

ENGROSSED HOUSE
BILL NO. 1660

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(Betty), Boyd (Laura),
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Smith (Dale), Smith (Hopper),
Stites, Thomas, Turner,
Vaughn and Voskuhl of the
House

and

Taylor, Haney, Hobson,
Maddox, Long, Helton,
Douglass, Price, Wilcoxson,
Easley and Roberts of the
Senate

An Act relating to property; enacting the Oklahoma
Charitable Fiduciary Act; making legislative
findings; defining terms; specifying fiduciary
capacities of charitable organizations; authorizing
charitable organizations to exercise certain powers
as trustees; requiring certain fidelity bonds;
prescribing procedures related to fidelity bonds;
defining terms; specifying powers of charitable
organizations acting as trustees of charitable
trusts; prohibiting certain actions by charitable
organizations with respect to common charitable
trust funds; prescribing standards; requiring
records; requiring periodic reporting; specifying
content of report; providing for communication of

report to certain persons; authorizing recovery of costs; providing accounting not required unless pursuant to judicial action; authorizing accounting under certain circumstances; prescribing procedures; prohibiting certain persons from deriving economic benefit from administration of trust funds; prohibiting certain financial transactions; requiring audit; prescribing procedures with respect to audit; providing for construction of audit provisions; specifying inapplicability of Oklahoma Open Records Act and Oklahoma Open Meeting Act; providing for applicability of act to entities and certain fiduciary relationships; providing for inapplicability of act to certain acts of charitable organizations; providing conflicting provisions of certain statutory enactments not applicable; providing exception; authorizing amendment of trusts for purposes of act; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 301.1 of Title 60, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Charitable Fiduciary Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 301.2 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. The Legislature finds that:

1. Charitable, religious, and educational and eleemosynary organizations perform essential and needed services in the state;

2. Clarification is needed regarding the capability of charitable, religious, educational, and eleemosynary organizations to act as a fiduciary in obtaining and administering present and future gifts benefitting the charitable, religious, educational, and eleemosynary purposes of such organizations and their affiliates; and

3. Clarification is needed regarding the fiduciary powers of charitable, religious, educational, and eleemosynary organizations in the administration of trusts which provide for present or future gifts benefitting the charitable, religious, educational, and eleemosynary purposes of such organizations.

B. The purpose of this act is to authorize charitable, religious, educational, and eleemosynary organizations to act as a fiduciary and to clarify the powers of such organizations when acting in a permitted fiduciary capacity.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 301.3 of Title 60, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Charitable organization" means an incorporated or unincorporated organization:

- a. domiciled in the State of Oklahoma,
- b. recognized under Section 501(c)(3) of the Internal Revenue Code as being organized and operated exclusively for charitable, religious, educational, or other eleemosynary purposes,
- c. which has been in existence for at least five (5) years if the organization administers charitable trusts which benefit private individuals,

- d. having a governing board of which a majority of its members are persons who are qualified by education or experience to provide direction of the charitable organization in the administration of its charitable trusts,
- e. having a governing board of which at least forty percent (40%) of its members are residents of the State of Oklahoma, provided that upon proper application the Attorney General may waive this requirement, and
- f. which has filed the comprehensive annual audit required by Section 9 of this act;

2. "Charitable trust" means:

- a. a trust which qualifies as a charitable remainder unitrust under the Internal Revenue Code,
- b. a trust which qualifies as a charitable remainder annuity trust under the Internal Revenue Code,
- c. a trust which is described as a charitable lead trust in the Internal Revenue Code,
- d. a fund which qualifies as a pooled income fund under the Internal Revenue Code,
- e. an institutional endowment fund as that term is defined in the Oklahoma Uniform Management of Institutional Endowment Funds Act,
- f. a trust providing for the welfare, maintenance, support, and education of minor issue of a decedent who has made a gift in the document creating the trust for the benefit of the minor issue to the charitable organization administering the trust or one or more of its affiliated charitable organizations at the decedent's death and the total of all gifts made to the charitable organization administering the trust or

one or more of its affiliated charitable organizations at the decedent's death is as large as the largest distribution made to another person who is not a charitable organization, but in no event shall the total of all gifts made to the charitable organization administering the trust or one or more of its affiliated charitable organizations be less than twenty-five percent (25%) of the property which is available for distribution provided that the trust terminates on or before the twenty-fifth birthday of the decedent's issue, or

g. any other irrevocable or revocable trust in which:

- (1) one or more gifts of either trust income or principal, whether outright or in trust, are irrevocably made to or for the benefit of a charitable organization,
- (2) if the irrevocable gift is of income or principal which is distributed before the termination of the trust, the total of all such irrevocable gifts of income or principal made to the charitable organization administering the trust or one or more of its affiliated charitable organizations is as large as the largest distribution to another beneficiary entitled to receive distributions of income or principal from the trust before the termination of the trust who is not the charitable organization administering the trust or an affiliated charitable organization, but in no event shall the total of all such irrevocable gifts of income or principal made to the charitable organization administering the trust or one or more of its affiliated

charitable organizations before the termination of the trust be less than twenty-five percent (25%) of the income or principal available for distribution from the trust,

- (3) if the irrevocable gift is of the remainder of the trust which is distributed upon the termination of the trust, the total of all irrevocable gifts of the remainder of the trust made to the charitable organization administering the trust or one or more of its affiliated charitable organizations is as large as the largest distribution made to another remainderman who is not the charitable organization administering the trust or an affiliated charitable organization, but in no event shall the total of all irrevocable gifts of the remainder of the trust made to the charitable organization administering the trust or one or more of its affiliated charitable organizations be less than twenty-five percent (25%) of the remainder of the trust which is available for distribution at the termination of the trust, and
- (4) if distributions of income from the trust are made to beneficiaries who are not charitable organizations, such distributions are in an amount specified by the donor in the governing instrument, or, if not in an amount specified by the donor in the governing instrument, are in an amount not less than five percent (5%) of the value of the principal of the trust determined annually, reduced by distributions of current

income from the trust to charitable organizations, if any; and

3. "Affiliated charitable organization" means another charitable organization which directly or indirectly controls or is under direct or indirect common control with the charitable organization acting in a fiduciary capacity.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 301.4 of Title 60, unless there is created a duplication in numbering, reads as follows:

Charitable organizations shall be permitted to act in the following fiduciary capacities within this state:

1. To act as trustee under charitable trusts created by will, inter vivos declaration of trust or trust agreement, corporate resolution, or order, judgment or decree of any of the courts of record of this state or of any state or of the United States;

2. To accept and execute all charitable trusts and perform such duties of every description as may be committed to them under such trust by any person or persons, any corporation, or any order, judgment or decree of any of the courts of record of this state or of any state or of the United States provided that such duties are not inconsistent with the charitable, religious, educational, or other eleemosynary purposes of the charitable organization;

3. To take, accept and hold by gift, grant, assignment, transfer, devise or bequest of any person or persons, any corporation, or any order, judgment or decree of any of the courts of record of this state or of any state or of the United States any real or personal property as a charitable trust;

4. To execute and perform any and all charitable trusts upon the terms, conditions, limitations and restrictions which may be declared, imposed, established or agreed upon in and by the person or persons, corporation, or order, judgment, decree, gift, grant, assignment, transfer, devise or bequest establishing such trust;

5. To act as attorney-in-fact for any person establishing a charitable trust; and

6. To act as personal representative in the probate of the will of any decedent, whether such decedent was a resident of this state or not, and whether the probate of the will of such decedent is by original or ancillary proceeding, where the will makes a present or future gift to or confers a present or future benefit on the charitable organization serving as personal representative or one or more of its affiliated charitable organizations and the total of all gifts made to the charitable organization serving as personal representative or one or more of its affiliated charitable organizations in the will is as large as the largest distribution made to another person who is not a charitable organization, but in no event shall the total of all gifts made to the charitable organization serving as personal representative or one or more of its affiliated charitable organizations in the will be less than twenty-five percent (25%) of the estate which is available for distribution.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 301.5 of Title 60, unless there is created a duplication in numbering, reads as follows:

In addition to the powers conferred on fiduciaries by the Oklahoma Trust Act, the Oklahoma Uniform Management of Institutional Endowment Funds Act, and the Oklahoma Uniform Prudent Investor Act, all charitable organizations acting as trustees of charitable trusts shall expressly be permitted to exercise the following powers:

1. To limit the investment of property received in trust to investments in real or personal property; securities including bonds, stocks, all kinds of negotiable and nonnegotiable paper; and other investment instruments, which are consistent with the charitable, religious, educational, or other eleemosynary purposes of the charitable organization;

2. To make distributions from an institutional endowment fund as that term is defined in the Oklahoma Uniform Management of Institutional Endowment Funds Act in a manner that will provide a consistent source of funds to charitable organizations benefited by such charitable trusts;

3. For assets held in an institutional endowment fund as that term is defined in the Oklahoma Uniform Management of Institutional Endowment Funds Act, to invest in loans of money upon adequate collateral security to affiliated charitable organizations provided that the charitable organization serving in a fiduciary capacity conforms to the standard for care set forth in the document creating the trust or, in the absence of a standard of care in the document creating the trust, to the standard of care for fiduciaries as set forth in the Oklahoma Trust Code, the Oklahoma Uniform Institutional Endowment Funds Act, and the Oklahoma Uniform Prudent Investor Act, and provided further that the loan furthers the charitable, religious, educational and other eleemosynary purposes of the affiliated charitable organization;

4. To recover costs and expenses to include a reasonable charge for administrative overhead incurred in administering charitable trusts to include costs incurred for investment counselors, advisors and agents; and

5. To delegate the investment of assets of charitable trusts and the administration of charitable trusts to state banks in Oklahoma having trust powers, national banking associations having trust powers, and trust companies having trust powers.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 301.6 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Governing board must require fidelity bonds. The governing board of a charitable organization serving as trustee of a charitable trust shall require good and sufficient fidelity bonds on

all officers and employees who are involved in the funding and administration of a charitable trust, whether or not they are paid a salary or other compensation. The fidelity bonds shall indemnify the charitable trusts administered by a charitable organization for loss sustained to a charitable trust as the result of dishonest, fraudulent, or criminal conduct by the officers and employees of the charitable organization, whether acting independently or in collusion with any person or persons.

B. Form and premiums of fidelity bonds. The governing board of a charitable organization serving as trustee of a charitable trust shall determine the amount and form of its fidelity bonds. The premiums for its fidelity bonds shall be paid by the charitable organization and the cost of premiums may be included in the administrative overhead of the charitable organization.

C. Annual review of fidelity bonds. At least once each calendar year the governing board of a charitable organization serving as trustee of a charitable trust shall evaluate all known elements and factors constituting its risk of loss due to dishonest, fraudulent, or criminal conduct by its officers and employees and determine if the amount and form of its fidelity bonds are sufficient. The governing board shall then require fidelity bonds in such amounts and form as are sufficient to protect its charitable trusts from such risk or hazard. The action of the governing board in determining the amount and form of its fidelity bonds shall be recorded in the minutes of the governing board.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 301.7 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Definitions. For purposes of this section:

1. "Common charitable trust fund" means a fund composed of assets from two or more charitable trusts and other charitable assets which are pooled for investment;

2. "Other charitable assets" means assets owned by an affiliated charitable organization or assets contributed to the charitable organization administering the common charitable trust fund in exchange for the issuance of charitable gift annuity contracts; and

3. "Affiliated charitable organization" means another charitable organization which directly or indirectly controls or is under direct or indirect common control with the charitable organization administering a common charitable trust fund.

B. Powers. Any charitable organization acting as a trustee of charitable trusts in this state may:

1. Establish one or more common charitable trust funds for the exclusive purpose of furnishing investments to itself as fiduciary, to itself and others as cofiduciaries, or to affiliated charitable organizations;

2. Invest funds which it holds for investment in such common charitable trust funds, unless:

- a. the investment is prohibited by the instrument, judgment, decree, or order creating the fiduciary relationship,
- b. consent to investment in the common charitable trust fund is intentionally withheld in writing by a cofiduciary, or
- c. a cofiduciary that is not a charitable organization has the right to direct the management of the common charitable trust fund; and

3. Employ and delegate to investment advisors, investment counselors, state banks in Oklahoma having trust powers, national banking associations having trust powers, and trust companies having trust powers the discretion to make specific investment decisions provided that the charitable organization shall at all times

maintain ultimate control of the management of the common charitable trust fund.

C. Common charitable trust fund investments.

1. A charitable organization administering a common charitable trust fund shall not commingle its administrative and operating funds with its common charitable trust funds but may place its endowment and funds its governing board has designated as endowment in its common charitable trust funds.

2. Each charitable trust and each other charitable asset shall be deemed to own a proportionate share of each asset of the common charitable trust fund.

3. In determining whether the investment in the common charitable trust fund by the charitable trust is a proper investment for assets held by a fiduciary, the charitable organization acting as fiduciary may consider the common charitable trust fund as a whole and shall not be prohibited from making the investment if any one or more of the assets of the common charitable trust fund are nonincome producing or might not otherwise be considered proper investments for a fiduciary account.

4. The charitable organization administering a common charitable trust fund may limit investments in its common charitable trust funds to investments which are compatible with or further the charitable, religious, educational, or other eleemosynary purposes of the charitable organization administering the common charitable trust fund.

5. The charitable organization administering a common charitable trust fund consisting solely of assets held in an institutional endowment fund, as that term is defined in the Oklahoma Uniform Management of Institutional Endowment Funds Act, may invest such assets in loans upon adequate collateral security to an affiliated charitable organization provided that the charitable organization administering the common charitable trust fund conforms

to the standard for care set forth in the documents creating the trusts or, in the absence of a standard of care in the documents creating the trusts, to the standard of care for fiduciaries as set forth in the Oklahoma Trust Code, the Oklahoma Uniform Institutional Endowment Funds Act, and the Oklahoma Uniform Prudent Investor Act, and provided further that the loan furthers the charitable, religious, educational and other eleemosynary purposes of the affiliated charitable organization.

6. In selecting investments and when making investment decisions pursuant to this subsection, the charitable organization shall be bound by the provisions of this act, the Oklahoma Trust Act, the Oklahoma Uniform Management of Institutional Endowment Funds Act, and the Oklahoma Uniform Prudent Investor Act, unless otherwise provided by law.

7. Nothing in this subsection shall diminish the standard of care of a fiduciary of charitable trust funds or institutional endowment funds.

D. Reporting.

1. The charitable organization administering a common charitable trust fund shall keep records which shall at all times show all necessary and proper matters related to the administration of the common charitable trust fund to include the proportionate interest in the common charitable trust fund of each trust or investment account of an affiliated charitable organization.

2. Within one hundred twenty (120) days following the end of the common charitable trust fund's fiscal year, the charitable organization administering a common charitable trust fund shall make a report of the condition of the common charitable trust fund. This report shall include, as of the date of the report, a list of the investments comprising the common charitable trust fund and the value placed on each investment on such list by the charitable organization. The report shall also include a statement of income

and disbursements since the last report and appropriate comments as to any investment in default as to payment of principal or interest. The reasonable expenses of preparing the report may be charged to the common charitable trust fund.

3. The charitable organization shall send a copy of the latest report required by this subsection annually to each person to whom a regular periodic accounting of the trusts or other charitable assets participating in the common charitable trust fund ordinarily would be rendered, or shall advise each such person annually that the report is available and that a copy will be furnished without charge upon request.

E. Recovery of costs. The charitable organization administering a common charitable trust fund may recover its costs of administration of the common charitable trust fund to include a reasonable charge for administrative overhead and the fees and costs of investment advisors, counselors and agents.

F. Accounting to court. Unless ordered by a court of competent jurisdiction, the charitable organization administering common charitable trust funds is not required to render an accounting to the court with regard to such funds. The charitable organization administering a common charitable trust fund may, by application to the district court, secure approval of such an accounting after such notice, and on such conditions as the court may establish.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 301.8 of Title 60, unless there is created a duplication in numbering, reads as follows:

No private inurement.

1. Employees, officers, and members of the governing board of the charitable organization administering a charitable trust or the common charitable trust fund shall not receive commissions, bonuses, or other remuneration based on the solicitation of charitable trusts or investment of assets in the common charitable trust fund.

2. Employees, officers, and members of the governing board of the charitable organization administering a charitable trust or the common charitable trust fund shall not receive loans, gifts, or other pecuniary benefits from a charitable trust or the common charitable trust fund except that employees and officers of the charitable organization may receive reasonable compensation for their employment as a part of the administrative overhead of the charitable organization administering a charitable trust or the common charitable trust fund.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 301.9 of Title 60, unless there is created a duplication in numbering, reads as follows:

Each year a charitable organization administering charitable trusts shall have prepared a comprehensive annual audit conforming to generally accepted accounting principles which is certified by an independent certified public accounting firm. A copy of this annual audit shall be delivered to the Oklahoma Banking Department within ninety (90) days of receipt of the final audit report by the charitable organization. The Oklahoma Banking Department shall serve only as a depository of the annual audits received by it but the audit reports shall be made available for inspection by the public. Nothing in this provision shall be construed either to authorize the Oklahoma Banking Department to exercise regulatory authority over charitable organizations exercising the powers and rights granted by this act or to create any duty on the Oklahoma Banking Department to enforce any provision of this act, including the obligation of a charitable organization to submit an annual audit.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 301.10 of Title 60, unless there is created a duplication in numbering, reads as follows:

Nothing herein shall be construed to subject a charitable organization to the Oklahoma Open Records Act or the Oklahoma Open Meeting Act, provided however that the annual audit reports which are in the possession of the Oklahoma Banking Department because of having been delivered by charitable organizations pursuant to Section 9 of this act shall be deemed a "record" as defined in the Oklahoma Open Records Act.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 301.11 of Title 60, unless there is created a duplication in numbering, reads as follows:

Subject to Section 13 of this act, the provisions of this act shall apply to charitable trusts and fiduciary relationships of charitable organizations in existence at the time this act takes effect or thereafter established and to resolve the uncertainties surrounding the administration of charitable trusts by charitable organizations and the exercise of the fiduciary powers set forth in this act. Nothing in this act shall govern, control, or restrict the activities of a charitable organization when acting in a nonfiduciary capacity on behalf of any third party.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 301.12 of Title 60, unless there is created a duplication in numbering, reads as follows:

The provisions of Section 161 of Title 60 of the Oklahoma Statutes and of the Oklahoma Trust Act, Sections 175.1 to 175.56, inclusive, of Title 60 of the Oklahoma Statutes which are in conflict with this act are not applicable to charitable trusts. Provided however, with the exception of such provisions that are in conflict, charitable organizations shall be subject to all other provisions of law, now existing and hereafter adopted or adjudicated, which affect fiduciary responsibilities.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 301.13 of Title 60, unless there is created a duplication in numbering, reads as follows:

Charitable organizations administering trusts that are not charitable trusts as defined in this act as of ninety (90) days after the effective date of this act or September 1, 1997, whichever date is the first to occur, shall be permitted to continue administering those trusts until these trusts terminate.

SECTION 14. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 24th day of February, 1997.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1997.

President of the Senate