STAND. COM. REP. NO. 817 -10

Honolulu, Hawaii , 2010 Morch 18 RE: S.B. No. 2842 S.D. 2

H.D. 1

Honorable Calvin K.Y. Say Speaker, House of Representatives Twenty-Fifth State Legislature Regular Session of 2010 State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which was referred S.B. No. 2842, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO THE PERMITTED TRANSFERS IN TRUST ACT,"

begs leave to report as follows:

The purpose of this bill is to allow the establishment of perpetual trusts that are protected against federal estate taxes and the claims of certain creditors by:

- Creating the Permitted Transfers in Trust Act (PTTA) to govern transfers of currency, bonds, and securities from a transferor to a trustee by means of an irrevocable trust instrument; and
- (2) Specifying that the rule against perpetuities does not apply to transfers pursuant to PTTA.

First Hawaiian Bank and Bank of Hawaii supported this bill with amendments.

Your Committee has amended this bill by replacing its contents with those of a similar bill, H.B. No. 2706, H.D. 1. Specifically, this measure has been amended by, among other things:



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- (1) Adding definitions for the terms "cash" and "marketable securities";
- (2) Amending the definitions of:
  - (A) "Permitted property" to mean cash, marketable securities, life insurance contracts, and nonprivate annuities; and
  - (B) "Permitted trustee" to mean a person other than the transferor, who is a resident of Hawaii, or a bank or trust company authorized to do business in Hawaii and act as a trustee;
- (3) Replacing the term "perfected," which has a certain meaning under the Uniform Commercial Code, which is not applicable to this bill, with the term "completed";
- (4) Allowing the trustee to terminate the trust if the market value has declined to the extent it would be uneconomical, imprudent, or unwise to continue to retain the trust;
- (5) Allowing the transferor to direct that a determination is to be made by the advisor in the case of a dispute, deadlock, or difference of opinion between a permitted trustee and an advisor;
- (6) Providing that a permitted trustee shall be authorized to invest only in permitted property, as defined in this chapter, instead of in accordance with Chapter 554C, Hawaii Revised Statutes;
- (7) Providing that limits on actions by creditors to avoid permitted transfers shall not apply to a lender who extends a secured or collateralized loan to the transferor on the representation that the trust amounts would be security for the transferor's default on the loan;
- (8) Blanking out the tax on permitted transfers;
- (9) Removing the provision that the State will not levy any other taxes against trusts under the chapter;



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- (10) Providing that a nongrantor trust is subject to Hawaii income tax unless there is no Hawaii beneficiary;
- (11) Changing the effective date to July 1, 2020, to encourage further discussion; and
- (12) Making technical, nonsubstantive amendments for consistency, clarity, and style.

As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2842, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2842, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

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

ROBERT N. HERKES, Chair



State of Hawaii House of Representatives The Twenty-fifth Legislature

## **Record of Votes of the Committee on Consumer Protection & Commerce**

Bill/Resolution No.: SB2842, SD2	Committee Referral: CPC, FIN			Date: 3/10/10				
□ The committee is reconsidering its previous decision on the measure.								
The recommendation is to: □ Pass, unamended (as is) □ Pass, with amendments (HD) □ Hold   □ Pass short form bill with HD to recommit for future public hearing (recommit)								
CPC Members		Ayes	Ayes (WR)		Nays		Excused	
1. HERKES, Robert N. (C)		V						
2. WAKAI, Glenn (VC)							$\checkmark$	
3. BELATTI, Della Au		$\mathbf{v}$						
4. CABANILLA, Rida								
5. CARROLL, Mele	811 - 11 1911 - 11						V	<u> 1</u>
6. ITO, Ken			an and a second s		PROPERTY		RUNDOWERS SERVICE	
7. KARAMATSU, Jon Riki		V						
8. LUKE, Sylvia	e		antin ann a	0.020	a bastara			
9. McKELVEY, Angus L.K.								
10. MIZUNO, John M.		anti su di 🖉 a stati	sanistra di si	u na se	tigation)	<u> </u>		
11. MORITA, Hermina M.			<u>alent</u> i					
12. SOUKI, Joseph M. 13. TSUJI, Clift						-		
14. MARUMOTO, Barbara C.				建制制		いう相		
15. THIELEN, Cynthia								
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TOTAL (15)		1511	$\varphi$		Ø		4	
The recommendation is: Adopted If joint referral, did not support recommendation.								
Vice Chair's or designee's signature: Acm								
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO								