

## LEGISLATIVE BILL 793

Approved by the Governor April 30, 1971

Introduced by Fred W. Carstens, 30th District

AN ACT relating to charitable trusts which are private foundations within the meaning of the Internal Revenue Code of 1954; to provide for the regulation of such trust as prescribed; to provide for interpretation; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Notwithstanding any provision to the contrary in the governing instrument or under any other law of this state and except as otherwise provided by court decree entered after the effective date of this act, a trust, whenever created, which is a private foundation or a split-interest trust as defined in sections 509 and 4947, respectively, of the Internal Revenue Code of 1954, during the period it is a private foundation or split-interest trust as so defined:

(1) Shall not engage in any act of self-dealing as defined in section 4941 (d) of such code;

(2) Shall distribute the trust income for each taxable year at such time and in such manner as not to subject the trust to the tax on undistributed income imposed by section 4942 of such code;

(3) Shall not retain any excess business holdings as defined in section 4943 (c) of such code;

(4) Shall not make any investment in such manner as to subject the trust to tax under section 4944 of such code; and

(5) Shall not make any taxable expenditure as defined in section 4945 (d) of such code.

Except as otherwise provided by court decree entered after the effective date of this act, the prohibitions and requirements imposed upon such a trust by subdivisions (1) to (5) of this section shall be deemed to be included within the governing instrument of every private foundation or split-interest trust, as defined in this section.

Sec. 2. The trustee of a trust, whenever

created, which is a private foundation or a split-interest trust as defined in sections 509 and 4947, respectively, of the Internal Revenue Code of 1954, may, notwithstanding any provision to the contrary in the governing instrument or under any other law of this state and except as otherwise provided by court decree entered after the effective date of this act, amend the terms of the governing instrument to the extent necessary to bring the trust into conformity with the requirements for:

(1) Termination of private foundation status in the manner described in section 507 of such code, and exemption of the trust from the taxes imposed by sections 4941 to 4945, inclusive, thereof; or

(2) Exclusion of the trust from private foundation status under section 509 (a) (3) of such code; and to this end may release any power contained in the governing instrument, may reduce or limit the charitable organizations or classes of charitable organizations in whose favor a power to select may be exercised and may appoint new or additional trustees. If the trust is for the benefit of one or more named charitable organizations, the trustee shall first obtain the consent of those organizations before making any amendment under this subdivision.

Sec. 3. A trustee of a trust which is a private foundation or a split-interest trust as defined in section 1 of this act, may elect that this act shall not apply to such trust and its trustee or trustees by so notifying the Attorney General in writing within six months following the effective date of this act, or when such trust becomes subject to this act, whichever last occurs. Section 1 of this act shall not apply to any trust with respect to which notice has been given, unless the trust is amended to comply with the terms of section 1 of this act.

Sec. 4. This act shall be interpreted to effectuate the intent of the State of Nebraska to preserve, foster and encourage gifts to or for the benefit of charitable organizations and to preserve to such organizations their right to exemption from federal income taxes.

Sec. 5. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.