

Honolulu, Hawaii

March 18, 2010

RE: S.B. No. 2842  
S.D. 2  
H.D. 1

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fifth State Legislature  
Regular Session of 2010  
State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which was referred S.B. No. 2842, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO THE PERMITTED TRANSFERS IN TRUST ACT,"

begs leave to report as follows:

The purpose of this bill is to allow the establishment of perpetual trusts that are protected against federal estate taxes and the claims of certain creditors by:

- (1) Creating the Permitted Transfers in Trust Act (PTTA) to govern transfers of currency, bonds, and securities from a transferor to a trustee by means of an irrevocable trust instrument; and
- (2) Specifying that the rule against perpetuities does not apply to transfers pursuant to PTTA.

First Hawaiian Bank and Bank of Hawaii supported this bill with amendments.

Your Committee has amended this bill by replacing its contents with those of a similar bill, H.B. No. 2706, H.D. 1. Specifically, this measure has been amended by, among other things:

SB2842 HD1 HSCR CPC HMS 2010-2563



- (1) Adding definitions for the terms "cash" and "marketable securities";
- (2) Amending the definitions of:
  - (A) "Permitted property" to mean cash, marketable securities, life insurance contracts, and non-private annuities; and
  - (B) "Permitted trustee" to mean a person other than the transferor, who is a resident of Hawaii, or a bank or trust company authorized to do business in Hawaii and act as a trustee;
- (3) Replacing the term "perfected," which has a certain meaning under the Uniform Commercial Code, which is not applicable to this bill, with the term "completed";
- (4) Allowing the trustee to terminate the trust if the market value has declined to the extent it would be uneconomical, imprudent, or unwise to continue to retain the trust;
- (5) Allowing the transferor to direct that a determination is to be made by the advisor in the case of a dispute, deadlock, or difference of opinion between a permitted trustee and an advisor;
- (6) Providing that a permitted trustee shall be authorized to invest only in permitted property, as defined in this chapter, instead of in accordance with Chapter 554C, Hawaii Revised Statutes;
- (7) Providing that limits on actions by creditors to avoid permitted transfers shall not apply to a lender who extends a secured or collateralized loan to the transferor on the representation that the trust amounts would be security for the transferor's default on the loan;
- (8) Blanking out the tax on permitted transfers;
- (9) Removing the provision that the State will not levy any other taxes against trusts under the chapter;



- (10) Providing that a nongrantor trust is subject to Hawaii income tax unless there is no Hawaii beneficiary;
- (11) Changing the effective date to July 1, 2020, to encourage further discussion; and
- (12) Making technical, nonsubstantive amendments for consistency, clarity, and style.

As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2842, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2842, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Respectfully submitted on  
behalf of the members of the  
Committee on Consumer  
Protection & Commerce,

  
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ROBERT N. HERKES, Chair



