

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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SENATE DRS15153-LH-119A (03/09)

Short Title: UNC/Amend Umstead Act. (Public)

Sponsors: Senator Nesbitt.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE UMSTEAD ACT TO BROADEN THE SCOPE OF
ACTIVITIES THAT MAY BE OFFERED BY THE UNIVERSITY OF NORTH
CAROLINA PROVIDED THE ACTIVITIES ARE NOT, IN FACT, UNFAIR
COMPETITION.

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.

- 1 e. The hospital and Medical School of the University of North
- 2 Carolina.
- 3 f. The Coliseum of North Carolina State University at Raleigh,
- 4 and the other schools and colleges for higher education
- 5 maintained or supported by the State.
- 6 g. The Centennial Campus of North Carolina State University at
- 7 Raleigh.
- 8 h. The Horace Williams Campus of the University of North
- 9 Carolina at Chapel Hill.
- 10 i. A Millennial Campus of a constituent institution of The
- 11 University of North Carolina.
- 12 j. The comprehensive student health services or the
- 13 comprehensive student infirmaries maintained by the
- 14 constituent institutions of the University of North Carolina.
- 15 k. Agreements by the North Carolina School of the Arts to the use
- 16 of that school's facilities, equipment, and services of students,
- 17 faculty, and staff for the creation of commercial materials and
- 18 productions that may be unrelated to educational purposes, so
- 19 long as the proceeds from those agreements are used for the
- 20 benefit of the educational mission of the North Carolina School
- 21 of the Arts.

22 ..."

23 **SECTION 2.** G.S. 66-58 is amended by adding the following new
24 subsections:

25 "(i) Notwithstanding subsection (a) of this section, nothing in this section shall
26 prohibit The University of North Carolina from engaging in an activity that does any of
27 the following:

- 28 (1) Furthers the mission of the University as stated in G.S. 116-1.
- 29 (2) Primarily serves students, employees, or alumni of the University.
- 30 (3) Enables the community in which a constituent institution or other
- 31 University entity is located, or the people of the State, to utilize the
- 32 University's facilities, equipment, or expertise, and the activity is not
- 33 unfair competition. Whether an activity is unfair competition shall be
- 34 determined as set out in subsection (j) of this section.

35 (j) The Board of Governors of The University of North Carolina shall establish a
36 panel to determine whether an activity undertaken pursuant to subdivision (i)(3) of this
37 section is unfair competition with an existing or proposed nongovernmental entity. The
38 panel shall consist of an equal number of members appointed by the Governor who are
39 familiar with the interests of the business community of the State and members
40 appointed by the Board of Governors none of whom may be employees of The
41 University of North Carolina. The panel may make the determination whether a
42 proposed or ongoing activity of The University of North Carolina is unfair competition
43 based on a complaint from any nongovernmental entity in the State that is in or
44 proposes to be in the same or a similar or competing business or based on a request

1 from the constituent institution or other university system entity engaging in or
2 proposing to engage in the activity. The University of North Carolina and its employees
3 may rely on a determination by the panel as to whether an activity violates this section,
4 and a determination that an activity is not unfair competition and therefore does not
5 violate this section shall be an absolute defense in any prosecution brought under this
6 section.

7 (k) The proceeds of any activity undertaken under subsection (i) or subsection (j)
8 of this section shall be placed in an institutional trust fund pursuant to G.S. 116-36.1 and
9 shall be used to continue to conduct the activity that generated the proceeds or to further
10 the mission of the constituent institution or other University entity engaging in the
11 activity."

12 **SECTION 3.** This act is effective when it becomes law.