

TITLE 68  
TRUSTS AND FIDUCIARIES

CHAPTER 12  
PRIVATE FOUNDATIONS AND CHARITABLE TRUSTS

68-1201. TRUSTS COVERED BY LAW. This act shall apply only to trusts which are "private foundations" as defined in section 509 of the Internal Revenue Code of 1986, "charitable trusts" as described in section 4947(a) (1) of the Internal Revenue Code of 1986 and "split-interest trusts" as described in section 4947(a) (2) of the Internal Revenue Code of 1986.

[68-1201, added 1974, ch. 73, sec. 1, p. 1154; am. 1994, ch. 190, sec. 1, p. 617.]

68-1202. PROVISIONS PROHIBITED IN TRUST INSTRUMENTS. The trust instrument of each trust to which this act applies shall be deemed to contain provisions prohibiting the trustee from:

(a) Engaging in any act of "self-dealing" (as defined in section 4941(d) of the Internal Revenue Code of 1986), which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code of 1986;

(b) Retaining any "excess business holdings" (as defined in section 4943(c) of the Internal Revenue Code of 1986), which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code of 1986;

(c) Making any investments which 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 1986, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code of 1986; and

(d) Making any "taxable expenditures" (as defined in section 4945(d) of the Internal Revenue Code of 1986), which would give rise to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code of 1986;

Provided, that this section shall not apply either to those split-interest trusts or to amounts thereof which are not subject to the prohibitions applicable to private foundations by reason of the provisions of section 4947 of the Internal Revenue Code of 1986.

[68-1202, added 1974, ch. 73, sec. 2, p. 1154; am. 1994, ch. 190, sec. 2, p. 617.]

68-1203. REQUIRED DISTRIBUTIONS. The trust instrument of each trust to which this act applies, except "split-interest" trusts, shall be deemed to contain a provision requiring the trustee to distribute, for the purposes specified in the trust instrument, 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 1986.

[68-1203, added 1974, ch. 73, sec. 3, p. 1154; am. 1994, ch. 190, sec. 3, p. 618.]

68-1204. TRUSTEE MAY AMEND GOVERNING INSTRUMENT UNDER CERTAIN CIRCUMSTANCES. The trustee of a trust may, with the prior consent of the attorney

general, amend the terms of the governing instrument to the extent necessary:

(a) To assure conformity of the governing instrument with the requirements for exemption from the taxes imposed in sections 4941 to 4945 of the Internal Revenue Code of 1986, including amendments which broaden, extend, reduce or limit the charitable purposes for which the trust is administered;

(b) 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 1986; or

(c) To terminate the trust and transfer its assets to one (1) or more entities described in section 501(c) (3) of the Internal Revenue Code of 1986 because continuation is impractical due to its small size or impractical because of changed circumstances adversely impacting its purpose or purposes.

Prior to giving 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 (1) or more charitable organizations, or in the event there are one (1) or more residual beneficiaries, the trustee shall also obtain the prior consent of such organizations or individuals prior to amending the terms of the governing instrument in the manner set forth in this section. Further, notwithstanding the provisions of section [68-1201](#), Idaho Code, this section shall additionally apply to all trusts described in section 501(c) (3) of the Internal Revenue Code of 1986.

[68-1204, added 1994, ch. 190, sec. 5, p. 618.]

68-1205. COURTS AND ATTORNEY GENERAL NOT IMPAIRED. Nothing in this act shall impair the rights and powers of the courts or the attorney general of this state with respect to any trust.

[68-1205, added 1974, ch. 73, sec. 5, p. 1154.]

68-1206. REFERENCES TO INTERNAL REVENUE CODE OF 1986. All references to sections of the Internal Revenue Code of 1986 shall refer to that term as it is now and hereafter defined in section [63-3004](#), Idaho Code.

[68-1206, added 1974, ch. 73, sec. 6, p. 1154; am. 1994, ch. 190, sec. 6, p. 619.]

68-1207. TRUST INSTRUMENTS OR PRIVATE FOUNDATION ARTICLES MAY PROVIDE THAT THIS LAW WILL NOT APPLY. Nothing in this act shall limit the power of a person who creates a trust or the power of a person who has retained or has been granted the right to amend a trust to include a specific provision in the trust instrument or an amendment thereto which provides that some or all of the provisions of this act shall have no application to such trust.

[68-1207, added 1974, ch. 73, sec. 7, p. 1154; am. 1994, ch. 190, sec. 7, p. 619.]