Chapter 128

1981 REPLACEMENT PART

Trusts

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UNIFORM TRUSTEES' POWERS ACT

128.003 Short title. ORS 128.003 to 128.045 may be cited as the "Uniform Trustees' Powers Act." [1977 c 614 §10]

128.005 Definitions for ORS 128.003 to 128.051 and 128.065. As used in ORS 128.003 to 128.051 and 128.065:

(1) "Trust" means an express trust created by a trust instrument, including a will, whereby a trustee has the duty to administer a trust asset for the benefit of a named or otherwise described income or principal beneficiary, or both; "trust" does not include a resulting or constructive trust, a business trust which provides for certificates to be issued to the beneficiary, an investment trust, a voting trust, a security instrument, a trust created by the judgment or decree of a court, a liquidation trust, or a trust for the primary purpose of paying dividends, interests, interest coupons, salaries, wages, pensions or profits, or employe benefits of any kind, an instrument wherein a person is nominee or escrowee for another, a trust created in deposits in any financial institution, or other trust the nature of which does not admit of general trust administration.

(2) "Trustee" means an original, added, or successor trustee and includes the state, or any agency thereof, when it is acting as the trustee of a trust as defined in this section. [1977 c.614 §1]

128.007 Powers of trustee conferred by trust or by law. (1) The trustee has all powers conferred upon him by the provisions of ORS 128.003 to 128.051 and 128.065 except as is otherwise provided by statute. However, the trust instrument may confer powers in addition to those conferred under ORS 128.003 to 128.051 and 128.065 or, by specific reference, prohibit the exercise of any power conferred under ORS 128.003 to 128.051 and 128.065.

(2) An instrument which is not a trust under ORS 128.005 (1) may incorporate any part of ORS 128.003 to 128.051 and 128.065 by reference. [1977 c 614 §2]

128.009 Powers of trustee. (1) From time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform, without court authorization, every act which a prudent person would perform for the purposes of the trust including but not limited to the powers specified in subsection (3) of this section.

(2) In the exercise of powers including the powers granted by ORS 128.003 to 128.051 and 128.065, a trustee has a duty to act with due regard to obligation as a fiduciary.

(3) A trustee has the power, subject to subsections (1) and (2) of this section:

(a) To collect, hold, and retain trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made;

(b) To receive additions to the assets of the trust;

(c) To continue or participate in the operation of any business or other enterprise, and to effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;

(d) To acquire an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest;

(e) To invest and reinvest trust assets in accordance with the provisions of the trust or as provided by law;

(f) To deposit trust funds in a bank, including a bank operated by the trustee when adequately secured;

(g) To acquire or dispose of an asset, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon a trust asset or any interest therein; and to encumber, mortgage, or pledge a trust asset for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

(h) To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;

(i) To subdivide, develop, or dedicate land to public use; or to make or obtain the vacation of plats and adjust boundaries; or to adjust differences in valuation on exchange or partition by giving or receiving consideration; or to dedicate easements to public use without consideration;

(j) To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust;

(k) To enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(L) To grant an option involving disposition of a trust asset, or to take an option for the acquisition of any asset;

(m) To vote a security, in person or by general or limited proxy;

(n) To pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(o) To sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(p) To hold a security in the name of a nominee or in other form without disclosure of the trust, so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the stock so held;

(q) To insure the assets of the trust against damage or loss, and the trustee against liability with respect to third persons;

(r) To borrow money to be repaid from trust assets or otherwise; to advance money for the protection of the trust, and for all expenses, losses, and liability sustained in the administration of the trust or because of the holding or ownership of any trust assets, for which advances with any interest the trustee has a lien on the trust assets as against the beneficiary;

(s) To pay or contest any claim; to settle a claim by or against the trust by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the trust to the extent that the claim is uncollectible;

(t) To pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust;

(u) To allocate items of income or expense to either trust income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;

(v) To pay any sum distributable to a beneficiary under legal disability, without liability to the trustee, by paying the sum to the beneficiary or by paying the sum for the use of the beneficiary to any person having custody of the beneficiary under legal disability or to any person who, or corporation which, shall be furnishing maintenance, support or education to the beneficiary who is under legal disability;

(w) To effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation;

(x) To employ persons, including attorneys, auditors, investment advisors, or agents to advise or assist the trustee in the performance of administrative duties; to act without independent investigation upon their recommendations;

(y) To apply for and qualify all or any part of the property in the trust estate for special governmental programs, tax or otherwise, which may benefit the trust estate or any of the beneficiaries thereof;

(z) To prosecute or defend actions, claims, or proceedings for the protection of trust assets and of the trustee in the performance of duties; and

(aa) To execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the trustee.

(4) Subject to subsections (1) and (2) of this section, if at any time the trustee has determined that the market value of a trust is below $10,000 and that, in relation to the costs of administration thereof, the continuance of the trust pursuant to its existing terms, will defeat or substantially impair the accomplishment of the purposes of the trust, the trustee may, in its sole discretion, terminate the trust and distribute the trust property, including principal and undistributed income, to the beneficiaries in a manner which conforms as nearly as possible to the intention of the trustor. The trustee may enter into such an agreement or make such other provisions that it deems necessary or appropriate to protect the interests of the beneficiaries and to carry out the intent and purpose of the trust. The existence of spendthrift or similar protective provisions in the trust shall not make this section inapplicable. [1977 c 614 §3; 1981 c 915 §1]

128.010 [Renumbered 128 055]

128.015 Transfer of trustee's office; resignation of trustee. Unless otherwise provided in the trust instrument, while continuing to act as a trustee, the trustee shall

not transfer his office to another or delegate the entire administration of the trust to a cotrustee or another. Upon approval of a court of competent jurisdiction a trustee may resign. [1977 c 614 §4]

128.020 [Amended by 1969 c 267 §1, renumbered 128 057]

128.021 Power of court to relieve trustee from restrictions on trustee's power. ORS 128.003 to 128.051 and 128.065 do not affect the power of a court of competent jurisdiction for cause shown and upon petition of the trustee or affected beneficiary and upon appropriate notice to the affected parties to relieve a trustee from any restrictions on his power that would otherwise be placed upon him by the trust or by ORS 128.003 to 128.051 and 128.065. [1977 c 614 §5]

128.025 [1969 c 267 §3, renumbered 128 061]

128.026 Powers of joint trustees; liability. (1) Any power vested in three or more trustees may be exercised by a majority, but a trustee who has not joined in exercising a power is not liable to the beneficiaries or to others for the consequences of the exercise; and a dissenting trustee is not liable for the consequences of an act in which he joins at the direction of the majority of the trustees, if he expressed his dissent in writing to any of his cotrustees at or before the time of the joinder.

(2) If two or more trustees are appointed to perform a trust, and if any of them is unable or refuses to accept the appointment, or, having accepted, ceases to be a trustee, the surviving or remaining trustees shall perform the trust and succeed to all the powers, duties, and discretionary authority given to the trustees jointly.

(3) This section does not excuse a cotrustee from liability for failure either to participate in the administration of the trust or to attempt to prevent a breach of trust. [1977 c.614 §6]

128.030 [Amended by 1977 c.614 §13, renumbered 128.065]

128.031 Protection of third persons dealing with trustee. With respect to a third person dealing with a trustee or assisting a trustee in the conduct of a transaction, the existence of trust powers and their proper exercise by the trustee may be assumed without inquiry. The third person is not bound to inquire whether the trustee has power to act or is properly exercising the power; and a third person, without actual knowledge that the trustee is exceeding his powers or improperly exercising them, is fully protected in dealing with the trustee as if the trustee possessed and properly exercised the powers he purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the trustee. [1977 c 614 §7]

128.035 Application of ORS 128.003 to 128.051. Except as specifically provided in the trust, the provisions of ORS 128.003 to 128.051 and 128.065 apply to any trust established before or after October 4, 1977, and to any trust asset acquired by the trustee before or after October 4, 1977. [1977 c 614 §8]

128.040 [Repealed by 1977 c 614 §14]

128.041 Uniformity of interpretation. ORS 128.003 to 128.051 and 128.065 shall be construed to effectuate its general purpose to make uniform the law of those states which enact it. [1977 c 614 §9]

128.045 Severability. If any provision of ORS 128.005 to 128.051 and 128.065 or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of ORS 128.005 to 128.051 and 128.065 which can be given effect without the invalid provision or application, and to this end the provisions of ORS 128.005 to 128.051 and 128.065 are severable. [1977 c.614 §11]

128.050 [Repealed by 1977 c 614 §14]

128.051 Judicial review of certain acts of trustee; remedy for payment of excessive compensation. On petition of an interested person, after notice to all interested persons, the propriety of employment of any person by a trustee including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the trustee for his own services, may be reviewed by the court. Any person who has received excessive compensation from a trust for services rendered may be ordered to make appropriate refunds. [1977 c 614 §12]

DUTIES OF TRUSTEES AND FIDUCIARIES GENERALLY

128.055 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. [Formerly 128 010]

128.057 Investments by fiduciaries; standard of prudent person. (1) 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 persons 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 or government obligations, preferred or common stocks, interests in common trust funds, securities of any open-end or closed-end management type investment company or investment trust, and, subject to subsection (3) of this section, contracts of life insurance, which persons of prudence, discretion and intelligence acquire or retain for their own account.

(2) "Contracts of life insurance," as used in this section, means contracts of life insurance as defined by ORS 731.170 and issued by authorized insurers as defined by ORS 731.066.

(3) A fiduciary shall not invest more than 25 percent of the fiduciary property in such contracts of life insurance unless the fiduciary has express authority from the trustor to do so. [Amended by 1969 c 267 §1; formerly 128 020; 1979 c.382 §1]

128.060 [Amended by 1973 c.827 §19; repealed by 1977 c 614 §14]

128.061 [1969 c 267 §3; formerly 128.025; repealed by 1979 c 382 §2]

128.065 Deviation from instrument as to fiduciary's duties and powers not authorized. Nothing contained in ORS 128.057 to 128.065 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 128.057. [Formerly 128 030]

128.070 [Repealed by 1973 c 506 §46]

128.075 [1973 c 367 §16; renumbered 128 595]

128.080 [Amended by 1973 c 177 §2; repealed by 1973 c 506 §46]

128.085 Limitations on trustee's administration of "private foundation" trust. Notwithstanding any provision to the contrary in the governing instrument or any law of this state, the trustee of a trust which is a "private foundation" as defined in section 509 of the Internal Revenue Code of 1954 (including nonexempt charitable trusts as defined in section 4947 (a) (1) of the Internal Revenue Code of 1954) shall not engage in any act of self dealing as defined in section 4941 (d) of the Internal Revenue Code of 1954; shall distribute its income and, when necessary, amounts from principal at such time and in such manner as not to subject the trust to the taxes on failure to distribute income imposed by section 4942 of the Internal Revenue Code of 1954; shall not retain any excess business holdings as defined in section 4943 (c) of the Internal Revenue Code of 1954; shall not make any investments in such manner as to subject the trust to the taxes on investments which jeopardize charitable purpose imposed by section 4944 of the Internal Revenue Code of 1954; and shall not make any taxable expenditures as defined in section 4945 (d) of the Internal Revenue Code of 1954. [1971 c.197 §1]

128.090 Limitations on trustee's administration of "split-interest" trust. (1) Notwithstanding any provision to the contrary in the governing instrument or any law of this state, the trustee of a trust which is a "split-interest trust" as defined in section 4947 (a) (2) of the Internal Revenue Code of 1954, shall not engage in any act of self dealing as defined in section 4941 (d) of the Internal Revenue Code of 1954; shall not retain any excess business holdings as defined in section 4943 (c) of the Internal Revenue Code of 1954, unless the trust is one exempted from the requirements of section 4943 by section 4947 (b) (3) of the Internal Revenue Code of 1954;

shall not make any investment in such manner as to subject the trust to the taxes on investments which jeopardize charitable purpose imposed by section 4944 of the Internal Revenue Code of 1954, unless the trust is one exempted from the requirements of section 4944 by section 4947 (b) (3) of the Internal Revenue Code of 1954; and shall not make any taxable expenditures as defined in section 4945 (d) of the Internal Revenue Code of 1954.

(2) This section shall not apply with respect to:

(a) Any amounts payable under the terms of a trust to income beneficiaries, unless a deduction was allowed under section 170 (f) (2) (B), section 2055 (e) (2) (B), or section 2522 (c) (2) (B) of the Internal Revenue Code of 1954;

(b) Any amounts in trust other than amounts for which a deduction was allowed under section 170, section 545 (b) (2), section 556 (b) (2), section 642 (c), section 2055, section 2106 (a) (2) or section 2522 of the Internal Revenue Code of 1954, if such other amounts are segregated from amounts for which no deduction was allowable; or

(c) Any amounts transferred in trust before May 27, 1969. [1971 c.197 §2]

128.095 Trustee may amend governing instrument of "private foundation" or "split-interest" trust with prior consent of Attorney General and benefited organizations. The trustee of a trust which is a private foundation to which ORS 128.085 applies or a split-interest trust to which ORS 128.090 applies may, with the prior consent of the Attorney General, amend the terms of the governing instrument to the extent necessary (1) to assure conformity of the governing instrument with the requirements for exemption from the taxes imposed by sections 4941 to 4945 of the Internal Revenue Code of 1954, including amendments which broaden, extend, reduce or limit the charitable purposes for which the trust is administered, or (2) to terminate the status of the trust as a private foundation in a manner described in section 507 (b) (1) of the Internal Revenue Code of 1954. Prior to giving his consent, the Attorney General shall determine that the proposed amendments are necessary or appropriate to achieve the charitable purposes of the trust. If the trust is for the exclusive benefit of one or more charitable organizations, the trustee shall also obtain the prior consent of such organizations prior to amending the terms of the governing instrument in the manner set forth in this section. [1971 c 197 §3]

128.100 Authority of fiduciary to deposit securities in clearing corporation. (1) Notwithstanding any other provision of law, any fiduciary holding securities in his fiduciary capacity, any bank or trust company holding securities as a custodian or managing agent, and any bank or trust company holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit of the securities in a clearing corporation as defined in ORS 78.1020 (4). When the securities are deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of the clearing corporation with any other securities of the same class deposited in the clearing corporation by any person regardless of the ownership of the securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of the fiduciary and the records of the bank or trust company acting as custodian, as managing agent or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities are deposited. Ownership of, and other interests in, the securities may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing the securities. A bank or trust company depositing securities pursuant to this section shall be subject to the rules and regulations as, in the case of state-chartered institutions, the state Superintendent of Banks and, in the case of national banking associations, the comptroller of the currency may from time to time issue. A bank or a trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities deposited by the bank or trust company in the clearing corporation for the account of the fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of the fiduciary's account or on demand by the attorney for the party, certify in writing to the party the securities deposited by the fiduciary in the clearing corporation for its account as the fiduciary.

(2) This section shall apply to any fiduciary holding securities in his fiduciary capacity, and to any bank or trust company holding securities as a custodian, managing agent or custodian for a fiduciary, acting on October 5,

1973, or who thereafter may act regardless of the date of the agreement, instrument or court order by which it is appointed and regardless of whether or not the fiduciary, custodian, managing agent or custodian for a fiduciary owns capital stock of the clearing corporation. [1973 c 365 §§1, 2]

128.110 [Amended by 1979 c.284 §108, repealed by 1981 c 66 §8]

Note: Section 9, chapter 66, Oregon Laws 1981, provides

Sec. 9. The repeal of statute sections [ORS 128 110 to 128 270] by section 8 of this Act does not affect

(1) Court orders or decrees, including decrees providing for court retention of jurisdiction for the purpose of supplemental proceedings, entered under those statute sections before and in effect on the effective date of this Act [November 1, 1981], which shall continue to be subject to those statute sections on and after the effective date of this Act.

(2) Proceedings commenced under those statute sections before and pending on the effective date of this Act, which shall be conducted on and after the effective date of this Act as provided in those statute sections

PROCEEDINGS TO MODIFY TRUST ADMINISTRATION

128.115 Definitions for ORS 128.125 to 128.175. As used in ORS 128.125 to 128.175, "trust" and "trustee" have the meanings set forth in ORS 128.005. [1981 c 66 §1]

128.120 [Repealed by 1981 c 66 §8]

128.125 Authority of beneficiary to require trustee to prepare accounting of trust income, expenditures and assets; equitable remedy for failure by trustee to perform. (1) As used in this section, "beneficiary" means any vested income or remainder beneficiary of a trust, determined as of the date the request described in this section is received by the trustee, or the guardian or conservator of such beneficiary or the personal representative of a deceased beneficiary.

(2) A beneficiary may request in writing that the trustee of a trust for the benefit of the beneficiary prepare either or both of the following:

(a) An itemized statement of receipts and disbursements of income and principal of the trust during the 12-month period ending on the last day of the month preceding the month in which the request is received by the trustee, or if longer, for the entire period since the last such statement prepared by the trustee.

(b) An itemized statement of all property held by the trustee as of the date the request is received by the trustee.

(3) If no statement described in subsection (2) of this section has previously been prepared by the trustee for a period ending within the 12-month period described in paragraph (a) of subsection (2) of this section, the trustee shall prepare the requested statement and mail or deliver a written copy thereof to the requesting beneficiary If such a statement has previously been prepared by the trustee for a period ending within the 12-month period described in paragraph (a) of subsection (2) of this section, the trustee shall mail or deliver a written copy of the prepared statement to the requesting beneficiary.

(4) Subsections (2) and (3) of this section do not prevent a trustee from preparing and providing beneficiaries with more frequent statements of receipts and disbursements and of property held by the trustee.

(5) If a trustee fails within a reasonable time to provide a requested statement as provided in subsection (3) of this section, the requesting beneficiary may petition a court with jurisdiction to grant equitable remedies in any county where trust assets are located or where the trustee resides to require the trustee to provide the statement. Upon notice to the trustee, and upon such hearing or opportunity to object as the court shall require, the court may order the trustee to provide the statement. The procedure, pleading and notice requirements for the proceeding shall be the same as provided in ORS 111.205 to 111.235 for petition to a probate court by a party interested in the estate of a decedent, and the court shall have all of the powers of the probate court in such proceedings in the probate court. [1981 c 66 §2; repealed by 1981 c.66 8]

128.130 [Amended by 1979 c 284 §109]

128.135 Authority of beneficiary to obtain equitable remedies to modify administration of trust; effect of proceeding; authority of court. (1) As used in this section, ORS 128.145 and 128.155, "beneficiary" means any vested or contingent beneficiary of a trust, determined as of the date of the petition, or the guardian or conservator of such beneficiary or the personal representative of a deceased beneficiary.

(2) Any beneficiary of a trust or the trustee thereof may petition a court with jurisdiction to grant equitable remedies in any county where trust assets are located or where the

trustee resides for the purpose of any of the following:

(a) Requiring, reviewing or approving an accounting of a trustee of the trust.

(b) Accepting a resignation of the trustee or appointing a successor trustee or an additional trustee.

(c) Obtaining authority, approval or instructions on any matter concerning the interpretation of the trust or the administration, settlement or distribution of the trust estate.

(3) Except as otherwise provided in this section, the procedure, pleading and notice requirements for a proceeding under this section shall be the same as provided in ORS 111.205 to 111.235 for petition to a probate court by a party interested in the estate of a decedent, and the court shall have all of the powers of the probate court in such proceedings in the probate court.

(4) Upon the filing of a petition under subsection (2) of this section, the petitioner shall cause notice of the petition to be given, prior to the time for filing objections or court hearing specified in the notice, to all living beneficiaries and the currently acting trustee, other than the petitioner, in the manner and within the times provided in ORS 111.215. Any beneficiary whose name, identity or existence is unknown to the petitioner may be given notice as provided in ORS 111.215 (1)(c).

(5) When petitioned to review or approve an accounting of a trustee, the court shall determine the correctness of the account and the validity and propriety of all actions of the trustee set forth therein, including the purchase, retention or disposition of any property or funds of the trust.

(6) The court, by its order or judgment, may give directions, instructions, authority or approval, or make appointments, as appear to it to be most beneficial to all beneficiaries of the trust. The court may approve or disapprove an accounting or any part thereof and may surcharge the trustee for losses, if any, caused by negligent or wilful breaches of trust. Any order or judgment entered in a proceeding under this section is final, conclusive and binding upon all beneficiaries notified of the proceeding, including all incompetent, unborn and unascertained beneficiaries of the trust, subject only to the right of appeal as provided in ORS 128.165.

(7) Every unborn or unascertainable beneficiary shall be bound by any action taken by the court for or against any living beneficiary of the same class or whose interests are similar to the interests of the unborn or unascertainable beneficiary.

(8) The court, by a provision in an order or judgment entered in a proceeding under this section, may retain jurisdiction over all the parties and over all the trust assets, and may from time to time, upon application under ORS 128.145, make such further orders or judgments regarding the purposes set forth in subsection (2) of this section as appear to be for the best interest of the beneficiaries. [1981 c 66 §3]

128.140 [Repealed by 1981 c 66 §8]

128.145 Authority of party to proceeding under ORS 128.135 to obtain other modification of trust administration; adding parties. (1) Any person who is a party to a proceeding under ORS 128.135 may from time to time apply to the court for additional accountings, appointments, authority, approval or instructions. For that purpose the person shall file a petition setting forth the facts showing the need or desirability of the additional accountings, appointments, authority, approval or instructions. All the allegations of the original and subsequent petitions and all other proceedings, including previous orders or judgments up to and including the time of filing the new petition, shall constitute a part of the new petition without being realleged therein, it being sufficient to set forth therein by reference the filing of the previous petitions and the entering of the previous orders or judgments. Jurisdiction over all the other parties to enter additional orders or judgments shall be obtained in the same manner provided for obtaining jurisdiction in the original proceeding.

(2) After a petition is filed under subsection (1) of this section, the proceedings shall be the same as the proceedings in the original proceeding under ORS 128.135.

(3) Any beneficiary who is born, or whose interest becomes apparent after the original petition is filed under ORS 128.135, and who would have been a necessary party to receive notice thereof if then living, or if the interest had then been apparent, shall, if living at the time of a subsequent application for accounting, appointment, authority, approval or instructions, be made a party to the subsequent proceeding by order of the court, upon application by the beneficiary or any party to the subsequent proceeding, and thereafter is

entitled to all the rights of the other parties to the subsequent proceeding. [1981 c.66 §4]

128.150 [Repealed by 1981 c.66 §8]

128.155 Undertaking for proceedings under ORS 128.135 or 128.145. A beneficiary who petitions a court under ORS 128.135 or 128.145 shall file with the petition an undertaking with one or more sureties to the effect that the beneficiary will pay all costs, disbursements and reasonable attorney fees that may be ordered against the beneficiary in the proceeding. If the beneficiary is unsuccessful in the proceeding and the court finds that the beneficiary filed the petition in bad faith, or that the petition was frivolous, the court may tax the costs and disbursements of the proceeding, including any appeal therein, and reasonable attorney fees against the unsuccessful beneficiary and the surety on the undertaking. If the beneficiary is successful, the court may tax the costs and disbursements of the proceeding, including any appeal therein, and reasonable attorney fees against the trust estate or the trustee individually. [1981 c 66 §5]

128.160 [Repealed by 1981 c 66 §8]

128.165 Appeal of orders or judgments entered pursuant to ORS 128.135 or 128.145. Appeals from orders or judgments entered under ORS 128.135 or 128.145 shall be taken in the same manner as from issues determined by any court of record with general jurisdiction. [1981 c 66 §6]

128.170 [Repealed by 1981 c.66 §8]

128.175 Remedies under ORS 128.135 or 128.145 cumulative. The remedies provided by ORS 128.135 and 128.145 are cumulative and do not limit or abrogate any inherent power of a court with jurisdiction to grant equitable remedies, or in any manner limit any lawful power, express or implied, conferred upon the trustee by the instrument creating the trust. [1981 c.66 §7]

128.180 [Repealed by 1981 c.66 §8]

128.190 [Repealed by 1981 c.66 §8]

128.200 [Repealed by 1981 c.66 §8]

128.210 [Repealed by 1981 c.66 §8]

128.220 [Repealed by 1981 c 66 §8]

128.230 [Repealed by 1981 c.66 §8]

128.240 [Repealed by 1981 c.66 §8]

128.250 [Amended by 1979 c.284 §110; repealed by 1981 c.66 §8]

128.260 [Amended by 1979 c 284 §111, repealed by 1981 c 66 §8]

128.270 [Repealed by 1981 c 66 §8]

UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT

128.310 Short title. ORS 128.310 to 128.355 may be cited as the "Uniform Management of Institutional Funds Act." [1975 c 707 §11]

128.315 Definitions for ORS 128.310 to 128.355. As used in ORS 128.310 to 128.355:

(1) "Institution" means an incorporated or unincorporated nonpublic organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes.

(2) "Institutional fund" means a fund held by an institution for its exclusive use, benefit or purposes, but does not include (a) a fund held for an institution by a trustee that is not an institution or (b) a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

(3) "Endowment fund" means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

(4) "Governing board" means the body responsible for the management of an institution or of an institutional fund.

(5) "Historic dollar value" means the aggregate fair value in dollars of (a) an endowment fund at the time it became an endowment fund, (b) each subsequent donation to the fund at the time it is made and (c) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the institution is conclusive.

(6) "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or held by an institution as an institutional fund. [1975 c.707 §2]

128.320 Amount of expenditure for uses and purposes of fund. The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by ORS 128.340. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charger of the institution. [1975 c 707 §3]

128.325 When ORS 128.320 not applicable; limit on implying net appreciation restriction. ORS 128.320 does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only "income," "interest," "dividends," or "rents, issues or profits," or "to preserve the principal intact," or a direction which contains other words of similar import. This rule of construction applies to gift instruments executed or in effect before or after September 13, 1975. [1975 c 707 §4]

128.330 Power of governing board to invest and retain property of fund. In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or in the applicable law other than law relating to investments by a fiduciary, may:

(1) Invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships or individuals and obligations of any government or subdivision or instrumentality thereof;

(2) Retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;

(3) Include all or any part of an institutional fund in any pooled or common fund maintained by the institution; and

(4) Invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board. [1975 c 707 §5]

128.335 Authority of governing board to delegate power. The governing board may:

(1) Delegate to its committees, officers or employes of the institution or the fund or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds;

(2) Contract with independent investment advisors, investment counsel or managers, banks or trust companies, so to act; and

(3) Authorize the payment of compensation for investment advisory or management services. [1975 c 707 §6]

128.340 Standard of care for investment and delegation of duties. In the administration of the powers to appropriate appreciation, to make and retain investments and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long and short term needs of the institution in carrying out its education, religious, charitable or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends and general economic conditions. [1975 c 707 §7]

128.345 Release of restriction on fund with consent of donor by application to court; notice to Attorney General; limit on extent of release. (1) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(2) If written consent of the donor cannot be obtained by reason of his death, disability,

unavailability or impossibility of identification, the governing board may apply in the name of the institution to the appropriate circuit court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The Attorney General shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.

(3) A release under this section may not allow a fund to be used for purposes other than educational, religious, charitable or other eleemosynary purposes of the institution affected.

(4) This section does not limit the application of the doctrine of cy pres. [1975 c 707 §8]

128.350 Uniformity of interpretation. ORS 128.310 to 128.355 shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of ORS 128.310 to 128.355 among those states which enact it. [1975 c 707 §10]

128.355 Severability. If any provision of ORS 128.310 to 128.355 or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of ORS 128.310 to 128.355 which can be given effect without the invalid provision or application, and to this end the provisions of ORS 128.310 to 128.355 are declared severable. [1975 c 707 §9]

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 750.005 to 750.065 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, referred to in this section as the 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 or irrevocable at the option of 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, 1967 c 359 §681; 1979 c 661 §1]

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 authorized to do business in this state.

(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. [1959 c.691 §2, 1967 c 359 §682]

128.415 Deposit of trust funds. (1) As used in this section, "common trust account" means trust funds received by a trustee from two or more trustors.

(2) All such trust funds shall be deposited by the trustee with a financial institution in the State of Oregon carrying deposit insurance, within 30 days after receipt thereof. A trust fund 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, or in a common trust account in the name of the depositor followed by the words "trustee of funeral plan trusts," in trust for each person for whom such prearranged funeral plan is made, until a trust fund is released under any of the following conditions:

(a) Upon presentation of 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 of a revocable trust, the financial institution shall release such trust fund as directed in such request.

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

(d) Upon presentation of proof of the death, dissolution, insolvency or merger with another of the trustee of an irrevocable trust, the financial institution shall continue to hold such trust fund subject to the funeral plan trust, and upon appointment of a successor trustee by the trustor, the trustor's legal representative, or a court of competent jurisdiction, the financial institution shall release such trust fund to the successor trustee only as provided in paragraph (a) of this subsection.

(3) If trust funds are held in a common trust account under subsection (2) of this section, the trustee shall maintain records showing the trustor and beneficiary of each individual trust fund in the account and the allocation to each individual trust fund of interest earned by the account.

(4) The financial institution shall in no way be responsible for the fulfillment of any prearranged funeral plan, excepting only such financial institution shall release a trust fund as provided in this section. [1953 c 639 §2; 1955 c.524 §2, 1959 c 691 §3, 1981 c 484 §1]

128.420 Restriction on marketing methods; costs not to be paid from trust funds. (1) Persons or establishments, as defined in ORS 692.010, may advertise or market prearranged funeral plan trusts and may pay employe salary or other costs connected therewith. No person or establishment shall engage in unsolicited door to door or telephone advertising and marketing for prearranged funeral plan trusts. The costs of advertising and marketing shall not be paid from trust funds.

(2) Except as provided in subsection (1) of this section, advertising and marketing of prearranged funeral plan trusts by a person or establishment does not constitute a violation of ORS 692.180 (2)(c) to (f). [1981 c 719 §9a]

TRUSTS FOR DEATH BENEFITS

128.460 Definitions for ORS 128.460 to 128.500. As used in ORS 128.460 to 128.500:

(1) The words "death benefits" shall mean death benefits of any kind, including, but not limited to, proceeds of life insurance policies, payments under annuity or endowment contracts, and funds payable in connection with pension, retirement, stock bonus or profit-sharing plans, or any trust or trusts administered in connection therewith;

(2) The word "designator" shall mean the person entitled to designate the beneficiary of such death benefits upon his death; and

(3) The word "obligor" shall mean the insurer or other person obligated to pay such death benefits. [1971 c 182 §1]

128.470 Creation of death benefits trust; trust without corpus valid. A trustee may be named as beneficiary of any death benefits and such death benefits shall be paid to such trustee and be held and disposed of by him as provided in a trust agreement made by the designator during his lifetime. It shall not be necessary to the validity of any such trust agreement or declaration of trust that it have a trust corpus other than the right of the trustee to receive such death benefits as beneficiary. [1971 c 182 §2]

128.480 Creation of death benefits trust by will; disposition of death benefits upon probate of will. A trustee named by will may be designated as beneficiary of death benefits, if the designation is made in accordance with the provisions of the policy, con-

tract, plan, trust or other governing instrument. Upon probate of the will, the death benefits shall be payable to the trustee to be held and disposed of under the term of the designator's last will in the same manner as other testamentary trusts are administered; but if no qualified trustee claims the death benefits within one year after the death of the designator or if satisfactory evidence is furnished within such one-year period showing that no trustee can qualify to receive such death benefits, payment thereof may be made, unless the designator has otherwise provided, by the obligor to the personal representative of the designator or to those thereafter entitled, and the obligor shall be discharged from liability. [1971 c 182 §3]

128.490 Death benefits received by trustee not subject to additional inheritance or estate taxes. The death benefits received by the trustee shall not be subject to the debts of the designator or to inheritance or estate taxes to any greater extent than if such death benefits were payable to the beneficiaries named in the trust and not to the estate of the designator. [1971 c.182 §4]

128.500 Commingling with other trust assets. Death benefits so held in trust may be commingled with any other assets which may properly become a part of such trust. [1971 c.182 §5]

EMPLOYES' TRUSTS

128.510 Definitions for ORS 128.520. 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 be permitted to accumulate 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 continue in perpetuity or 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]

BUSINESS TRUSTS

128.560 "Business trust" described. A "business trust" is any association, including a real estate investment trust, engaged in or operating a business under a written trust agreement or declaration of trust, the beneficial interest under which is divided into transferable certificates of participation or shares, other than a trust engaged solely in exercising the voting rights pertaining to corporate shares or other securities in accordance with the terms of a written instrument. [1971 c 491 §1]

128.565 Business trust permitted. A business trust is permitted as a recognized form of association for the conduct of business within the State of Oregon. [1971 c.491 §2]

128.570 Business trusts and trustees not subject to bank and trust company regulations. Neither a business trust nor the trustees of such trust are subject to the provisions of ORS chapters 706, 707, 708 and 709. [1971 c 491 §3]

128.575 Creation of business trust; filing with Corporation Commissioner required. (1) Any business trust desiring to do business in this state shall first file with the Corporation Commissioner:

(a) A verified copy of the trust instrument creating such trust and any subsequent amendments thereto;

(b) The assumed business name, if any;

(c) The names and addresses of its trustees; and

(d) A designation of its registered office and registered agent in this state.

(2) The filing described in subsection (1) of this section shall be accompanied by a filing fee of:

(a) $50 for a business trust domiciled within the State of Oregon; or

(b) $200 for a business trust domiciled without the State of Oregon.

(3) If the Corporation Commissioner finds that the filing conforms to law, he shall, when

all fees have been paid, issue a certificate of authority entitling the business trust to do business in this state.

(4) If a business trust amends its trust instrument after it has been issued a certificate of authority entitling it to do business in this state, it shall file a verified copy of any such amendment with the Corporation Commissioner and shall pay a filing fee of $25 to the Corporation Commissioner. [1971 c 491 §4; 1973 c 367 §12]

128.580 Business trusts subject to certain corporate laws. Any business trust shall be subject to such provisions of law, now or hereafter enacted, with respect to domestic and foreign corporations, respectively, as relate to the issuance of securities, filing of required statements or reports, service of process, general grants of power to act, right to sue and be sued, limitation of individual liability of shareholders and rights to acquire, mortgage, sell, lease, operate and otherwise to deal in real and personal property. Except as otherwise provided in its trust agreement or declaration of trust, or any amendments thereto, any business trust shall also be subject to the other provisions of ORS chapter 57 and other rights and duties existing under the common law and statutes of this state applicable to domestic and foreign corporations. Title to any real or personal property may be held in the name of the trust, one or more of the trustees or any other person as nominee. [1971 c 491 §5, 1973 c 367 §13; 1979 c 208 §6]

128.585 Personal liability of trustees, shareholders or beneficiaries of business trust. The trustees, shareholders or beneficiaries of a business trust shall not, as such, be personally liable for any obligations of such business trust arising after June 25, 1971. Persons becoming trustees, shareholders or beneficiaries after June 25, 1971, shall not be personally liable, as such, for obligations of the business trust existing on June 25, 1971. [1971 c 491 §6; 1973 c.367 §14]

128.590 Certificate of authority as conclusive evidence of compliance with laws; exception. For purposes of ORS 128.585, a certificate of authority issued by the Corporation Commissioner shall be conclusive evidence that all conditions precedent required to be performed by the business trust have been complied with and that the business trust is authorized to do business in this state, except as against this state in a proceeding to cancel or revoke the certificate of authority for violations of the provisions of ORS 128.580. [1971 c 491 §7]

128.595 Business trusts reports required; due date; filing fee; content; notice of requirement; effect of failure to file. (1) Each business trust shall file a report with the Corporation Commissioner before the 16th day of the second calendar month following each anniversary of the issuance of a certificate of authority and pay a filing fee of:

(a) $50 for a business trust domiciled in the State of Oregon; or

(b) $200 for a business trust domiciled without the State of Oregon.

(2) The report shall contain the following:

(a) Either a statement that there have been no changes in the trust instrument creating the trust or a statement that all amendments are on file with the commissioner;

(b) The names and address of its trustees; and

(c) The address of the registered office in this state and the name of its registered agent in this state.

(3) Not less than 30 days before the reporting date, the Corporation Commissioner shall notify the business trust of the requirement to file a report. The notice shall be sent by first-class mail, shall indicate the date upon which the report is due, and include the forms for the report.

(4) After the reporting date, if no report has been filed, the commissioner shall send to the business trust a final notice advising that no report has been filed and it is, therefore, assumed that the business trust is no longer active and that the name thereof shall become available, unless a report is filed within 30 days after the mailing of such final notice. The commissioner does not need to send the final notice to any business trust which has previously notified him that it does not intend to file the report. The final notice shall be sent by certified mail with return receipt requested.

(5) Not less than 30 days after the date of mailing of the final notice provided for by subsection (4) of this section, the commissioner may assume and note on his records that the business trust is inactive. Thereafter, the name of the business trust is available. The business trust may later give notice of its active status by filing the required report. The commissioner shall then remove his notation

of the inactive status and name availability. However, if the name has been used in the intervening period or is currently reserved by another entity with the same or a deceptively similar business trust, corporate, limited partnership, registered or assumed business name, the business trust may file a statement of the name which it elects to use within this state. [Formerly 128 075]

CHARITABLE TRUST AND SOLICITATION ACT

128.610 Short title. ORS 128.610 to 128.750, 128.805 to 128.865 and 128.990 (2), (3) and (4) may be cited as the Charitable Trust and Solicitation Act. [1963 c 583 §1, 1971 c 589 §1, 1981 c 593 §1]

128.620 Definitions for ORS 128.610 to 128.865. As used in ORS 128.610 to 128.750, 128.805 to 128.865 and 128.990 (2), (3) and (4):

(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 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.

(3) "Charitable purpose" means any purpose to promote the well-being of the public at large, or for the benefit of an indefinite number of persons, including but not limited to educational, literary, or scientific purposes, or for the prevention of cruelty to children or animals, or for the benefit of religion, rehabilitation services, public recreation, civic improvement, or services which lessen the burdens of government.

(4) "Religious organization" means any organized church or group organized for the purpose of divine worship, religious teaching, or other directly ancillary purposes.

(5) "Educational institution" means a school, college or other institution with an established curriculum, student body and faculty, conducting classes in buildings adapted for that purpose.

(6) "Solicitation" means any request or appeal, either oral or written, or any endeavor to obtain, seek or plead for funds, property, financial assistance, or other thing of value, including the promise or grant of any money or property of any kind or value and any special event or other fund raising activity for a charitable purpose; but excluding:

(a) Direct grants or allocations of funds received or solicited from any affiliated fund raising organization by a member agency; and

(b) Unsolicited contributions received from any individual donor, foundation, trust, governmental agency, or other source, unless such contributions are received in conjunction with a solicitation drive. [1963 c 583 §§3, 4, 1971 c 589 §2; 1981 c 593 §2]

128.630 Application of ORS 128.610 to 128.865. (1) ORS 128.610 to 128.750, 128.805 to 128.865 and 128.990 (2), (3) and (4) 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 128.610 to 128.750, 128.805 to 128.865 and 128.990 (2), (3) and (4) shall apply regardless of any contrary provisions of any instrument. [1963 c 583 §§2, 14, 1971 c 589 §3, 1981 c 593 §3]

128.640 Exemptions from application of ORS 128.610 to 128.865. ORS 128.610 to 128.750, 128.805 to 128.865 and 128.990 (2) 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; and ORS 128.610 to 128.750 do not apply 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, to a child-caring agency regulated under ORS 418.215 to 418.265 or to a charitable corporation organ-

ized and operated primarily as a religious organization, educational institution, hospital, historical society or museum. [1963 c 583 §5, 1971 c 589 §4, 1981 c.593 §4]

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 128.610 to 128.750, 128.805 to 128.865 and 128.990 (2), (3) and (4) 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, 1971 c 589 §5, 1981 c 593 §5]

128.660 Filing of articles of incorporation or other instrument with Attorney General. Every charitable corporation and trustee subject to ORS 128.610 to 128.750 who has received property for charitable purposes shall file with the Attorney General, upon receiving possession or control of such property, a copy of the articles of incorporation, trust agreement or other instrument providing for title, powers or duties. [1963 c 583 §7, 1971 c 589 §6; 1981 c 593 §6]

128.670 Filing of reports; fees; authority of Attorney General relating to reports. (1) Except as otherwise provided, every charitable corporation and trustee subject to ORS 128.610 to 128.750 shall, in addition to filing copies of the instruments previously required, file with the Attorney General periodic written reports 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) The Attorney General shall receive reasonably current, periodic reports as to all charitable trusts or other relationships of a similar nature, which will enable the Attorney General 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 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 the Attorney General's 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. Subsequent annual reports shall be submitted not later than four months and 15 days following the close of each calendar or fiscal year adopted by the charitable corporation or trustee.

(6) The Attorney General shall make rules as to the time for filing reports, the contents thereof, and the manner of executing and filing them. The Attorney General may make additional rules and amend existing rules as necessary for the proper administration of the Charitable Trust and Solicitation Act.

(7) Each charitable corporation, trustee, or other charitable organization filing a report required by this section shall pay to the Department of Justice, with such report, a fee based on the total amount of its income and receipts during the time covered by the report, as follows:

(a) $5, if less than $10,000, or if it received no income and receipts during the time covered by the report;

(b) $10, if $10,000 or more but less than $50,000;

(c) $50, if $50,000 or more but less than $100,000;

(d) $250, if $100,000 or more but less than $500,000;

(e) $500, if $500,000 or more but less than $1,000,000; or

(f) $675, if $1,000,000 or more.

(8)(a) If the fee prescribed by subsection (7) of this section is not paid when due or if the charitable corporation or trustee fails to file a report by the date due, a penalty charge of an additional $20 shall be paid to the Department of Justice.

(b) The Attorney General may at any time after a fee or report is delinquent give written notice by certified mail to the charitable corporation, trustee or other charitable organization of the delinquency, requiring it to correct the delinquency and informing it of the Attorney General's authority to impose an additional penalty if it fails to do so within a specified number of days thereafter, but not less than 10. Thereafter, unless the fee, including the penalty charge prescribed by paragraph (a) of this subsection, or the report, or both, are filed within the specified number of days, the Attorney General may impose an additional penalty, not exceeding $300, if the total income and receipts of the charitable corporation, trustee or other charitable organization during the time for which the report or fee is required was less than $100,000, and not exceeding twice the amount of the fee prescribed by subsection (7) of this section in all other cases, giving notice by certified mail. The notice of imposition of penalty shall state that the charitable corporation, trustee or other charitable organization shall, upon its written request received within 10 days, be entitled to a contested case hearing before the Attorney General or the Attorney General's designee to dispute the imposition of the penalty or to submit evidence in mitigation. The hearing shall be held and the Attorney General's order may be appealed in accordance with the procedure for contested cases provided in ORS 183.310 to 183.550, but the order shall be reversed or modified only if the court finds that the Attorney General lacked authority to impose the penalty or the amount of the penalty imposed was unconscionable in the circumstances.

(c) The Attorney General may file a certified copy of the original notice assessing an additional penalty, or of the order entered after hearing, with the clerk of any circuit court in the state, after expiration of the time to request a hearing, or expiration of the time in which to appeal, or after final determination of the matter on appeal, whichever is appropriate, and such notice or order shall be docketed in the judgment docket and may be enforced in the same manner as a judgment.

(d) The Attorney General may grant an extension of time for a reasonable period for filing a report upon written application filed by or on behalf of the charitable corporation or trustee stating the reason that additional time should be allowed for filing the report beyond the ordinary due date. If the request is submitted on or prior to the due date for filing the report, the $20 penalty charge will not be due unless the report and fee are thereafter not filed within the extended period granted for filing the report, or, if the request is denied, within 10 days after the denial is received by the corporation.

(9) All fees and penalties received by the Department of Justice under subsections (7) and (8) of this section shall be paid over to the State Treasurer monthly for deposit in the General Fund in the Department of Justice Operating Account created under the provisions of ORS 180.180. Amounts deposited in the General Fund pursuant to this subsection are continuously appropriated to the Attorney General to pay the expenses of the Department of Justice in administering the Charitable Trust and Solicitation Act. [1963 c 583 §8; 1971 c 589 §7, 1973 c.506 §40, 1973 c 775 §4; 1975 c 388 §5, 1981 c.593 §7]

Note: Section 8, chapter 593, Oregon Laws 1981, provides:

Sec. 8. The amendment of ORS 128 670 by section 7 of this Act shall apply with respect to reports required to be filed and fees paid for calendar or fiscal years of charitable corporations, trustees or other charitable organizations ending on or after June 30, 1981

128.680 Investigatory authority of Attorney General. The Attorney General may investigate transactions and relationships of corporations and trustees subject to ORS 128.610 to 128.750, 128.805 to 128.865 and 128.990 (2), (3) and (4) 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. The Attorney General 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; 1971 c 589 §8, 1981 c.593 §9]

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 [1963 c.583 §12, repealed by 1973 c 794 §34]

128.710 Enforcement; jurisdiction of court. (1) The Attorney General may institute appropriate proceedings to secure compliance with ORS 128.610 to 128.750, 128.805 to 128.865 and 128.990 (2), (3) and (4) and to invoke the jurisdiction of the court. Wilful failure to comply with an order of any court having jurisdiction of charitable trusts requiring an accounting by a charitable corporation or trustee shall constitute grounds for removal of the officers of such charitable corporation or of such trustee and the appointment by the court of successor officers or trustee. The powers and duties of the Attorney General provided in ORS 128.610 to 128.750, 128.805 to 128.865 and 128.990 (2), (3) and (4) are in addition to existing powers and duties.

(2) Nothing in ORS 128.610 to 128.750, 128.805 to 128.865 and 128.990 (2), (3) and (4) 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, 1971 c 589 §9, 1981 c.593 §10]

128.720 Copies of certain documents and notice 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. Upon filing the final account and petition for decree of distribution of any estate through which a residuary testamentary trust for charitable purposes is established, the personal representative shall mail a copy thereof, and a copy of the notice fixing the time for filing objections thereto, to the Attorney General not less than 20 days before the time fixed in the notice. 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 128.610 to 128.750 as the Attorney General requires. [1963 c 583 §15; 1971 c 589 §10]

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 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; 1971 c 589 §11]

128.740 [1963 c.583 §17; 1971 c.589 §12, repealed by 1975 c.388 §8]

128.750 Uniformity of interpretation. The Charitable Trust and Solicitation 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; 1981 c 593 §11]

CHARITABLE ORGANIZATIONS; FUND SOLICITATIONS

128.805 Certain charitable organizations required to register and submit report to Attorney General on fund raising activities; report to be verified. (1) All persons, corporations, societies or other organizations, except those exempted in ORS

128.825, that solicit funds in Oregon for charitable purposes and which expect to solicit and receive gross contributions in excess of $500 in any 12-month period shall, prior to any solicitation, file with the Attorney General a registration statement containing such information as the Attorney General may by rule require. Only one such registration statement need be provided to the Attorney General in any such 12-month period. If a person, corporation, society or other organization which would have been required to file a registration statement under this subsection except that it did not expect to receive gross contributions exceeding $500 in such period, it shall within 30 days after receiving such contributions register with the Attorney General as provided in this subsection.

(2) All persons, corporations, societies or other organizations, except those specified in ORS 128.825, that solicit funds for charitable purposes shall, upon commencing a fund raising campaign, notify the Attorney General in writing and when they collect more than $500 in any 12-month period shall file a detailed report with the Attorney General, showing the amount of funds received from solicitations or other fund raising activities and all expenditures for supplies, equipment, goods, services, or other expenses. The report shall be filed not later than four months and 15 days following the close of the calendar or fiscal year on a form furnished by the Attorney General. The report shall contain a detailed list of all salaries and wages paid and expenses allowed to any officer, employe, agent, each of whom shall be identified by name, and the disposition of the net proceeds received from solicited contributions or other fund raising activities. The report shall be verified by the person soliciting the funds under the person's own authority, or if filed by a corporation, society or other organization by its managing officer or agent.

(3) The prior registration and notice provisions of subsections (1) and (2) of this section shall only apply to persons, corporations, societies or other organizations soliciting funds in Oregon for charitable purposes who have not filed a 12-month period report required by subsection (2) of this section for the preceding year or the last year in which a solicitation requiring such filing occurred. [1971 c 589 §14; 1981 c.593 §12]

128.810 [1959 c.599 §1; repealed by 1967 c 359 §704]

128.813 False or misleading representations prohibited. No person shall make any false or misleading representations in the course of any solicitation of donations for charitable purposes. [1975 c 388 §2]

128.815 Restrictions on use of filing required by ORS 128.805 in fund raising activities. (1) No person, and no charitable corporation, trustee or organization subject to ORS 128.610 to 128.750, 128.805 to 128.865 and 128.990 (2), (3) and (4) shall in any way use, in connection with any solicitation subject to ORS 128.805, the fact or requirement of registration, or of the filing of any report pursuant to the Charitable Trust and Solicitation Act, with the intent to cause or in a manner tending to cause any person to believe that such solicitation, the manner in which it is conducted, its purposes, any use to which the proceeds will be applied, or the person or organization conducting it have been or will be in any way indorsed, sanctioned or approved by the Attorney General or any other governmental agency or office.

(2) Any written or oral statement made in connection with a solicitation subject to ORS 128.805, that the person or organization conducting the solicitation is registered or has filed, will file or is required to file any report with the Attorney General, or any statement of similar import, shall be immediately followed by a statement of equal prominence that such registration or report in no way constitutes or implies any indorsement, sanction or approval of the solicitation, its purposes, the manner in which it is conducted or the person or organization conducting it, by the Attorney General or any other governmental agency or officer. [1971 c 589 §14a, 1981 c 593 §13]

128.820 [1959 c 599 §§2, 3, 4, 5, 1967 c 359 §125, renumbered 731 704]

128.825 Organizations exempt from provisions of ORS 128.805 to 128.845. ORS 128.805 to 128.845 shall not apply to:

(1) Any educational institution, hospital, historical society or museum, church or religious organization soliciting funds solely for its own use, or any other similar society soliciting funds, including membership fees or dues solely from its members, or any church or religious organization or society soliciting funds only from members of its congregation, or persons otherwise presently affiliated with such church, religious organization or society.

(2) Any local affiliate of a state-wide or national organization, when all local fund raising expenses are paid by the parent organization, if the parent organization files a report required by this section. [1971 c 589 §15]

128.830 [1959 c 599 §7; 1967 c 359 §126, renumbered 731 708]

128.835 Audit of organization accounts required upon petition of contributors; costs of audit; disclosure required. Upon petition of 10 persons who contributed funds, or a lesser number who in the aggregate contributed funds totaling at least $500, during any 12-month period, to any person or organization enumerated in ORS 128.805, the circuit court of the county in which such person or organization resides or has its principal office shall appoint a competent certified public accountant to audit the accounts of such person or organization pertaining to funds solicited, and shall file the report with the county clerk of the county. A copy of the report shall be forwarded by the accountant to the Attorney General. The cost of the audit shall be paid by the petitioners. It shall be the duty of the person having custody of any of the records or books of account of the person or organization pertaining to the receipt or expenditures of any such funds, to place them at the disposal of any person appointed to audit the accounts, pursuant to the provisions of this section. [1971 c 589 §16; 1981 c 593 §14]

128.840 [1959 c 599 §6, repealed by 1967 c 359 §704]

128.845 Solicitations by noncomplying organization may be enjoined. The Attorney General may obtain an injunction against solicitation of funds by any person, corporation, society or other organization subject to ORS 128.610 to 128.750, 128.805 to 128.865 and 128.990 (2), (3) and (4) until it has complied with all registration and reporting requirements applicable to it under those statutes. [1971 c 589 §17, 1981 c 593 §15]

128.850 [1959 c 599 §8, 1967 c.359 §128, renumbered 731.716]

128.855 When solicitations may be enjoined. (1) The Attorney General may obtain an injunction against solicitation of donations for charitable purposes by any person on behalf of any person, corporation, society or organization, whether or not otherwise subject to ORS 128.610 to 128.750 and 128.805 to 128.845, and may obtain such other or additional equitable relief as the court may grant, including an order requiring any defendant to refund or to offer refunds to donors in this state and to widely publicize such offer, if:

(a) A general course of deceptive conduct, or of violation of ORS 128.813, is found by a preponderance of the evidence to exist in the solicitation of donations for such purpose in this or any other state on behalf of such person, corporation, society or organization; and a finding of more than one instance of such deceptive conduct or violation of ORS 128.813 shall be prima facie evidence of such a course of conduct; or

(b) The costs of solicitation of such donations or other administrative costs of such person, corporation, society or organization, or both combined, are grossly disproportionate to the proportion of donations received which is ultimately used for charitable purposes, or if salary or other compensation paid to one or more employes, officers or agents is grossly excessive. Costs of solicitation exceeding 25 percent of net proceeds, or combined costs of solicitation and administrative costs exceeding 50 percent of net proceeds, shall be rebuttably presumed to be grossly disproportionate.

(2) As used in paragraph (b) of subsection (1) of this section:

(a) "Net proceeds" means the total donations received from the solicitation of donations reduced by the cost of merchandise or other goods sold and by the direct costs of sponsoring a fund raising dinner, bazaar, show, circus or any form of benefit performance.

(b) "Costs of solicitation" means the costs of promoting a fund raising dinner, bazaar, show, circus or any form of benefit performance; all salaries, wages, commissions and related expenses of any professional fund raising organization, professional solicitor or agent or employe of that organization or solicitor or of the person, corporation, society or organization on whose behalf the donations are solicited who engages in the solicitation; and all expenditures for rent, supplies, equipment, goods, services or other expenses attributable to the solicitation that are chargeable to the person, corporation, society or organization on whose behalf the donations are solicited. "Costs of solicitation" does not include the cost of merchandise or other goods sold or the direct costs of sponsoring a fund raising dinner, bazaar, show, circus or any form of benefit performance.

(c) "Administrative costs" means all costs of administration of the person, corporation, society or organization on whose behalf the donations are solicited, including salaries, rent, supplies, equipment, goods, services and other expenses; but not including costs of solicitation as defined in paragraph (b) of this subsection, the cost of merchandise or other goods sold, the direct costs of sponsoring a fund raising dinner, bazaar, show, circus or any form of benefit performance, or administrative costs directly related to carrying out the charitable program or purpose of the person, corporation, society or organization. [1975 c 388 §3, 1977 c 467 §1]

128.860 [1959 c 599 §11, 1967 c 359 §129; renumbered 731 720]

128.865 Prevailing party attorney fees; source of fees to Attorney General. (1) In any suit or action against a charitable corporation or trustee or any other charitable organization to enforce any fiduciary or other duty arising under ORS 128.610 to 128.845, or to enforce any fiduciary duty arising under the common law, or in a suit under ORS 128.855, the court in its discretion may award to the prevailing party reasonable attorney fees at trial and on appeal and, as part of costs and disbursements, reasonable investigative expenses and reasonable expert witness fees.

(2) If the Attorney General prevails, the attorney fees, costs and disbursements of the Attorney General may, in the discretion of the court, be a judgment against the responsible officers of the charitable corporation or trustee of a charitable trust, or may be paid out of the corpus of the trust. [1975 c 388 §4; 1981 c.897 §37]

128.870 [1959 c 599 §12, repealed by 1967 c 359 §704]

128.880 [1959 c 599 §9; 1967 c 359 §130; renumbered 731 724]

128.890 [1959 c 599 §10; repealed by 1967 c 359 §704]

PENALTIES

128.990 Penalties. (1) Violation of any of the provisions of ORS 128.410 or 128.415 or of 128.813 is punishable, upon conviction, by a fine not exceeding $1,000, or imprisonment in the county jail not exceeding one year, or both.

(2) Any violation of ORS 128.610 to 128.750 and 128.805 to 128.865 is punishable, upon conviction, by a fine not exceeding $500.

(3) The responsible officers or trustees, managing committee or managing director of any corporation, society, trust or other organization which fails to register or file a report as required by the Charitable Trust and Solicitation Act shall, upon conviction, be fined no more than $500.

(4) Any person who prepares or files, or assists in preparing or filing a report required by ORS 128.670 or 128.805 that is false or fraudulent shall be punished, upon conviction, by imprisonment in the penitentiary for not more than five years. [1959 c 639 §3; subsections (2), (3), (4) enacted as 1971 c 589 §18, 1975 c 388 §7, 1981 c 593 §16]