CHAPTER 59-20
FOUNDATIONS AND CHARITABLE AND SPLIT-INTEREST TRUSTS

59-20-01. Private foundations - Charitable trusts - Split-interest trusts.

1. Any will or trust instrument creating a trust that is a "private foundation", as defined in section 509(a) of the Internal Revenue Code of 1954, or a "charitable trust", as defined in section 4947(a)(1) of the Internal Revenue Code of 1954, or a "split-interest trust", as defined in section 4947(a)(2) of the Internal Revenue Code of 1954, and any other instrument governing the trustee of any such trust, or the use, retention, or disposition of any of the income or property of such trust, may be deemed to have incorporated within the will, trust instrument, or other governing instrument, with the same effect as though such language were included in the will, trust instrument, or other governing instrument, the following provisions with respect to the trust and the trustee thereof, and, except as the contrary is provided in subsection 2, such provisions govern the administration and distribution of any such trust, irrespective of any provisions of any applicable will, trust instrument, or other governing instrument, statute, or law of this state to the contrary:
   a. The trustee shall distribute for each taxable year of the trust amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code of 1954, as now enacted or as hereafter amended.
   b. The trustee may not engage in any act of "self-dealing", as defined in section 4941(d) of the Internal Revenue Code of 1954, which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code of 1954.
   c. The trustee may not retain any "excess business holdings", as defined in section 4943(c) of the Internal Revenue Code of 1954, which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code of 1954.
   d. The trustee may not make any investments that would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of section 4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code of 1954.
   e. The trustee may not make any "taxable expenditure", as defined in section 4945(d) of the Internal Revenue Code of 1954, which would give rise to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code of 1954.
2. Subsection 1 does not apply to the extent that a court of competent jurisdiction determines that application would be contrary to the terms of the will, trust instrument, or other governing instrument described in subsection 1 and that such will, trust instrument, or other governing instrument may not be changed to conform to subsection 1.
3. As used in this section, "trustee" means a corporation, individual, or other legal entity acting as an original, added, or successor trustee of a testamentary or inter vivos trust estate. Any reference to a particular section of the Internal Revenue Code of 1954 includes, as now enacted or as hereafter amended, such section and any provision of federal law as is or may hereafter be applicable, cognate to such section.
4. This section does not impair the rights and powers of the attorney general or the courts of this state with respect to any trust.