

S B. NO. 2794

JAN 23 2014

A BILL FOR AN ACT

RELATING TO THE PROTECTION OF CHARITABLE ASSETS.

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

1 SECTION 1. The attorney general's role in providing
2 oversight of Hawaii's charitable organizations is recognized
3 under common law and through various sections of the Hawaii
4 Revised Statutes, including but not limited to provisions in
5 chapters 323D, 414D, 431, 467B, 554, 554B, and 517E, Hawaii
6 Revised Statutes. The purpose of this Act is to enact section 3
7 of the Model Protection of Charitable Assets Act that provides
8 that the attorney general has charitable oversight over
9 charitable assets regardless of the form in which they are held.

10 SECTION 2. Chapter 28, Hawaii Revised Statutes, is amended
11 to add a new section to be appropriately designated and to read
12 as follows:

13 "§28- Protection of charitable assets; attorney
14 general's authority to. (a) The attorney general shall
15 represent the public interest in the protection of charitable
16 assets and may:

17 (1) Enforce the application of a charitable asset in
18 accordance with:

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1 (A) The law and terms governing the use, management,
2 investment, distribution, and expenditure of the
3 charitable asset; and

4 (B) The charitable purpose of the person holding the
5 asset;

6 (2) Act to prevent or remedy:

7 (A) The misapplication, diversion, or waste of a
8 charitable asset; or

9 (B) A breach of fiduciary or other legal duty in the
10 governance, management, or administration of a
11 charitable asset; and

12 (3) Commence or intervene in an action to:

13 (A) Prevent, remedy, or obtain damages for:

14 (i) The misapplication, diversion, or waste of a
15 charitable asset; or

16 (ii) For a breach of fiduciary or other legal
17 duty in the governance, management, or
18 administration of a charitable asset; or

19 (B) Determine that an asset is a charitable asset.

20 (b) If the attorney general has reason to believe an
21 investigation is necessary to determine whether action

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1 is advisable under this section, the attorney general may
2 conduct an investigation, including exercising administrative
3 subpoena power under sections 28-2.5 and 467B-9.3.

4 (c) This section does not limit the powers and duties of
5 the attorney general under law of this State other than this
6 section.

7 (d) As used in this section "charitable asset" means
8 property that is given, received, or held for a charitable
9 purpose. The term does not include property acquired or held
10 for a for-profit purpose."

11 SECTION 3. New statutory material is underscored.

12 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: 

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BY REQUEST

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Report Title:

Protection of Charitable Assets

Description:

Enacts section 3 of the Model Protection of Charitable Assets Act that provides that the Attorney General has charitable oversight over charitable assets regardless of the form in which they are held; authorizes the Attorney General to enforce the application of the charitable asset and prevent or remedy breaches of fiduciary or other duty or the diversion or waste of a charitable assets.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

SB. NO. 2794

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO THE PROTECTION OF CHARITABLE ASSETS.

PURPOSE: The purpose of this bill is to amend chapter 28, Hawaii Revised Statutes, to enact section 3 of the Model Protection of Charitable Assets Act (MPOCAA) adopted by the National Conference of Commissioners on Uniform State Laws.

MEANS: Add a new section to chapter 28, Hawaii Revised Statutes (HRS).

JUSTIFICATION: As stated in the purpose section of the bill, the Attorney General's role in providing oversight of Hawaii's charitable organizations is recognized under common law and through various sections of the Hawaii Revised Statutes, including but not limited to, provisions in chapters 323D, 414D, 431, 554, 554B, 467B, and 517E, HRS. Codification of section 3 of MPOCAA will provide clarity that the Attorney General has oversight over charitable assets regardless of the form in which the assets are held and may investigate breaches of duty, diversions of charitable assets, and intervene in actions for the protection of charitable assets.

Impact on the public: Adoption of this proposed legislation will clarify that the Attorney General has the legal authority to protect charitable assets, for the benefit of the public at large, regardless of the form in which those assets are held.

Impact on the department and other agencies:
None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: ATG 100

OTHER AFFECTED
AGENCIES:

None.

EFFECTIVE DATE:

Upon approval.

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