

## LEGISLATIVE BILL 9

Approved by the Governor March 10, 1981

Introduced by R. Maresh, 32

AN ACT relating to trusts; to prohibit the acquiring of additional agricultural land by certain trusts; to provide duties; and to provide a penalty.

Be it enacted by the people of the State of Nebraska,

Section 1. For purposes of this act, unless the context otherwise requires, the definitions found in sections 2 to 8 of this act shall be used.

Sec. 2. Agricultural land shall mean land suitable for use in farming.

Sec. 3. Farming shall mean the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, and grazing or the production of livestock. Farming shall not include the production of timber, forest products, nursery products, or sod, and farming shall not include a contract under which a processor or distributor of farm products or supplies provides spraying, harvesting, or other farm services.

Sec. 4. Fiduciary capacity shall mean an undertaking to act as executor, administrator, personal representative, guardian, conservator, or receiver.

Sec. 5. Trust shall mean a fiduciary relationship with respect to property, subjecting the person by whom the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it. Trust does not include a person acting in a fiduciary capacity, as defined in section 4 of this act. A trust includes a legal entity holding property as trustee, agent, escrow agent, attorney-in-fact, and in any similar capacity.

Sec. 6. Family trust shall mean a trust:

(1) In which a majority interest in the trust is held by and the majority of the beneficiaries are persons related to each other as spouse, parent, grandparent, lineal descendants of grandparents or their spouses and other legal descendants of the grandparents or their

spouses, or persons acting in a fiduciary capacity for persons so related; and

(2) In which all the beneficiaries are natural persons, who are not acting as a trustee or in a similar capacity for a trust, as defined in section 5 of this act, or persons acting in a fiduciary capacity, or nonprofit corporation.

Sec. 7. Authorized trust shall mean a trust other than a family trust in which:

(1) The beneficiaries do not exceed twenty-five in number;

(2) The beneficiaries are all natural persons, who are not acting as a trustee or in a similar capacity for a trust as defined in section 5 of this act, or persons acting in a fiduciary capacity, or nonprofit corporation; and

(3) Its income is not exempt from taxation under the laws of either the United States or the State of Nebraska, except that its income may be exempt from taxation under sections 501 (c) (3) and 509 (a) (3) of the Internal Revenue Code.

Sec. 8. Testamentary trust shall mean a trust created by devising or bequeathing property in trust in a will as such terms are used in the Nebraska Probate Code.

Sec. 9. No trust, other than a family trust, authorized trust, or testamentary trust, shall either directly or indirectly acquire or otherwise obtain or lease any agricultural land in this state, except that the restrictions set forth in this section shall not apply to the following:

(1) A bona fide encumbrance taken for purposes of security;

(2) Agricultural land acquired by a trust for research or experimental purposes, if the commercial sales from such agricultural land are incidental to the research or experimental objectives of the trust, and agricultural land acquired for the purpose of testing, developing, or producing seeds, animals, or plants for sale or resale to farmers or for purposes incidental to such purposes. Commercial sales are incidental to the research or experimental objectives of the trust when they are less than twenty-five per cent of the gross sales of the primary product of the research;



(3) Agricultural land which is acquired by a trust company or bank in a fiduciary capacity or as trustee for a family trust, authorized trust, or testamentary trust;

(4) Agricultural land held or leased by a trust on the effective date of this act, as long as the trust holding or leasing such land on such date continues to hold or lease such agricultural land;

(5) Agricultural land acquired by a trust for immediate use in nonfarming purposes; and

(6) Any property held by the State of Nebraska.

Sec. 10. Any trust, other than a family trust, authorized trust, or testamentary trust, violating this act shall upon conviction, be punished by a fine of not more than fifty thousand dollars and shall divest itself of any land acquired in violation of this act within one year after conviction. The courts of this state may prevent and restrain violations of this section through the issuance of an injunction. The Attorney General or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of this act.

Sec. 11. The county assessor shall forward to the Secretary of State, by October 1 of each year, the name and address of every trust owning agricultural land in the county as shown by the assessment rolls of the county.