Chapter 128

1965 REPLACEMENT PART

Trusts; Educational Institution Annuity Agreements

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DUTIES OF TRUSTEES AND FIDUCIARIES GENERALLY

128.010 Accountability for faithful execution of trust. All trustees residing or transacting business in Oregon are accountable for the faithful execution of the trust imposed upon them, according to the terms of the trust.

128.020 Investments by fiduciaries; "prudent man" rule. In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of another, a fiduciary shall exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard, a fiduciary is authorized to acquire and retain every kind of property, real, personal or mixed, and every kind of investment, specifically including but not by way of limitation, bonds, debentures and other corporate obligations, and stocks, preferred or common, which men of prudence, discretion and intelligence acquire or retain for their own account.

128.030 Deviation from instrument as to fiduciary's duties and powers not authorized. Nothing contained in ORS 128.020 to 128.050 authorizes any departure from, or variation of, the express terms or limitations set forth in any will, agreement, court order or other instrument creating or defining the fiduciary's duties and powers, but the terms "legal investment" or "authorized investment" or words of similar import, as used in any such instrument, shall mean any investment which is permitted by the terms of ORS 128.020.

128.040 Deviations authorized. Nothing contained in ORS 128.020 to 128.050 restricts the power of a court of proper jurisdiction to permit a fiduciary to deviate from the terms of any will, agreement or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale or management of fiduciary property.

128.050 Fiduciaries under present and future instruments governed. The provisions of ORS 128.020 to 128.050 govern fiduciaries acting under wills, agreements, court orders and other instruments existing on July 5, 1947, or thereafter made.

128.060 Application of income of trust towards maintenance of infants. (1) Where any property is held by trustees in trust for an infant, either for life, or for any greater interest, or for a definite or indefinite time, and whether absolutely, or contingently on his attaining the age of 21 years, or on the occurrence of any event before his attaining that age, or the lapse of time, the trustees may, upon order of a court of competent jurisdiction, pay to the infant's parent or guardian, if any, or otherwise apply for or toward the infant's maintenance, education, or benefit, the income of that property, or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance or education, or not.

(2) The trustees shall accumulate all the residue of that income in the way of compound interest, by investing the same and the resulting income thereof from time to time in securities in which they are by the settlement, if any, or by law authorized to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled thereto under the terms of the trust; provided, however, that the trustees may at any time, if they think fit, apply those accumulations, or any part thereof, as if the same were income arising in the then current year.

(3) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms and provisions of that instrument.

(4) This section applies whether such instrument comes into operation before or after the taking effect hereof.

128.070 Annual report as to trust funds for philanthropic or educational purposes. Except as otherwise provided by law, any trustee having in charge any trust fund or trust funds intended to serve philanthropic or educational purposes shall render annually, not later than December 31, to the probate court of the county wherein the trustee resides, a written report in such form and to such extent as the court may require in order to fully disclose the manner and character of the stewardship of the trustee. But if the trustee is a corporation

or nonresident then the reports required in this section shall be rendered to the probate court of the county wherein the corporation or nonresident transacts its or his chief business concerns in the state. The reports required by this section to be rendered shall be filed with the county clerk of the county where rendered.

128.080 Removal of trustee; filling vacancies; action for trust fund held by trustees removed. Any violation of the terms of any such trust shall render the trustee guilty thereof liable to removal by the probate court and such court may remove any such trustee and appoint a successor therefor and may fill vacancies caused by death or otherwise and may bring action in the name of the State of Oregon to recover any trust fund or trust funds held by any trustee so removed. The failure of any trustee to render the report mentioned in ORS 128.070 shall of itself be sufficient cause for removal by the court.

128.090 and 128.100 [Reserved for expansion]

SUITS TO AUTHORIZE DEALING WITH TRUST PROPERTY

128.110 Suit for decree authorizing dealing with trust property. When any trust in real or personal property, or both, has been or shall be created by will, deed or otherwise, and the trustee or trustees, or any person interested in the trust or any person interested in the property embraced in the trust upon the termination thereof, whether such latter interest is by way of a vested or contingent remainder, executory devise, conditional limitation, shifting use or of any other nature, deems it for the interest of all persons who are or may become interested in the property that the same or any part thereof should be sold, mortgaged, improved, exchanged, leased or otherwise dealt with in any other manner, such party or parties may commence a suit for the purpose of obtaining a decree for the sale, mortgaging, leasing, improving, exchanging of or otherwise dealing with the property, or any portion thereof. Any court of equity in a county in which any of such trust property may be situated shall have jurisdiction to hear the cause of suit and enter the proper decree.

128.120 Parties. All persons who are living at the time of the commencement of the suit, and who are interested, whether as trustees or beneficiaries, in the property under the trust, or who have any vested, contingent, executory or reversionary interest therein at the termination of the trust, shall be made parties defendant, except those who are made parties plaintiff. In determining who are interested parties within the meaning of this section, all persons living at the commencement of the suit who at that time have any apparent interest in the property shall be included, but any person whose name, identity or existence is unknown to the person instituting the proceedings may be made a party and served as provided in ORS 128.140. The provisions of this section shall apply to all subseqquent proceedings in the same suit to obtain subsequent decrees therein.

128.130 Summons; form. The summons in the suit shall be in the usual form, and in addition it shall contain the following notice as and for the succinct statement of the relief demanded, which is required by ORS 15.120: "The object of this suit is to obtain a decree authorizing the trustees of the trust set forth in the complaint herein to sell, mortgage, lease, exchange, improve or otherwise deal with the property embraced in the trust, in accordance with the prayer of the complaint."

128.140 Publication against unknown heirs or parties; conclusiveness of judgment. (1) Any person who may be a necessary or proper party to the suit within the meaning of ORS 128.110 to 128.270, whose name, identity or existence is unknown to the party or parties instituting proceedings thereunder, may be made a party and served by publication as provided in this section. Any such parties shall be designated in the title of the suit as "other unknown parties who have or claim some title, estate, lien or interest in the property described in the complaint herein." If such unknown parties are the heirs of any deceased person, they may be proceeded against under the name and title of "the unknown heirs of (naming the deceased)."

(2) Upon presenting an affidavit to the court or judge, showing to his satisfaction that the heirs of such deceased person or such unknown persons may be proper parties to the suit or action, and that their names, identity or existence cannot with the use of reasonable diligence be ascertained, the court

or judge may grant an order that service of the summons be made on the unknown heirs or unknown persons by publication thereof in the same manner as in suits against nonresident defendants.

(3) All unknown heirs of deceased persons and all unknown persons or parties so served by publication shall have the same rights as are provided by law in case of all other defendants upon whom service is made by publication, and the suit shall proceed against such unknown heirs or unknown person or parties in the same manner and with like effect as against defendants who are named, upon whom service is made by publication, and any such unknown heirs or unknown person or parties who have or claim any right, estate, lien or interest in the property in controversy shall be bound and concluded by the judgment or decree in the suit as effectually as if the suit were brought against the defendant by his or her name and constructive service of summons obtained.

128.150 Decree binding on persons born during suit. All interested persons who are born subsequent to the commencement of the suit shall be deemed parties to the suit by being represented therein by the defendants served, and shall be bound by any decree or decrees therein as fully as if made parties and duly served with process therein.

128.160 Authority conferrable on trustee; continuing jurisdiction of court. The court in the suit has jurisdiction to authorize the trustee to sell, mortgage, lease, improve, exchange or otherwise deal with the property, or any part thereof, whether such power is or is not given to the trustee in the instrument creating the trust, and the court may authorize the trustee to use the proceeds of any sale, mortgage or lease, or other trust funds or property, for the purpose of improving property belonging to the trust estate, or for paying liens upon any part of the trust estate, or for the purpose of reinvesting the proceeds or funds in other property, or for other purposes which may appear beneficial to all concerned. Any additional property so acquired shall be held under the trust and the instrument creating the same for the benefit of all persons interested. All the proceeds or property shall continue to be under the supervision of the court, which may from time to time make such orders and decrees in the suit as may be needed to enable the trustees to deal with the trust property or funds with all the powers of owners, keeping in view the full protection of the interests of all persons, living or unborn, in the property embraced in the trust.

128.170 When relief to be granted. The court shall grant the relief prayed for in the complaint whenever it appears that it is for the best interests of the trust estate, and all persons in any manner interested therein, to grant such relief.

128.180 Contents of decree; security by trustee. The court may in its decree embody such directions relating to the use or investment of the proceeds of the sale or mortgage and such provisions relating to the improvement of any of the trust property as shall seem to it to be most beneficial to all persons interested in the property. It may also require the trustee to give security in case it deems such security necessary for the protection of those interested in the property. When security is so required, it shall be only in such amount as may seem necessary.

128.190 Provision for retaining jurisdiction. The court may by a provision inserted in the decree retain jurisdiction over all the parties and over all the trust property, and may from time to time, upon application made as provided in ORS 128.200 make such further decrees in the suit touching the selling, mortgaging, exchanging, improving, leasing or other dealing with the property belonging to the estate as shall seem to be for the best interest of all persons interested in the property.

128.200 Application for supplemental decree. Any person who is a party to the suit may from time to time apply to the court for an additional decree therein to authorize the further selling, mortgaging, improving, exchanging, leasing or other dealing with the trust property. For this purpose he shall file a complaint in the suit, setting forth the facts showing the need or desirability of the additional selling, mortgaging, improving, exchanging, leasing or other dealing with the property. All the allegations of the original and subsequent complaints and all other proceedings in the suit, including the previous decree or decrees down to the time of filing the new complaint, shall constitute a part of the subsequent complaint without being realleged therein, it being sufficient to set forth therein by reference the

filing of such complaint or complaints and the rendering of such former decree or decrees. Jurisdiction over all the other parties to the suit to render such additional decree shall be obtained in the same manner provided for securing jurisdiction originally in the suit.

128.210 Proceedings. After the service of the summons to obtain a supplemental decree, the proceedings shall continue in all respects the same as the proceedings to obtain the original decree in the suit.

128.220 Additional parties. Any person who is born, or whose interest has become apparent since the original commencement of the suit, and who would have been a necessary party if then living, or if his interest had then been apparent, shall, if living at the time of the subsequent application for power to sell, mortgage, exchange, improve, lease or otherwise deal with additional property, upon his own application or upon the application of any party to the suit, be made a party to the suit by order of court, and shall thereafter be entitled to all the rights of the other parties to the suit, including the service of a summons upon him in case he is not made a party upon his own application.

128.230 Protection of persons under instrument executed pursuant to decree. The grantee, mortgagee, lessee or other party whose instrument is executed under the authority of the decree in a suit pursuant to ORS 128.110 to 128.270 shall be fully protected thereunder without reference to the proper application of any of the moneys or other consideration paid by him under such instrument, and such instrument shall be as effective as if executed by the creator of the trust, and by all the parties to the suit, including unknown parties served as provided in ORS 128.140, and by all persons represented by any such parties.

128.240 Report and confirmation of dealings with trust property. The court shall by order make such provisions for the reporting to the court of the terms of any proposed sale, mortgage, exchange, lease or improvement of or other dealing with the property and for the confirmation thereof as may be necessary for the protection of all interests in the property, and no such proposed sale, mortgage, lease, exchange, improvement or other dealing with the property shall be executed or concluded until the confirmation thereof by the court.

128.250 Application of provisions as to suits in equity. All provisions of law relating to the commencement of and procedure in suits, including the procedure to obtain jurisdiction of the parties, shall apply to the suits authorized by ORS 128.110 to 128.270, except as otherwise provided in ORS 128.110 to 128.270.

128.260 Remedy as cumulative. The remedy provided by ORS 128.110 to 128.270 is cumulative and does not limit or abrogate any inherent power of a court of equity, including the inherent power to authorize the sale, mortgage, exchange, improvement or lease of or otherwise dealing with trust property, or in any manner limit any lawful power, express or implied, conferred upon the trustee by the will, deed or other instrument creating such trust, to sell, mortgage, exchange, improve, lease or otherwise deal with the trust property, or any part thereof.

128.270 Undertaking when suit instituted by party other than trustee; costs and disbursements. Any person, firm or corporation, other than the trustee, instituting proceedings under any of the provisions of ORS 128.110 to 128.270, shall contemporaneously with the filing of the proceedings, file an undertaking with one or more sureties to the effect that he will, if unsuccessful, pay all costs or disbursements that may be decreed against him therein; and if such person, firm or corporation is unsuccessful in the proceedings, the court shall tax the costs and disbursements of the proceedings, together with reasonable attorney's fees, against the unsuccessful party or parties and the surety or sureties on such undertaking.

128.280 to 128.400 [Reserved for expansion]

PREARRANGED FUNERAL PLANS AS TRUSTS

128.410 Payments made under prearranged funeral plans as trust funds. Whenever an agreement not governed by the provisions of ORS chapter 742 is made with any person for the final disposition of a dead human body, wherein the delivery of personal property to be used under a prearranged funeral plan, or the furnishing of any personal property including burial vaults or professional services of a person, firm or corporation in connection therewith, is not

immediately required, all payments and proceeds made by any person, herein named trustor, under the agreement, including interest thereon, shall be and remain trust funds in the name of the person, firm or corporation, herein named trustee, upon a trust for the benefit of the estate of the person for whom such prearranged funeral plan is made, revocable by the trustor, until the death of the person for the benefit of whose estate the funds were paid.
[1953 c.639 §1; 1955 c.524 §1; 1959 c.691 §1; 1965 c.611 §14]

128.412 Exceptions to ORS 128.410. The provisions of ORS 128.410 shall not include:

(1) Agreements to sell or sales of graves, crypts or niches where such graves, crypts or niches are in existence at the time of the sale or agreement to sell and are located in an endowment care cemetery as defined in ORS 97.810.

(2) Agreements to sell or sales of crypts or niches where such crypts or niches are not in existence at the time of the sale or agreement to sell and are to be located in an endowment care cemetery; provided that:

(a) Thirty-five percent of the sales price of such crypts or niches is deposited in accordance with the provisions of ORS 128.415; or

(b) Such endowment care cemetery deposits a bond with the State Treasurer in the amount of $25,000 with a corporate surety. The bond shall be in a company licensed to do business in Oregon and approved by the State Insurance Commissioner in accordance with the provisions of ORS 736.530, 736.535 and 736.540.

(3) Agreements to sell or sales of burial vaults or markers for installation in an endowment care cemetery; provided that:

(a) Sixty-six and two-thirds percent of the sale price of such vaults or markers is deposited in accordance with the provisions of ORS 128.415;

(b) Such endowment care cemetery is at the time of the sale or agreement to sell and for not less than 24 months before such sale or agreement has been in continuous operation as an endowment care cemetery and has assumed the obligation to supply and install the vault or marker and maintain it as part of its endowment care program; and

(c) Such endowment care cemetery deposits a bond with the State Treasurer in the amount of $10,000 with a corporate or personal surety. Such personal surety shall submit a sworn financial statement as of the date of the bond and annually thereafter as long as the bond is in effect to insure the availability of the total amount of the sale price when required. The bond shall be administered by the State Insurance Commissioner in accordance with the provisions of ORS 736.530, 736.535 and 736.540.
[1959 c.691 §2]

128.415 Deposit of trust funds. (1) All such trust funds shall be deposited by the person, firm or corporation with a financial institution in the State of Oregon carrying deposit insurance, within 30 days after receipt thereof, and shall be held in a separate account in the name of the depositor followed by the words "trustee of funeral plan trust," in trust for the person for whom such prearranged funeral plan is made until said trust fund is released under any of the following conditions:

(a) Upon proof of the death of such person, the financial institution shall release such trust fund to the trustee.

(b) Upon presentation of the written request of the trustor, the financial institution shall release such trust fund as directed in such request.

(c) Upon furnishing proof of the death, dissolution, insolvency or merger with another of the trustee, the financial institution shall release such trust fund to the trustor.

(2) The financial institution shall in no way be responsible for the fulfillment of any prearranged funeral plan, excepting only such financial institution shall release said trust fund. as provided in this section.
[1953 c.639 §2; 1955 c.524 §2; 1959 c.691 §3]

128.420 to 128.500 [Reserved for expansion]

EMPLOYES' TRUSTS

128.510 Definitions. As used in ORS 128.520, "employes' trust" means a trust of real or personal property forming part of a pension, profit sharing, stock bonus, annuity, disability or death benefit plan of an employer or group of employers for the benefit of his or their employes, to which contributions are made by such employers or employes, or both, for the purpose of distributing income or principal, or both, to such employes or the beneficiaries of such employes.
[1955 c.586 §1]

128.520 Employes' trust may be in perpetuity; accumulation of income. An employes' trust may continue in perpetuity or for such time as may be necessary to accomplish the purpose for which it is created, and is not invalid as violating any rule of law against perpetuities or the suspension of the power of alienation of title to property. The income from any property held in an employes' trust may be permitted to accumulate in accordance with the terms of such trust, and the plan of which such trust forms a part, for such time as may be necessary to accomplish the purpose for which such trust is created.
[1955 c.586 §2]

128.530 to 128.600 [Reserved for expansion]

UNIFORM SUPERVISION OF TRUSTEES FOR CHARITABLE PURPOSES ACT

128.610 Short title. ORS 61.972 and 128.610 to 128.750 may be cited as the Uniform Supervision of Trustees for Charitable Purposes Act.
[1963 c.583 §1]

128.620 Definitions. As used in ORS 61.972 and 128.610 to 128.750:

(1) "Charitable corporation" means any nonprofit corporation organized under the laws of this state for charitable or eleemosynary purposes and any similar foreign corporation doing business or holding property in this state for such purposes. For the purposes of ORS 61.972 and 128.610 to 128.750, the mere making of grants or donations to institutions or beneficiaries within the State of Oregon, or the investigation of applicants for such grants or donations, shall not constitute doing business in this state.

(2) "Trustee" means:

(a) Any individual, group of individuals, corporation or other legal entity holding property in trust pursuant to any charitable trust;

(b) Any corporation which has accepted property to be used for a particular charitable corporate purpose as distinguished from the general purposes of the corporation; and

(c) A corporation formed for the administration of a charitable trust, pursuant to the directions of the settlor or at the instance of the trustee.
[1963 c.583 §§3, 4]

128.630 Application of ORS 61.972 and 128.610 to 128.750. (1) ORS 61.972 and 128.610 to 128.750 apply to all charitable corporations and trustees holding property for charitable purposes over which the state or the Attorney General has enforcement or supervisory powers.

(2) ORS 61.972 and 128.610 to 128.750 shall apply regardless of any contrary provisions of any instrument.
[1963 c.583 §§2, 14]

128.640 Exemptions from application of ORS 61.972 and 128.610 to 128.750. ORS 61.972 and 128.610 to 128.750 do not apply to 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 governmental subdivisions, to any religious corporation sole or other religious corporation or organization which holds property for religious purposes, or to any officer, director or trustee thereof who holds property for like purposes, to a cemetery corporation regulated under ORS 61.755 to 61.775, or to a charitable corporation organized and operated primarily as a religious organization, educational institution or hospital.
[1963 c.583 §5]

128.650 Register of charitable corporations and trustees; authority of Attorney General to maintain register. The Attorney General shall establish and maintain a register of charitable corporations and trustees subject to ORS 61.972 and 128.610 to 128.750 and of the particular trust or other relationship under which they hold property for charitable purposes and, to that end, may conduct whatever investigation is necessary, and shall obtain from public records, court officers, taxing authorities, trustees, and other sources, whatever information, copies of instruments, reports and records are needed for the establishment and maintenance of the register.
[1963 c.583 §6]

128.660 Filing of articles of incorporation or other instrument with Attorney General. Every charitable corporation and trustee subject to ORS 61.972 and 128.610 to 128.750 who has received property for charitable purposes shall file with the Attorney General, within six months after receiving possession or control of such property, a copy of the articles of incorporation or other instrument providing for his title, powers or

duties. If any part of the income or principal is authorized or required to be applied to a charitable purpose on September 2, 1963, the filing shall be made within six months thereafter.
[1963 c.583 §7]

128.670 Filing of reports; authority of Attorney General relating to reports. (1) Except as otherwise provided, every charitable corporation and trustee subject to ORS 61.972 and 128.610 to 128.750 shall, in addition to filing copies of the instruments previously required, file with the Attorney General periodic written reports, under oath, setting forth information as to the nature of the assets held for charitable purposes and the administration thereof by the corporation or trustee.

(2) The Attorney General may classify trusts and other relationships concerning property held for a charitable purpose as to purpose, nature of assets, duration of the trust or other relationship, amount of assets, amounts to be devoted to charitable purposes, nature of trustee, or otherwise, and may establish different rules for the different classes as to time and nature of the reports required to the ends that:

(a) He shall receive reasonably current, periodic reports as to all charitable trusts or other relationships of a similar nature, which will enable him to ascertain whether they are being properly administered; and

(b) Periodic reports shall not unreasonably add to the expense of the administration of charitable trusts and similar relationships.

(3) The Attorney General may suspend the filing of reports as to a particular charitable trust or relationship for a reasonable, specifically designated time upon written application of the trustee filed with the Attorney General 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 periodic reports are not required for proper supervision by his office.

(4) A copy of an account filed by the trustee in any court having jurisdiction of the trust or other relationship, if the account substantially complies with the rules and regulations of the Attorney General, may be filed as a report required by this section.

(5) The first report for a trust or similar relationship hereafter established, unless the filing thereof is suspended as provided in subsection (3) of this section, shall be filed not later than four months and 15 days following the close of the first calendar or fiscal year in which any part of the income or principal is authorized or required to be applied to a charitable purpose. If any part of the income or principal of a trust previously established is authorized or required to be applied to a charitable purpose on September 2, 1963, the first report shall be filed at the close of the calendar or fiscal year in which the trust was registered with the Attorney General or not later than four months and 15 days following the close of such calendar or fiscal period.

(6) A trustee filing reports pursuant to ORS 61.972 and 128.610 to 128.750 is exempt from the provisions of ORS 128.070.
[1963 c.583 §8]

128.680 Investigatory authority of Attorney General. The Attorney General may investigate transactions and relationships of corporations and trustees subject to ORS 61.972 and 128.610 to 128.750 for the purpose of ascertaining whether or not the purposes of the corporation or trust are being carried out in accordance with the terms and provisions of the articles of incorporation or other instrument. He may require any agent, trustee, fiduciary, beneficiary, institution, association or corporation, or other person to appear, at a named time and place, in the county designated by the Attorney General, where the person resides or is found, 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.
[1963 c.583 §10]

128.690 Order for attendance by Attorney General; effect. When the Attorney General requires the attendance of any person, as provided in ORS 128.680, 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 or certified mail to the person at least 14 days before the date fixed for attendance. Such order shall have the same force and effect as a subpena 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 trust may be in existence or administered or the person receiving it

resides or is found, in the same manner as though the notice were a subpena. 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.
[1963 c.583 §11]

128.700 Material filed with Attorney General as public record. The register, copies of instruments, and the reports filed with the Attorney General shall be open to public inspection. The Attorney General shall withhold from public inspection any instrument or portion of such instrument so filed whose content is not exclusively for charitable purposes.
[1963 c.583 §12]

128.710 Enforcement; jurisdiction of court. (1) The Attorney General may institute appropriate proceedings to secure compliance with ORS 61.972 and 128.610 to 128.750 and to invoke the jurisdiction of the court. The powers and duties of the Attorney General provided in ORS 61.972 and 128.610 to 128.750 are in addition to his existing powers and duties.

(2) Nothing in ORS 61.972 and 128.610 to 128.750 shall impair or restrict the jurisdiction of any court with respect to any of the matters covered by it, except that no court shall have jurisdiction to modify or terminate any trust of property for charitable purposes unless the Attorney General is a party to the proceedings.
[1963 c.583 §13]

128.720 Copies of certain documents to be provided Attorney General. Every person who offers for probate any instrument which establishes a testamentary trust of property for charitable purposes or who records in any county any inter vivos transfer of property for charitable purposes shall furnish a copy of such document to the Attorney General. The custodian of the records of a court having jurisdiction of probate matters or of charitable trusts shall furnish such copies of papers, records and files of his office relating to the subject of ORS 61.972 and 128.610 to 128.750 as the Attorney General requires.
[1963 c.583 §15]

128.730 List of certain claims for exemptions from taxation to be provided Attorney General. Every officer, agency, board or commission of this state, receiving applications for exemption from taxation of any corporation, charitable trust or similar relationship in which the corporation or trustee is subject to ORS 61.972 and 128.610 to 128.750 shall annually file with the Attorney General a list of all applications received during the year.
[1963 c.583 §16]

128.740 Disallowance of tax exemptions for failure to file reports; reinstatement of exemptions. (1) No tax exemption under ORS 317.080 shall be allowed to any charitable corporation or trustee subject to ORS 61.972 and 128.610 to 128.750 for any year or years for which it fails to file with the Attorney General, on or before the due date, any registration or periodic report required by ORS 61.972 and 128.610 to 128.750.

(2) The exemption shall be disallowed under this section only after the Attorney General has notified the State Tax Commission in writing that the charitable corporation or trustee subject to the provisions of ORS 61.972 and 128.610 to 128.750 has failed to file any such registration or periodic report on or before the due date thereof.

(3) If an exemption is disallowed under this section, such exemption may be reinstated when the registration or periodic reports are filed. However, any such charitable corporation or trustee shall pay the minimum tax imposed by ORS chapter 317 for any year or years for which its exemption was disallowed under this section.

(4) No exemption shall be disallowed under this section for income years commencing before January 1, 1964.
[1963 c.583 §17]

128.750 Uniformity of interpretation. The Uniform Supervision of Trustees for Charitable Purposes Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.
[1963 c.583 §19]

EDUCATIONAL INSTITUTION ANNUITY AGREEMENTS

128.810 Definitions. As used in ORS 128.810 to 128.890, unless the context requires otherwise:

(1) "Commissioner" means the State Insurance Commissioner.

(2) "Educational institution" means a private nonprofit college or university that:

(a) Is accredited by the Northwest Association of Colleges and Secondary Schools; and

(b) Has been regularly operated for 20 years.

(3) "Transferor" means a person who makes a transfer under ORS 128.820.
[1959 c.599 §1]

128.820 Educational institution may receive transfer of money or property conditioned upon institution's paying annuity or life income. (1) Subject to the approval of the commissioner under ORS 128.840, an educational institution may receive a transfer of money or property conditioned upon its agreement to pay an annuity or life income to the transferor or his nominee, if the institution holds a certificate of authority issued under subsection (3) of this section.

(2) Application for a certificate of authority shall be made in compliance with the rules of the commissioner. The commissioner may by his rules require such information relating to an educational institution as the commissioner considers desirable in the administration and enforcement of ORS 128.810 to 128.890.

(3) If the commissioner finds that the application is in order, that the educational institution is eligible to receive transfers under ORS 128.810 to 128.890 and that the institution has complied with subsection (4) of this section, the commissioner shall issue a certificate of authority to the applicant upon payment of the fee required by ORS 128.890.

(4) Each educational institution applying for a certificate of authority shall designate one or more of its officers as its agent or agents to execute and issue agreements for the payment of an annuity or life income.
[1959 c.599 §§2, 3, 4, 5]

128.830 Contents of agreement form. Each annuity agreement form shall include the following information:

(1) The value of the property to be transferred.

(2) The amount of the annuity or the basis for determining the life income agreed to be paid to the transferor or his nominee.

(3) The manner in which and the intervals at which payment is to be made.

(4) The age, in years, at or nearest the date of the agreement, of the transferor during whose life payment is to be made.

(5) The reasonably commensurate value as of the date of the agreement of the benefits thereby created. This value shall not exceed by more than 15 percent the net single premium for the benefits, determined in accordance with the standard of valuation set forth in ORS 128.850.
[1959 c.599 §7]

128.840 Obtaining approval of agreement forms. (1) An institution shall file with the commissioner a copy of each form of agreement proposed to be used relating to a transfer. Within 10 days the commissioner shall approve or disapprove the proposed agreement forms and the commissioner shall notify the educational institution of his decision as soon as practicable.

(2) No educational institution shall amend an approved agreement form until a copy of the proposed amendment has been filed with and approved by the commissioner in the manner prescribed by subsection (1) of this section.
[1959 c.599 §6]

128.850 Reserve funds. (1) Every educational institution that has accepted one or more transfers under ORS 128.810 to 128.890 shall maintain a separate and distinct trust fund as a reserve fund adequate to meet the future payments under all outstanding annuity or life income agreements. The reserve fund shall in no event be less than an amount computed on the basis of the transfers to which it relates in accordance with the standard of valuation based upon the 1937 Standard Annuity Mortality Table with interest at two and one-half percent per year or, if permitted by the rules of the commissioner, another table of mortality derived from recent annuity experience with interest not higher than is currently yielded on safe securities.

(2) If an educational institution fails to establish and maintain adequate reserve funds required by this section, the commissioner shall revoke the institution's certificate of authority.
[1959 c.599 §8]

128.860 Extent of application of General Insurance Law; reports. (1) Except as provided by subsection (2) of this section, every educational institution holding a certificate of authority is exempt from the General Insurance Law and from the other statutes listed in subsection (2) of ORS 736.005.

(2) Every educational institution holding a certificate of authority is subject to ORS

736.105, 736.545 to 736.560, 736.570 and 738.430 to the same extent as a domestic insurance company.

(3) Every educational institution holding a certificate of authority shall make an annual report of its business relating to annuities and life income plans in such form as the commissioner requires.
[1959 c.599 §11]

128.870 Applicability of Administrative Procedure Act. (1) The commissioner shall issue rules in compliance with ORS 183.310 to 183.510 to carry out ORS 128.810 to 128.890.

(2) Except as otherwise specifically provided in ORS 736.105, all proceedings under ORS 128.810 to 128.890 shall be conducted in compliance with ORS 183.310 to 183.510.
[1959 c.599 §12]

128.880 Procedure if institution's authority revoked or suspended. If an educational institution's certificate of authority is revoked or suspended, the commissioner may bring a proceeding under ORS 738.450 to 738.470 to take possession of so much of the institution's property as is necessary to guarantee payments to all of its transferors under agreements pursuant to ORS 128.810 to 128.890 then in effect.
[1959 c.599 §9]

128.890 Fees. (1) The commissioner shall require payment of a fee of $10 for issuing a certificate of authority to an educational institution.

(2) All fees collected by the commissioner under this section shall be paid to the State Treasurer under ORS 736.525.
[1959 c.599 §10]

128.900 to 128.980 [Reserved for expansion]

PENALTIES

128.990 Penalties. Violation of any of the provisions of ORS 128.410 or 128.415 is punishable, upon conviction, by a fine not exceeding $1,000, or imprisonment in the county jail not exceeding one year, or both.
[1953 c.639 §3]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on November 15, 1965.

Sam R. Haley
Legislative Counsel