

6681

I N S E N A T E

January 26, 2010

Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed 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

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

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1 YEARS, THE FAIR MARKET VALUE OF THE ENDOWMENT FUND MUST BE CALCULATED  
2 FOR THE PERIOD THE ENDOWMENT FUND HAS BEEN IN EXISTENCE. THIS PARAGRAPH  
3 DOES NOT:

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

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

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

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

23 Attention, Donor:

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

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

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

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

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

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

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

54 S 4. Paragraph (a) of section 555 of the not-for-profit corporation  
55 law, as added by a chapter of the laws of 2010 amending the not-for-pro-  
56 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.