

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 fifty million 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. A trustee, an immediate family member of a trustee, or a business
12 associated with either, shall not do business with or receive remuneration from
13 the trust except for reasonable compensation for services as a trustee as
14 provided for in this Chapter. A trustee shall not engage in conduct or activity
15 that would be prohibited pursuant to R.S. 42:1112 and R.S. 42:1113 as though
16 the trust were a governmental entity.

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

28 C. The trustee shall exercise reasonable care, skill, and caution in
29 selecting an officer, employee, or agent, and in establishing the scope and terms

1 of the delegation consistent with the purposes of the special charitable trust
2 when delegating performance of his duties authorized pursuant to this Section.
3 In the event the trustee discovers a breach of duty, reasonable action under the
4 circumstances shall be taken to remedy the breach.

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

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

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

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

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

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

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

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

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

27 §2349.1. Limitation on political and lobbying activities

28 A special charitable trust shall comply with the provisions of Section
29 501(c) of the Internal Revenue Code of 1986, as amended, including but not

1 limited to restrictions on influencing legislation and participating in political
2 campaign activity, and limitations of substantial activities promoting
3 propaganda. A special charitable trust shall not publish or distribute statements
4 or provide funding, directly or indirectly, relating to, supporting, or opposing
5 a political campaign regarding any candidate for public office or any campaign
6 regarding a political issue.

7 §2350. Indemnification of trustees, officers, employees, and agents of a special
8 charitable trust; insurance

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

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

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

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

19 (a) Expenses, reasonable attorney fees, settlements and judgments, and
20 finances.

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

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

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

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

28 (3) In a criminal action or proceeding by the special charitable trust or
29 its trustees, the indemnification shall be limited to expenses, attorney fees,

1 settlements and judgments, and the estimated cost of the litigation and shall be
2 reasonably incurred in connection with the defense of the action.

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

9 (5) A settlement or judgment, order, conviction, or plea of nolo
10 contendere shall not create a presumption that the person acted in bad faith and
11 not in the best interest of the special charitable trust, or, in a criminal action,
12 had reasonable cause to believe that his conduct was unlawful.

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

17 C. Indemnification pursuant to Subsection A of this Section, unless
18 ordered by the court, shall be made by the special charitable trust only as
19 authorized and upon a determination that the person meets the applicable
20 standard. The determination shall be made by a majority vote of a quorum
21 consisting of trustees who were not parties to the action or proceeding, or by
22 independent legal counsel, if a quorum of trustees is not obtainable or if
23 directed by a quorum of disinterested trustees.

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

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

7 F. A special charitable trust may procure liability insurance on behalf
8 of a past or present trustee, officer, employee, or agent of the special charitable
9 trust, or a person who is or was serving at the request of a special charitable
10 trust as a trustee, officer, employee, or agent of another nonprofit, business or
11 foreign corporation, partnership, joint venture or other enterprise, acting in a
12 prudent manner in the performance of his duties, notwithstanding the
13 indemnification provided by a special charitable trust authorized under the
14 provisions of this Chapter.

15 §2350.1. Indemnification of third party by special charitable trust

16 A special charitable trust may be subject to indemnification,
17 reimbursement claims, assumption of obligations, and liabilities of another
18 entity to incentivize donations or contributions to the special charitable trust.
19 This provision shall be broadly construed.

20 §2350.2. Application of other Louisiana Trust Code provisions

21 A. Whenever the provisions of this Chapter are silent and except as
22 otherwise provided in this Chapter, the provisions of Chapter 2 of Code Title
23 II of Code Book III of Title 9 of the Louisiana Revised Statutes shall apply, and
24 whenever the provisions of Chapter 2 are silent then the provisions of the
25 Louisiana Trust Code shall apply. The Louisiana Trust Code shall not be
26 applied in a contradictory manner to Chapter 2 of Code Title II of Code Book
27 III of Title 9 of the Louisiana Revised Statutes. The provisions of neither the
28 Louisiana Trust Code nor Chapter 2 shall be applied in a contradictory manner
29 to the provisions of this Chapter, to invalidate a trust authorized pursuant to

1 this Chapter, to adversely affect the tax-exempt status of a special charitable
2 trust, nor to prevent any tax deduction for contributions to the trust.

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

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

13 * * *

14 §2792.1.1. Limitation of liability of trustee and officer of special charitable trust

15 A person who serves as a trustee or officer of a special charitable trust
16 qualified as a tax-exempt organization under Section 501(c) of the Internal
17 Revenue Code of 1986, as amended, and who is compensated for such services
18 shall not be individually liable for any act or omission resulting in damage or
19 injury, arising out of the exercise of his judgment in the formation and
20 implementation of policy while acting as a trustee or officer of the special
21 charitable trust, or arising out of the management of the affairs of the special
22 charitable trust, provided he was acting in good faith and within the scope of his
23 official functions and duties, unless such damage or injury was caused by his
24 willful or wanton misconduct.

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

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Hanna Gettys.

DIGEST

SB 498 Reengrossed

2024 Regular Session

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Proposed law (R.S. 9:2348) provides that a special charitable trust may be created when a person makes a donation inter vivos to the trust in an amount not less than \$50 million for purposes of improving the health and lives of the people of La. and forms the trust pursuant to the provisions of proposed law. Provides that the special charitable trust may provide for any type of beneficiary, including an institutional beneficiary as defined in present law.

Proposed law (R.S. 9:2349) provides that 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. Provides that the trustee has a fiduciary duty to act in the best interest of the special charitable trust and its beneficiaries, and shall exercise due diligence in the performance of his duties pursuant to the provisions of present law.

Proposed law prohibits a trustee, an immediate family member of a trustee, or a business associated with either, from doing business with or receiving remuneration from the trust except for reasonable compensation for services as a trustee as provided for in proposed law. Further prohibits a trustee from engaging in conduct or activity that would be prohibited pursuant to present law as though the trust were a governmental entity.

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. Provides that 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 or provide funding, directly or indirectly, relating to, supporting, or opposing a political campaign regarding any candidate for public office or any campaign regarding a political issue.

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.

Proposed law requires that the amounts to be indemnified be reasonably incurred in connection with the action or proceeding.

Proposed law provisions on indemnification shall apply only if the party both:

- (i) Acted in good faith and exercised reasonable care and skill in a manner he reasonably believed to be in the best interests of the special charitable trust.
- (ii) 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 present law provisions of the Uniform Prudent Management of Institutional Funds Act.

Proposed law provides that a special charitable trust shall be considered an "institution" as defined in 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 the trust may only be amended with court approval. The trust shall not be amended to relieve a trustee of his fiduciary obligations or to waive a conflict of interest or ethical rules.

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 federal law, 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 2792.1.1)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill

1. Changes the threshold amount in which a special charitable trust may be created from \$1 billion to \$50 million.

Senate Floor Amendments to engrossed bill

1. Makes technical amendments.
2. Provides for prohibitions regarding the conduct of certain persons, including the trustee.
3. Adds prohibitions for trustees engaging in political campaigns.
4. Changes that trusts can be amended only with court approval.