

Honolulu, Hawaii

FEB 27 2014

RE: S.B. No. 2229

S.D. 2

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

Madam:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 2229, S.D. 1, 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 Commission to Promote Uniform Legislation and AARP Hawaii.

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 amended this measure by:

- (1) Adopting the language suggested by the Commission to Promote Uniform Legislation to:
 - (A) Clarify that if an agent breaches a fiduciary duty, then the agent remains liable for the full amount of damages caused by the breach;
 - (B) Clarify that conferring the power of attorney to an agent includes other broadly worded authority in a general power of attorney signed prior to the effective date of this measure; and
 - (C) Delete from the power of attorney statutory form the check box for gifts under the grant of general authority as gifts are covered under the grant of specific authority; 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 Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2229, S.D. 1, as amended herein, and recommends that it pass



Third Reading in the form attached hereto as S.B. No. 2229,
S.D. 2.

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

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

CLAYTON HLEE, Chair



