

Honolulu, Hawaii

JAN 31 2014

RE: S.B. No. 2229
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawaii

Madam:

Your Committee on Commerce and Consumer Protection, to which was referred S.B. No. 2229 entitled:

"A BILL FOR AN ACT RELATING TO THE UNIFORM POWER OF ATTORNEY ACT,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Establish the Uniform Power of Attorney Act, which defines the levels of authority granted in a power of attorney to the principal's agent, requires an agent to act in good faith and within the scope of authority of a power of attorney, and provides sample documents to be used to create a power of attorney; and
- (2) Repeal chapter 551D, Hawaii Revised Statutes, relating to the Uniform Durable Power of Attorney Act.

Your Committee received testimony in support of this measure from the Executive Office on Aging; Office of the Prosecuting Attorney, County of Hawaii; Commission to Promote Uniform Legislation; and AARP Hawaii. Your Committee received comments on this measure from the Judiciary.

Your Committee finds that powers of attorney are essential tools for delegating authority to others to effectively plan for incapacity, including the ability for a person to handle the financial matters of another. However, a 2002 national study of



durable powers of attorney revealed the need to address numerous issues not contemplated in the original Uniform Durable Power of Attorney Act, codified in Hawaii as chapter 551D, Hawaii Revised Statutes. In response to these concerns and as a way to promote uniformity on issues on which the Uniform Durable Power of Attorney Act was silent, the National Conference of Commissioners on Uniform State Laws developed the model Uniform Power of Attorney Act (2006). By 2013, the Uniform Power of Attorney Act had been enacted in thirteen states and one territory.

Your Committee further finds that this measure is based on the model Uniform Power of Attorney Act, which codifies state power of attorney legislative trends and collective best practices and strikes a balance between the need for flexibility and acceptance of an agent's authority and the need to prevent and redress financial abuse. This measure preserves the durable power of attorney as a low-cost and flexible form of surrogate financial decision making in the event of incapacity, encourages acceptance of powers of attorney by third persons, safeguards incapacitated principals, and provides clearer guidelines for agents.

Your Committee has heard testimony that this measure may create unintended consequences for families who use powers of attorney for the care of minors and disabled adults. Accordingly, amendments to this measure are necessary to exempt powers of attorney regarding the care of a minor or a disabled adult.

Your Committee has also heard the concerns of the Judiciary that this measure does not specify what court a person may petition to construe a power of attorney, review an agent's conduct, or grant appropriate relief. Your Committee notes that this measure is based on a model law intended for uniform enactment throughout the country, which is why a particular court may not have been specified. However, your Committee finds that this issue merits further consideration and requests that your Committee on Judiciary and Labor further examine the concerns raised by the Judiciary on this measure.

Your Committee has amended this measure by:

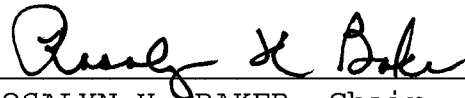
- (1) Specifying that the uniform power of attorney created by this measure shall not apply to a power created by a legal parent or legal guardian that places the care of a minor or disabled adult under another person; and



- (2) 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 Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2229, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2229, S.D. 1, and be referred to the Committee on Judiciary and Labor.

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



ROSALYN H. BAKER, Chair



The Senate
 Twenty-Seventh Legislature
 State of Hawai'i

Record of Votes
Committee on Commerce and Consumer Protection
CPN

Bill / Resolution No.:* SB 2229	Committee Referral: CPN, JDL	Date: 1/29/14		
<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
BAKER, Rosalyn H. (C)	✓			
TANIGUCHI, Brian T. (VC)	✓			
NISHIHARA, Clarence K.				✓
WAKAI, Glenn	✓			
SLOM, Sam	✓			
TOTAL	4	0	0	1
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