

SENATE BILL NO. 498

BY SENATOR FOIL

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

§2349. Duties and liabilities; indemnity; delegating performance

A. Subject to any limitations, restrictions, reservations in the trust, resolution of the trustees, or applicable law, the special charitable trust shall be managed by the trustees. The trustee has a fiduciary duty to act in the best

1 interest of the special charitable trust and its beneficiaries, and shall exercise
2 due diligence in the performance of his duties pursuant to the provisions of R.S.
3 9:2090. A trustee, an immediate family member of a trustee, or a business
4 associated with either, shall not do business with or receive remuneration from
5 the trust except for reasonable compensation for services as a trustee as
6 provided for in this Chapter. A trustee shall not engage in conduct or activity
7 that would be prohibited pursuant to R.S. 42:1112 and R.S. 42:1113 as though
8 the trust were a governmental entity.

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

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

26 D. In performing a delegated function, an officer, employee, or agent of
27 a special charitable trust shall have the same fiduciary duty as the delegating
28 trustee to the special charitable trust, act in the best interest of the special
29 charitable trust and its beneficiaries, and exercise due diligence in the
30 performance of his duties within the scope and terms of his delegation.

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

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

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

6 **(2) A report made by an appraiser selected with reasonable care by the**
7 **trustees.**

8 **(3) A financial statement or other record represented as accurate by the**
9 **president or officer in charge of the financial accounts or records of the special**
10 **charitable trust.**

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

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

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

18 **§2349.1. Limitation on political and lobbying activities**

19 **A special charitable trust shall comply with the provisions of Section**
20 **501(c) of the Internal Revenue Code of 1986, as amended, including but not**
21 **limited to restrictions on influencing legislation and participating in political**
22 **campaign activity, and limitations of substantial activities promoting**
23 **propaganda. A special charitable trust shall not publish or distribute statements**
24 **or provide funding, directly or indirectly, relating to, supporting, or opposing**
25 **a political campaign regarding any candidate for public office or any campaign**
26 **regarding a political issue.**

27 **§2350. Indemnification of trustees, officers, employees, and agents of a special**
28 **charitable trust; insurance**

29 **A. (1) A special charitable trust may indemnify a party to any action or**
30 **proceeding, including any action by the special charitable trust, and as set forth**

1 in R.S. 9:2191 and R.S. 9:2196, in either of the following circumstances:

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

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

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

9 (a) Expenses, reasonable attorney fees, settlements and judgments, and
10 finances.

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

13 (c) The provisions of this Paragraph shall apply only if the party both:

14 (i) Acted in good faith and exercised reasonable care and skill in a
15 manner he reasonably believed to be in the best interests of the special
16 charitable trust.

17 (ii) Had reasonable cause to believe his conduct was lawful.

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

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

28 (5) A settlement or judgment, order, conviction, or plea of nolo
29 contendere shall not create a presumption that the person acted in bad faith and
30 not in the best interest of the special charitable trust, or, in a criminal action,

1 had reasonable cause to believe that his conduct was unlawful.

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

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

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

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

25 F. A special charitable trust may procure liability insurance on behalf
26 of a past or present trustee, officer, employee, or agent of the special charitable
27 trust, or a person who is or was serving at the request of a special charitable
28 trust as a trustee, officer, employee, or agent of another nonprofit, business or
29 foreign corporation, partnership, joint venture or other enterprise, acting in a
30 prudent manner in the performance of his duties, notwithstanding the

1 indemnification provided by a special charitable trust authorized under the
2 provisions of this Chapter.

3 §2350.1. Indemnification of third party by special charitable trust

4 A special charitable trust may be subject to indemnification,
5 reimbursement claims, assumption of obligations, and liabilities of another
6 entity to incentivize donations or contributions to the special charitable trust.
7 This provision shall be broadly construed.

8 §2350.2. Application of other Louisiana Trust Code provisions

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

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

27 C. The trust may be amended only with court approval. The trust shall
28 not be amended to relieve a trustee of his fiduciary obligations or to waive a
29 conflict of interest or ethical rules.

30 * * *

§2792.1.1. Limitation of liability of trustee and officer of special charitable trust

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 of 1986, as amended, 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.

Section 3. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____