

STAND. COM. REP. NO. 3201

Honolulu, Hawaii

APR 05 2012

RE: H.B. No. 2623
H.D. 1
S.D. 1

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred
H.B. No. 2623, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO TRANSFER OF PROPERTY,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Specify that property held by spouses or reciprocal beneficiaries in tenancy by the entirety shall continue to be treated as such after the transfer to a trust unless otherwise specifically provided by the trust instrument;
- (2) Limit the remedies available to creditors against transferred property; and
- (3) Specify that upon divorce or annulment between spouses or the termination of a reciprocal beneficiary relationship, the trust property treated as held in tenancy by the entirety will instead be treated as property held in tenancy in common.

Your Committee received testimony in support of this measure from the Hawaii Association of Realtors and one private individual. The Hawaii Bankers Association submitted comments.



Your Committee finds that a debt of one spouse or reciprocal beneficiary may not be enforced against property held as tenants by the entirety. From an estate planning standpoint, it is often advisable to create revocable trusts for spouses or reciprocal beneficiaries in order to avoid probate and minimize estate taxes. However, under existing law, spouses or reciprocal beneficiaries are forced to choose between the creditor protections offered by a tenancy in the entirety arrangement or foregoing those protections in favor of setting up and properly funding estate planning trusts. This measure amends the law to allow these couples to use current estate planning tools and retain the creditor protections by holding real property as tenants by the entirety.

Your Committee recognizes the efforts made by the attorneys from the Judiciary's Committee on the Uniform Probate Code and Probate Court Practices, the Hawaii Bankers Association, and other estate planning professionals to develop language aimed at addressing concerns raised by the Hawaii Bankers Association and the Department of the Attorney General.

Accordingly, your Committee has amended this measure by:

- (1) Replacing the amendments to section 509-2, Hawaii Revised Statutes, with suggested amendments produced by the attorneys from the Judiciary's Committee on the Uniform Probate Code and Probate Court Practices, the Hawaii Bankers Association, and other estate planning professionals that:
 - (A) Specify that real property held in tenancy by the entirety by spouses or reciprocal beneficiaries and conveyed to a trust shall continue to have the same immunity from the claims of their separate creditors that would exist if the spouses or reciprocal beneficiaries had continued to hold the property or its proceeds as tenants by the entirety;
 - (B) Limit the tenants by the entirety protection to only real property placed in a trust;
 - (C) Specify that the tenants by the entirety protection applies if the spouses remain married or reciprocal beneficiaries remain in a registered reciprocal beneficiary relationship, the property shall



continue to be held in trust with both spouses or reciprocal beneficiaries remaining as beneficiaries of the trust, the tenancy by the entirety protection is not waived, and specific notice is provided in the conveyance deed and appropriately filed or recorded in Land Court or the Bureau of Conveyances;

- (D) Clarify that after death of one of the spouses or reciprocal beneficiaries, the tenancy by the entirety protection continues;
 - (E) Clarify that in the event the property transfer is held invalid, revoked, or dissolved, all real property held in trust is automatically deemed to be held in tenancy by the entirety;
 - (F) Allow spouses or reciprocal beneficiaries to waive the tenancy by the entirety protection in favor of specific creditors;
 - (G) Place the burden of proving immunity of the trust property from a separate creditor's claims on spouses or reciprocal beneficiaries in the event of a dispute; and
 - (H) Clarify that the real property is governed by the trust instrument and is considered as tenants by the entirety property only for protection purposes, not titling purposes;
- (2) Adding a savings clause;
 - (3) Changing the effective date to July 1, 2050, to encourage further discussion; and
 - (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2623, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2623, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.



Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,

A handwritten signature in black ink, appearing to read "Clayton Hee", written over a horizontal line.

CLAYTON HEE, Chair



