

# HOUSE BILL No. 6153

June 7, 2006, Introduced by Reps. Dillon and Huizenga and referred to the Committee on Judiciary.

A bill to amend 1961 PA 101, entitled "Supervision of trustees for charitable purposes act," by amending section 4 (MCL 14.254).

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 4. **(1)** ~~-(a)-~~ The attorney general ~~shall have~~ **HAS**  
 2 jurisdiction and control and shall represent the people of the  
 3 state and the uncertain or indefinite beneficiaries ~~in~~ **OF** all  
 4 charitable trusts in this state. ~~, and~~ **THE ATTORNEY GENERAL** may  
 5 enforce ~~such~~ **CHARITABLE** trusts **AND THE GRANTORS' INTENT**  
 6 **CONCERNING GRANTS AND DISTRIBUTIONS FROM THOSE TRUSTS** by proper  
 7 proceedings in the courts of this state.

8           **(2)** ~~-(b)-~~ The attorney general is a necessary party to ~~all~~ **A**  
 9 court ~~proceedings~~ ~~(1)~~ **ACTION** to terminate a charitable trust or

1 to liquidate or distribute its assets; ~~—, or (2)~~ to modify or  
2 depart from the objects or purposes of a charitable trust as ~~the~~  
3 ~~same are~~ set forth in the instrument governing the trust,  
4 including any proceeding for the application of the doctrine of cy  
5 pres; ~~—, or (3)~~ **OR** to construe the provisions of an instrument  
6 with respect to a charitable trust. A judgment rendered in ~~such~~  
7 ~~proceedings~~ **A COURT ACTION DESCRIBED IN THIS SUBSECTION** without  
8 service of process and pleadings ~~upon~~ **ON** the attorney general ~~—~~  
9 ~~shall be~~ **IS** voidable, unenforceable, and **MAY** be set aside at the  
10 option of the attorney general upon his **OR HER** motion seeking ~~such~~  
11 **THAT** relief. The attorney general shall intervene in any  
12 ~~proceedings~~ **ACTION** affecting a charitable trust subject to this  
13 act ~~—~~ when requested to do so by the court ~~having jurisdiction~~  
14 ~~of the proceedings~~ **IN WHICH THE ACTION IS FILED**, and may intervene  
15 in any ~~proceedings~~ **ACTION** affecting a charitable trust ~~when~~ **IF**  
16 he **OR SHE** determines that the public interest should be protected  
17 in ~~such proceedings~~ **THAT ACTION**. With respect to ~~such~~  
18 ~~proceedings, no~~ **AN ACTION DESCRIBED IN THIS SUBSECTION, A**  
19 compromise, settlement agreement, contract, or judgment agreed to  
20 by any or all parties having or claiming to have an interest in any  
21 charitable trust ~~shall be~~ **IS NOT** valid unless the attorney  
22 general ~~was made~~ **IS** a party ~~to such proceedings~~ **IN THE ACTION**  
23 and ~~joined~~ **JOINS** in the compromise, settlement agreement,  
24 contract, or judgment, or unless the attorney general, in writing,  
25 waives his **OR HER** right to participate. ~~therein.~~ The attorney  
26 general is expressly authorized to enter into ~~such~~ **ANY**  
27 compromise, settlement agreement, contract, or judgment ~~as~~ **THAT**

1 in his **OR HER** opinion ~~may be~~ **IS** in the best interests of the  
2 people of the state and the uncertain or indefinite beneficiaries  
3 **OF THE CHARITABLE TRUST.**

4 (3) ~~(e)~~ Whenever a petition is filed for probate of a last  
5 will and testament containing any residuary bequest or devise to a  
6 trustee, ~~as hereinbefore defined,~~ or if ~~such~~ **THAT** will creates  
7 or purports to create a charitable trust, the petitioner shall  
8 serve notice upon the attorney general, charitable trust division,  
9 of the pendency of the proceedings, and the probate judge shall  
10 make available and shall forward to the attorney general a copy of  
11 the petition for probate of will and a copy of the instruments  
12 filed for admission to probate. The notice and documents shall be  
13 served by certified mail, return receipt requested, not less than  
14 14 days before the hearing date **ON THE PETITION.** The judge of  
15 probate shall not pass ~~upon the~~ **ON A** petition **DESCRIBED IN THIS**  
16 **SUBSECTION** in the absence of filing of proof of mailing. Upon  
17 entering his **OR HER** appearance, the attorney general ~~shall become~~  
18 **BECOMES** a necessary party in interest in the estate proceedings,  
19 either in the probate court or ~~by way of~~ **ANY** appeal.

20 (4) ~~(d)~~ The attorney general shall establish and maintain a  
21 register of charitable trusts and trustees subject to this act and  
22 of the particular trust or other relationship under which ~~they~~  
23 **THE TRUSTEES** hold property for charitable purposes. ~~and~~ **THE**  
24 **ATTORNEY GENERAL** shall conduct whatever investigation is necessary  
25 ~~—~~ and shall obtain from public records, all courts of record,  
26 court officers, taxing authorities, trustees, and other sources ~~—~~  
27 whatever information, copies of instruments, reports, and records

1 needed ~~for the establishment~~ **TO ESTABLISH** and ~~maintenance of~~  
 2 **MAINTAIN** the register and files. The attorney general ~~shall be~~ **IS**  
 3 authorized to ~~require the necessary~~ **OBTAIN ANY** information and  
 4 documents ~~—~~ necessary to discharge the requirements of this act  
 5 ~~—~~ and to require true or certified copies ~~thereof~~ **OF THE**  
 6 **INFORMATION AND DOCUMENTS** to be furnished **TO** him **OR HER** ~~—, and all~~  
 7 **FROM ANY** public officials. **A PUBLIC OFFICIAL** shall provide ~~same,~~  
 8 ~~without payment of~~ **INFORMATION AND DOCUMENTS TO THE ATTORNEY**  
 9 **GENERAL UNDER THIS SUBSECTION WITHOUT** any fee or charge.  
 10 ~~whatsoever.~~

11 (5) ALL OF THE FOLLOWING APPLY IN AN ACTION UNDER SUBSECTION  
 12 (1) TO ENFORCE THE INTENT OF THE GRANTORS OF A CHARITABLE TRUST IN  
 13 THE DISTRIBUTION OF ASSETS:

14 (A) UNLESS A CONTRARY INTENT IS SPECIFICALLY ESTABLISHED IN  
 15 THE TRUST INSTRUMENT, PROOF OF BOTH OF THE FOLLOWING IS CONSIDERED  
 16 CLEAR AND CONVINCING EVIDENCE OF THE INTENT OF THE GRANTORS:

17 (i) THE GEOGRAPHIC LOCATION WHERE THE GRANTORS ORIGINALLY  
 18 ESTABLISHED THE CHARITABLE TRUST.

19 (ii) THE CHARACTER, AMOUNT, AND INTENDED PURPOSE OF GRANTS OR  
 20 DISTRIBUTIONS, AND THE TYPES OF RECIPIENTS TO WHICH GRANTS AND  
 21 DISTRIBUTIONS WERE MADE, BY THE CHARITABLE TRUST IN THE PERIOD FROM  
 22 THE APPOINTMENT OF THE ORIGINAL TRUSTEES OF THE TRUST TO THE TIME  
 23 THAT MORE THAN 50% OF THE TRUSTEES ARE NOT ORIGINAL TRUSTEES OF THE  
 24 TRUST.

25 (B) EACH OF THE FOLLOWING IS CONSIDERED PRIMA FACIE EVIDENCE  
 26 THAT A CHARITABLE TRUST IS VIOLATING THE INTENT OF THE GRANTORS:

27 (i) IF LESS THAN 50% OF THE AMOUNT OF THE TRUST'S GRANTS OR

1 DISTRIBUTIONS IN THE MOST RECENT 3-YEAR PERIOD BEFORE THE ACTION IS  
2 COMMENCED WERE MADE TO RECIPIENTS LOCATED OUTSIDE OF THE GEOGRAPHIC  
3 LOCATION WHERE THE GRANTORS ORIGINALLY ESTABLISHED THE TRUST.

4 (ii) IF LESS THAN 50% OF THE AMOUNT OF THE TRUST'S GRANTS OR  
5 DISTRIBUTIONS IN THE MOST RECENT 3-YEAR PERIOD BEFORE THE ACTION IS  
6 COMMENCED WERE MADE TO DIFFERENT TYPES OF RECIPIENTS THAN THE TYPES  
7 OF RECIPIENTS TO WHICH GRANTS OR DISTRIBUTIONS WERE MADE BY THE  
8 CHARITABLE TRUST IN THE PERIOD FROM THE APPOINTMENT OF THE ORIGINAL  
9 TRUSTEES OF THE TRUST TO THE TIME THAT MORE THAN 50% OF THE  
10 TRUSTEES ARE NOT ORIGINAL TRUSTEES OF THE TRUST.