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Judiciary 3/9, Pass per amendment 3/25

SENATE FILE 347

By DeKOSTER and GAUDINEER
(Kreamer and Pelton)

Passed Senate, Date 4-2-71 Passed House, Date 4-12-71
Vote: Ayes 31 Nays 1 Vote: Ayes 89 Nays 1
Approved 4-26-71

A BILL FOR

1 An Act relating to private foundations and charitable trusts.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. This Act shall apply only to trusts which are
2 private foundations as defined in section five hundred nine
3 (509) of the Internal Revenue Code of 1954, charitable trusts
4 as described in section four thousand nine hundred forty-seven
5 (4947) (a)(1) of the Internal Revenue Code of 1954, or split-
6 interest trusts as described in section four thousand nine
7 hundred forty-seven (4947) (a)(2) of the Internal Revenue
8 Code of 1954. With respect to any such trust created after
9 December 31, 1969, this Act shall apply from such trust's
10 creation. With respect to any such trust created before Jan-
11 uary 1, 1970, this Act shall apply only to such trust's federal
12 taxable years beginning after December 31, 1971.

13 Sec. 2. The trust instrument of each trust to which this
14 Act applies shall be deemed to contain provisions prohibiting
15 the trustee from:

16 1. Engaging in any act of self-dealing, as defined in
17 section four thousand nine hundred forty-one (4941) (d) of
18 the Internal Revenue Code of 1954, which would give rise to
19 any liability for the tax imposed by section four thousand
20 nine hundred forty-one (4941) (a) of the Internal Revenue
21 Code of 1954;

22 2. Retaining any excess business holdings, as defined
23 in section four thousand nine hundred forty-three (4943) (c)
24 of the Internal Revenue Code of 1954, which would give rise
25 to any liability for the tax imposed by section four thousand
26 nine hundred forty-three (4943) (a) of the Internal Revenue
27 Code of 1954;

28 3. Making any investments which would jeopardize the
29 carrying out of any of the exempt purposes of the trust,
30 within the meaning of section four thousand nine hundred
31 forty-four (4944) of the Internal Revenue Code of 1954, so
32 as to give rise to any liability for the tax imposed by section
33 four thousand nine hundred forty-four (4944) (a) of the
34 Internal Revenue Code of 1954; and

35 4. Making any taxable expenditures, as defined in section

1 four thousand nine hundred forty-five (4945) (d) of the
2 Internal Revenue Code of 1954, which would give rise to any
3 liability for the tax imposed by section four thousand nine
4 hundred forty-five (4945) (a) of the Internal Revenue Code
5 of 1954.

6 However, this section shall not apply either to those
7 split-interest trusts or to amounts thereof which are not
8 subject to the prohibitions applicable to private foundations
9 by reason of the provisions of section four thousand nine
10 hundred forty-seven (4947) of the Internal Revenue Code of
11 1954.

12 Sec. 3. The trust instrument of each trust to which this
13 Act applies, except split-interest trusts, shall be deemed
14 to contain a provision requiring the trustee to distribute
15 for the purposes specified in the trust instrument for each
16 taxable year of the trust amounts at least sufficient to avoid
17 liability for the tax imposed by section four thousand nine
18 hundred forty-two (4942) (a) of the Internal Revenue Code
19 of 1954.

20 Sec. 4. Nothing in this Act shall impair the rights and
21 powers of the courts or the attorney general of this state
22 with respect to any trust.

23 Sec. 5. All references to sections of the Internal Revenue
24 Code of 1954 shall include future amendments to such sections
25 and corresponding provisions of future provisions of the
26 Internal Revenue Code.

27 Sec. 6. Nothing in this Act shall limit the power of a
28 person who creates a trust after the effective date of this
29 Act or the power of a person who has retained or has been
30 granted the right to amend a trust created before the effec-
31 tive date of this Act, to include a specific provision in
32 the trust instrument or an amendment to the trust instrument
33 as the case may be, which provides that some or all of the
34 provisions of sections two (2) and three (3) of this Act
35 shall have no application to such trust.

EXPLANATION

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The 1969 amendments to the Internal Revenue Code imposed additional requirements for private foundations, charitable trusts and split-interest trusts if they are to continue to enjoy to the maximum possible extent, the tax advantages available to such private foundations and trusts.

This bill has been drafted to make it unnecessary for each such trust to amend its trust instrument in order to meet the new requirements. This bill accomplishes its purpose by stating in effect that the trust instrument of each such trust shall be deemed to contain the provisions necessary to comply with the federal requirements.

At the same time, it permits a trust which does not wish to comply with the federal requirements, to amend its trust instrument to exclude or make not applicable, the provisions which this Act would otherwise deem to be a part of the trust instrument.

Amend Senate File 347, page 3, by striking all of lines 23 through 26 inclusive and inserting in lieu thereof the following:
Sec. 5. All references to sections of the Internal Revenue Code of 1954 shall mean the Code as amended to and including January 1, 1971.

Filed *Pass 4/2/71*
March 25, 1971

By COMMITTEE ON JUDICIARY