S T A T E O F N E W Y O R K

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:

Section 1. Section 551 of the not-for-profit corporation law, as added by 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, as proposed in legislative bills numbers S.4778-A and A.7907-B, is amended by adding a new paragraph (a-1) to read as follows:

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

S 2. Paragraphs (d) and (e) of section 553 of the not-for-profit corporation law, as added by 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, as proposed in legislative bills numbers S.4778-A and A.7907-B, are relettered paragraphs (e) and (f) and a new paragraph (d) is added to read as follows:

(D) UNLESS STATED OTHERWISE IN THE GIFT INSTRUMENT, THE APPROPRIATION FOR EXPENDITURE IN ANY YEAR OF AN AMOUNT GREATER THAN SEVEN PERCENT OF THE FAIR MARKET VALUE OF AN ENDOWMENT FUND, CALCULATED ON THE BASIS OF MARKET VALUES DETERMINED AT LEAST QUARTERLY AND AVERAGED OVER A PERIOD OF NOT LESS THAN THREE YEARS IMMEDIATELY PRECEDING THE YEAR IN WHICH THE APPROPRIATION FOR EXPENDITURE IS MADE, CREATES A REBUTTABLE PRESUMPTION OF IMPRUDENCE. FOR AN ENDOWMENT FUND IN EXISTENCE FOR FEWER THAN THREE 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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FOR THE PERIOD THE ENDOWMENT FUND HAS BEEN IN EXISTENCE. THIS PARAGRAPH DOES NOT:

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

(2) CREATE A PRESUMPTION OF PRUDENCE FOR AN APPROPRIATION FOR EXPENDITURE OF AN AMOUNT LESS THAN OR EQUAL TO SEVEN PERCENT OF THE FAIR MARKET VALUE OF THE ENDOWMENT FUND.

S 3. Paragraph (e) of section 553 of the not-for-profit corporation law, as added by 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, as proposed in legislative bills numbers S.4778-A and A.7907-B and as relettered by section two of this act, is amended to read as follows:

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

Attention, Donor:

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

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

( ) #2 [The institution may not spend below the original dollar value of my gift. The] NOTWITHSTANDING THE provisions of Article 5-A of the Not-for-Profit Corporation Law, the Prudent Management of Institutional Funds Act [regarding the spending of endowment funds shall not apply to this gift], THE INSTITUTION MAY NOT SPEND BELOW THE ORIGINAL DOLLAR VALUE OF MY GIFT. HOWEVER THE PRUDENCE STANDARDS FOR SPENDING CONTAINED IN ARTICLE 5-A OF THE NOT-FOR-PROFIT CORPORATION LAW SHALL APPLY.

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

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

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

S 4. Paragraph (a) of section 555 of the not-for-profit corporation law, as added by 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, as proposed in legislative bills numbers S.4778-A and A.7907-B, is amended to read as follows:

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

S 5. Section 16 of 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, as proposed in legislative bills numbers S.4778-A and A.7907-B, is amended to read as follows:

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

S 6. This act shall take effect on the same day and in the same manner as 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 as proposed in legislative bills numbers S.4778-A and A.7907-B, takes effect; provided, however, that paragraph (d) of section 553 of the not-for-profit corporation law as added by section two of this act shall apply only to gift instruments made on or after January first next succeeding the effective date of this act.