Chapter
44 146, Article 7, of any interest in real property owned by or under the

1 supervision and control of an institution if the interest in real property
2 had first been acquired by gift, devise, or bequest or through
3 expenditure of moneys defined in this subsection (g) as "trust funds,"
4 except the net proceeds from the disposition of an interest in real
5 property first acquired by the institution through expenditure of
6 moneys received as a grant from a State agency;

7 (9) Moneys received from the operation and maintenance of institutional
8 forests and forest farmlands, provided, that such moneys shall be used,
9 when used, by the institution for support of forest-related research,
10 teaching, and public service ~~programs~~programs;

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

13 **SECTION 4.** The panel established by Section 2 of this act shall report to
14 the Joint Legislative Economic Development Oversight Committee. The panel shall
15 report to the Committee by May 1 of each year on the number and types of
16 determinations made during the preceding year.

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