

ACT 310

H.B. NO. 2362

A Bill for an Act Relating to Charitable Trusts.

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

SECTION 1. The legislature finds that there is a long-standing tradition, whereby trustees of most charitable trusts serve without compensation. While the legislature considers such voluntary service to be admirable, it believes that trustees of charitable trusts should not be prohibited by statute from receiving compensation. However, trustees who receive compensation from a charitable trust have a fiduciary duty to make sure such compensation is not in excess of what is reasonable under the circumstances. In addition to this common law duty, such trustees are subject to penalty under federal intermediate sanctions law if they allow their compensation to exceed what is reasonable under the circumstances. Knowledgeable and well-intentioned people can differ on what is reasonable compensation in any particular situation, but such controversies are best resolved by a judge who can take into account all relevant circumstances as presented by parties on both sides of the issue. Thus, the purpose of this Act is to codify the duty of trustees not to accept compensation above what is reasonable under the circumstances.

SECTION 2. Section 607-20, Hawaii Revised Statutes, is amended to read as follows:

“§607-20 Charitable trusts, special provision. (a) Notwithstanding any other provisions, in the case of [an estate of] a charitable trust, the [commissions] compensation of the trustees shall be limited to [the following schedule of percentages on all moneys received in the nature of revenue or income of the estate, such as rents, interests, and general profits: ten per cent on the first \$1,000; seven per cent on

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the next \$4,000; five per cent on the next \$100,000; three per cent on the next \$100,000; and two per cent on all over \$205,000. This schedule of percentages shall be applied not oftener than once a year. The trustees shall also be entitled to just and reasonable allowances for bookkeeping, clerical, and special services and expenses incidental thereto.] an amount that is reasonable under the circumstances.

(b) This section shall apply [as well to future accounting in existing estates as to new estates.] to existing and new charitable trusts established after the effective date of this Act; provided that any provisions in existing trust agreements regarding trustees compensation shall supersede this section.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect on January 1, 1999.

(Approved July 21, 1998.)