

17:9A-213

LEGISLATIVE HISTORY CHECKLIST

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(Not for profit corporations -- trust powers)

NJSA: 17:9A-213

LAWS OF: 1997 CHAPTER: 245

BILL NO: S2063

SPONSOR(S): Inverso and others

DATE INTRODUCED: May 15, 1997

COMMITTEE: ASSEMBLY: ---

SENATE: State Management

AMENDED DURING PASSAGE: Yes Amendments during passage denoted
First reprint enacted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: June 26, 1997

SENATE: June 19, 1997

DATE OF APPROVAL: September 9, 1997

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBP:pp

P.L. 1997, CHAPTER 245, *approved September 9, 1997*
Senate, No. 2063 (*First Reprint*)

1 AN ACT concerning certain trust powers of certain not-for-profit
2 corporations and amending P.L.1948, c.67.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 213 of P.L.1948, c.67 (C.17:9A-213) is amended to
8 read as follows:

9 213. Limitations on exercise of powers.

10 ^{1(a)} Except as otherwise provided by law, only a banking
11 institution shall exercise within this State any of the powers
12 enumerated in paragraph (4) of section 24 of P.L.1948, c.67
13 (C.17:9A-24), paragraphs (4), (5) and (13) of section 25 of P.L.1948,
14 c.67 (C.17:9A-25), and paragraphs (1) and (5) of section 26 of
15 P.L.1948, c.67 (C.17:9A-26), and except as otherwise provided in this
16 section, no corporation other than a qualified bank shall exercise
17 within this State any of the powers specified in paragraphs (3), (4),
18 (5), (6), (7), (8) and (9) of section 28 of P.L.1948, c.67 (C.17:9A-28),
19 provided that no corporation organized prior to March 24, 1899,
20 authorized to exercise all or any of the powers specified in paragraph
21 (13) of section 25 of P.L.1948, c.67 (C.17:9A-25) or in paragraph (3)
22 of section 28 of P.L.1948, c.67 (C.17:9A-28), shall be prohibited
23 from exercising such powers, and further provided that if, prior to the
24 effective date of this amendatory act, a not-for-profit corporation was
25 exercising any of the powers specified in paragraph (6) or (9) of
26 section 28 of P.L.1948, c.67 (C.17:9A-28) as trustee ¹[over trusts and
27 funds in which that corporation had an interest] of a trust created to
28 administer insurance programs¹, that corporation shall not be
29 prohibited, on and after the effective date of this act, from exercising
30 the powers specified in paragraph (6) or (9) of section 28 of P.L.1948,
31 c.67 (C.17:9A-28) over ¹[trusts and funds in which that corporation

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SSM committee amendments adopted June 12, 1997.

1 has an interest] the trust¹ , and further provided that no qualified
2 corporation, as hereinafter defined, shall be prohibited from exercising
3 all or any of the powers specified in paragraph (3) of section 28 of
4 P.L.1948, c.67 (C.17:9A-28), or in paragraph (13) of section 25 of
5 P.L.1948, c.67 (C.17:9A-25). A qualified corporation shall mean a
6 domestic corporation or a foreign corporation authorized to transact
7 business in this State and registered with the Department of Banking
8 and Insurance which (a) has such capital, surplus and undivided profits
9 as may be fixed by the Commissioner of Banking and Insurance
10 commensurate with the nature and volume of its business; (b) has
11 adequate vault or other safe keeping facilities for the safeguarding of
12 stocks and other securities received, processed or otherwise held for
13 the account of customers; and (c) is adequately insured, as may be
14 provided by regulation, to protect its customers and the holders or
15 transferees of securities issued by its customers.

16 ¹(b) Notwithstanding the provisions of subsection (a) of this
17 section to the contrary, a qualified educational institution shall not be
18 prohibited from exercising the powers specified in paragraphs (6) and
19 (9) of section 28 of P.L.1948, c.67 (C.17:9A-28) as trustee of funds
20 in which the qualified educational institution has a qualifying interest.
21 For the purposes of this subsection, a "qualified educational
22 institution" means a not-for-profit corporation which is operated
23 pursuant to Title 15A of the New Jersey Statutes (C.15A:1-1 et seq.)
24 and which is organized and operated exclusively for educational
25 purposes, is exempt from federal income taxation pursuant to
26 paragraph (3) of subsection (c) of section 501 or section 115 of the
27 Internal Revenue Code of 1986, 26 U.S.C. §501(c)(3) and 26 U.S.C.
28 §115, and has registered with the department pursuant to this section.
29 A "qualified interest" means the interest of the qualified educational
30 institution as an income beneficiary, a principal beneficiary of a trust,
31 or both, which is a charitable remainder trust, charitable lead trust or
32 a pooled income fund, as those terms are commonly used under the
33 Internal Revenue Code, or a similar split interest trust, and in which
34 the qualified educational institution is entitled to receive at least 51%
35 of the income of the trust or 51% of the principal.

36 (c) Each qualified educational institution shall:

37 (1) have unrestricted net assets (as defined by the Statement of
38 Financial Accounting Standard (SFAS) No. 117, "Financial Statement
39 of Not-for-Profit") in an amount fixed by the commissioner
40 commensurate with the volume of its trust operations;

41 (2) provide for adequate vault or other safe-keeping facilities for
42 the safeguarding of stocks and other securities held for their trust
43 accounts;

44 (3) be adequately insured, as required by regulation;

45 (4) have officers or other employees determined by the
46 commissioner to possess the qualifications, experience and character

1 required for the duties and responsibilities for which they will be
2 responsible in administering and investing the assets of the trusts: and

3 (5) have available competent legal counsel to advise and pass upon
4 trust matters whenever necessary.

5 (d)¹ A qualified corporation ¹and qualified educational institution¹
6 shall be subject to any regulations which may be adopted by the
7 Commissioner of Banking and Insurance and subject to examination
8 by the Department of Banking and Insurance ¹to ensure compliance
9 with those regulations¹, the cost of which shall be paid by the qualified
10 corporation ¹[, to ensure compliance with any such regulations] or
11 qualified educational institution¹. The Commissioner of Banking and
12 Insurance may require ¹[such]¹ qualified corporations ¹and qualified
13 educational institutions¹ to file ¹[such] any¹ reports ¹[as from time to
14 time he] the commissioner¹ deems necessary to [enable him to] ¹
15 determine compliance with any regulations which may be issued ¹[by
16 him]¹ and to pay fees set by regulation for filing ¹[such] those¹ reports
17 and for registering with the Department of Banking and Insurance .

18 ¹(e) All moneys, securities and other properties held by a qualified
19 educational institution in trust pursuant to this section shall be kept
20 separate and apart from the moneys, securities and other property
21 belonging to the qualified educational institution. The requirements
22 of this subsection shall be satisfied as long as the qualified educational
23 institution maintains at all times records that show the name of the
24 party on whose account the moneys, securities and other property are
25 held. All moneys, securities and other property held by a qualified
26 educational institution in trust pursuant to this section shall not be
27 liable for the debts and obligations of the qualified educational
28 institution.

29 (f) Subsections (c) and (d) of this section shall not apply to any
30 qualified educational institution that was acting as a trustee prior to
31 1983, that holds in unrestricted assets an amount equal to ten times all
32 assets under trust management and that has over \$100 million under
33 trust management.¹

34 (cf: P.L.1989, c.262, s.1)

35

36 2. This act shall take effect immediately ¹but the amendments to
37 subsection (d) of section 213 of P.L.1948, c. 61 (C.17:9A-213)
38 contained in section 1 of this act shall remain inoperative until the
39 180th day after enactment¹.

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41

42

43

44 Concerns certain trust powers of certain not-for-profit corporations.

1 (C.17:9A-25). A qualified corporation shall mean a domestic
2 corporation or a foreign corporation authorized to transact business
3 in this State and registered with the Department of Banking and
4 Insurance which (a) has such capital, surplus and undivided profits as
5 may be fixed by the Commissioner of Banking and Insurance
6 commensurate with the nature and volume of its business; (b) has
7 adequate vault or other safe keeping facilities for the safeguarding of
8 stocks and other securities received, processed or otherwise held for
9 the account of customers; and (c) is adequately insured, as may be
10 provided by regulation, to protect its customers and the holders or
11 transferees of securities issued by its customers.

12 A qualified corporation shall be subject to any regulations which
13 may be adopted by the Commissioner of Banking and Insurance and
14 subject to examination by the Department of Banking and Insurance
15 , the cost of which shall be paid by the qualified corporation, to ensure
16 compliance with any such regulations. The Commissioner of Banking
17 and Insurance may require such qualified corporations to file such
18 reports as from time to time he deems necessary to enable him to
19 determine compliance with any regulations which may be issued by
20 him and to pay fees set by regulation for filing such reports and for
21 registering with the Department of Banking and Insurance .
22 (cf: P.L.1989, c.262, s.1)

23

24 2. This act shall take effect immediately.

25

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27 SPONSORS' STATEMENT

28

29 This bill provides that if a not-for-profit corporation was exercising
30 certain trust powers as trustee over trusts and funds in which it had an
31 interest prior to the effective date of the bill, it shall not be prohibited,
32 on and after that effective date, from exercising those same trust
33 powers over trusts and funds in which it has an interest.

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38 Concerns certain trust powers of certain not-for-profit corporations.

[Passed Both Houses]

[First Reprint]

SENATE, No. 2063

STATE OF NEW JERSEY

INTRODUCED MAY 15, 1997

By Senators INVERSO, LITTELL,
Assemblymen Bagger and Bateman

1 AN ACT concerning certain trust powers of certain not-for-profit
2 corporations and amending P.L.1948, c.67.

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4 BE IT ENACTED by the Senate and General Assembly of the State
5 of New Jersey:

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8 read as follows:

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213. Limitations on exercise of powers.

10 ¹(a) Except as otherwise provided by law, only a banking
11 institution shall exercise within this State any of the powers
12 enumerated in paragraph (4) of section 24 of P.L.1948, c.67
13 (C.17:9A-24), paragraphs (4), (5) and (13) of section 25 of P.L.1948,
14 c.67 (C.17:9A-25), and paragraphs (1) and (5) of section 26 of
15 P.L.1948, c.67 (C.17:9A-26), and except as otherwise provided in this
16 section, no corporation other than a qualified bank shall exercise
17 within this State any of the powers specified in paragraphs (3), (4),
18 (5), (6), (7), (8) and (9) of section 28 of P.L.1948, c.67 (C.17:9A-28),
19 provided that no corporation organized prior to March 24, 1899,
20 authorized to exercise all or any of the powers specified in paragraph
21 (13) of section 25 of P.L.1948, c.67 (C.17:9A-25) or in paragraph (3)
22 of section 28 of P.L.1948, c.67 (C.17:9A-28), shall be prohibited
23 from exercising such powers, and further provided that if, prior to the
24 effective date of this amendatory act, a not-for-profit corporation was
25 exercising any of the powers specified in paragraph (6) or (9) of
26 section 28 of P.L.1948, c.67 (C.17:9A-28) as trustee ¹**[over trusts and**
27 **funds in which that corporation had an interest]** of a trust created to

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SSM committee amendments adopted June 12, 1997.

1 administer insurance programs¹, that corporation shall not be
2 prohibited, on and after the effective date of this act, from exercising
3 the powers specified in paragraph (6) or (9) of section 28 of P.L.1948,
4 c.67 (C.17:9A-28) over ¹ [trusts and funds in which that corporation
5 has an interest] the trust¹, and further provided that no qualified
6 corporation, as hereinafter defined, shall be prohibited from exercising
7 all or any of the powers specified in paragraph (3) of section 28 of
8 P.L.1948, c.67 (C.17:9A-28), or in paragraph (13) of section 25 of
9 P.L.1948, c.67 (C.17:9A-25). A qualified corporation shall mean a
10 domestic corporation or a foreign corporation authorized to transact
11 business in this State and registered with the Department of Banking
12 and Insurance which (a) has such capital, surplus and undivided profits
13 as may be fixed by the Commissioner of Banking and Insurance
14 commensurate with the nature and volume of its business; (b) has
15 adequate vault or other safe keeping facilities for the safeguarding of
16 stocks and other securities received, processed or otherwise held for
17 the account of customers; and (c) is adequately insured, as may be
18 provided by regulation, to protect its customers and the holders or
19 transferees of securities issued by its customers.

20 ¹(b) Notwithstanding the provisions of subsection (a) of this
21 section to the contrary, a qualified educational institution shall not be
22 prohibited from exercising the powers specified in paragraphs (6) and
23 (9) of section 28 of P.L.1948, c.67 (C.17:9A-28) as trustee of funds
24 in which the qualified educational institution has a qualifying interest.
25 For the purposes of this subsection, a "qualified educational
26 institution" means a not-for-profit corporation which is operated
27 pursuant to Title 15A of the New Jersey Statutes (C.15A:1-1 et seq.)
28 and which is organized and operated exclusively for educational
29 purposes, is exempt from federal income taxation pursuant to
30 paragraph (3) of subsection (c) of section 501 or section 115 of the
31 Internal Revenue Code of 1986, 26 U.S.C. §501(c)(3) and 26 U.S.C.
32 §115, and has registered with the department pursuant to this section.
33 A "qualified interest" means the interest of the qualified educational
34 institution as an income beneficiary, a principal beneficiary of a trust,
35 or both, which is a charitable remainder trust, charitable lead trust or
36 a pooled income fund, as those terms are commonly used under the
37 Internal Revenue Code, or a similar split interest trust, and in which
38 the qualified educational institution is entitled to receive at least 51%
39 of the income of the trust or 51% of the principal.

40 (c) Each qualified educational institution shall:

41 (1) have unrestricted net assets (as defined by the Statement of
42 Financial Accounting Standard (SFAS) No. 117, "Financial Statement
43 of Not-for-Profit") in an amount fixed by the commissioner
44 commensurate with the volume of its trust operations;

45 (2) provide for adequate vault or other safe-keeping facilities for
46 the safeguarding of stocks and other securities held for their trust

1 accounts;

2 (3) be adequately insured, as required by regulation;

3 (4) have officers or other employees determined by the
4 commissioner to possess the qualifications, experience and character
5 required for the duties and responsibilities for which they will be
6 responsible in administering and investing the assets of the trusts; and
7 (5) have available competent legal counsel to advise and pass upon
8 trust matters whenever necessary.

9 (d)¹ A qualified corporation ¹and qualified educational institution¹
10 shall be subject to any regulations which may be adopted by the
11 Commissioner of Banking and Insurance and subject to examination
12 by the Department of Banking and Insurance ¹to ensure compliance
13 with those regulations¹, the cost of which shall be paid by the qualified
14 corporation ¹[, to ensure compliance with any such regulations] or
15 qualified educational institution¹. The Commissioner of Banking and
16 Insurance may require ¹[such]¹ qualified corporations ¹and qualified
17 educational institutions¹ to file ¹[such] any¹ reports ¹[as from time to
18 time he] the commissioner¹ deems necessary to ¹[enable him to] ¹
19 determine compliance with any regulations which may be issued ¹[by
20 him]¹ and to pay fees set by regulation for filing ¹[such] those¹
21 reports and for registering with the Department of Banking and
22 Insurance .

23 ¹(e) All moneys, securities and other properties held by a qualified
24 educational institution in trust pursuant to this section shall be kept
25 separate and apart from the moneys, securities and other property
26 belonging to the qualified educational institution. The requirements
27 of this subsection shall be satisfied as long as the qualified educational
28 institution maintains at all times records that show the name of the
29 party on whose account the moneys, securities and other property are
30 held. All moneys, securities and other property held by a qualified
31 educational institution in trust pursuant to this section shall not be
32 liable for the debts and obligations of the qualified educational
33 institution.

34 (f) Subsections (c) and (d) of this section shall not apply to any
35 qualified educational institution that was acting as a trustee prior to
36 1983, that holds in unrestricted assets an amount equal to ten times all
37 assets under trust management and that has over \$100 million under
38 trust management.¹

39 (cf: P.L.1989, c.262, s.1)

40

41 2. This act shall take effect immediately ¹but the amendments to
42 subsection (d) of section 213 of P.L.1948, c. 61 (C.17:9A-213)
43 contained in section 1 of this act shall remain inoperative until the
44 180th day after enactment¹.

SENATE STATE MANAGEMENT, INVESTMENT AND
FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

SENATE, No. 2063

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 12, 1997

The Senate State Management, Investment and Financial Institutions Committee reports favorably and with committee amendments Senate Bill No. 2063.

This bill, as amended, provides that certain not-for-profit corporations may exercise certain trust powers as a trustee of a trust created to administer insurance programs and that qualified educational institution may exercise certain trust powers as trustee over trusts and funds in which it has a qualifying interest. The bill defines a qualified educational institution as a not-for-profit corporation which is operated pursuant to Title 15A of the New Jersey Statutes (C.15A:1-1 et seq.) and which is organized and operated exclusively for educational purposes, is exempt from federal income taxation pursuant to paragraph (3) of subsection (c) of section 501 or section 115 of the Internal Revenue Code of 1986, 26 U.S.C. §501(c)(3) and 26 U.S.C. §115, and has registered with the department pursuant to this section. A qualifying interest is defined as the interest of the qualified educational institution as an income beneficiary, a principal beneficiary of a trust, or both, which is a charitable remainder trust, charitable lead trust or a pooled income fund, as those terms are commonly used under the Internal Revenue Code, or a similar split interest trust, and in which the qualified educational institution is entitled to receive at least 51% of the income of the trust or 51% of the principal.

In addition the bill requires each qualified educational institution to:

(1) have unrestricted net assets (as defined by the Statement of Financial Accounting Standard (SFAS) No. 117, "Financial Statement of Not-for-Profit") in an amount fixed by the commissioner commensurate with the volume of its trust operations;

(2) provide for adequate vault or other safe-keeping facilities for the safeguarding of stocks and other securities held for their trust accounts;

(3) be adequately insured, as required by regulation;

(4) have officers or other employees determined by the commissioner to possess the qualifications, experience and character required for the duties and responsibilities for which they will be responsible in administering and investing the assets of the trusts: and

(5) have available competent legal counsel to advise and pass upon trust matters whenever necessary.

The bill provides regulatory authority over qualified educational institution.

The bill further requires qualified educational institutions to meet the fiduciary standards applicable to banks regarding the moneys, securities and other properties held in trust and provides that the moneys, securities and property held in trust shall not be liable for the debts and obligations of the qualified educational institution.

Finally, the bill provides an exemption from the provisions of subsections (c) and (d) for a qualified educational institutions that was acting as trustee prior to 1983, holds in unrestricted assets an amount equal to ten times all assets under trust management and has over \$100 million under trust management.

As amended, Senate, No. 2063 is identical to Assembly, No. 2929 (1R).

COMMITTEE AMENDMENTS

The amendments to the bill allow certain not-for-profit corporations acting as trustee of a trust created to administer insurance programs and to qualified educational institutions that have a qualifying interest in the trusts under management to exercise trust powers. The amendments also define qualifying educational institution and qualifying interest and provide for the regulation of qualifying educational institutions by the Department of Banking and Insurance. Furthermore, the amendments require certain protections for the assets under management and require that qualifying educational institutions that act as trustee meet the same fiduciary standards as banks. Finally, the amendments provide that the assets under trust management are protected from creditors of the institution, and provide an exemption from some of the requirements for certain qualified educational institutions. The amendments to subsection (d) of section 213 of P.L.1948, c.61 (17:9A-213) contained in section 1 of the bill are not to take effect until the 180th day after enactment.