

2024 Regular Session

SENATE BILL NO. 498

BY SENATOR FOIL

TRUSTS. Provides for special charitable trusts. (gov sig)

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AN ACT

To enact Chapter 2-B of Code Title II of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:2348 through 2350.2, and R.S. 9:2792.1.1, relative to special charitable trusts; to provide for the creation and purpose of special charitable trusts; to provide with respect to terms, conditions, and procedures; to provide for duties, functions, limitations, and restrictions; to provide with respect to trustees and officers of the special charitable trusts; to provide for indemnification and insurance; to provide for limitation of liability; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 2-B of Code Title II of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950, comprised of R.S. 9:2348 through 2350.2, and R.S. 9:2792.1.1 are hereby enacted to read as follows:

CHAPTER 2-B. SPECIAL CHARITABLE TRUSTS

§2348. Special charitable trust; purpose

A special charitable trust may be created when a person makes a donation inter vivos to the trust in an amount not less than one billion dollars

1 for purposes of improving the health and lives of the people of Louisiana and
2 forms the trust pursuant to the provisions of this Chapter. The special
3 charitable trust may provide for any type of beneficiary, including an
4 institutional beneficiary as defined in R.S. 9:2271.

5 §2349. Duties and liabilities; indemnity; delegating performance

6 A. Subject to any limitations, restrictions, reservations in the trust,
7 resolution of the trustees, or applicable law, the special charitable trust shall be
8 managed by the trustees. The trustee has a fiduciary duty to act in the best
9 interest of the special charitable trust and its beneficiaries, and shall exercise
10 due diligence in the performance of his duties pursuant to the provisions of R.S.
11 9:2090.

12 B. Notwithstanding the provisions of R.S. 9:2087, the trustee of a special
13 charitable trust shall be authorized to delegate the performance of his duties to
14 one or more trustees, or to an officer, employee, or agent of the trust by
15 resolution of the trustees without requiring a power of attorney. The delegation
16 of authority shall not relieve the trustee of any responsibility imposed by law.
17 The president or equivalent officer, or the trustee, may delegate powers or
18 duties if an officer is absent or for any other reason deemed sufficient. The
19 officer, employee, or agent is authorized to perform the delegated duties of the
20 special charitable trust as prescribed by the trustee, and shall be subject to a
21 court of competent jurisdiction on all matters relating to the performance of his
22 duties.

23 C. The trustee shall exercise reasonable care, skill, and caution in
24 selecting an officer, employee, or agent, and in establishing the scope and terms
25 of the delegation consistent with the purposes of the special charitable trust
26 when delegating performance of his duties authorized pursuant to this Section.
27 In the event the trustee discovers a breach of duty, reasonable action under the
28 circumstance shall be taken to remedy the breach.

29 D. In performing a delegated function, an officer, employee, or agent of

1 a special charitable trust shall have the same fiduciary duty as the delegating
2 trustee to the special charitable trust, act in the best interest of the special
3 charitable trust and its beneficiaries, and exercise due diligence in the
4 performance of his duties within the scope and terms of his delegation.

5 E. The liability of trustees and officers of a special charitable trust shall
6 be as provided in R.S. 9:2792.1.1.

7 F. A trustee shall not be held liable under the provisions of this Section
8 if he acted in good faith reliance on any of the following:

9 (1) A report made by a representative of the special charitable trust.

10 (2) A report made by an appraiser selected with reasonable care by the
11 trustees.

12 (3) A financial statement or other record represented as accurate by the
13 president or officer in charge of the financial accounts or records of the special
14 charitable trust.

15 (4) A written report by a certified public accountant fairly reflecting the
16 financial condition of the special charitable trust.

17 G. Nothing contained in this Section shall derogate from the
18 indemnification authorized pursuant to R.S. 9:2350.

19 H. The trustees, officers, employees, or agents of a special charitable
20 trust shall be entitled to reasonable compensation as determined by the trustees
21 for services performed on behalf of the special charitable trust.

22 §2349.1. Limitation on political and lobbying activities

23 A special charitable trust shall comply with the provisions of Section
24 501(c) of the Internal Revenue Code of 1986, as amended, including but not
25 limited to, restrictions on influencing legislation and participating in political
26 campaign activity, and limitations of substantial activities promoting
27 propaganda. A special charitable trust shall not publish or distribute statements
28 concerning a political campaign regarding any candidate for public office.

29 §2350. Indemnification of trustees, officers, employees, and agents of a special

1 charitable trust; insurance

2 A. (1) A special charitable trust may indemnify a party to any action or
3 proceeding, including any action by the special charitable trust, and as set forth
4 in R.S. 9:2191 and R.S. 9:2196, in either of the following circumstances:

5 (a) The party is a past or present trustee, officer, employee, or agent of
6 the special charitable trust.

7 (b) The party is or was serving, at the request of the special charitable
8 trust, as a trustee, officer, employee, or agent of another nonprofit, business or
9 foreign special charitable trust, partnership, joint venture or other enterprise.

10 (2) The trustee, officer, employee, or agent shall be entitled to
11 indemnification of each of the following:

12 (a) Expenses, reasonable attorney fees, settlements and judgments, and
13 fines.

14 (b) The amounts provided herein shall be reasonably incurred in
15 connection with the action or proceeding.

16 (c) He acted in good faith and exercised reasonable care and skill in a
17 manner he believed to be in the best interests of the special charitable trust.

18 (d) He had reasonable cause to believe his conduct was lawful.

19 (3) In a criminal action or proceeding by the special charitable trust or
20 its trustees, the indemnification shall be limited to expenses, attorney fees,
21 settlements and judgments, and the estimated cost of the litigation and shall be
22 reasonably incurred in connection with the defense of the action.

23 (4) The trustee shall not be entitled to indemnification if found by a court
24 of competent jurisdiction to be liable for negligence or willful misconduct in the
25 performance of his duty to the special charitable trust. The court may find
26 based upon the facts and circumstances that, notwithstanding the adjudication
27 of liability, the trustee shall be entitled to indemnification for reasonable
28 expenses as determined by the court.

29 (5) A settlement or judgment, order, conviction, or plea of nolo

1 contendere shall not create a presumption that the person acted in bad faith and
2 not in the best interest of the special charitable trust, or, in a criminal action,
3 had reasonable cause to believe that his conduct was unlawful.

4 B. A trustee, officer, employee, or agent of a special charitable trust who
5 has prevailed in any action or proceeding, or in defense of any claim shall be
6 entitled to indemnification of actual expenses, and reasonable attorney fees
7 which he incurred.

8 C. Indemnification pursuant to Subsection A of this Section, unless
9 ordered by the court, shall be made by the special charitable trust only as
10 authorized and upon a determination that the person meets the applicable
11 standard. The determination shall be made by a majority vote of a quorum
12 consisting of trustees who were not parties to the action or proceeding, or by
13 independent legal counsel, if a quorum of trustees is not obtainable or if
14 directed by a quorum of disinterested trustees.

15 D. Expenses incurred in defense of an action or proceeding may be paid
16 by the special charitable trust in advance of the final disposition if authorized
17 by the trustees in the manner provided in Subsection C of this Section, upon
18 receipt of an undertaking by or on behalf of the trustee, officer, employee, or
19 agent to repay such amount unless determined that he is entitled to
20 indemnification by the special charitable trust as authorized in this Section.

21 E. The indemnification provided by this Section shall not be deemed
22 exclusive of any rights the person otherwise may be entitled by law, agreement,
23 by-laws, or authorization of disinterested trustees, both, acting in his official
24 capacity or in another capacity while holding office. The indemnification shall
25 continue to a person who is no longer a trustee, officer, employee, or agent and
26 shall inure to the benefit of his heirs and legal representative.

27 F. A special charitable trust may procure liability insurance on behalf
28 of a past or present trustee, officer, employee, or agent of the special charitable
29 trust, or a person who is or was serving at the request of a special charitable

1 trust as a trustee, officer, employee, or agent of another nonprofit, business or
2 foreign corporation, partnership, joint venture or other enterprise, acting in a
3 prudent manner in the performance of his duties, notwithstanding the
4 indemnification provided by a special charitable trust authorized under the
5 provisions of this Chapter.

6 §2350.1. Indemnification of third party by special charitable trust

7 A special charitable trust may be subject to indemnification,
8 reimbursement claims, assumption of obligations, and liabilities of another
9 entity to incentivize donations or contributions to the special charitable trust.

10 This provision shall be broadly construed.

11 §2350.2. Application of other Louisiana Trust Code provisions

12 A. Whenever the provisions of this Chapter are silent and except as
13 otherwise provided in this Chapter, the provisions of Chapter 2 of Code Title
14 II of Code Book III of Title 9 of the Louisiana Revised Statutes shall apply, and
15 whenever the provisions of Chapter 2 are silent then the provisions of the
16 Louisiana Trust Code shall apply. The Louisiana Trust Code shall not be
17 applied in a contradictory manner to Chapter 2 of Code Title II of Code Book
18 III of Title 9 of the Louisiana Revised Statutes. The provisions of neither the
19 Louisiana Trust Code nor Chapter 2 shall be applied in a contradictory manner
20 to the provisions of this Chapter, to invalidate a trust authorized pursuant to
21 this Chapter, to adversely affect the tax-exempt status of a special charitable
22 trust, nor to prevent any tax deduction for contributions to the trust.

23 B. Notwithstanding any provision to the contrary, a special charitable
24 trust shall be subject to the provisions of the Louisiana Uniform Prudent
25 Management of Institutional Funds Act. A special charitable trust shall be
26 considered an "institution" for purposes of R.S. 9:2337.2(4) and the trust assets
27 shall not be considered funds "held for an institution by a trustee that is not an
28 institution" pursuant to R.S. 9:2337.2(5)(b) although the special charitable trust
29 has "individuals" as trustees.

Proposed law provides that notwithstanding the provisions of present law, the trustee of a special charitable trust shall be authorized to delegate the performance of his duties to one or more trustees, or to an officer, employee, or agent of the trust by resolution of the trustees without requiring a power of attorney.

Proposed law provides that the delegation of authority shall not relieve the trustee of any responsibility imposed by law. The president or equivalent officer, or the trustee, may delegate powers or duties if an officer is absent or for any other reason deemed sufficient.

Proposed law provides that the officer, employee, or agent is authorized to perform the delegated duties of the special charitable trust as prescribed by the trustee, and shall be subject to a court of competent jurisdiction on all matters relating to the performance of his duties.

Proposed law provides that the trustee shall exercise reasonable care, skill, and caution in selecting an officer, employee, or agent, and in establishing the scope and terms of the delegation consistent with the purposes of the special charitable trust when delegating performance of his duties authorized pursuant to proposed law. In the event the trustee discovers a breach of duty, reasonable action under the circumstance shall be taken to remedy the breach.

Proposed law provides that in performing a delegated function, an officer, employee, or agent of a special charitable trust shall have the same fiduciary duty as the delegating trustee to the special charitable trust, act in the best interest of the special charitable trust and its beneficiaries, and exercise due diligence in the performance of his duties within the scope and terms of his delegation.

Proposed law provides that the liability of trustees and officers of a special charitable trust shall be as provided in proposed law (R.S. 9:2792.1.1).

Proposed law provides that a trustee shall not be held liable under the provisions of proposed law if he acted in good faith reliance on any of the following:

- (1) A report made by a representative of the special charitable trust.
- (2) A report made by an appraiser selected with reasonable care by the trustees.
- (3) A financial statement or other record represented as accurate by the president or officer in charge of the financial accounts or records of the special charitable trust.
- (4) A written report by a certified public accountant fairly reflecting the financial condition of the special charitable trust.

Proposed law provides that nothing contained in proposed law shall derogate from the indemnification authorized pursuant to proposed law (R.S. 9:2350).

Proposed law provides that the trustees, officers, employees, or agents of a special charitable trust shall be entitled to reasonable compensation as determined by the trustees for services performed on behalf of the special charitable trust.

Proposed law (R.S. 9:2349.1) provides that a special charitable trust shall comply with the provisions of present law, including but not limited to, restrictions on influencing legislation and participating in political campaign activity, and limitations of substantial activities promoting propaganda.

Proposed law provides that a special charitable trust shall not publish or distribute statements concerning a political campaign regarding any candidate for public office.

Proposed law (R.S. 9:2350) provides that a special charitable trust may indemnify a party to any action or proceeding, including any action by the special charitable trust, and as set forth in present law, in either of the following circumstances:

- (a) The party is a past or present trustee, officer, employee, or agent of the special charitable trust.
- (b) The party is or was serving, at the request of the special charitable trust, as a trustee, officer, employee, or agent of another nonprofit, business or foreign special charitable trust, partnership, joint venture or other enterprise.

Proposed law provides that the trustee, officer, employee, or agent shall be entitled to indemnification of each of the following:

- (a) Expenses, reasonable attorney fees, settlements and judgments, and fines.
- (b) The amounts provided herein shall be reasonably incurred in connection with the action or proceeding.
- (c) He acted in good faith and exercised reasonable care and skill in a manner he believed to be in the best interests of the special charitable trust.
- (d) He had reasonable cause to believe his conduct was lawful.

Proposed law provides that in a criminal action or proceeding by the special charitable trust or its trustees, the indemnification shall be limited to expenses, attorney fees, settlements and judgments, and the estimated cost of the litigation and shall be reasonably incurred in connection with the defense of the action.

Proposed law provides that the trustee shall not be entitled to indemnification if found by a court of competent jurisdiction to be liable for negligence or willful misconduct in the performance of his duty to the special charitable trust. Provides that the court may find based upon the facts and circumstances that, notwithstanding the adjudication of liability, the trustee shall be entitled to indemnification for reasonable expenses as determined by the court.

Proposed law provides that a settlement or judgment, order, conviction, or plea of nolo contendere shall not create a presumption that the person acted in bad faith and not in the best interest of the special charitable trust, or, in a criminal action, had reasonable cause to believe that his conduct was unlawful.

Proposed law provides that a trustee, officer, employee, or agent of a special charitable trust who has prevailed in any action or proceeding, or in defense of any claim shall be entitled to indemnification of actual expenses, and reasonable attorney fees which he incurred.

Proposed law provides that the indemnification pursuant to proposed law, unless ordered by the court, shall be made by the special charitable trust only as authorized and upon a determination that the person met the applicable standard. Provides that the determination shall be made by a majority vote of a quorum consisting of trustees who were not parties to the action or proceeding, or by independent legal counsel, if a quorum of trustees is not obtainable or if directed by a quorum of disinterested trustees.

Proposed law provides that the expenses incurred in defense of an action or proceeding may be paid by the special charitable trust in advance of the final disposition if authorized by the trustees in the manner provided in proposed law, upon receipt of an undertaking by or on behalf of the trustee, officer, employee, or agent to repay such amount unless determined that he is entitled to indemnification by the special charitable trust as authorized in proposed law.

Proposed law provides that the indemnification provided by proposed law shall not be deemed exclusive of any rights the person otherwise may be entitled by law, agreement, by-laws, or authorization of disinterested trustees, both, acting in his official capacity or in another capacity while holding office.

Proposed law provides that the indemnification shall continue to a person who is no longer a trustee, officer, employee, or agent and shall inure to the benefit of his heirs and legal representative.

Proposed law provides that a special charitable trust may procure liability insurance on behalf of a past or present trustee, officer, employee, or agent of the special charitable trust, or a person who is or was serving at the request of a special charitable trust as a trustee, officer, employee, or agent of another nonprofit, business or foreign corporation, partnership, joint venture or other enterprise, acting in a prudent manner in the performance of his duties, notwithstanding the indemnification provided by a special charitable trust authorized under the provisions of proposed law.

Proposed law (R.S. 9:2350.1) provides that a special charitable trust may be subject to indemnification, reimbursement claims, assumption of obligations, and liabilities of another entity to incentivize donations or contributions to the special charitable trust. Proposed law provides that this provision shall be broadly construed.

Proposed law (R.S. 9:2350.2) provides for application of other code provisions whenever the provisions of proposed law are silent.

Proposed law provides that the application of other code provisions shall not be applied in a contradictory manner to proposed law, nor to invalidate a trust authorized pursuant to proposed law, to adversely affect the tax-exempt status of a special charitable trust, nor to prevent any tax deduction for contributions to the trust.

Proposed law provides that notwithstanding any provision to the contrary, a special charitable trust shall be subject to the provisions of the La. Uniform Prudent Management of Institutional Funds Act.

Proposed law provides that a special charitable trust shall be considered an "institution" for purposes of present law and the trust assets shall not be considered funds "held for an institution by a trustee that is not an institution" pursuant to present law although the special charitable trust has "individuals" as trustees.

Proposed law provides that unless the trust provides otherwise, the trustees of a special charitable trust may amend the provisions of the trust. The trust may require court approval for an amendment to any provision of the trust.

Proposed law (R.S. 9:2792.1.1) provides that a person who serves as a trustee or officer of a special charitable trust qualified as a tax-exempt organization under Section 501(c) of the Internal Revenue Code, and who is compensated for such services shall not be individually liable for any act or omission resulting in damage or injury, arising out of the exercise of his judgment in the formation and implementation of policy while acting as a trustee or officer of the special charitable trust, or arising out of the management of the affairs of the special charitable trust, provided he was acting in good faith and within the scope of his official functions and duties, unless such damage or injury was caused by his willful or wanton misconduct.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 9:2348-2350.2 and 9:2792.1.1)