
A BILL FOR AN ACT

RELATING TO THE PERMITTED TRANSFERS IN TRUST ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that Hawaii continues to
2 lay the foundation necessary to attract foreign-source capital
3 and to retain local capital through proven domestic and
4 international estate and financial planning methodologies. The
5 legislature further finds that the original intent of the
6 permitted transfers in trust act was to offer incentives to high
7 net-worth individuals throughout the United States and the world
8 to transfer a portion of their liquid net worth into this State
9 for asset and trust management. It is the legislature's intent
10 to achieve the original purpose of the permitted transfers in
11 trust act and to make Hawaii a more competitive investment
12 environment in the national and local marketplace.

13 The purpose of this Act is to amend the permitted transfers
14 in trust act by allowing increased flexibility in the type and
15 extent of assets that may be managed by Hawaii's private
16 financial sector, thereby increasing state tax revenues and
17 better positioning the State as a world-class financial
18 management jurisdiction.



1 SECTION 2. Chapter 554G, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§554G- Advisors. (a) A transferor may appoint,
5 through the trust instrument, one or more advisors or
6 protectors, including:

7 (1) Advisors who have authority under the terms of the
8 trust to remove and appoint trustees, advisors, trust
9 committee members, or protectors;

10 (2) Advisors who have authority under the terms of the
11 trust to direct, consent to, or disapprove of
12 distributions from the trust; and

13 (3) Advisors, including the transferor beneficiary of the
14 trust, who serve as investment advisors to the trust.

15 (b) While a trustee may appoint an advisor, the
16 administrative and non-administrative authority over the trust
17 shall remain with the trustee.

18 (c) Notwithstanding subsection (b), whenever there is a
19 dispute, deadlock, or difference of opinion between a trustee
20 and an advisor, the transferor may direct that the determination
21 of the advisor shall be binding upon the trustee; provided that
22 the trustee shall bear no liability or accountability for any



1 act or transaction entered into as a result of the enforcement
2 of the advisor's determination. The trustee's administrative
3 and non-administrative fiduciary duty to the beneficiaries shall
4 be waived as to the specific act or executed transaction;
5 provided that the trustee dissents in writing before the act or
6 transaction is completed."

7 SECTION 3. Section 554G-2, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "[+] §554G-2 [+] **Definitions.** As used in this chapter:

10 [~~"Cash" means United States currency.~~]

11 "Claim" means a right to payment [7] whether or not the
12 right is reduced to judgment, liquidated, unliquidated, fixed,
13 contingent, matured, unmatured, disputed, undisputed, legal,
14 equitable, secured, or unsecured.

15 "Creditor" means, with respect to a transferor, a person
16 who has a claim.

17 "Debt" means liability on a claim.

18 "Former spouse" means a person to whom the transferor was
19 married where the marriage was dissolved before the time of the
20 permitted transfer.

21 [~~"Grantor trust" means a trust described in sections 671~~
22 ~~through 679 of the Internal Revenue Code of 1986, as amended.~~]



1 ~~"Marketable securities" means securities that are:~~

2 ~~(1) Exchanged on a governmentally regulated exchange~~
3 ~~within the United States including, common stocks,~~
4 ~~bonds, mutual funds, or exchange traded funds; and~~

5 ~~(2) Permitted to be held by a fiduciary under Hawaii state~~
6 ~~law;~~

7 ~~provided that "marketable securities" does not include real~~
8 ~~estate or any interests in corporations, partnerships, and~~
9 ~~limited liability companies that are not publicly traded.~~

10 ~~"Non grantor trust" shall refer to any trust that is not a~~
11 ~~"grantor trust" as defined in this chapter.]~~

12 ~~"Permitted property" [means cash, marketable securities,~~
13 ~~life insurance contracts, and non private annuities.] includes~~
14 ~~real property, personal property, and interests in real or~~
15 ~~personal property.~~

16 "Permitted transfer" means a transfer of permitted property
17 by or from ~~[a transferer to]~~ one or more transferors who own an
18 undivided interest in the property to one or more trustees, at
19 least one of which is a permitted trustee, by means of a trust
20 instrument ~~[,]~~ regardless of whether consideration is exchanged.
21 In the case of a transfer to more than one trustee, a
22 disposition that is otherwise a permitted transfer shall not be



1 treated as other than a permitted transfer solely because not
2 all of the trustees are qualified trustees.

3 "Permitted trustee" means a person~~[, other than the~~
4 ~~transferor,~~] who is a resident of this State~~[,]~~ or a bank or
5 trust company that is authorized to do business in this State
6 ~~[that],~~ possesses and exercises trust powers, and has its
7 principal place of business in this State~~[,]~~; that:

- 8 (1) Maintains or arranges for custody of some or all of
9 the property that is the subject of the permitted
10 transfer;
- 11 (2) Maintains records for the trust on an exclusive or
12 nonexclusive basis;
- 13 (3) Prepares or arranges for the preparation of fiduciary
14 income tax returns; or
- 15 (4) Otherwise materially participates in the
16 administration of the trust.

17 "Person" means a natural person.

18 "Spouse" means a person to whom the transferor is married
19 at the time of the permitted transfer.

20 "Transfer" means the disposition, conveyance, or assignment
21 of ~~[permitted]~~ property ~~[to a permitted trustee],~~ including the
22 change in the legal ownership of property occurring upon the



1 substitution of one trustee for another or the addition of one
2 or more new trustees, or the exercise of a power that causes the
3 disposition, conveyance, or assignment of permitted property to
4 a [permitted] trustee[-] or trustees, but shall not include the
5 release or relinquishment of an interest in property that was
6 formerly the subject of a permitted transfer.

7 ~~["Transfer tax" means the tax described in section 554C-~~
8 ~~12.]~~

9 "Transferor" means [an] :

- 10 (1) An owner of permitted property; [a]
- 11 (2) The holder of a power of appointment that authorizes
12 the holder to appoint in favor of the holder, the
13 holder's creditors, the holder's estate, or the
14 creditors of the holder's estate; or [a]
- 15 (3) A trustee who directly or indirectly makes a
16 disposition of permitted property.

17 "Trust instrument" means an irrevocable instrument
18 appointing a permitted trustee or permitted trustees for the
19 permitted property that is the subject of a disposition.

20 "Trustee" includes an original, additional, or successor
21 trustee, whether or not appointed or confirmed by court."



1 SECTION 4. Section 554G-4, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " ~~[+] §554G-4 [+] Permitted trustees. [(a) A permitted~~
4 ~~trustee means a person, other than the transferor, who is a~~
5 ~~resident of this State, or a bank or trust company authorized to~~
6 ~~do business in this State that possesses and exercises trust~~
7 ~~powers and has its principal place of business in this State.~~

8 ~~(b)]~~ If a permitted trustee of a trust ceases to meet the
9 ~~[requirements of subsection (a)]~~ criteria for a permitted
10 trustee as defined in section 554G-2, and there remains no
11 trustee that meets the requirements, the permitted trustee shall
12 be deemed to have resigned ~~[as of]~~ at the time that the trustee
13 ~~[no longer meets the requirements of subsection (a).]~~ ceases to
14 meet the criteria. At that time, the successor permitted
15 trustee provided for in the trust instrument shall become the
16 permitted trustee of the trust. In the absence of any successor
17 permitted trustee provided for in the trust instrument, a trust
18 advisor or protector provided for in the trust instrument shall
19 appoint a successor permitted trustee. In the absence of ~~[an~~
20 ~~appointed]~~ a designated trust advisor or protector ~~[, a Hawaii~~
21 ~~court of competent jurisdiction shall,]~~ or in the event of the
22 failure of the designated trust advisor or protector to appoint



1 a successor permitted trustee, the circuit court sitting in
2 probate, upon application of any interested party, shall appoint
3 a successor permitted trustee.

4 ~~[(c) A permitted trustee may appoint an investment advisor~~
5 ~~to manage the assets of the trust fund; provided that~~
6 ~~administrative and non-administrative fiduciary responsibility~~
7 ~~shall remain vested, as against beneficiaries of the trust, with~~
8 ~~the permitted trustee.] "~~

9 SECTION 5. Section 554G-5, Hawaii Revised Statutes, is
10 amended to read as follows:

11 " ~~[+] §554G-5 [†]~~ **Trust instrument.** (a) A trust instrument
12 shall be irrevocable and shall expressly incorporate the laws of
13 this State governing the validity, construction, and
14 administration of the trust.

15 (b) The trustee, in its discretion, may terminate any
16 trust if and when its fair market value has declined to the
17 extent that would make it uneconomical, imprudent, or unwise to
18 continue to retain the trust, and shall pay and distribute the
19 trust to the persons entitled to mandatory or discretionary
20 income distributions as the trustee in the trustee's absolute
21 discretion shall decide.



1 (c) A trust instrument shall not be deemed revocable on
2 account of the inclusion of:

3 (1) A transferor's power to veto a distribution from the
4 trust;

5 (2) A power of appointment other than a power to appoint
6 to the transferor, the transferor's creditors, the
7 transferor's estate, or the creditors of the
8 transferor's estate that may be exercised by will or
9 other written instrument of the transferor effective
10 only upon the transferor's death;

11 (3) The transferor's potential or actual receipt of
12 income, including rights to income retained in the
13 trust instrument;

14 (4) The transferor's annual receipt of a percentage not to
15 exceed five per cent of the initial value of the trust
16 assets or its value determined from time to time
17 pursuant to the trust instrument or of a fixed amount
18 that on an annual basis does not exceed five per cent
19 of the initial value of the trust assets;

20 (5) The transferor's potential or actual receipt or use of
21 the trust's principal due to [~~the discretionary action~~
22 ~~of a permitted trustee or~~ the trustee acting];



- 1 (A) In the trustee's discretion;
- 2 (B) Pursuant to a provision in the trust instrument
3 that governs the distribution of principal [~~+~~
4 ~~provided that any included provision shall]~~ and
5 that does not confer upon the transferor a
6 substantially unfettered right to the receipt or
7 use of the principal; or
- 8 (C) At the direction of an advisor described in
9 section 554G- who is acting:
- 10 (i) In the advisor's discretion;
- 11 (ii) Pursuant to a provision in the trust
12 instrument that governs the distribution of
13 principal and does not confer upon the
14 transferor a substantially unfettered right
15 to the receipt or use of the principal; or
- 16 (iii) Pursuant to the transferor's determination
17 under section 554G- (c) of a dispute,
18 deadlock, or difference of opinion in favor
19 of the advisor;
- 20 For purposes of this paragraph, a trustee is presumed
21 to have discretion with respect to the distribution of



1 principal unless that discretion is expressly denied
2 to the trustee by the terms of the trust instrument;

3 (6) The transferor's right to remove a [permitted] trustee
4 or advisor and to appoint a new [permitted] trustee or
5 advisor;

6 (7) The transferor's potential or actual receipt of income
7 or principal to pay income taxes due on income of the
8 trust if the trust instrument includes a provision
9 allowing or directing the use of trust funds to pay
10 income taxes due, or if the [permitted] trustee acts
11 in the trustee's discretion to allow payment of income
12 taxes due on the trust income; [~~or~~]

13 (8) A [permitted] trustee's authority pursuant to
14 discretion, direction, or the transferor's exercise of
15 a testamentary power of appointment to pay all or any
16 part of the transferor's debts outstanding at the time
17 of the transferor's death, the expenses of
18 administering the transferor's estate, or any estate
19 or inheritance tax imposed on or with respect to the
20 transferor's estate [~~or~~];

21 (9) The transferor's potential or actual receipt of income
22 or principal from a charitable remainder unitrust or



1 charitable remainder annuity trust, as those terms are
2 defined in section 664 of the Internal Revenue Code
3 and any successor provision; and the transferor's
4 right, at any time and from time to time by written
5 instrument delivered to the trustee, to release the
6 transferor's retained interest in the trust, in whole
7 or in part, in favor of one or more charitable
8 organizations with a succeeding beneficial interest in
9 the trust;

10 (10) The transferor's potential or actual receipt of income
11 or principal from a grantor-retained annuity trust or
12 grantor-retained unitrust, as these terms are
13 described in 26 Code of Federal Regulations 25.2702-3
14 and any successor provision, or the transferor's
15 receipt each year of a percentage specified in the
16 governing instrument of the initial value of the trust
17 assets or their value determined from time to time
18 pursuant to the governing instrument; provided that
19 the percentage received does not exceed five per cent;
20 or

21 (11) The transferor's potential or actual use of real
22 property held under a qualified personal residence



1 trust, as described in 26 Code of Federal Regulations
2 25.2702-5(c) and any successor provision, or the
3 transferor's possession and enjoyment of a qualified
4 annuity interest, as described in 26 Code of Federal
5 Regulations 25.2702-5(c) (8) and any successor
6 provision thereto.

7 (d) A trust instrument may provide that the interest of a
8 beneficiary of the trust, including a beneficiary who is the
9 transferor of the trust, may not be transferred, assigned,
10 pledged, or mortgaged, whether voluntarily or involuntarily,
11 before the ~~[permitted]~~ trustee actually distributes the property
12 or income to the beneficiary. Any provision of this type
13 contained in the trust instrument shall be deemed to be a
14 restriction on the transfer of the transferor's beneficial
15 interest in the trust that is enforceable under applicable
16 nonbankruptcy law within the meaning of 11 United States Code
17 ~~[section]~~ Section 541(c) (2) of the Bankruptcy Code or any
18 successor provision.

19 ~~[(c) A transferor may appoint, through the trust~~
20 ~~instrument, one or more advisors or protectors, including the~~
21 ~~following:~~



- 1 ~~(1) Advisors who have authority under the terms of the~~
2 ~~trust to remove and appoint permitted trustees,~~
3 ~~advisors, or protectors,~~
- 4 ~~(2) Advisors who have authority under the terms of the~~
5 ~~trust to direct, consent to, or disapprove of~~
6 ~~distributions from the trust, and~~
- 7 ~~(3) Advisors, including the transferor beneficiary of the~~
8 ~~trust, who serve as investment advisors to the trust.~~
- 9 ~~(f) Whenever there shall be a dispute, deadlock, or~~
10 ~~difference of opinion between a permitted trustee and an~~
11 ~~advisor, the transferor may direct that the determination of the~~
12 ~~advisor shall be binding upon the permitted trustee, but that~~
13 ~~the permitted trustee shall bear no liability or accountability~~
14 ~~for any act or transaction entered into as a result of the~~
15 ~~enforcement of the advisor's privilege if the permitted trustee~~
16 ~~dissents in writing.~~
- 17 ~~(g)]~~ (e) If a trustee of a trust existing prior to the
18 enactment of this chapter proposes to make a permitted transfer,
19 but the trust instrument does not contain a power of appointment
20 that conforms to section 554G-5(c)(2), the trustee may deliver
21 an irrevocable written election to have section 554G-5(c)(2)
22 apply to the trust [7] and the nonconforming powers of



1 appointment shall be deemed modified to the extent necessary to
2 conform with section 554G-5(c)(2). The irrevocable written
3 election shall include a description of the original
4 transferor's powers of appointment as modified, and the original
5 transferor's written consent to the modification. Consent of
6 the original transferor to a modification of powers of
7 appointment shall not be considered to be a permitted transfer.

8 ~~[(h)]~~ (f) If, in any action brought against a trustee of a
9 trust that results from a permitted transfer, a court declines
10 to apply the law of this State in determining the validity,
11 construction, or administration of the trust~~[-]~~ or the effect of
12 a spendthrift provision of the trust, the trustee, immediately
13 upon the court's action and without the further order of any
14 court, shall cease to be trustee of the trust and a successor
15 trustee shall ~~[thereupon]~~ succeed as trustee in accordance with
16 the terms of the trust instrument. If the trust instrument does
17 not provide for a successor trustee or does not provide for an
18 advisor or protector with powers to appoint successor trustees,
19 a Hawaii court of competent jurisdiction shall appoint a
20 successor permitted trustee upon the application of any
21 beneficiary of the trust under any terms and conditions that the
22 court determines to be consistent with the purposes of the trust



1 and with this chapter. Upon the removal of a trustee pursuant
2 to this section, the trustee who has been removed shall have no
3 power or authority other than to convey the trust property to
4 the successor trustee."

5 SECTION 6. Section 554G-6, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "[+]§554G-6[+] Investments. Nothing in this chapter shall
8 prohibit a [permitted] trustee from diversifying trust assets[
9 ~~provided that a permitted trustee shall be authorized to invest~~
10 ~~only in permitted property, as defined in this chapter]."~~

11 SECTION 7. Section 554G-7, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[+]§554G-7[+] Retained interests of transferor. (a) A
14 permitted transfer shall be subject to this chapter
15 notwithstanding a transferor's retention of any or all of the
16 powers and rights described in section 554G-5(c) and
17 notwithstanding the transferor's service as investment advisor
18 pursuant to section [~~554G-5(e)(3).~~] 554G- (a)(3).

19 (b) The transferor shall have only the powers and rights
20 specifically conferred by the trust instrument. Except as
21 permitted by sections 554G-5(c) and [~~554G-5(e),~~] 554G- (a)(3),
22 a transferor shall have no rights or authority with respect to



1 the property that is the subject of a permitted transfer or to
2 the income from property that is the subject of a permitted
3 transfer. Any agreement or understanding purporting to grant or
4 permit the retention of any greater rights or authority shall be
5 void."

6 SECTION 8. Section 554G-8, Hawaii Revised Statutes, is
7 amended as follows:

8 1. By amending subsection (b) to read:

9 "(b) An allowable claim under subsection (a) [~~of this~~
10 ~~section~~] shall be extinguished unless:

11 (1) The creditor's claim arose before the permitted
12 transfer was made and the action is brought within the
13 limitations of section 651C-9 on the latter of the
14 date of the permitted transfer or [~~the date of the~~
15 ~~enactment of this section,~~] July 1, 2011; or

16 (2) [~~The~~] Notwithstanding the provisions of section
17 651C-9, the creditor's claim arose concurrent with or
18 subsequent to the permitted transfer, and the action
19 is brought within two years after the permitted
20 transfer is made."

21 2. By amending subsection (f) to read:



1 "(f) No creditor or any other person shall have any claim
2 or cause of action, including an action to enforce a judgment
3 entered by a court or other body having adjudicative authority,
4 against a trustee or advisor described in section [~~554G-4(e)~~]
5 554G- (a) or against any person involved in drafting,
6 preparing, executing, or funding a trust or in counseling the
7 parties to a trust that is the subject of a permitted transfer
8 if, as of the date [~~of~~] the action[~~, the~~] is brought, an action
9 with respect to the permitted transfer would be barred under
10 this section."

11 SECTION 9. Section 554G-9, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "~~[+]~~ §554G-9 ~~[+]~~ **Limitations on permitted transfers.** The
14 limitations contained in section 554G-8 on actions by creditors
15 to avoid permitted transfers shall not apply to:

16 (1) Any person to whom the transferor is indebted on
17 account of a family court-supervised agreement or
18 family court order for the payment of support or
19 alimony to the transferor's spouse, former spouse, or
20 children, or for a division or distribution of
21 property to the transferor's spouse or former
22 spouse [~~,~~]; provided that the transferor is in default



1 by thirty days or more of making a payment due under
2 the agreement or order, but only to the extent of the
3 debt and not to any claim for forced heirship,
4 legitime, or elective share;

5 (2) Any person who suffers death, personal injury, or
6 property damage on or before the date of a permitted
7 transfer; provided that the death, personal injury, or
8 property damage is determined to have been caused in
9 whole or in part by the tortious act or omission of
10 either the transferor or another person for whom the
11 transferor is or was vicariously liable to the extent
12 of the transferor's liability or vicarious liability;

13 (3) Any lender who extends a secured or collateralized
14 loan to the transferor based on the transferor's or
15 the transferor's agent's express or implied
16 representation that the assets of a trust established
17 under this chapter would be available as security
18 against the loan in the event of the transferor's
19 default thereon; [ø]

20 (4) The State of Hawaii to the extent that a transfer
21 results in the transferor being unable to meet the
22 transferor's tax liabilities, but only to the extent



1 necessary to extinguish the outstanding tax

2 liabilities[-]; or

3 (5) A divorce or dissolution of marriage, for purposes of
4 considering property subject to division under section
5 580-47, a transferor-beneficiary's interest with
6 respect to assets transferred to the trust instrument:

7 (A) After the transferor's marriage; or

8 (B) Within thirty days prior to the transferor's

9 marriage unless the transferor gives written

10 notice to the other party to the marriage of the

11 transfer; provided that in the event of the

12 divorce or dissolution of the marriage of a non-

13 transferor beneficiary of the trust, the non-

14 transferor beneficiary's interest in the trust is

15 not considered property subject to division under

16 section 580-47."

17 SECTION 10. Section 554G-10, Hawaii Revised Statutes, is
18 amended to read as follows:

19 " [H] §554G-10 [H] **Effect of avoidance of permitted**
20 **transfers.** (a) A creditor may avoid a permitted transfer
21 pursuant to section 554G-8 only to the extent necessary to
22 satisfy the transferor's debt to the creditor at whose instance



1 the transfer has been avoided, together with costs[7] including
2 attorney's fees[7] as allowed by a court.

3 (b) In an action pursuant to subsection (a) to avoid a
4 permitted transfer:

5 (1) If a court finds that a trustee has not acted with
6 intent to defraud, hinder, or delay the creditor in
7 accepting or administering the property that is the
8 subject of the permitted transfer:

9 (A) The trustee shall have a first and paramount lien
10 against the property that is the subject of the
11 permitted transfer in an amount equal to the
12 entire cost[7] including attorney's fees[7]
13 properly incurred by the trustee in the defense
14 of the action or proceedings to avoid the
15 permitted transfer; [and]

16 (B) The permitted transfer shall be avoided, subject
17 to payment of proper fees, costs, preexisting
18 rights, claims, and interests of the trustee and
19 of any predecessor trustee who has not acted with
20 intent to defraud, hinder, or delay the creditor;
21 and



1 (C) For purposes of this paragraph, it shall be
2 presumed that the trustee did not act with intent
3 to defraud, hinder, or delay the creditor merely
4 by accepting the property; and

5 (2) If the court is satisfied that a beneficiary of the
6 trust has not acted with intent to defraud, hinder, or
7 delay the creditor, the permitted transfer shall be
8 avoided subject to the beneficiary's right to retain
9 any distribution made prior to the creditor's
10 commencement of an action to avoid the permitted
11 transfer~~[.—For]~~; provided that for purposes of this
12 paragraph, it shall be presumed that a beneficiary did
13 not act with intent to defraud, hinder, or delay the
14 creditor merely by creating the trust or by accepting
15 a distribution made in accordance with the terms of
16 the trust.

17 (c) A creditor who brings an action pursuant to
18 section 554G-8 to avoid a permitted trust shall have the burden
19 of proving by clear and convincing evidence that a trustee or
20 beneficiary acted with intent to defraud, hinder, or delay the
21 creditor; provided that in the case of a beneficiary who is also
22 the transferor, the burden on the creditor shall be to prove by



1 a preponderance of the evidence that the transferor-beneficiary
2 acted with intent to defraud, hinder, or delay the creditor.
3 ~~[Mere acceptance of permitted property by a trustee shall not~~
4 ~~constitute evidence of intent to defraud, hinder, or delay a~~
5 ~~creditor.]~~

6 (d) For purposes of this chapter, attachment, garnishment,
7 sequestration, or other legal or equitable process shall be
8 permitted only where permitted by the express terms of this
9 chapter.

10 ~~[(d)]~~ (e) Notwithstanding any other provision of this
11 chapter, a creditor shall have no right against the interest of
12 a beneficiary to a trust based solely on the beneficiary's right
13 to authorize or direct the trustee to use all or part of the
14 trust property to pay:

15 (1) Estate or inheritance taxes imposed upon or due to the
16 beneficiary's estate;

17 (2) Debts of the beneficiary's estate; or

18 (3) Expenses of administering the beneficiary's
19 estate [+], [+]

20 unless the beneficiary actually directs the payment of taxes,
21 debts, or expenses and then only to the extent of that
22 direction.



1 (f) Where a husband and wife make a permitted transfer of
2 property and, immediately before the permitted transfer, the
3 property, any part of the permitted property, or any
4 accumulation to the permitted property was, pursuant to
5 applicable law, owned by them as tenants by the entirety, then
6 notwithstanding the permitted transfer and except where the
7 provisions of the trust instrument expressly provide to the
8 contrary, the property and any accumulation to the property,
9 while held in trust during the lifetime of both spouses, shall
10 be treated as though it were held in tenancy by the entirety and
11 shall be subject to all applicable law; provided that in every
12 other respect, the property shall be subject to the terms of the
13 trust instrument.

14 In any action concerning whether a creditor of either or
15 both spouses may recover the debt from the trust, upon avoidance
16 of the permitted transfer the sole remedy available to the
17 creditor with respect to trust property treated as though it
18 were held in tenancy by the entirety shall be an order directing
19 the trustee to transfer the property to both spouses as tenants
20 by the entirety.

21 (g) Subject to all of the provisions of this section and
22 except as otherwise provided in subsection (f), upon avoidance



1 of a qualified disposition to the extent permitted under
2 subsection (a), the sole remedy available to the creditor shall
3 be an order directing the trustee to transfer to the transferor
4 the amount necessary to satisfy the transferor's debt to the
5 creditor at whose instance the disposition has been avoided."

6 SECTION 11. Section 554G-3, Hawaii Revised Statutes, is
7 repealed.

8 ~~["**§554G-3** Completed transfers. The transfer of~~
9 ~~permitted property under this chapter shall be deemed completed~~
10 ~~following the completion of all of the following:~~

- 11 ~~(1) The delivery of permitted property by the transferor~~
12 ~~to the permitted trustee and the written acceptance of~~
13 ~~the permitted property by the permitted trustee;~~
14 ~~(2) The delivery by the transferor to the permitted~~
15 ~~trustee of a signed and notarized certificate of~~
16 ~~solveny that states that the amount of the transfer~~
17 ~~is equal to or less than twenty five per cent of the~~
18 ~~transferor's net worth and that the transfer will not~~
19 ~~result in delay, defrauding, or hindrance of a~~
20 ~~creditor who is known or knowable to the transferor at~~
21 ~~the time of the permitted transfer with a claim~~



1 ~~against the property that is subject to the transfer,~~
2 ~~and~~
3 ~~(3) The filing of the appropriate form by the transferor~~
4 ~~with the department of taxation and payment of the~~
5 ~~attendant transfer tax."]~~

6 SECTION 12. Section 554G-12, Hawaii Revised Statutes, is
7 ~~repealed.~~

8 ~~[" §554G-12 Taxation. (a) The State shall levy a one-~~
9 ~~time one per cent excise tax on the fair market value of all~~
10 ~~permitted transfers. This one time excise tax shall be~~
11 ~~administered by the department of taxation with all of its~~
12 ~~authorities under title 14, including all rights relating to the~~
13 ~~assessment, collection, and enforcement of the tax laws. The~~
14 ~~department of taxation shall be authorized to implement the tax~~
15 ~~under this section, including the timing, collection, and appeal~~
16 ~~rights of persons affected, by rule, including temporary rule.~~

17 ~~(b) A non grantor trust established under this chapter~~
18 ~~shall be subject to income tax in Hawaii; provided that to the~~
19 ~~extent that the beneficial interest in the non grantor trust~~
20 ~~shall be held by a beneficiary or beneficiaries residing outside~~
21 ~~this State, any income or capital gains accumulated for the~~



1 ~~benefit of the non resident beneficiary or beneficiaries shall~~
2 ~~be excluded from Hawaii income tax for that year.~~

3 ~~(c) A trustee of a non grantor trust established under~~
4 ~~this chapter shall not be required to track accumulated income~~
5 ~~or gains attributable to a nonresident beneficiary.~~

6 ~~(d) Notwithstanding any discretionary distribution~~
7 ~~provisions to the contrary, where the percentage interests of~~
8 ~~the beneficiaries are indeterminable based on the provisions of~~
9 ~~the trust, the trustee shall allocate accumulated income and~~
10 ~~gains equally among all beneficiaries then entitled to~~
11 ~~distributions of income.~~

12 ~~(e) Hawaii resident taxpayers who receive actual or~~
13 ~~constructive distributions of income or principal from trusts~~
14 ~~shall be subject to all applicable taxes on that income."]~~

15 SECTION 13. This Act does not affect rights and duties
16 that matured, penalties that were incurred, and proceedings that
17 were begun before its effective date.

18 SECTION 14. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 15. This Act shall take effect on July 1, 2011.

21



Report Title:

Permitted Transfers in Trust Act

Description:

Amends provisions of the Permitted Transfers in Trust Act governing transfers of property from a transferor to a trustee by means of an irrevocable trust instrument. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

