

WRITTEN TESTIMONY RE: SB 847

SENATE COMMITTEE ON TECHNOLOGY

JANUARY 31, 2019; 2:45 p.m.

My name is Eric S. T. Young, Esq. and am an attorney licensed to practice in the State of Hawaii. A significant part of my legal practice includes estate planning and conservatorship, probate and trust administration. I am member of the Standing Committee on the Uniform Probate Code and Probate Court Practices of the Judiciary of the State of Hawaii (the "Probate Committee"). I am also a Fellow of the American College of Trust and Estate Counsel, and an instructor of a clinical class on estate planning at the William S. Richardson School of Law. These comments represent my personal views only.

I SUPPORT SB 847 WITH COMMENTS.

I support the intent and purpose of SB 847, which purports to grant fiduciaries such as trustees, personal representatives, conservatorships and agents under durable powers of attorney, the right to access electronic communications and control digital assets of the account holder. This can be particularly useful for fiduciaries during an account holder's incapacity and after the account holder's death. Please note the following:

1. The definition of "Guardian" as "a person who has been appointed by the court as guardian of the property" should be changed to "Conservator", to reflect the current nomenclature used in Hawaii's Uniform Probate Code, Chapter 560:5-401 et. seq.;
2. HRS §551E-33(9) permits a principal to authorize an agent under a statutory power of attorney to "(9) Access communications intended for, and communicate on behalf of the principal, whether by mail, electronic transmission, telephone, or other means; . . ." In connection with the passage of SB 847, it may be helpful for the general public if the Statutory Form Power of Attorney, codified at HRS § 551E-51, were amended as highlighted in **boldface** text, below:

"GRANT OF GENERAL AUTHORITY

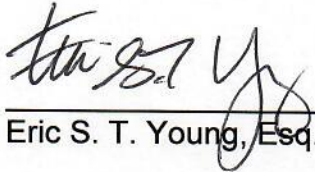
I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the Uniform Power of Attorney Act in chapter 551E, Hawaii Revised Statutes.

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All Preceding Subjects" instead of initialing each subject.)

- () Real Property
() Tangible Personal Property

- Stocks and Bonds
- Commodities and Options
- Banks and Other Financial Institutions
- Operation of Entity or Business
- Insurance and Annuities
- Estates, Trusts, and Other Beneficial Interests
- Claims and Litigation
- Personal and Family Maintenance
- Benefits from Governmental Programs or Civil or Military Service
- Retirement Plans
- Taxes
- Digital Assets**
- All Preceding Subjects"

Respectfully submitted this 30th day of January, 2019.



Eric S. T. Young, Esq.

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JANUARY 31, 2019; 2:45 p.m.

My name is Frank T. Kanemitsu, Esq. an attorney licensed to practice in the State of Hawaii. An area of my practice is conservatorships and guardianships. I am also a member of the Standing Committee on the Uniform Probate Code and Probate Court Practices of the Judiciary of the State of Hawaii (the "Probate Committee"). The Probate Committee was organized pursuant to Resolution No. 91-25, adopted by the sixth annual Hawaii State Judicial Conference. The Probate Committee is comprised of three circuit court judges, each representing a Circuit Court of the Judiciary of the State of Hawaii and nine attorneys that practice estate planning and probate law, all of whom have been appointed by the Chief Justice of the Supreme Court of the State of Hawaii. These comments represent my views only.

I OPPOSE SB 847.

The intended purpose of SB 847 is unclear because this legislature enacted Act 162, known as the Uniform Fiduciary Access To Digital Assets Act in 2016.

Respectfully submitted this 30th day of January, 2019.

By



Frank T. Kanemitsu, Esq.