

**TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION**

ON H.B. NO. 2245

RELATING TO THE PROTECTION OF CHARITABLE ASSETS

**BEFORE THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE**

DATE: Wednesday, February 5, 2014 at 2:10 p.m.
Conference Room 325, State Capitol

PERSON(S) TESTIFYING: KEN TAKAYAMA,
Commission to Promote Uniform Legislation

Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

My name is Ken Takayama, and I am testifying on behalf of the Commission to Promote Uniform Legislation (the "Commission"), in support of H. B. No. 2245, Relating to **THE PROTECTION OF CHARITABLE ASSETS**.

This measure formally authorizes the Attorney General to protect charitable assets. In this regard, the section 2 of the measure also specifically authorizes the Attorney General to conduct investigations, issue subpoenas, and adopt rules. As such, this measure enacts section 3 of the Model Protection of Charitable Assets Act (MPOCAA) ("the Act"), which was developed by the Uniform Law Commission (ULC) and made available to the states in 2011.

The comments to section 3 of the Act state that one of the major goals of the Act is to articulate the Attorney General's duty to represent the public interest in the protection of charitable assets. The duty exists in the common law and in statutes in many states, but the scope of the duty is sometimes uncertain. The Act declares and clarifies the scope of the duty and what the Attorney General is authorized to do to fulfill it, although the Act does not limit the authority or powers that already exist. In other words, this measure formalizes and statutorily codifies the powers, duties, and responsibilities of the Attorney General with regard to charitable assets in this state.

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While it may appear odd that this measure is enacting only a single section of an act produced by the Uniform Law Commission, there is nothing in the least that is untoward or inappropriate about this. While most of the products developed by the ULC are developed as "uniform" acts that the ULC believes are best enacted in as uniform a manner as possible throughout the nation, this is by no means true of all measures. There is a second category of ULC products developed as "model" legislation with the realization that states are likely to enact only certain elements of that product. Perhaps the best known example of a model act is the Model State Administrative Procedure Act, which Hawaii has enacted as chapter 91, Hawaii Revised Statutes.

Thank you very much for the opportunity to testify in support of this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:

H.B. NO. 2245, RELATING TO THE PROTECTION OF CHARITABLE ASSETS.

BEFORE THE:

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

LATE

DATE: Wednesday, February 5, 2014 **TIME:** 2:10 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Hugh R. Jones, Supervising Deputy Attorney General

Chair McKelvey and Members of the Committee:

The Department of the Attorney General (Department) requests the Committee pass this bill.

The purpose of this bill is to amend chapter 28, Hawaii Revised Statutes (HRS), to codify section 3 of the Model Protection of Charitable Assets Act (MPOCA), adopted by the National Conference of Commissioners on Uniform State Laws (NCCUSL). Section 3 of MPOCA makes clear that the Attorney General represents the public interest in the protection of charitable assets, regardless of the form in which the charitable assets are held. Section 3 of MPOCA also authorizes the Attorney General to enforce the proper application and use of charitable assets and to prevent their waste, diversion, or misuse through the use of legal process such as investigative subpoenas and civil actions to enjoin or to redress the misuse or misapplication of charitable assets.

The NCCUSL comment to section 3 of MPOCA indicates that the purpose of section 3 is to make clear the authority that Attorneys General had at common law:

One of the major goals of the Act is to articulate the Attorney General's duty to represent the public interest in the protection of charitable assets. The duty exists in the common law and in statutes in many states, but the scope of the duty is sometimes uncertain. The Act declares and clarifies the scope of the duty and what the Attorney General is authorized to do to fulfill it, although the Act does not limit the authority or powers that already exist. The Attorney General's duty has sometimes been described as the "parens patriae" power – the duty to protect the public interest in property that has been committed to charitable purposes. Unlike a private corporation or a private trust, no shareholder or private beneficiary has a

financial incentive to supervise the proper management of assets held for charitable purposes. A donor or charitable beneficiary may be interested in the management of the assets, but under the common law the Attorney General has standing to sue or take action to protect the public's interest in charitable assets.

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The Attorney General's authority over charitable assets does not depend on the organizational form of the person holding the assets. Charitable assets may be held by nonprofit corporations or unincorporated associations, as well as by trustees of charitable trusts, and the Attorney General will protect the interests of the public in these assets, however held.

Model Protection of Charitable Assets Act, §3, cmt. 3 (2011).

The reason that this bill seeks to codify only section 3 of MPOCA is that most of what is found within MPOCA is already contained in chapters 28, 467B, HRS, and other sections of the HRS.

The Attorney General requests the Committee's favorable consideration of this bill.