

ACT 136

H. B. NO. 1556

A Bill for an Act Relating to Activities of Certain Charitable Organization.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 554, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“Sec. 554- . Charitable trust; administration.

“(a) In the administration of any trust which is a ‘private foundation’ as defined in section 509 of the Code or to which section 4947 of the Code applies, the following shall be prohibited:

- “(i) engaging in any act of ‘self-dealing’ (as defined in section 4941(d) of the Code);
- “(ii) retaining any ‘excess business holdings’ (as defined in section 4943(c) of the Code);
- “(iii) making any investments in such manner as to subject it to tax under section 4944 of the Code; and
- “(iv) making any ‘taxable expenditures’ (as defined in section 4945(d) of the Code);

provided, however, that this subsection (a) shall not apply to such amounts of any trust to which section 4947(a) (2) of the Code applies as are described in the second sentence of said section and items (ii) and (iii) of this subsection (a) shall not apply to any trust to which said section 4947(a) (2) applies which is described in section 4947(b)(3) of the Code.

“(b) In the administration of any trust which is a ‘private foundation’

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as defined in section 509 of the Code or a 'charitable trust' as defined in section 4947(a) (1) of the Code, there shall be distributed, and the trustee or trustees shall be empowered and authorized to distribute, for the purposes specified in the trust instrument, such amounts at such time and in such manner as shall be required so as not to subject it to tax under section 4942 of the Code.

“(c) Nothing in this Act shall impair the rights and powers of the courts or the attorney general of this State with respect to any trust.

“(d) References in this section to sections of the Code are to sections of the Internal Revenue Code of 1954, as heretofore amended, and shall include future amendments to such sections and corresponding provisions of future Internal Revenue laws.”

SECTION 2. Section 416-21, Hawaii Revised Statutes, is amended to read as follows:

“Section 416-21. Powers prohibited for non-profit corporations.

“(a) In general. No nonprofit corporation shall have or issue shares of stock and no dividends shall be paid and no part of the income of such corporation shall be distributed to its members, directors, or officers, except upon the liquidation of the property of the corporation in case of corporate dissolution. A nonprofit corporation may pay compensation in a reasonable amount to its members, directors, or officers, for services rendered, and may confer benefits upon its members in conformity with its purposes. No loans shall be made by a nonprofit corporation to its directors or officers. The directors of a nonprofit corporation who vote for or assent to the making of a loan to a director or officer of the corporation, and any officer or officers participating in the making of the loan, shall be jointly and severally liable to the corporation for the amount of the loan until the repayment thereof.

“(b) Special requirements for private foundations.

“(1) No nonprofit corporation which is a 'private foundation' as defined in section 509(a) of the Code shall

“(i) engage in any act of 'self-dealing' (as defined in section 4941(d) of the Code);

“(ii) retain any 'excess business holdings' (as defined in section 4943(c) of the Code);

“(iii) make any investments in such manner as to subject it to tax under section 4944 of the Code; and

“(iv) make any 'taxable expenditures' (as defined in section 4945(d) of the Code).

“(2) Each nonprofit corporation which is a 'private foundation' as defined in section 509 of the Code shall distribute, for the purposes specified in its charter of incorporation, such amounts at such time and in such manner as shall be required so as not to subject it to tax under section 4942 of the Code.

“(3) Nothing in this act shall impair the rights and powers of the courts or the attorney general or the director of regulatory agencies of this State with respect to any corporation.

“(4) References in this subsection to sections of the Code are to sec-

tions of the Internal Revenue Code of 1954, as heretofore amended, and shall include future amendments to such sections and corresponding provisions of future Internal Revenue laws.”

SECTION 3. This Act shall take effect upon its approval and shall apply to all trusts and nonprofit corporations in existence on the effective date or coming into existence after the effective date.

(Approved May 28, 1971.)