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# A BILL FOR AN ACT

RELATING TO THE SUPERVISION OF CHARITABLE TRUSTS AND NONPROFIT ORGANIZATIONS ACT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The State confers tax-exempt status to  
2 charitable trusts and nonprofit organizations, including private  
3 foundations, because they provide needed public services that  
4 reduce the overall burdens of government. The people of this  
5 State, therefore, have a vested interest in the proper  
6 administration, operation, and disposition of all property held  
7 for charitable purposes in this State, and shall be represented  
8 by the attorney general in all courts of this State in respect  
9 of such property held by charitable trusts and nonprofit  
10 organizations including private foundations.

11           The purpose of this Act is to:

12           (1) Expressly clarify that the attorney general's powers  
13           and duties over charitable trusts as *parens patriae*  
14           include all nonprofit organizations, such as private  
15           foundations, and fiduciaries holding property for  
16           charitable purposes;



- 1           (2) Ensure that trustees and others holding property for  
2           charitable purposes properly administer, register, and  
3           report on the existence of property held for  
4           charitable purposes to the attorney general;
- 5           (3) Ensure that funds solicited by and donated to  
6           charitable organizations by the community are truly  
7           applied for the charitable purposes intended by the  
8           donors; and
- 9           (4) Provide specific enforcement mechanisms for the  
10          attorney general to carry out preexisting common law  
11          supervisory powers and duties over charitable trusts  
12          and charitable corporations.

13           SECTION 2. The Hawaii Revised Statutes is amended by  
14 adding a new chapter to be appropriately designated and to read  
15 as follows:

16   **"CHAPTER**

17   **SUPERVISION OF CHARITABLE TRUSTS AND**

18   **NONPROFIT ORGANIZATIONS ACT**

19           **§ -1 Short title.** This chapter shall be known and may  
20 be cited as the Supervision of Charitable Trusts and Nonprofits  
21 Act.



1           **§ -2 Application of this chapter.** This chapter applies  
2 to any trustee, as defined in section -3.

3           **§ -3 Definitions.** For purposes of this chapter:

4           "Charitable purpose" means any purpose to promote the  
5 well-being of the public at large, or for the benefit of an  
6 indefinite number of persons, including but not limited to  
7 educational, literary, or scientific purposes, or for the  
8 prevention of cruelty to children or animals, or for the benefit  
9 of religion, rehabilitation services, public recreation, or  
10 civic improvement.

11           "Trustee" means any person, individual, group of  
12 individuals, corporation, nonprofit corporation, limited  
13 liability company, limited liability partnership, unincorporated  
14 association, trust, or other legal entity holding property for  
15 any charitable purpose; or any chief operating officer,  
16 director, executive director, manager, responsible officer or  
17 partner, or owner of a corporation or other organization holding  
18 property for a charitable purpose.

19           **§ -4 Excluded entities.** This chapter does not apply to  
20 the United States, any state, territory, or possession of the  
21 United States, the District of Columbia, the Commonwealth of



1 Puerto Rico, or to any of their agencies or governmental  
2 subdivisions.

3       **§ -5 Authority of attorney general.** The attorney  
4 general's preexisting duty, as *parens patriae*, to oversee the  
5 activities of a trustee of any trust that is wholly or partially  
6 charitable, shall also include any person, individual, group of  
7 individuals, corporation, nonprofit corporation, limited  
8 liability company, limited liability partnership, unincorporated  
9 association, trust, or other legal entity holding property for  
10 any charitable or nonprofit purposes.

11       **§ -6 Registration of charitable trusts and nonprofit**  
12 **organizations.** (a) Beginning January 1, 2009, the trustee of a  
13 trust or organization that has in whole or in part a charitable  
14 or nonprofit purpose shall register the trust or organization  
15 with the attorney general. Religious organizations performing  
16 tax-exempt activities, and small organizations that are not  
17 required either to file an Internal Revenue Service form 990 or  
18 900 EZ or a Hawaii general excise tax return under chapter 237  
19 are exempt from the registration requirements imposed by this  
20 section and the payment of the registration fee under section  
21 -7(d).



1           (b) "Register" for purposes of this section means provide  
2 to the attorney general a copy of the trust's or organization's  
3 Internal Revenue Service form 990, 990-EZ, 990-PF, or 990-T or  
4 similar tax return (return of exempt organization) for the  
5 organization's most recent calendar or fiscal year, whichever is  
6 applicable.

7           **§ -7 Duty to provide federal tax information returns and**  
8 **other information to the attorney general.** (a) Except as  
9 otherwise provided, every trustee shall file with the attorney  
10 general on the date that the organization's Internal Revenue  
11 Service tax return is due, including any Internal Revenue  
12 Service extensions, a copy of the current Internal Revenue  
13 Service tax return of the charitable organization including, but  
14 not limited to, form 990, 990-EZ, 990-PF, or 990-T or similar  
15 tax return.

16           (b) The attorney general may suspend for good cause the  
17 filing of a return or report as to a particular charitable trust  
18 or organization for a reasonable, specifically designated time  
19 upon written application of the trustee filed with the attorney  
20 general, and after the attorney general has filed in the  
21 register of charitable trusts and organizations a written  
22 statement that the interests of the beneficiaries, or the



1 public, as the case may be, will not be prejudiced thereby, and  
2 the period when such returns or reports shall resume.

3 (c) Upon request of the attorney general, each trust or  
4 organization subject to the filing requirements of subsection  
5 (a) shall promptly provide the attorney general with copies of  
6 its trust agreement or indenture, articles of incorporation and  
7 bylaws, or other governing documents, and current financial  
8 statements, federal and state applications for tax-exempt  
9 status, and any other information reasonably requested by the  
10 attorney general.

11 (d) Every trustee filing a return or report required by  
12 this section shall pay to the fund established in section  
13 -15, a fee based on the trust's or organization's gross  
14 income and receipts, as set forth in the trust's or  
15 organization's federal tax return, during the time covered by  
16 the report, as follows:

- 17 (1) \$10, if less than \$25,000;  
18 (2) \$50, if \$25,000 or more but less than \$100,000;  
19 (3) \$100, if \$100,000 or more but less than \$250,000;  
20 (4) \$150, if \$250,000 or more but less than \$500,000;  
21 (5) \$200, if \$500,000 or more but less than \$1,000,000;  
22 (6) \$300, if \$1,000,000 or more but less than \$5,000,000;



1           (7)   \$500, if more than \$5,000,000 and less than  
2                   10,000,000; or

3           (8)   \$750, if more than \$10,000,000.

4           (e)   In the case of each failure to file a return or report  
5 required under this section (determined with regard to any  
6 extension of time for filing), unless it is shown that the  
7 failure is due to reasonable cause, there shall be paid by the  
8 person failing to so file, \$20 for each day during which the  
9 failure continued, but the total amount imposed under this  
10 subsection on any person for failure to file any return or  
11 report shall not exceed \$20,000. Returns and reports submitted  
12 without the proper fee shall not be accepted for filing.

13           **§ -8 Rules.** The attorney general may adopt rules  
14 necessary for the administration of this chapter pursuant to  
15 chapter 91.

16           **§ -9 Investigation.** In addition to the powers conferred  
17 under chapter 28, the attorney general may investigate  
18 transactions and relationships of any trustee subject to this  
19 chapter for the purpose of determining whether the property held  
20 for charitable purposes is properly administered, whether any  
21 trustee has violated any provision of this chapter, or whether  
22 any trustee has breached a fiduciary duty. The attorney general



1 may require any agent, trustee, fiduciary, beneficiary,  
2 institution, association, corporation, or other person to  
3 appear, at a named time and place designated by the attorney  
4 general, in the county where the person resides or is found, to  
5 give testimony under oath and to produce books, memoranda,  
6 papers, documents of title and evidence of assets, liabilities,  
7 receipts, disbursements, or other information in the possession  
8 or control of the person ordered to appear, subject to all  
9 privileges enjoyed by all witnesses in this State.

10       **§ -10 Attendance of parties and witnesses; enforcement**  
11 **by the courts.** In addition to the powers conferred under  
12 chapter 28, when the attorney general requires the attendance of  
13 any person, or the production of documents, as provided in this  
14 chapter, the attorney general shall issue an order setting forth  
15 the time when and the place where attendance is required and  
16 shall cause the same to be served upon the person in the manner  
17 provided for service of process in civil cases. The order shall  
18 have the same force and effect as a subpoena and, upon  
19 application of the attorney general, obedience to the order may  
20 be enforced by the circuit or probate court in the county where  
21 the person served with the subpoena resides or is found, in the  
22 same manner as though the notice were a subpoena. The court





1 may, in case of refusal to obey the order issued by the attorney  
2 general, issue an order requiring such person to appear before  
3 the attorney general to give testimony and to produce  
4 documentary evidence, if so ordered, or to give evidence  
5 relating to the matter in question, and any failure to obey such  
6 order of the court may be punishable as a contempt of court.

7       **§ -11 Powers of the attorney general; jurisdiction of**  
8 **court.** In addition to the powers conferred under chapter 28,  
9 the attorney general may institute appropriate proceedings to  
10 secure compliance with this chapter and to invoke the  
11 jurisdiction of the court. The powers and duties of the  
12 attorney general provided in this chapter are in addition to  
13 existing powers and duties. Nothing in this chapter shall  
14 impair or restrict the jurisdiction of any court with respect to  
15 any of the matters covered by it, except that no court shall  
16 have the jurisdiction to modify or terminate any trust of  
17 property for charitable purposes unless the attorney general is  
18 a party to the proceedings. Failure without good cause to  
19 comply with any order of any court shall constitute grounds for  
20 removal of the officers and directors of a charitable  
21 organization or trustees of a charitable trust and the



1 appointment by the court of successor officers and directors or  
2 trustees.

3       **§ -12 Duties of taxing and business registration**

4 **authorities.** (a) Before April 20th of each year, every  
5 officer, agency, board, or commission of this State, that has  
6 received an application for exemption from taxation by any  
7 charitable organization or trust subject to this chapter, shall  
8 provide the attorney general with a list that includes the name  
9 and business address of every trust or charitable organization.  
10 The list shall include any application for exemption filed with  
11 the agency as of December 31 of the preceding year.

12 Notwithstanding any statutory confidentiality provisions to the  
13 contrary, every taxing authority of the State, or its agencies  
14 or political subdivisions, shall make available to the attorney  
15 general for inspection and copying all tax returns and return  
16 information of all charitable organizations upon request.

17       (b) Before June 30 of each year, the department of  
18 commerce and consumer affairs shall provide the attorney general  
19 with a list of all active Hawaii nonprofit corporations. The  
20 list shall include each corporation's name and address, and the  
21 names of the current officers, directors, and members, if any.



1 (c) Before June 30 of each year, the department of  
2 commerce and consumer affairs shall provide the attorney general  
3 with list of Hawaii nonprofit corporations that are no longer  
4 considered by the department to be in good standing or that have  
5 been involuntarily dissolved by the department.

6 § -13 Recovery of expenses by the State. In any  
7 proceeding in any court concerning a charitable trust or other  
8 nonprofit organization, including private foundations, brought  
9 by the attorney general seeking enforcement or compliance with  
10 the provisions of this chapter, or in which the attorney general  
11 is cited by the court or a trustee as a necessary or proper  
12 party, the court having jurisdiction of such proceedings shall  
13 require the payment of all reasonable expenses incurred by the  
14 attorney general from the corpus or income, or both, of the  
15 trust or organization, in such reasonable amounts as the court  
16 may order. Necessary expenses include but are not limited to  
17 the costs of special deputy attorneys general, accountants,  
18 auditors, consultants, and experts employed or retained to  
19 assist with the investigation, preparation, and presentation in  
20 court of the charitable trust or nonprofit organization  
21 enforcement action. The court may also award to the attorney  
22 general reasonable attorney's fees, at hourly rates prevailing



1 in the community for similar services, to compensate for the  
2 time expended by deputies in connection with any enforcement  
3 action brought under this chapter. All fees and expenses  
4 collected under this section shall be deposited by the  
5 department of the attorney general in the Hawaii charitable  
6 trust and nonprofit special fund created by section -15.

7 **§ -14 Injunctive relief.** In any action in which the  
8 attorney general alleges that a charitable trust or nonprofit  
9 organization needs to be protected or the trustees, directors,  
10 officers, or members of a charitable trust or organization have  
11 breached their fiduciary duties, and injunctive relief and  
12 removal of trustees is sought, the circuit or probate courts  
13 shall exercise their discretion as the equities require and may,  
14 as a part of injunctive relief, and after a hearing where the  
15 trustees shall have an opportunity to be heard, appoint  
16 temporarily or permanently a receiver or a temporary trustee,  
17 trustees, directors, officers, or members to protect and operate  
18 the trust or organization and may temporarily or, as ultimate  
19 relief for breach of duty or to protect the trust or  
20 organization, permanently remove any trustee, officer, director,  
21 or member from office and appoint replacements to protect the  
22 public interest. The public interest is paramount and the



1 stewardship of a charitable organization is a privilege to serve  
2 as a fiduciary for the public good.

3 **§ -15 Hawaii charitable trust and nonprofit**

4 **organizations special fund.** There is created in the state  
5 treasury the Hawaii charitable trust and nonprofit organizations  
6 special fund. All fees and penalties collected by the attorney  
7 general pursuant to this chapter shall be deposited in the  
8 Hawaii charitable trust and nonprofit organizations special  
9 fund. Moneys in the fund shall be expended by the attorney  
10 general for the enforcement of this chapter, the dissemination  
11 of public information, and charitable trust and charitable  
12 nonprofit organization oversight.

13 **§ -16 Contrary and inconsistent provisions invalid.**

14 This chapter shall supersede the provisions of any charitable  
15 instrument that are contrary to or inconsistent with the  
16 provisions of this chapter."

17 SECTION 3. This Act shall not be construed to diminish,  
18 defeat, or impair any common law power that the attorney general  
19 may possess as *parens patriae* of charitable trusts, or any right  
20 established by an order of a court of competent jurisdiction.

21 SECTION 4. Section 554-8, Hawaii Revised Statutes, is  
22 repealed.



1           ~~["§554-8 Charitable trusts, expenses. In any proceedings~~  
2 ~~in any court, concerning a trust, which is wholly or partly~~  
3 ~~charitable and in which the attorney general has been cited by~~  
4 ~~the court or trustees as a necessary or proper party, the court~~  
5 ~~having jurisdiction of such proceedings may require the payment~~  
6 ~~of all reasonable and necessary expenses incurred by the~~  
7 ~~attorney general for the protection of the beneficial interest~~  
8 ~~in, or for the proper conduct of, such proceedings from the~~  
9 ~~corpus or income, or both, of the trust estate, in such~~  
10 ~~reasonable amounts as the court may order." ]~~

11           SECTION 5. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13           SECTION 6. This Act shall take effect on January 1, 2009.

14

INTRODUCED BY: Clarence K. Spahr  
Will Syro



**Report Title:**

Supervision of Charitable Trusts and Nonprofit Organizations

**Description:**

Confers authority to the attorney general to oversee charitable trusts and nonprofit organizations; requires charitable trusts and nonprofits to register with the attorney general; ensures that funds collected are applied solely to intended purposes of donor; requires the department of commerce and consumer affairs to provide the attorney general with a list every year of active Hawaii nonprofit corporations.

