

of operating and maintaining the Lake Owasso Children's Home. This appropriation shall not cancel but remain available until expended.

Sec. 3. Minnesota Statutes 1974, Section 252.025, Subdivision 3, is repealed.

Approved June 2, 1975.

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## CHAPTER 243—H.F.No.907

[Coded]

*An act relating to charitable trusts and trustees; authorizing the secretary of state to establish and maintain a register of charitable trusts; authorizing the attorney general to take appropriate actions to protect and enforce the proper administration of charitable trusts; authorizing investigations; authorizing fees.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[501.71] CHARITABLE TRUSTS AND TRUSTEES; SUPERVISION; CITATION.** Sections 1 to 11 shall be known and may be cited as the supervision of charitable trusts and trustees act.

Sec. 2. **[501.72] CHARITABLE TRUSTS; SUPERVISION BY ATTORNEY GENERAL.** Sections 1 to 11 shall apply to all charitable trusts and all trustees holding property for charitable purposes. The attorney general shall have and exercise, in addition to all the common law and statutory rights, duties and powers of the attorney general in connection with the supervision, administration and enforcement of charitable trusts, the rights, duties and powers set forth in sections 1 to 11.

Sec. 3. **[501.73] DEFINITIONS.** Subdivision 1. For the purposes of sections 1 to 11, the terms defined in this section have the meanings ascribed to them.

Subd. 2. "Charitable purpose" means any charitable, benevolent, philanthropic, religious, social service, educational, eleemosynary or other public use or purpose, either actual or purported.

Subd. 3. "Trustee" means a person or group of persons either in an individual or a joint capacity, or a director, officer or other agent of an association, foundation, trustee corporation, corporation or other legal entity who is vested with the control or responsibility of administering property held for any charitable purpose.

Subd. 4. "Charitable trust" means any fiduciary relationship with respect to property arising as a result of a manifestation of an intention to create it and subjecting the trustee by whom the property is

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held to fiduciary duties to deal with the property for charitable purposes.

Subd. 5. The definition of the terms "trustee" and "charitable trust" contained in this section are for the purposes of sections 1 to 11 and shall not be construed to modify or abridge any law or rule respecting the nature of any charitable trust or the nature and extent of the duties of any trustee except such duties as may be imposed by sections 1 to 11.

Sec. 4. **[501.74] EXCLUSIONS.** The registration and reporting provisions of sections 5 and 6 shall not apply to

(a) A charitable trust administered by the United States, any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico or to any of their agencies or subdivisions.

(b) An educational institution which is under the general supervision of the state board of education, the state college board, the state board for community colleges, or the university of Minnesota or the north central association of colleges and secondary schools, or by any other national or regional accrediting association, and all charitable trusts organized and operated exclusively for educational purposes which are administered by any such institution.

(c) Religious associations organized pursuant to Minnesota Statutes, Chapters 315 and 317 and all charitable trusts organized and operated exclusively for religious purposes which are administered by any such religious association.

(d) Institutions and corporations organized and operated as hospitals or as medical centers engaged in medical care, education and research.

(e) An organization described in section 509(a) (3) of the Internal Revenue Code of 1954 which is operated, supervised or controlled by or in connection with one or more organizations described in clauses (b) through (d) of this section, a pooled income fund as defined in section 642(c) (5) of the Internal Revenue Code of 1954 which is maintained by an organization described in clauses (b) through (d) of this section, and a charitable remainder annuity trust or unitrust, as defined in section 664 of the Internal Revenue Code of 1954, of which the trustee is an organization described in clauses (b) through (d) of this section.

(f) A trust in which the only charitable interest is a contingent interest for which no charitable deduction has been allowed for Minnesota income, inheritance or gift tax purposes and a trust not all of the unexpired interests in which are devoted to one or more charitable purposes and in which the only charitable interest is an annuity or an

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income interest with respect to which a charitable deduction is allowed the trust under applicable Minnesota income tax laws.

(g) An organization which does not have at least \$5,000 of gross assets at any time during a taxable year and which normally receives more than two thirds of its support each year from the general public or from the United States, any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any of their agencies.

**Sec. 5. [501.75] REGISTER OF TRUSTS AND TRUSTEES.** Subdivision 1. The secretary of state shall establish and maintain a register of charitable trusts and trustees subject to the provisions of sections 1 to 11.

Subd. 2. Every charitable trust subject to the provisions of sections 1 to 11 shall register and file with the secretary of state a copy of the instrument creating the charitable trust, including any amendments thereto, within three months after the charitable trust first receives possession or control of any property authorized or required to be applied, either at present or in the future, for charitable purposes. If a trustee holds any property at the time sections 1 to 11 take effect, which is authorized or required to be applied, either at present or in the future, for charitable purposes, the filing and registration shall be made within three months after the effective date of sections 1 to 11.

**Sec. 6. [501.76] FILING OF ANNUAL REPORTS.** Subdivision 1. Every charitable trust subject to the provisions of sections 1 to 11 shall, in addition to filing copies of the instruments previously required, file with the secretary of state annual written reports setting forth information as described in section 6056(b) of the Internal Revenue Code of 1954. These reports shall be filed annually on or before the fifteenth day of the fifth month following the close of the charitable trust's taxable year as established for federal tax purposes. The time for filing may be extended by application to the secretary of state, but no such extension shall be for more than six months.

Subd. 2. The secretary of state may suspend the filing of reports as to a particular charitable trust for a reasonable, specifically designated time upon written application of the trustee filed with the secretary of state and after the attorney general has filed in the register of charitable trusts a written statement that the interests of the beneficiaries will not be prejudiced thereby and that annual reports are not required for proper supervision by his office.

**Sec. 7. [501.77] PUBLIC INSPECTION OF RECORDS.** The register, copies of instruments, and the reports filed with the secretary of state shall be open to public inspection.

**Sec. 8. [501.78] INVESTIGATORY POWERS; CUSTODIANS TO FURNISH COPIES OF RECORDS.** Subdivision 1. The attorney general

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may conduct investigations reasonably necessary for the administration of sections 1 to 11 and for the purpose of determining whether the property held for charitable purposes is properly administered. He may require any agent, trustee, fiduciary, beneficiary, institution, association, or corporation or other person, to answer written interrogatories reasonably related to the administration of a charitable trust, or to appear, at a reasonable time and place as the attorney general may designate, to give information under oath and to produce books, memoranda, papers, documents of title, and evidence of assets, liabilities, receipts or disbursements in the possession or control of the person ordered to appear.

Subd. 2. When the attorney general requires the attendance of any person, as provided in subdivision 1 of this section, he shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least 14 days before the date fixed for attendance. The order shall have the same force and effect as a subpoena and, upon application of the attorney general, obedience to the order may be enforced by any court having jurisdiction of charitable trusts in the county where the person receiving it resides or is found, in the same manner as though the notice were a subpoena. The court, *after hearing, for cause, and upon application of any person aggrieved* by the order, shall have the right to alter, amend, revise, suspend or postpone all or any part of its provisions.

Subd. 3. The custodians of the records of a court having jurisdiction of probate matters or of charitable trusts, and any custodian of records of any department, agency or political subdivision of this state shall furnish free of charge copies of papers, records and files of his office relating to the subject of sections 1 to 11 as the attorney general requires.

Subd. 4. Every officer, agency, board or commission of this state receiving applications for exemption from taxation of any charitable trust subject to sections 1 to 11 shall annually file with the secretary of state a list of all applications received during the year and shall notify the secretary of state of any suspension or revocation of a tax exempt status previously granted.

**Sec. 9. [501.79] BREACH OF TRUST; PROCEEDINGS TO SECURE COMPLIANCE.** Subdivision 1. The attorney general may institute appropriate proceedings to secure compliance with the provisions of sections 1 to 11 and to secure the proper administration of any charitable trust. The powers and duties of the attorney general provided herein are in addition to his existing powers and duties.

Subd. 2. The attorney general shall be notified of and has the right to participate as a party in all court proceedings:

(a) To terminate a charitable trust or to liquidate or distribute its

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assets, or

(b) To modify or depart from the objects or purposes of a charitable trust as are set forth in the instrument governing the trust, including any proceeding for the application of the doctrine of cy pres, or

(c) To construe the provisions of an instrument with respect to a charitable trust, or

(d) To review an accounting of a charitable trust submitted by a trustee, or

(e) Any other proceeding involving a charitable trust when the interests of the uncertain or indefinite charitable beneficiaries may be affected.

Subd. 3. A judgment or order rendered in proceedings without service of process and pleadings upon the attorney general, are voidable, unenforceable, and may be set aside at the option of the attorney general upon his motion seeking relief. With respect to those proceedings, no compromise, settlement agreement, contract or judgment agreed to by any or all of the parties having or claiming to have an interest in any charitable trust is valid unless the attorney general was made a party to the proceedings and joined in the compromise, settlement agreement, contract or judgment, or unless the attorney general, in writing waives his right to participate. The attorney general is expressly authorized to enter into a compromise, settlement agreement, contract or judgment as in his opinion may be in the best interests of the people of the state and the uncertain or indefinite beneficiaries.

Subd. 4. Whenever a will provides for a bequest or devise to a charitable trust, the personal representative shall send to the attorney general a copy of the petition or application for probate together with a copy of the last will and testament, including any codicils which have been admitted to probate. Whenever objections are filed to any will or codicil containing any bequest or devise to a charitable trust, the person filing such objections, at least 14 days prior to the hearing thereon, shall send to the attorney general a copy of such objections, together with a copy of the petition or application for probate and a copy of the will, together with any codicils thereto which have been offered for probate. Any notice or documents required to be sent to the attorney general pursuant to this section shall be served by certified mail, return receipt requested. Upon receiving any such notice or documents the attorney general may become a party in the estate proceedings.

Subd. 5. The failure of a trustee to register as required by section 5, or to file annual reports as required by section 6, or to administer and manage property held for charitable purposes in accordance with law or consistent with his fiduciary obligations constitutes a breach of trust.

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Subd. 6. The attorney general may institute a civil action in order to remedy and redress a breach of trust, as described in subdivision 5 of this section or as otherwise provided by law, committed by a trustee subject to the provisions of sections 1 to 11. Whenever it appears to the attorney general that a breach of trust has been committed, he is entitled to sue for and have:

(a) *Injunctive relief in any court of competent jurisdiction against the breach of trust or threatened breach of trust;*

(b) The removal of a trustee who has committed or is committing a breach of trust;

(c) The recovery of damages; and

(d) Any other appropriate remedy.

Sec. 10. **[501.80] CONTRARY PROVISIONS OF INSTRUMENT INVALID.** Sections 1 to 11 apply regardless of any contrary provisions of any instrument.

Sec. 11. **[501.81] COST OF INVESTIGATIONS AND PROCEEDINGS; REGISTRATION AND FILING FEES.** Subdivision 1. The secretary of state shall collect a fee of \$10 upon the registration of a charitable trust as required by section 5.

Subd. 2. The secretary of state shall collect the following fees upon the filing of an annual report by a charitable trust as required by section 6:

(a) \$10, if the assets of the charitable trust are less than \$5,000;

(b) \$25, if the assets of the charitable trust are \$5,000 or more but less than \$100,000;

(c) \$50, if the assets of the charitable trust are \$100,000 or more but less than \$500,000;

(d) \$100, if the assets of the charitable trust are \$500,000 or more.

For the purposes of this section, "assets" means the total fair market value of the charitable trust's assets at the end of that trust's taxable year as stated in the annual report required by section 6.

Subd. 3. In any proceeding brought by the attorney general, or in which the attorney general intervenes, pursuant to sections 1 to 11, the judgment or order may provide that the trustee shall pay the reasonable expenses necessarily incurred by the attorney general in the investigation and prosecution of such action, including attorneys' fees, if it shall also be determined in such proceeding that the trustee has been guilty of an intentional or grossly negligent breach of trust as defined

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in section 10, subdivision 5, or as otherwise provided by law.

Subd. 4. All moneys received by the attorney general and the secretary of state pursuant to this section shall be deposited in the state treasury and shall be credited to the general fund.

Approved June 2, 1975.

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## CHAPTER 244—H.F.No.911

*An act relating to crime; prohibiting removing, altering or obliterating identifying marks on property; providing penalties; amending Minnesota Statutes 1974, Section 609.52, Subdivision 2.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1974, Section 609.52, Subdivision 2, is amended to read:

Subd. 2. **CRIME AND CRIMINALS; THEFT; DESTROYING IDENTIFYING MARKS; ACTS CONSTITUTING THEFT.** Whoever does any of the following commits theft and may be sentenced as provided in subdivision 3:

(1) Intentionally and without claim of right takes, uses, transfers, conceals or retains possession of movable property of another without his consent and with intent to deprive the owner permanently of possession of the property; or

(2) Having a legal interest in movable property, intentionally and without consent, takes such property out of the possession of a pledgee or other person having a superior right of possession, with intent thereby to deprive the pledgee or other person permanently of the possession of the property; or

(3) Obtains for himself or another the possession, custody or title to property of a third person by intentionally deceiving him with a false representation which is known to be false, made with intent to defraud, and which does defraud the person to whom it is made. "False representation" includes without limitation:

(a) The issuance of a check, draft, or order for the payment of money or the delivery of property knowing that he is not entitled to draw upon the drawee therefor or to order the payment or delivery thereof; or

(b) A promise made with intent not to perform. Failure to perform is not evidence of intent not to perform unless corroborated by

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