

ASSEMBLY THIRD READING
AB 900 (Reyes)
As Introduced February 17, 2021
Majority vote

SUMMARY:

Enhances the Attorney General's oversight of trusts and other charitable assets by requiring specified notices to be transmitted to the Attorney General's Office.

Major Provisions

Requires a trustee holding assets subject to a charitable trust to give written notice to the Attorney General at least 20 days before the trustee sells, leases, conveys, exchanges, transfers, or otherwise disposes of all or substantially all of the charitable assets.

COMMENTS:

Seeking to eliminate inconsistencies between the regulation of public benefit corporations, non-profit charities, and charitable trusts, this bill proposes to require a trustee of a charitable trust to give written notice to the Attorney General at least 20 days before the trustee sells, leases, conveys, exchanges, transfers, or otherwise disposes of all or substantially all of the charitable assets. By requiring charitable trusts to make such a filing with the Attorney General, this bill would impose the same requirements on charitable trusts that presently exist for public benefit corporations.

The Attorney General maintains broad authority over the regulation of charities, trusts, and public benefit corporations. Existing law vests significant authority in the Attorney General to oversee and regulate charities and charitable solicitations in California in order to ensure that charitable assets, ostensibly donated for use to advance the public good, are used for their intended purposes and that the charitable donations contributed by Californians are not misappropriated or misused through fraud or other means. The existing statutory scheme requires the Attorney General to maintain a registry of all charities in the state and the law requires that charitable trustees and fundraising professionals register and file annual financial disclosures to the Attorney General. Additionally, the Department of Justice receives and investigates complaints regarding misuse of charitable assets.

In addition to maintaining registration and oversight of charities, the Attorney General is also provided with notice when specified charitable organizations seek to dispose of substantial amounts of their charitable assets. While a charity disposing of significant quantities of assets may be legitimate, due to the need to ensure that charitable assets are being put toward a public benefit, these notices provide the Attorney General an opportunity to review and investigate large-scale sales of charitable assets to ensure the protection of the public.

Recent case law has highlighted the inconsistencies of existing regulation of charitable organizations. Unlike other areas of charitable regulation, significant portions of the regulation of charitable trusts are located in the Probate Code because charitable trusts also involve trust assets and end-of-life planning. The present statutory scheme for regulating charitable trusts was adopted in 1990 (AB 759 (Friedman) Chapter 79, Statutes of 1990), and generally provides for the duties and obligations of trustees. Although the trustee is required to provide significant disclosures to the beneficiaries and others involved with the trust, unlike other charitable

organizations or public benefit corporations, the trustee is not required to notify the Attorney General about the disposal of trust assets. Although trustees are not required to notify the Attorney General of their actions, it appears that the statutory scheme envisioned by AB 759 believed the fiduciary duties imposed on trustees would have been sufficient to deter bad actors. While it appears that the omission of notice to the Attorney General was little more than a simple oversight when the statute was drafted in the early 1990s, recent case law suggests that the Attorney General may need to take a more proactive role in charitable trusts. In recent years, as the Attorney General's Office indicates to this Committee, there have been an increasing number of cases involving self-dealing by charitable trustees that are making their way through California courts. (See, e.g. *People of the State of California v. Bishop* (Super. Ct. Napa. County, 2014, No. 26-65141.) Given the increasing frequency of cases involving the misappropriation of trust assets, the author contends that the law regarding charitable trusts must be updated to provide greater oversight of trustees who seek to dispose of such assets.

This bill. Seeking to enhance the Attorney General's oversight of charitable trusts, this bill proposes to require the trustee of a charitable trust to notify the Attorney General at least 20 days before the trustee sells, leases, conveys, exchanges, transfers, or otherwise disposes of all or substantially all of the charitable assets. This bill does not modify the trustee's duty of care, nor does it vest the Attorney General with any new regulatory powers beyond those already conveyed in existing law.

New notice requirements augment existing safeguards to protect charitable assets. As noted above, the Attorney General maintains significant oversight over charitable assets in California. As a part of this oversight authority, the Attorney General may not only bring an action against a person who misuses charitable assets, but may also bring actions seeking to stop the disposal of charitable assets. This proactive enforcement works particularly well when the Attorney General is afforded prior notice of a charity's intent to dispose of their assets. Accordingly, this bill simply augments the Attorney General's existing powers by providing the Attorney General with prior notice of the planned disposal of charitable trust assets, thus enhancing the Attorney General's ability to proactively enforce existing law as it applies to charitable trusts.

According to the Author:

This legislation is long overdue, and essential to ensuring that bad actors are unable to engage in self-dealing transactions. California charities should not be allowed to bypass the simple act of giving notice when making large transfers."

Current California law is inconsistent, as it requires public benefit corporations to give advance notice to the Attorney General, but not charitable trusts. AB 900 will make the law consistent and equitable.

Arguments in Support:

No support on file.

Arguments in Opposition:

No opposition on file.

FISCAL COMMENTS:

None

VOTES:

ASM JUDICIARY: 9-2-0

YES: Stone, Chau, Chiu, Davies, Lorena Gonzalez, Holden, Kalra, Maienschein, Reyes

NO: Gallagher, Kiley

UPDATED:

VERSION: February 17, 2021

CONSULTANT: Nicholas Liedtke / JUD. / (916) 319-2334

FN: 0000137