

STAND. COM. REP. NO. 2035

Honolulu, Hawaii

FEB 07 2012

RE: S.B. No. 2216
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 S.B. No. 2216 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 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) Define "spouse" to include partners in a civil union.

Your Committee received testimony in support of this measure from Honolulu Pride and two private individuals. Testimony in opposition to this measure was submitted by the Hawaii Bankers Association. The Department of the Attorney General; and the Gay, Lesbian, Bisexual and Transgender Caucus of the Democratic Party of Hawaii submitted comments.

Your Committee finds that a debt of one spouse or reciprocal beneficiary may not be enforced against property titled as tenancy in the entirety. From an estate planning standpoint, it is often advisable to create revocable trusts for spouses or reciprocal

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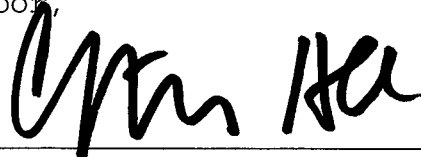
beneficiaries in order to avoid probate and minimize estate taxes. However, under existing law, spouses or reciprocal beneficiaries are forced to choose between the creditor protections offered by a tenancy in the entirety arrangement or foregoing those protections in favor of setting up and properly funding estate planning trusts. This measure amends the law to prevent couples from having to make this sometimes difficult choice.

Your Committee recognizes that the language of this measure needs further streamlining and encourages the attorneys from the Judiciary's Committee on the Uniform Probate Code and Probate Court Practices, the Department of the Attorney General, and the Hawaii Bankers Association to work on language, especially with respect to when spouses divorce after the transfer of property to a specified trust, as the measure moves through the legislative process.

Your Committee has amended this measure by deleting the definition for "spouse" to avoid any unintended consequences of affecting the interpretation of other statutes, and to ensure that partners in a civil union are included in the interpretation as originally intended.

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 S.B. No. 2216, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2216, 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,



CLAYTON HEE, Chair



The Senate
 Twenty-Sixth Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB 2216	Committee Referral: JDL	Date: 11/27/12		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile (VC)	✓			
GABBARD, Mike			✓	
IHARA, Jr., Les		✓		
SLOM, Sam			✓	
TOTAL	2	1	2	
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes