CHARITABLE TRUSTEES POWERS ACT
Act 78 of 1971

AN ACT to prescribe and regulate the functions of charitable trusts and trustees; and to prescribe the functions of the attorney general in relation thereto.

History: 1971, Act 78, Imd. Eff. July 31, 1971.

The People of the State of Michigan enact:

14.271 Short title.

Sec. 1. This act shall be known and may be cited as the "charitable trustees powers act".

History: 1971, Act 78, Imd. Eff. July 31, 1971.

14.272 Definitions.

Sec. 2. As used in this act:

(a) "IRC" means the internal revenue code of 1954 as in effect on January 1, 1970.

(b) "Private foundation trust" means a trust, including a trust described in section 4947(a)(1) of the IRC, as defined in section 509(a) of the IRC.

(c) "Public charitable organization" means an organization described in section 509(a)(1), (2) or (3) of the IRC and exempt from tax under section 501(a) of the IRC.

(d) "Split interest trust" means a trust for individual and charitable beneficiaries that is subject to section 4947(a)(2) of the IRC.

(e) "Trust" means an express trust created by a trust instrument, including a will.

(f) "Trustee" means the trustee or person possessing a power referred to in this act.

History: 1971, Act 78, Imd. Eff. July 31, 1971.

14.273 Applicability of act.

Sec. 3. The provisions of this act that are applicable to a split interest trust, a private foundation trust, public charitable organization or any other trust, apply to such entities, whether created before or after the effective date of this act.

History: 1971, Act 78, Imd. Eff. July 31, 1971.

14.274 Trustee of private foundation or split interest trust; duties, and powers generally.

Sec. 4. Except as provided in section 7, a trustee of a private foundation trust or a split interest trust has the duties and powers conferred upon him by this act.

History: 1971, Act 78, Imd. Eff. July 31, 1971.

14.275 Tax exemption, deduction, or credit; distributions; prohibited conduct.

Sec. 5. (1) In the exercise of his powers including the powers granted by this act, a trustee has a duty to act with due regard to his obligation as a fiduciary, including a duty not to exercise any power in such a way as to deprive the trust of an otherwise available tax exemption, deduction or credit for tax purposes or deprive a donor of a trust asset of a tax deduction or credit or operate to impose a tax upon a donor, trust or other person. "Tax" includes, but is not limited to, any federal, state or local excise, income, gift, estate or inheritance tax.

(2) A trustee of a private foundation trust, except as provided in section 7, shall make distributions at such time and in such manner as not to subject the trust to tax under section 4942 of the IRC.

(3) A trustee of a private foundation trust or a split interest trust, to the extent that the split interest trust is subject to the provisions of section 4947(a)(2) of the IRC, in the exercise of his powers, except as provided in sections 6 and 7, shall not:

(a) Engage in any act of self-dealing as defined in section 4941(d) of the IRC.

(b) Retain any excess business holdings as defined in section 4943(c) of the IRC.

(c) Make any investments in such manner as to subject the foundation to tax under section 4944 of the IRC.

(d) Make any taxable expenditures as defined in section 4945(d) of the IRC.

History: 1971, Act 78, Imd. Eff. July 31, 1971.

14.276 Split interest trust; applicability of section 14.275(3)(b) and (c).

Sec. 6. Subdivisions (b) and (c) of subsection (3) of section 5 do not apply to a split interest trust if:

(a) All the income interest, and none of the remainder interest, of the trust is devoted solely to 1 or more of

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the purposes described in section 170(c)(2)(B) of the IRC and all amounts in the trust for which a deduction was allowed under sections 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2) or 2522 of the IRC have an aggregate fair market value not more than 60% of the aggregate fair market value of all amounts in the trust.

(b) A deduction was allowed under sections 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2) or 2522 of the IRC for amounts payable under the terms of the trust to every remainder beneficiary but not to any income beneficiary.

History: 1971, Act 78, Imd. Eff. July 31, 1971.

14.277 Distributions; trust investment more restrictive than or inconsistent with this act; notice to attorney general.

Sec. 7. If a trustee determines that the governing instrument contains provisions, in case of a power to make distributions, which are more restrictive than subsection (2) of section 5, or if the trust contains other powers which specifically direct acts by the trustee that are inconsistent with subsection (3) of section 5, the trustee shall notify the attorney general within 6 months following the effective date of this act, or when the trust becomes subject to this act, whichever last occurs and failure to notify the attorney general within 6 months renders the trust subject to this act. Sections 5 and 6 do not apply to a trust with respect to which notice has been given, unless the trust is amended to comply with this act.

History: 1971, Act 78, Imd. Eff. July 31, 1971.

14.278 Amendment of trust instrument.

Sec. 8. (1) In the case of a trust which is solely for named public charitable organizations and as to which the trustee does not possess any discretion with regard to the distribution of income or principal among 2 or more organizations, the trustee, with the consent of the named public charitable organizations, may amend the governing instrument to comply with subsection (2) of section 5.

(2) If a charitable trust is not subject to subsection (1) of section 8, the trustee with the consent of the attorney general may amend the governing instrument to comply with subsection (2) of section 5.

History: 1971, Act 78, Imd. Eff. July 31, 1971.

14.279 Trustee; relief from restrictions of trust instrument.

Sec. 9. This act does not affect the power of a court of competent jurisdiction for cause shown, upon petition of the trustee, attorney general or affected beneficiary and upon appropriate notice to the affected parties and the attorney general, to relieve a trustee from any restriction on his powers and duties that is placed upon him by the governing instrument to comply with the rules applicable to private foundations, to terminate the trust or to convert to a public charitable organization.

History: 1971, Act 78, Imd. Eff. July 31, 1971.

14.280 Trustee; release of power to select charitable donee.

Sec. 10. (1) Unless the creating instrument expressly provides otherwise, the trustee of a trust, all of the unexpired interests in which are devoted to 1 or more charitable purposes, may release a power to select a charitable donee.

(2) The release of a power to select a charitable donee may apply to all or any part of the property subject to the power and may reduce or limit the public charitable organizations or classes of public charitable organizations in whose favor the power is exercisable.

(3) A release is effected by a duly acknowledged written instrument signed by the trustee and delivered as provided in subsection (1) of section 11.

History: 1971, Act 78, Imd. Eff. July 31, 1971.

14.281 Delivery of release; effect of specifying public charitable organization as beneficiary.

Sec. 11. (1) Delivery of a release is accomplished as follows:

(a) If the release is accomplished by specifying public charitable organizations as beneficiaries of the trust, by delivery of a copy of the release to each designated public charitable organization.

(b) If the release is accomplished by reducing the class of permissible public charitable organizations, by delivery of a copy of the release to the attorney general.

(2) If a release is accomplished by specifying a public charitable organization as beneficiary of the trust, the trust thereafter shall be operated exclusively for the benefit of and supervised by the specified public charitable organization until such time as the specified public charitable organization ceases to exist or ceases to be an exempt public charitable organization.

History: 1971, Act 78, Imd. Eff. July 31, 1971.

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14.282 Public charitable trust; supervision by specified public charitable organization.

Sec. 12. A trustee of a trust for the benefit of a public charitable organization, with the consent of such organization, may come under subsection (2) of section 11 by filing an election, accompanied by the consent, with the attorney general. Thereafter, the trust is subject to subsection (2) of section 11 and section 13.

History: 1971, Act 78, Imd. Eff. July 31, 1971.

14.283 Filing copy of trust instrument and report with specified public charitable organization.

Sec. 13. The trustee of a trust subject to supervision by a specified public charitable organization, as provided in subsection (2) of section 11, shall file with each specified public charitable organization, (a) a true copy of the governing instrument together with a written report, under oath, setting forth complete information as to the nature of the assets and liabilities with the delivery of the release pursuant to subsection (1) of section 11 or the filing of the election under section 12; (b) an annual report, within 4 1/2 months following the close of each year, setting forth a complete statement of receipts, disbursements, assets together with cost and market value of each asset, and liabilities; and (c) such other information as the public charitable organization deems necessary to compel proper administration of the trust.

History: 1971, Act 78, Imd. Eff. July 31, 1971.

14.284 Effect of delivery of release and acceptance thereof; supervisory authority of public charitable organization.

Sec. 14. (1) The trustee, by delivery of the release or execution of the election, and each specified public charitable organization, by accepting delivery of the release as provided in subsection (1) of section 11 or by consenting to the election in section 12, agree that the public charitable organization, (a) shall compel the proper administration of the trust; (b) may inspect the books, records, memoranda, papers, documents of title and evidence of assets, liabilities, receipts or disbursements in possession or control of the trustee or other person having custody of the books and records; and (c) may require such other information as the public charitable organization deems necessary to compel proper administration of the trust.

(2) The supervisory authority granted a public charitable organization is in addition to the supervisory authority of the attorney general over charitable trusts under common law and the statutes of this state.

History: 1971, Act 78, Imd. Eff. July 31, 1971.

14.285 Termination or dissolution of private foundation trust; consent of attorney general.

Sec. 15. (1) The attorney general may consent to termination or dissolution of a private foundation trust without the necessity of court proceedings if the trust does all of the following:

(a) Gives notice to the attorney general of its intended termination or dissolution.

(b) Makes provision for retention of all its books and records with some suitable person.

(c) Provides the attorney general, at his request, all papers, documents, reports, statements or other information he deems necessary to consent to the termination or dissolution.

(d) Distributes its assets in a manner that avoids taxation under the internal revenue code.

(2) If the attorney general does not consent in accordance with subsection (1), the trust shall be terminated only with consent of a court of competent jurisdiction in an action to which the attorney general is an indispensable party.

History: 1971, Act 78, Imd. Eff. July 31, 1971.

14.286 Action to enforce act.

Sec. 16. The attorney general may bring an action in the circuit court for the county where the charitable trust is located or in the circuit court for Ingham county to do any of the following:

(a) Require the trustee of a charitable trust subject to this act to comply with this act.

(b) Enjoin a violation of this act.

(c) Surcharge the trustee of a trust subject to this act who acts or fails to act in violation of the applicable provisions of sections 5 and 6.

History: 1971, Act 78, Imd. Eff. July 31, 1971.

14.287 Interpretation of act.

Sec. 17. This act shall be interpreted to effectuate the intent of this state to preserve, foster and encourage gifts to or for the benefit of public charitable organizations.

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