

Presentation to the House Committee on Consumer Protection and Commerce
Wednesday, February 03, 2010, at 2:00 PM, Room 325

Testimony for HB2706 Relating to the
Permitted Transfers in Trust Act

TO: The Honorable Robert N. Herkes, Chair
The Honorable Glenn Wakai, Vice Chair
Members of the House Committee on Consumer Protection and Commerce

My name is Paul E. DeLauro, Esq. (Colorado) and I testify on behalf of myself in favor of HB2706 relating to the Permitted Transfers in Trust Act.

The Permitted Transfers in Trust Act will spur development in Hawaii's economic sector, will lead to direct and indirect tax revenues, and will increase tourism (wealthy individuals coming to Hawaii to visit their trusts and professionals coming to Hawaii to learn about the law).

The purpose of HB2706 is to make Hawaii more competitive in attracting assets under management from wealthy individuals throughout the United States. It allows wealthy individuals to establish trusts in Hawaii with cash and marketable securities that (a) last forever, (b) avoid some of the severe effects of the federal death tax, and (c) are protected from the claims of creditors (with exceptions).

Wealthy individuals routinely establish trusts in states that offer the best trust laws. As businesses are often incorporated in Delaware in order to take advantage of Delaware's favorable business laws, trusts are often formed in other jurisdictions that offer superior trust laws than the state in which the wealthy individual lives.

HB2706 makes two primary changes in Hawaii law that will make Hawaii a competitor in this **multi-billion dollar** nationwide marketplace:

- First, the Act permits trusts established under the Act to last forever. Current Hawaii law states that a trust must end within 90 years or 21 years following the death of someone alive at the time the trust was drafted (whichever is longer). This law is based on a very old English common law rule known as the Rule Against Perpetuities. The Rule was of little estate planning consequence until passage of the federal Tax Reform Act of 1986.

The Tax Reform Act of 1986 created a new tax known as the Generation Skipping Transfer Tax (GSTT). If a wealthy individual attempted to leave assets to grandchildren or more remote heirs at their death, then their estate would have to pay this large extra tax. The exception is that the decedent can leave assets in trust but that the trust cannot last longer than state law allows.

Acting on this exception, Alaska, Delaware, South Dakota and other states abolished their Rule Against Perpetuities to allow their trusts to last forever. In effect, this allows a wealthy individual to leave assets in trust and those assets will never be charged with the GST tax.

HB2706 does not do away with Hawaii's Rule Against Perpetuities. Rather, it only abolishes it with respect to trusts established under the Act. Also, such trusts may only be funded with cash or marketable securities (not real estate) and must abide by fiduciary investment standards.

- Second, the Act allows a wealthy individual to form a trust under the Act and he/she is permitted to be a beneficiary of the trust. This means that a wealthy individual is allowed to take a portion of their estate (no more than 25%) and put it in a Hawaii trust that is protected against their future (unknown or unknowable) creditors. This allows a wealthy individual to establish a nest-egg for themselves with which they can start over financially if they lose everything in a frivolous lawsuit. In the litigious American society, this is highly appealing to high net worth individuals. When they pass away, the assets remain in Hawaii in trust for their heirs forever.

Wealthy individuals are looking for methods to reduce their estate tax burdens when they pass away. They are looking for ways to protect a small portion of their wealth for their own use and enjoyment against the ravages of frivolous litigation. In short, they are establishing trusts in other states (such as Delaware and Alaska) that offer more compelling trust laws than are currently offered by the state of Hawaii. Being remotely situated, Hawaii is the most geographically suited jurisdiction in the United States to establish such laws. Were Hawaii to enter this market place, it would cause a veritable tidal wave of interest nationally.

The Permitted Transfers in Trust Act will spur development in Hawaii's economic sector, will lead to direct and indirect tax revenues, and will increase tourism (wealthy individuals coming to Hawaii to visit their trusts and professionals coming to Hawaii to learn about the law).

Accordingly, I urge the passage of the Permitted Transfers in Trust Act.