

JAN 27 2016

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. Section 28-5.2, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[~~†~~]**\$28-5.2**[~~†~~] **Protection of charitable assets; attorney**
4 **general's authority.** (a) The attorney general shall represent
5 the public interest in the protection of charitable assets and
6 may:

7 (1) Enforce the application of a charitable asset in
8 accordance with:

9 (A) The law and terms governing the use, management,
10 investment, distribution, and expenditure of the
11 charitable asset; and

12 (B) The charitable purpose of the person holding the
13 asset;

14 (2) Act to prevent or remedy:

15 (A) The misapplication, diversion, or waste of a
16 charitable asset; or

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1 (B) A breach of fiduciary or other legal duty in the
2 governance, management, or administration of a
3 charitable asset; or

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

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

6 (i) The misapplication, diversion, or waste of a
7 charitable asset; or

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

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

12 (b) If the attorney general has reason to believe an
13 investigation is necessary to determine whether action is
14 advisable under this section, the attorney general may conduct
15 an investigation, including exercising administrative subpoena
16 power under sections 28-2.5 and 467B-9.3.

17 (c) This section shall not limit the powers and duties of
18 the attorney general under the laws of this State.

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

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1 (e) As used in this section, "property" includes all
2 interests in real property or tangible or intangible personal
3 property, including cash, remainder interests, land, and
4 conservation or preservation easements or restrictions. The
5 remainder interest in a charitable remainder trust is property
6 held for a charitable purpose, as is the current interest in a
7 charitable lead trust, property held for ten years in a building
8 fund, and property given to a charitable organization subject to
9 a restriction on its use. Property held in a revocable trust
10 that provides a remainder interest for a charitable purpose is
11 not a charitable asset while the settlor is alive because the
12 settlor can revoke or change the interest."

13 SECTION 2. New statutory material is underscored.

14 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: *AM J. W.*

18

BY REQUEST

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Report Title:

Protection of Charitable Assets

Description:

Defines "property" as used in section 28-5.2, Hawaii Revised Statutes.

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

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 section 28-5.2, Hawaii Revised Statutes, to add a definition of "property" as used in that section.

MEANS: Amends section 28-5.2, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Act 217, Session Laws of Hawaii 2014, codified section 3 of the Model Protection of Charitable Assets Act (Act). The Act gives the Attorney General regulatory authority over charitable assets regardless of the form in which they are held. The term charitable asset is defined as property. This bill will create a new definition of "property" using wording from the Commentary to section 3 of the Act to provide greater clarity and guidance.

Impact on the public: None. By virtue of Act 217, Session Laws of Hawaii 2014, the Attorney General already has regulatory oversight over charitable assets.

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.