



EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 7, 2014

GOV. MSG. NO. 1322

The Honorable Donna Mercado Kim,
President
and Members of the Senate
Twenty-Seventh State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

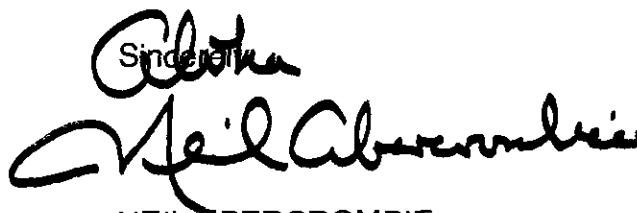
The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Seventh State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on July 7, 2014, the following bill was signed into law:

SB1249 SD2 HD1

RELATING TO THE COMPENSATION OF
TRUSTEES
ACT 212 (14)


Sincerely,
Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawaii

A BILL FOR AN ACT

RELATING TO THE COMPENSATION OF TRUSTEES.

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

1 SECTION 1. The purpose of this Act is to clarify current
2 state law relating to trustee compensation. Certain ambiguities
3 in the law have caused disputes between beneficiaries and
4 trustees, which have resulted in litigation.

5 The purpose of this Act is to:

6 (1) Clarify trustee compensation;

7 (2) Provide a compensation system that is predictable and
8 fair to beneficiaries and trustees;

9 (3) Reduce issues that require court intervention; and

10 (4) Minimize the legal fees and costs connected with court
11 intervention.

12 SECTION 2. Section 607-18, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "~~§607-18 [Fees and expenses]~~ Compensation of trustees.

15 (a) Unless the trust instrument otherwise provides, or the
16 settlor and trustee otherwise agree, or, after the settlor's
17 death, all the beneficiaries and the trustee otherwise agree,
18 the trustee shall be entitled to the compensation set forth in



1 this section and the compensation shall be deemed to be
2 reasonable. For good cause shown, the court may also approve
3 any other fee arrangement that it deems reasonable.

4 (b) Banks and trust companies serving as trustees shall be
5 entitled to reasonable compensation, which may be set forth in
6 their published fee schedules and may be amended from time to
7 time; provided that advance written notice of any amendment to
8 the fee schedule is provided to the settlor or, after the
9 settlor's death, to all beneficiaries.

10 (c) Except as provided in subsection (a), individuals
11 serving as trustees shall be entitled to the following
12 compensation:

13 (1) Compensation Upon Inception of the Trust:

14 (A) One per cent based upon the gross fair market
15 value of the trust assets on the date of the
16 trustee's acceptance shall be payable to the
17 first trustee who is not the settlor of the
18 trust; and

19 (B) One per cent based upon the gross fair market
20 value of the trust assets of the trust created
21 under the revocable living or administrative
22 trust on the date of the trustee's acceptance



1 shall be payable to the first trustee of any
2 trust created under a revocable living trust
3 after the settlor's death or other administrative
4 trust; provided that the trustee shall not also
5 be the trustee of the revocable living trust or
6 administrative trust that is the source of
7 funding for the newly-created trust;
8 provided that if more than one individual serves as
9 trustee, then the compensation shall be divided
10 equally between the then-acting trustees unless
11 otherwise agreed by the trustees. If one or more
12 individuals are serving as co-trustees with a bank or
13 trust company, then the individual trustees shall be
14 entitled to fifty per cent of the compensation
15 provided for under this paragraph described herein,
16 which shall be divided among the then-serving
17 individual co-trustees as they may agree. A bank or
18 trust company serving as co-trustee shall be entitled
19 to the compensation described in subsection (b).

20 (2) Annual Compensation:

21 ~~[(a)]~~ (A) Upon all moneys and other property received in
22 the nature of revenue or income of the ~~[estate,]~~



1 trust, such as rents, interest, dividends, and
2 general profits, [~~trustees, except trustees of a~~
3 ~~charitable trust, shall be allowed as commissions~~
4 ~~payable out]~~ five per cent of the income received
5 during each year[~~;~~] shall be payable to the
6 ~~trustee, [~~seven per cent for the first \$5,000 and~~~~
7 ~~five per cent for all over \$5,000 the commissions~~
8 ~~to be payable]~~ as and when the income is
9 received[~~, but not more often than once a year.~~];

10 [~~(b)~~] (B) Upon the principal [~~of the estate, trustees shall~~
11 ~~be allowed as commissions one per cent on the~~
12 ~~value at the inception of the trust payable at~~
13 ~~the inception out of the principal, one per cent~~
14 ~~on the value of all or any part of the estate~~
15 ~~upon final distribution payable at the~~
16 ~~termination out of the principal, and two and~~
17 ~~one half per cent upon all cash principal~~
18 ~~received after the inception of the trust and~~
19 ~~neither being nor representing principal upon~~
20 ~~which the two and one half per cent has~~
21 ~~previously at any time been charged, payable at~~
22 ~~the receipt out of the principal, and two and~~



~~one half per cent upon the final payment of any
cash principal prior to the termination of the
trust, payable at the final payment out of the
principal, and in addition thereto five tenths of
one per cent on the value at the expiration of
each year during the continuance of the trust
payable annually out of the principal, provided
that such five tenths of one per cent on the
principal shall not apply to charitable trusts,
nor to the extent the trustee has employed others
to perform bookkeeping and clerical services at
the expense of the estate as permitted by the
trust document or as provided in section 554A-3.~~

~~(c) Such further allowances]~~ trust, the trustee
shall be compensated no more than once per
quarter, based on the following:

(i) One-half of one per cent of the first
\$5,000,000;

(ii) One-third of one per cent of the next
\$3,000,000;

(iii) One-fifth of one per cent of the next
\$2,000,000; and



1 (iv) One-tenth of one per cent of assets in
2 excess of \$10,000,000,
3 based upon the gross fair market value of the
4 principal assets as of the first business day of
5 the trust's fiscal year;

6 (C) Notwithstanding subparagraphs (A) and (B), a
7 trustee shall be entitled to a minimum total
8 annual compensation of \$3,000; and

9 (D) The threshold dollar amounts in subparagraph (B)
10 and the dollar amounts in subparagraph (C) shall
11 be increased by an amount equal to (i) the dollar
12 amount from subparagraph (B) or (C), as
13 applicable, multiplied by (ii) a cost-of-living
14 adjustment with changes in the Consumer Price
15 Index (CPI) using the year 2014 as the base. The
16 "CPI" means the Consumer Price Index (Annual
17 Average) for All Urban Consumers (CPI-U); for the
18 Honolulu area - All Items, reported by the Bureau
19 of Labor Statistics, United States Department of
20 Labor or its successor or, if the index is
21 discontinued, an equivalent index reported by a
22 federal authority. If no such index is reported,



1 the term means the substitute index chosen by a
2 court of competent jurisdiction. If any amount
3 as adjusted is not a multiple of \$10,000, such
4 amount shall be rounded down to the next lowest
5 multiple of \$10,000;

6 (3) Compensation Upon Termination of the Trust:

7 One per cent based upon the gross fair market value of
8 the trust assets as of the termination date of the
9 trust pursuant to the terms of the trust, shall be
10 payable to the trustee at any time after the
11 termination date, up to and including the date the
12 trust assets are finally distributed; and

13 (4) Special Service Fees:

14 Further compensation may be made as the court deems
15 just and reasonable for services performed in
16 connection with assuming the trusteeship, sales or
17 leases of real estate, contested or litigated claims
18 against the estate, the adjustment and payment of
19 extensive or complicated estate or inheritance taxes,
20 the preparation of estate and income tax returns, the
21 carrying on of the decedent's business pursuant to an
22 order of court or under the provisions of any will,



1 litigation in regard to the property of the estate,
2 and such other special services as may be necessary
3 for the trustee to perform, prosecute, or defend[
4 ~~All contracts between a trustee and a beneficiary~~
5 ~~other than the creator of the trust, for higher~~
6 ~~compensation than is allowed in this section shall be~~
7 ~~void-]; provided that if all of the beneficiaries
8 agree to the trustee's special service fees, then
9 court approval shall not be required.~~

10 (d) For purposes of any agreement between the trustee and
11 the beneficiaries regarding the trustee's compensation, the
12 agreement shall be binding upon incapacitated, minor, unborn,
13 and unascertained beneficiaries if the applicable provisions of
14 section 560:1-403(2)(B) and (C) are satisfied.

15 (e) The following terms, or comparable language in the
16 provisions of a trust, unless otherwise limited or modified,
17 authorize compensation to the trustee under this section:
18 "reasonable compensation", "compensation in accordance with
19 applicable law", "compensation", "reasonable compensation
20 commensurate with the services performed", and "statutory
21 compensation".



1 [~~(d)~~] (f) This section shall apply [~~as well~~] to future
2 accounting in existing [~~estates~~] trusts as well as to new
3 [~~estates~~] trusts. This section shall not apply to charitable
4 trusts."

5 SECTION 3. This Act shall not be construed to limit the
6 rights of interested persons to petition the court for review
7 under article VII of chapter 560, Hawaii Revised Statutes.

8 SECTION 4. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 5. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 6. This Act shall take effect on January 1, 2015.

APPROVED this 7 day of JUL , 2014

A handwritten signature in black ink, appearing to read "Neil Abernethy". The signature is fluid and cursive, with the first name "Neil" and last name "Abernethy" clearly distinguishable.

GOVERNOR OF THE STATE OF HAWAII