

9538

I N A S S E M B L Y

January 13, 2010

Introduced by M. of A. BING -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the not-for-profit corporation law, in relation to adopting a prudent management of institutional funds standard; and to amend a chapter of the laws of 2010 amending the not-for-profit corporation law and other laws relating to adopting a prudent management of institutional funds standard, in relation to the effectiveness thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 551 of the not-for-profit corporation law, as added
2 by a chapter of the laws of 2010 amending the not-for-profit corporation
3 law and other laws relating to adopting a prudent management of institu-
4 tional funds standard, as proposed in legislative bills numbers S.4778-A
5 and A.7907-B, is amended by adding a new paragraph (a-1) to read as
6 follows:

7 (A-1) "DONOR" MEANS THE PERSON WHO GRANTS OR TRANSFERS PROPERTY TO AN
8 INSTITUTION PURSUANT TO A GIFT INSTRUMENT, OR A PERSON DESIGNATED IN THE
9 APPLICABLE GIFT INSTRUMENT TO ACT IN THE PLACE OF THE DONOR, BUT DOES
10 NOT OTHERWISE INCLUDE THE PERSON'S EXECUTORS, HEIRS, SUCCESSORS,
11 ASSIGNS, TRANSFEREES, OR DISTRIBUTEES.

12 S 2. Paragraphs (d) and (e) of section 553 of the not-for-profit
13 corporation law, as added by a chapter of the laws of 2010 amending the
14 not-for-profit corporation law and other laws relating to adopting a
15 prudent management of institutional funds standard, as proposed in
16 legislative bills numbers S.4778-A and A.7907-B, are relettered para-
17 graphs (e) and (f) and a new paragraph (d) is added to read as follows:

18 (D) UNLESS STATED OTHERWISE IN THE GIFT INSTRUMENT, THE APPROPRIATION
19 FOR EXPENDITURE IN ANY YEAR OF AN AMOUNT GREATER THAN SEVEN PERCENT OF
20 THE FAIR MARKET VALUE OF AN ENDOWMENT FUND, CALCULATED ON THE BASIS OF
21 MARKET VALUES DETERMINED AT LEAST QUARTERLY AND AVERAGED OVER A PERIOD
22 OF NOT LESS THAN THREE YEARS IMMEDIATELY PRECEDING THE YEAR IN WHICH THE
23 APPROPRIATION FOR EXPENDITURE IS MADE, CREATES A REBUTTABLE PRESUMPTION
24 OF IMPRUDENCE. FOR AN ENDOWMENT FUND IN EXISTENCE FOR FEWER THAN THREE
25 YEARS, THE FAIR MARKET VALUE OF THE ENDOWMENT FUND MUST BE CALCULATED

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 FOR THE PERIOD THE ENDOWMENT FUND HAS BEEN IN EXISTENCE. THIS PARAGRAPH
2 DOES NOT:

3 (1) APPLY TO AN APPROPRIATION FOR EXPENDITURE PERMITTED UNDER LAW
4 OTHER THAN THIS ACT OR BY THE GIFT INSTRUMENT; OR

5 (2) CREATE A PRESUMPTION OF PRUDENCE FOR AN APPROPRIATION FOR EXPENDI-
6 TURE OF AN AMOUNT LESS THAN OR EQUAL TO SEVEN PERCENT OF THE FAIR MARKET
7 VALUE OF THE ENDOWMENT FUND.

8 S 3. Paragraph (e) of section 553 of the not-for-profit corporation
9 law, as added by a chapter of the laws of 2010 amending the not-for-pro-
10 fit corporation law and other laws relating to adopting a prudent
11 management of institutional funds standard, as proposed in legislative
12 bills numbers S.4778-A and A.7907-B and as relettered by section two of
13 this act, is amended to read as follows:

14 (e) (1) With respect to a gift instrument [dated] EXECUTED BY THE
15 DONOR before the effective date of this article, an institution must
16 provide ninety days notice to the donor, if the donor is then available,
17 before applying paragraph (a) of this section for the first time, during
18 which time the donor may, with the consent of the institution, clarify
19 or amend the gift instrument to prohibit the application of paragraph
20 (a) of this section. Such notice shall include a form for use by the
21 donor, which shall contain language substantially as follows:

22 Attention, Donor:

23 Please check Box #1 or #2 below and return to the address shown above.

24 () #1 The institution may spend [all or part] AS MUCH of my gift[.
25 The] AS MAY BE PRUDENT UNDER CRITERIA ESTABLISHED BY THE
26 provisions of Article 5-A of the Not-for-Profit Corporation Law,
27 the Prudent Management of Institutional Funds Act [regarding the
28 spending of endowment funds shall apply to this gift].

29 () #2 [The institution may not spend below the original dollar value of
30 my gift.

31 The] NOTWITHSTANDING THE provisions of Article 5-A of the Not-
32 for-Profit Corporation Law, the Prudent Management of Institu-
33 tional Funds Act [regarding the spending of endowment funds shall
34 not apply to this gift], THE INSTITUTION MAY NOT SPEND BELOW THE
35 ORIGINAL DOLLAR VALUE OF MY GIFT. HOWEVER THE PRUDENCE STANDARDS
36 FOR SPENDING CONTAINED IN ARTICLE 5-A OF THE NOT-FOR-PROFIT
37 CORPORATION LAW SHALL APPLY.

38 If the donor does not respond within ninety days from the date notice
39 was given, [paragraph] PARAGRAPHS (a), (B), AND (C) of this section
40 [may] SHALL be applied. THE ACT OF SENDING THE FORM AS REQUIRED BY THIS
41 SECTION SHALL NOT BE DEEMED CONSENT BY THE INSTITUTION.

42 (2) [For purposes of this paragraph, "donor" means the person who
43 grants or transfers property to an institution pursuant to a gift
44 instrument, or a person designated in the applicable gift instrument to
45 act in the place of the donor, but does not otherwise include the
46 person's executors, heirs, successors, assigns, transferees, or distri-
47 butees.

48 (3)] This paragraph shall not apply: (A) if the gift instrument
49 permits appropriation for expenditure from the endowment fund without
50 regard for the fund's historic dollar value; or (B) to funds received as
51 a result of an institutional solicitation without a separate communi-
52 cation by the donor expressing a restriction on the use of funds.

53 S 4. Paragraph (a) of section 555 of the not-for-profit corporation
54 law, as added by a chapter of the laws of 2010 amending the not-for-pro-
55 fit corporation law and other laws relating to adopting a prudent

1 management of institutional funds standard, as proposed in legislative
2 bills numbers S.4778-A and A.7907-B, is amended to read as follows:

3 (a) If the donor consents in a record, an institution may release or
4 modify, in whole or in part, a restriction contained in a gift instru-
5 ment on the management, investment, or purpose of an institutional fund.
6 A release or modification may not allow a fund to be used for a purpose
7 other than a [programmatic] CHARITABLE purpose of the institution.

8 S 5. Section 16 of a chapter of the laws of 2010 amending the not-for-
9 profit corporation law and other laws relating to adopting a prudent
10 management of institutional funds standard, as proposed in legislative
11 bills numbers S.4778-A and A.7907-B, is amended to read as follows:

12 S 16. This act shall take effect [on the first of September next
13 succeeding the date on which it shall have become a law] IMMEDIATELY.

14 S 6. This act shall take effect on the same day and in the same manner
15 as a chapter of the laws of 2010 amending the not-for-profit corporation
16 law and other laws relating to adopting a prudent management of institu-
17 tional funds standard as proposed in legislative bills numbers S.4778-A
18 and A.7907-B, takes effect; provided, however, that paragraph (d) of
19 section 553 of the not-for-profit corporation law as added by section
20 two of this act shall apply only to gift instruments made on or after
21 January first next succeeding the effective date of this act.