

## CHAPTER 245

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

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

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

C.17:9A-213 Limitations on exercise of powers.

213. Limitations on exercise of powers.

(a) Except as otherwise provided by law, only a banking institution shall exercise within this State any of the powers enumerated in paragraph (4) of section 24 of P.L.1948, c.67 (C.17:9A-24), paragraphs (4), (5) and (13) of section 25 of P.L.1948, c.67 (C.17:9A-25), and paragraphs (1) and (5) of section 26 of P.L.1948, c.67 (C.17:9A-26), and except as otherwise provided in this section, no corporation other than a qualified bank shall exercise within this State any of the powers specified in paragraphs (3), (4), (5), (6), (7), (8) and (9) of section 28 of P.L.1948, c.67 (C.17:9A-28), provided that no corporation organized prior to March 24, 1899, authorized to exercise all or any of the powers specified in paragraph (13) of section 25 of P.L.1948, c.67 (C.17:9A-25) or in paragraph (3) of section 28 of P.L.1948, c.67 (C.17:9A-28), shall be prohibited from exercising such powers, and further provided that if, prior to the effective date of this amendatory act, a not-for-profit corporation was exercising any of the powers specified in paragraph (6) or (9) of section 28 of P.L.1948, c.67 (C.17:9A-28) as trustee of a trust created to administer insurance programs, that corporation shall not be prohibited, on and after the effective date of this act, from exercising the powers specified in paragraph (6) or (9) of section 28 of P.L.1948, c.67 (C.17:9A-28) over the trust, and further provided that no qualified corporation, as hereinafter defined, shall be prohibited from exercising all or any of the powers specified in paragraph (3) of section 28 of P.L.1948, c.67 (C.17:9A-28), or in paragraph (13) of section 25 of P.L.1948, c.67 (C.17:9A-25). A qualified corporation shall mean a domestic corporation or a foreign corporation authorized to transact business in this State and registered with the Department of Banking and Insurance which (a) has such capital, surplus and undivided profits as may be fixed by the Commissioner of Banking and Insurance commensurate with the nature and volume of its business; (b) has adequate vault or other safe keeping facilities for the safeguarding of stocks and other securities received, processed or otherwise held for the account of customers; and (c) is adequately insured, as may be provided by regulation, to protect its customers and the holders or transferees of securities issued by its customers.

(b) Notwithstanding the provisions of subsection (a) of this section to the contrary, a qualified educational institution shall not be prohibited from exercising the powers specified in paragraphs (6) and (9) of section 28 of P.L.1948, c.67 (C.17:9A-28) as trustee of funds in which the qualified educational institution has a qualifying interest. For the purposes of this subsection, a "qualified educational institution" means a not-for-profit corporation which is operated pursuant to Title 15A of the New Jersey Statutes (N.J.S.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. s.501(c)(3) and 26 U.S.C. s.115, and has registered with the department pursuant to this section. A "qualified interest" means 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.

(c) Each qualified educational institution shall:

(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.

(d) A qualified corporation and qualified educational institution shall be subject to any regulations which may be adopted by the Commissioner of Banking and Insurance and subject to examination by the Department of Banking and Insurance to ensure compliance with those regulations, the cost of which shall be paid by the qualified corporation or qualified educational institution. The Commissioner of Banking and Insurance may require qualified corporations and qualified educational institutions to file any reports the commissioner deems necessary to determine compliance with any regulations which may be issued and to pay fees set by regulation for filing those reports and for registering with the Department of Banking and Insurance.

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

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

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

Approved September 9, 1997.