



GOV. MSG. NO. 1264

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 23, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 23, 2011, the following bill was signed into law:

HB1447 HD2 SD2

RELATING TO THE PERMITTED TRANSFERS IN
TRUST ACT
Act 161 (11)

Aloha
Sincerely,
Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor

on JUN 23 2011
HOUSE OF REPRESENTATIVES
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

ACT 161
H.B. NO. 1447
H.D. 2
S.D. 2

A BILL FOR AN ACT

RELATING TO THE PERMITTED TRANSFERS IN TRUST ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that Hawaii continues to
2 lay the foundation necessary to attract foreign-source capital
3 and to retain local capital through proven domestic and
4 international estate and financial planning methodologies. The
5 legislature further finds that the original intent of the
6 permitted transfers in trust act was to offer incentives to high
7 net-worth individuals throughout the United States and the world
8 to transfer a portion of their liquid net worth into this State
9 for asset and trust management. It is the legislature's intent
10 to achieve the original purpose of the permitted transfers in
11 trust act and to make Hawaii a more competitive investment
12 environment in the national and local marketplace.

13 The purpose of this Act is to amend the permitted transfers
14 in trust act by allowing increased flexibility in the type and
15 extent of assets that may be managed by Hawaii's private
16 financial sector, thereby increasing state tax revenues and
17 better positioning the State as a world-class financial
18 management jurisdiction.



1 SECTION 2. Chapter 554G, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§554G- Advisors. (a) A transferor may appoint,
5 through the trust instrument, one or more advisors or
6 protectors, including:

7 (1) Advisors who have authority under the terms of the
8 trust to remove and appoint trustees, advisors, trust
9 committee members, or protectors;

10 (2) Advisors who have authority under the terms of the
11 trust to direct, consent to, or disapprove of
12 distributions from the trust; and

13 (3) Advisors, including the transferor beneficiary of the
14 trust, who serve as investment advisors to the trust.

15 (b) While a trustee may appoint an advisor, the
16 administrative and non-administrative authority over the trust
17 shall remain with the trustee.

18 (c) Notwithstanding subsection (b), whenever there is a
19 dispute, deadlock, or difference of opinion between a trustee
20 and an advisor, the transferor may direct that the determination
21 of the advisor shall be binding upon the trustee; provided that
22 the trustee shall bear no liability or accountability for any



1 act or transaction entered into as a result of the enforcement
2 of the advisor's determination. The trustee's administrative
3 and non-administrative fiduciary duty to the beneficiaries shall
4 be waived as to the specific act or executed transaction;
5 provided that the trustee dissents in writing before the act or
6 transaction is completed."

7 SECTION 3. Section 554G-2, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "[~~+~~]§554G-2[+] **Definitions.** As used in this chapter:

10 [~~"Cash" means United States currency.~~]

11 "Claim" means a right to payment, whether or not the right
12 is reduced to judgment, liquidated, unliquidated, fixed,
13 contingent, matured, unmatured, disputed, undisputed, legal,
14 equitable, secured, or unsecured.

15 "Creditor" means, with respect to a transferor, a person
16 who has a claim.

17 "Debt" means liability on a claim.

18 "Former spouse" means a person to whom the transferor was
19 married where the marriage was dissolved before the time of the
20 permitted transfer[+], or person with whom the transferor was in
21 a civil union where the civil union was dissolved before the
22 time of the permitted transfer.



1 ~~["Grantor trust" means a trust described in sections 671~~
2 ~~through 679 of the Internal Revenue Code of 1986, as amended.~~

3 ~~"Marketable securities" means securities that are:~~

4 ~~(1) Exchanged on a governmentally regulated exchange~~
5 ~~within the United States including, common stocks,~~
6 ~~bonds, mutual funds, or exchange traded funds; and~~

7 ~~(2) Permitted to be held by a fiduciary under Hawaii state~~
8 ~~law;~~

9 ~~provided that "marketable securities" does not include real~~
10 ~~estate or any interests in corporations, partnerships, and~~
11 ~~limited liability companies that are not publicly traded.~~

12 ~~"Non grantor trust" shall refer to any trust that is not a~~
13 ~~"grantor trust" as defined in this chapter.]~~

14 ~~"Permitted property" [means cash, marketable securities,~~
15 ~~life insurance contracts, and non private annuities.] includes~~
16 ~~real property, personal property, and interests in real or~~
17 ~~personal property.~~

18 ~~"Permitted transfer" means a transfer of permitted property~~
19 ~~by or from [a transferor to] one or more transferors who own an~~
20 ~~undivided interest in the property to one or more trustees, at~~
21 ~~least one of which is a permitted trustee, by means of a trust~~
22 ~~instrument, regardless of whether consideration is exchanged.~~



1 In the case of a transfer to more than one trustee, a
2 disposition that is otherwise a permitted transfer shall not be
3 treated as other than a permitted transfer solely because not
4 all of the trustees are qualified trustees.

5 "Permitted trustee" means a person, other than the
6 transferor, who is a resident of this State~~[7]~~ or a bank or
7 trust company that is authorized to do business in this State
8 ~~[that]~~, possesses and exercises trust powers ~~[and]~~, has its
9 principal place of business in this State~~[7]~~; and:

10 (1) Maintains or arranges for custody of some or all of
11 the property that is the subject of the permitted
12 transfer;

13 (2) Maintains records for the trust on an exclusive or
14 nonexclusive basis;

15 (3) Prepares or arranges for the preparation of fiduciary
16 income tax returns; or

17 (4) Otherwise materially participates in the
18 administration of the trust.

19 "Person" means a natural person.

20 "Spouse" means a person to whom the transferor is married
21 or with whom the person is party to a civil union at the time of
22 the permitted transfer.



1 "Transfer" means the disposition, conveyance, or assignment
2 of ~~[permitted] property [to a permitted trustee]~~, including the
3 change in the legal ownership of property occurring upon the
4 substitution of one trustee for another or the addition of one
5 or more new trustees, or the exercise of a power that causes the
6 disposition, conveyance, or assignment of permitted property to
7 a ~~[permitted] trustee[-]~~ or trustees, but shall not include the
8 release or relinquishment of an interest in property that was
9 formerly the subject of a permitted transfer.

10 ~~["Transfer tax" means the tax described in section 554C-~~
11 ~~12-]~~

12 "Transferor" means ~~[an]~~ :

- 13 (1) An owner of permitted property; ~~[a]~~
- 14 (2) The holder of a power of appointment that authorizes
15 the holder to appoint in favor of the holder, the
16 holder's creditors, the holder's estate, or the
17 creditors of the holder's estate; or ~~[a]~~
- 18 (3) A trustee who directly or indirectly makes a
19 disposition of permitted property.

20 "Trust instrument" means an irrevocable instrument
21 appointing a permitted trustee or permitted trustees for the
22 permitted property that is the subject of a disposition.



1 "Trustee" includes an original, additional, or successor
2 trustee, whether or not appointed or confirmed by court."

3 SECTION 4. Section 554G-4, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[~~f~~] §554G-4 [~~+~~] Permitted trustees. [~~(a)~~—A permitted
6 trustee means a person, other than the transferor, who is a
7 resident of this State, or a bank or trust company authorized to
8 do business in this State that possesses and exercises trust
9 powers and has its principal place of business in this State.

10 ~~(b)]~~ If a permitted trustee of a trust ceases to meet the
11 ~~[requirements of subsection (a)]~~ criteria for a permitted
12 trustee as defined in section 554G-2, and there remains no
13 trustee that meets the requirements, the permitted trustee shall
14 be deemed to have resigned as of the time that the trustee ~~[no~~
15 ~~longer meets the requirements of subsection (a).]~~ ceases to meet
16 the criteria. At that time, the successor permitted trustee
17 provided for in the trust instrument shall become the permitted
18 trustee of the trust. In the absence of any successor permitted
19 trustee provided for in the trust instrument, a trust advisor or
20 protector provided for in the trust instrument shall appoint a
21 successor permitted trustee. In the absence of ~~[an appointed]~~ a
22 designated trust advisor or protector ~~[, a Hawaii court of~~



1 ~~competent jurisdiction shall,]~~ or in the event of the failure of
2 the designated trust advisor or protector to appoint a successor
3 permitted trustee, the circuit court sitting in probate, upon
4 application of any interested party, shall appoint a successor
5 permitted trustee.

6 ~~[(c) A permitted trustee may appoint an investment adviser~~
7 ~~to manage the assets of the trust fund; provided that~~
8 ~~administrative and non administrative fiduciary responsibility~~
9 ~~shall remain vested, as against beneficiaries of the trust, with~~
10 ~~the permitted trustee.] "~~

11 SECTION 5. Section 554G-5, Hawaii Revised Statutes, is
12 amended to read as follows:

13 " ~~[+]§554G-5 [.]~~ **Trust instrument.** (a) A trust instrument
14 shall be irrevocable and shall expressly incorporate the laws of
15 this State governing the validity, construction, and
16 administration of the trust.

17 (b) The trustee, in its discretion, may terminate any
18 trust if and when its fair market value has declined to the
19 extent that would make it uneconomical, imprudent, or unwise to
20 continue to retain the trust, and shall pay and distribute the
21 trust to the persons entitled to mandatory or discretionary



1 income distributions as the trustee in the trustee's absolute
2 discretion shall decide.

3 (c) A trust instrument shall not be deemed revocable on
4 account of the inclusion of:

5 (1) A transferor's power to veto a distribution from the
6 trust;

7 (2) A power of appointment other than a power to appoint
8 to the transferor, the transferor's creditors, the
9 transferor's estate, or the creditors of the
10 transferor's estate that may be exercised by will or
11 other written instrument of the transferor effective
12 only upon the transferor's death;

13 (3) The transferor's potential or actual receipt of
14 income, including rights to income retained in the
15 trust instrument;

16 (4) The transferor's annual receipt of a percentage not to
17 exceed five per cent of the initial value of the trust
18 assets or its value determined from time to time
19 pursuant to the trust instrument or of a fixed amount
20 that on an annual basis does not exceed five per cent
21 of the initial value of the trust assets;



1 (5) The transferor's potential or actual receipt or use of
2 the trust's principal due to ~~[the discretionary action~~
3 ~~of a permitted trustee or]~~ the trustee acting:

4 (A) In the trustee's discretion;

5 (B) Pursuant to a provision in the trust instrument
6 that governs the distribution of principal ~~[+~~
7 ~~provided that any included provision shall]~~ and
8 that does not confer upon the transferor a
9 substantially unfettered right to the receipt or
10 use of the principal; or

11 (C) At the direction of an advisor described in
12 section 554G- who is acting:

13 (i) In the advisor's discretion;

14 (ii) Pursuant to a provision in the trust
15 instrument that governs the distribution of
16 principal and does not confer upon the
17 transferor a substantially unfettered right
18 to the receipt or use of the principal; or

19 (iii) Pursuant to the transferor's determination
20 under section 554G- (c) of a dispute,
21 deadlock, or difference of opinion in favor
22 of the advisor;



1 provided that for purposes of this paragraph, a
2 trustee is presumed to have discretion with respect to
3 the distribution of principal unless that discretion
4 is expressly denied to the trustee by the terms of the
5 trust instrument;

6 (6) The transferor's right to remove a [permitted] trustee
7 or advisor and to appoint a new [permitted] trustee or
8 advisor;

9 (7) The transferor's potential or actual receipt of income
10 or principal to pay income taxes due on income of the
11 trust if the trust instrument includes a provision
12 allowing or directing the use of trust funds to pay
13 income taxes due, or if the [permitted] trustee acts
14 in the trustee's discretion to allow payment of income
15 taxes due on the trust income; [~~or~~]

16 (8) A [permitted] trustee's authority pursuant to
17 discretion, direction, or the transferor's exercise of
18 a testamentary power of appointment to pay all or any
19 part of the transferor's debts outstanding at the time
20 of the transferor's death, the expenses of
21 administering the transferor's estate, or any estate



1 or inheritance tax imposed on or with respect to the
2 transferor's estate[-];

3 (9) The transferor's potential or actual receipt of income
4 or principal from a charitable remainder unitrust or
5 charitable remainder annuity trust, as those terms are
6 defined in section 664 of the Internal Revenue Code
7 and any successor provision; and the transferor's
8 right, at any time and from time to time by written
9 instrument delivered to the trustee, to release the
10 transferor's retained interest in the trust, in whole
11 or in part, in favor of one or more charitable
12 organizations with a succeeding beneficial interest in
13 the trust;

14 (10) The transferor's potential or actual receipt of income
15 or principal from a grantor-retained annuity trust or
16 grantor-retained unitrust, pursuant to Title 26 Code
17 of Federal Regulations Section 25.2702-3 and any
18 successor provision, or the transferor's receipt each
19 year of a percentage specified in the governing
20 instrument of the initial value of the trust assets or
21 their value determined from time to time pursuant to



1 the governing instrument; provided that the percentage
2 received does not exceed five per cent; or

3 (11) The transferor's potential or actual use of real
4 property held under a qualified personal residence
5 trust, as described in Title 26 Code of Federal
6 Regulations Section 25.2702-5(c) and any successor
7 provision, or the transferor's possession and
8 enjoyment of a qualified annuity interest, as
9 described in Title 26 Code of Federal Regulations
10 Section 25.2702-5(c) (8) and any successor provision
11 thereto.

12 (d) A trust instrument may provide that the interest of a
13 beneficiary of the trust, including a beneficiary who is the
14 transferor of the trust, may not be transferred, assigned,
15 pledged, or mortgaged, whether voluntarily or involuntarily,
16 before the [~~permitted~~] trustee actually distributes the property
17 or income to the beneficiary. Any provision of this type
18 contained in the trust instrument shall be deemed to be a
19 restriction on the transfer of the transferor's beneficial
20 interest in the trust that is enforceable under applicable
21 nonbankruptcy law within the meaning of Title 11 United States



1 Code ~~[section]~~ Section 541(c)(2) of the Bankruptcy Code or any
2 successor provision.

3 ~~[(e) A transferor may appoint, through the trust~~
4 ~~instrument, one or more advisors or protectors, including the~~
5 ~~following:~~

6 ~~(1) Advisors who have authority under the terms of the~~
7 ~~trust to remove and appoint permitted trustees,~~
8 ~~advisors, or protectors;~~

9 ~~(2) Advisors who have authority under the terms of the~~
10 ~~trust to direct, consent to, or disapprove of~~
11 ~~distributions from the trust; and~~

12 ~~(3) Advisors, including the transferor beneficiary of the~~
13 ~~trust, who serve as investment advisors to the trust.~~

14 ~~(f) Whenever there shall be a dispute, deadlock, or~~
15 ~~difference of opinion between a permitted trustee and an~~
16 ~~advisor, the transferor may direct that the determination of the~~
17 ~~advisor shall be binding upon the permitted trustee, but that~~
18 ~~the permitted trustee shall bear no liability or accountability~~
19 ~~for any act or transaction entered into as a result of the~~
20 ~~enforcement of the advisor's privilege if the permitted trustee~~
21 ~~dissents in writing.~~



1 ~~(g)~~ (e) If a trustee of a trust existing prior to the
2 enactment of this chapter proposes to make a permitted transfer,
3 but the trust instrument does not contain a power of appointment
4 that conforms to section 554G-5(c)(2), the trustee may deliver
5 an irrevocable written election to have section 554G-5(c)(2)
6 apply to the trust [7] and the nonconforming powers of
7 appointment shall be deemed modified to the extent necessary to
8 conform with section 554G-5(c)(2). The irrevocable written
9 election shall include a description of the original
10 transferor's powers of appointment as modified, and the original
11 transferor's written consent to the modification. Consent of
12 the original transferor to a modification of powers of
13 appointment shall not be considered to be a permitted transfer.

14 ~~(h)~~ (f) If, in any action brought against a trustee of a
15 trust that results from a permitted transfer, a court declines
16 to apply the law of this State in determining the validity,
17 construction, or administration of the trust [7] or the effect of
18 a spendthrift provision of the trust, the trustee, immediately
19 upon the court's action and without the further order of any
20 court, shall cease to be trustee of the trust and a successor
21 trustee shall [thereupon] succeed as trustee in accordance with
22 the terms of the trust instrument. If the trust instrument does



1 not provide for a successor trustee or does not provide for an
2 advisor or protector with powers to appoint successor trustees,
3 a Hawaii court of competent jurisdiction shall appoint a
4 successor permitted trustee upon the application of any
5 beneficiary of the trust under any terms and conditions that the
6 court determines to be consistent with the purposes of the trust
7 and with this chapter. Upon the removal of a trustee pursuant
8 to this section, the trustee who has been removed shall have no
9 power or authority other than to convey the trust property to
10 the successor trustee."

11 SECTION 6. Section 554G-6, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[+] §554G-6 [+] **Investments.** Nothing in this chapter shall
14 prohibit a [permitted] trustee from diversifying trust assets [7
15 ~~provided that a permitted trustee shall be authorized to invest~~
16 ~~only in permitted property, as defined in this chapter]."~~

17 SECTION 7. Section 554G-7, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "[+] §554G-7 [+] **Retained interests of transferor.** (a) A
20 permitted transfer shall be subject to this chapter
21 notwithstanding a transferor's retention of any or all of the
22 powers and rights described in section 554G-5(c) and



1 notwithstanding the transferor's service as investment advisor
2 pursuant to section ~~[554G-5(e)(3)]~~ 554G- (a) (3).

3 (b) The transferor shall have only the powers and rights
4 specifically conferred by the trust instrument. Except as
5 permitted by sections 554G-5(c) and ~~[554G-5(e)]~~ 554G- (a) (3),
6 a transferor shall have no rights or authority with respect to
7 the property that is the subject of a permitted transfer or to
8 the income from property that is the subject of a permitted
9 transfer. Any agreement or understanding purporting to grant or
10 permit the retention of any greater rights or authority shall be
11 void."

12 SECTION 8. Section 554G-8, Hawaii Revised Statutes, is
13 amended as follows:

14 1. By amending subsection (b) to read:

15 "(b) An allowable claim under subsection (a) ~~[of this~~
16 ~~section]~~ shall be extinguished unless:

17 (1) The creditor's claim arose before the permitted
18 transfer was made and the action is brought within the
19 limitations of section 651C-9 on the latter of the
20 date of the permitted transfer or ~~[the date of the~~
21 ~~enactment of this section]~~ July 1, 2010; or



1 (2) [The] Notwithstanding the provisions of section
2 651C-9, the creditor's claim arose concurrent with or
3 subsequent to the permitted transfer, and the action
4 is brought within two years after the permitted
5 transfer is made."

6 2. By amending subsection (f) to read:

7 "(f) No creditor or any other person shall have any claim
8 or cause of action, including an action to enforce a judgment
9 entered by a court or other body having adjudicative authority,
10 against a trustee or advisor described in section [~~554G-4(e)~~]
11 554G- (a) or against any person involved in drafting,
12 preparing, executing, or funding a trust or in counseling the
13 parties to a trust that is the subject of a permitted transfer
14 if, as of the date [~~of~~] the action[~~, the~~] is brought, an action
15 with respect to the permitted transfer would be barred under
16 this section."

17 SECTION 9. Section 554G-9, Hawaii Revised Statutes, is
18 amended to read as follows:

19 " [~~+~~] **§554G-9** [~~+~~] **Limitations on permitted transfers.** The
20 limitations contained in section 554G-8 on actions by creditors
21 to avoid permitted transfers shall not apply to:



- 1 (1) Any person to whom the transferor is indebted on
2 account of a family court-supervised agreement or
3 family court order for the payment of support or
4 alimony to the transferor's spouse, former spouse, or
5 children, or for a division or distribution of
6 property to the transferor's spouse or former
7 spouse [7]; provided that the transferor is in default
8 by thirty days or more of making a payment due under
9 the agreement or order, but only to the extent of the
10 debt and not to any claim for forced heirship,
11 legitime, or elective share;
- 12 (2) Any person who suffers death, personal injury, or
13 property damage on or before the date of a permitted
14 transfer; provided that the death, personal injury, or
15 property damage is determined to have been caused in
16 whole or in part by the tortious act or omission of
17 either the transferor or another person for whom the
18 transferor is or was vicariously liable to the extent
19 of the transferor's liability or vicarious liability;
- 20 (3) Any lender who extends a secured or collateralized
21 loan to the transferor based on the transferor's or
22 the transferor's agent's express or implied



1 representation that the assets of a trust established
2 under this chapter would be available as security
3 against the loan in the event of the transferor's
4 default thereon; ~~[or]~~

5 (4) The State of Hawaii to the extent that a transfer
6 results in the transferor being unable to meet the
7 transferor's tax liabilities, but only to the extent
8 necessary to extinguish the outstanding tax
9 liabilities ~~[or]~~; or

10 (5) A divorce or dissolution of marriage or civil union,
11 for purposes of considering property subject to
12 division under section 580-47, a transferor-
13 beneficiary's interest with respect to assets
14 transferred to the trust instrument:

15 (A) After the transferor's marriage or entry into a
16 civil union; or

17 (B) Within thirty days prior to the transferor's
18 marriage or civil union unless the transferor
19 gives written notice to the other party to the
20 marriage or civil union of the transfer; provided
21 that in the event of the divorce or dissolution
22 of the marriage or civil union of a non-



1 transferor beneficiary of the trust, the non-
2 transferor beneficiary's interest in the trust is
3 not considered property subject to division under
4 section 580-47."

5 SECTION 10. Section 554G-10, Hawaii Revised Statutes, is
6 amended to read as follows:

7 " ~~[+]~~ §554G-10 ~~[+]~~ **Effect of avoidance of permitted**
8 **transfers.** (a) A creditor may avoid a permitted transfer
9 pursuant to section 554G-8 only to the extent necessary to
10 satisfy the transferor's debt to the creditor at whose instance
11 the transfer has been avoided, together with costs ~~[7]~~ including
12 attorney's fees ~~[7]~~ as allowed by a court.

13 (b) In an action pursuant to subsection (a) to avoid a
14 permitted transfer:

15 (1) If a court finds that a trustee has not acted with
16 intent to defraud, hinder, or delay the creditor in
17 accepting or administering the property that is the
18 subject of the permitted transfer:

19 (A) The trustee shall have a first and paramount lien
20 against the property that is the subject of the
21 permitted transfer in an amount equal to the
22 entire cost ~~[7]~~ including attorney's fees ~~[7]~~



1 properly incurred by the trustee in the defense
2 of the action or proceedings to avoid the
3 permitted transfer; ~~and~~

4 (B) The permitted transfer shall be avoided, subject
5 to payment of proper fees, costs, preexisting
6 rights, claims, and interests of the trustee and
7 of any predecessor trustee who has not acted with
8 intent to defraud, hinder, or delay the creditor;
9 and

10 (C) For purposes of this paragraph, it shall be
11 presumed that the trustee did not act with intent
12 to defraud, hinder, or delay the creditor merely
13 by accepting the property; and

14 (2) If the court is satisfied that a beneficiary of the
15 trust has not acted with intent to defraud, hinder, or
16 delay the creditor, the permitted transfer shall be
17 avoided subject to the beneficiary's right to retain
18 any distribution made prior to the creditor's
19 commencement of an action to avoid the permitted
20 transfer~~[.—For]~~; provided that for purposes of this
21 paragraph, it shall be presumed that a beneficiary did
22 not act with intent to defraud, hinder, or delay the



1 creditor merely by creating the trust or by accepting
2 a distribution made in accordance with the terms of
3 the trust.

4 (c) A creditor who brings an action pursuant to
5 section 554G-8 to avoid a permitted trust shall have the burden
6 of proving by clear and convincing evidence that a trustee or
7 beneficiary acted with intent to defraud, hinder, or delay the
8 creditor; provided that in the case of a beneficiary who is also
9 the transferor, the burden on the creditor shall be to prove by
10 a preponderance of the evidence that the transferor-beneficiary
11 acted with intent to defraud, hinder, or delay the creditor.

12 ~~[Mere acceptance of permitted property by a trustee shall not~~
13 ~~constitute evidence of intent to defraud, hinder, or delay a~~
14 ~~creditor.]~~

15 (d) For purposes of this chapter, attachment, garnishment,
16 sequestration, or other legal or equitable process shall be
17 permitted only where permitted by the express terms of this
18 chapter.

19 ~~[(d)]~~ (e) Notwithstanding any other provision of this
20 chapter, a creditor shall have no right against the interest of
21 a beneficiary to a trust based solely on the beneficiary's right



1 to authorize or direct the trustee to use all or part of the
2 trust property to pay:

- 3 (1) Estate or inheritance taxes imposed upon or due to the
4 beneficiary's estate;
- 5 (2) Debts of the beneficiary's estate; or
- 6 (3) Expenses of administering the beneficiary's
7 estate [-], [+]

8 unless the beneficiary actually directs the payment of taxes,
9 debts, or expenses and then only to the extent of that
10 direction.

11 (f) Where spouses make a permitted transfer of property
12 and, immediately before the permitted transfer, the property,
13 any part of the permitted property, or any accumulation to the
14 permitted property was, pursuant to applicable law, owned by
15 them as tenants by the entirety, then notwithstanding the
16 permitted transfer and except where the provisions of the trust
17 instrument expressly provide to the contrary, the property and
18 any accumulation to the property, while held in trust during the
19 lifetime of both spouses, shall be treated as though it were
20 held in tenancy by the entirety and shall be subject to all
21 applicable law; provided that in every other respect, the
22 property shall be subject to the terms of the trust instrument.



1 In any action concerning whether a creditor of either or
2 both spouses may recover the debt from the trust, upon avoidance
3 of the permitted transfer the sole remedy available to the
4 creditor with respect to trust property treated as though it
5 were held in tenancy by the entirety shall be an order directing
6 the trustee to transfer the property to both spouses as tenants
7 by the entirety.

8 (g) Subject to all of the provisions of this section and
9 except as otherwise provided in subsection (f), upon avoidance
10 of a qualified disposition to the extent permitted under
11 subsection (a), the sole remedy available to the creditor shall
12 be an order directing the trustee to transfer to the transferor
13 the amount necessary to satisfy the transferor's debt to the
14 creditor at whose instance the disposition has been avoided."

15 SECTION 11. Section 554G-3, Hawaii Revised Statutes, is
16 repealed.

17 ~~["§554G-3] Completed transfers. The transfer of~~
18 ~~permitted property under this chapter shall be deemed completed~~
19 ~~following the completion of all of the following:~~

20 ~~(1) The delivery of permitted property by the transferor~~
21 ~~to the permitted trustee and the written acceptance of~~
22 ~~the permitted property by the permitted trustee;~~



1 ~~(2) The delivery by the transferor to the permitted~~
2 ~~trustee of a signed and notarized certificate of~~
3 ~~solvency that states that the amount of the transfer~~
4 ~~is equal to or less than twenty five per cent of the~~
5 ~~transferor's net worth and that the transfer will not~~
6 ~~result in delay, defrauding, or hindrance of a~~
7 ~~creditor who is known or knowable to the transferor at~~
8 ~~the time of the permitted transfer with a claim~~
9 ~~against the property that is subject to the transfer;~~
10 ~~and~~

11 ~~(3) The filing of the appropriate form by the transferor~~
12 ~~with the department of taxation and payment of the~~
13 ~~attendant transfer tax."]~~

14 SECTION 12. Section 554G-12, Hawaii Revised Statutes, is
15 repealed.

16 ~~["~~§554G-12~~ Taxation. (a) The State shall levy a one-~~
17 ~~time one per cent excise tax on the fair market value of all~~
18 ~~permitted transfers. This one time excise tax shall be~~
19 ~~administered by the department of taxation with all of its~~
20 ~~authorities under title 14, including all rights relating to the~~
21 ~~assessment, collection, and enforcement of the tax laws. The~~
22 ~~department of taxation shall be authorized to implement the tax~~



1 ~~under this section, including the timing, collection, and appeal~~
2 ~~rights of persons affected, by rule, including temporary rule.~~

3 ~~(b) A non grantor trust established under this chapter~~
4 ~~shall be subject to income tax in Hawaii; provided that to the~~
5 ~~extent that the beneficial interest in the non grantor trust~~
6 ~~shall be held by a beneficiary or beneficiaries residing outside~~
7 ~~this State, any income or capital gains accumulated for the~~
8 ~~benefit of the non resident beneficiary or beneficiaries shall~~
9 ~~be excluded from Hawaii income tax for that year.~~

10 ~~(c) A trustee of a non grantor trust established under~~
11 ~~this chapter shall not be required to track accumulated income~~
12 ~~or gains attributable to a nonresident beneficiary.~~

13 ~~(d) Notwithstanding any discretionary distribution~~
14 ~~provisions to the contrary, where the percentage interests of~~
15 ~~the beneficiaries are indeterminable based on the provisions of~~
16 ~~the trust, the trustee shall allocate accumulated income and~~
17 ~~gains equally among all beneficiaries then entitled to~~
18 ~~distributions of income.~~

19 ~~(e) Hawaii resident taxpayers who receive actual or~~
20 ~~constructive distributions of income or principal from trusts~~
21 ~~shall be subject to all applicable taxes on that income."]~~



1 SECTION 13. This Act does not affect rights and duties
2 that matured, penalties that were incurred, and proceedings that
3 were begun before its effective date.

4 SECTION 14. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 15. This Act shall take effect on July 1, 2011.
7

APPROVED this 23 day of JUN , 2011


GOVERNOR OF THE STATE OF HAWAII

