

ACT 191

S.B. NO. 1284

A Bill for an Act Relating to the Uniform Probate Code and Trusts.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Purpose. The purpose of this Act is to facilitate coordination of the trust, uniform probate code and professional corporations provisions of the Hawaii Revised Statutes, and to ensure that professional corporations qualifying as trustees shall be subject to the fiduciary duties applicable to trustees.

SECTION 2. Section 560:3-602, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 560:3-602 Acceptance of appointment; consent to jurisdiction. By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative and his attorney, or mailed to them by ordinary first class mail at the

addresses as listed in the application or petition for appointment or as thereafter reported to the court and to the addresses as then known to the petitioner.

A professional corporation accepting appointment under section 560:3-601 shall be subject to the fiduciary duties set out in part 3 of article VII of this chapter in addition to such regulations as may be imposed by the regulatory board of the profession in which the corporation is engaged.”

SECTION 3. Section 406-4, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 406-4 Corporations acting as personal representatives, etc.** Except as provided in section 560:3-601 and in section 554-2, no corporation or joint-stock company, except trust companies doing business under this chapter and except banks authorized to engage in a trust business, shall act as personal representative, guardian, assignee, or receiver, or shall engage in the business of acting as trustee for the management and investment of funds of other persons, or shall continue to do business with the word “trust” or “trustee” in its corporate name, under penalty of \$10 for every day that it so acts or engages in business. The penalty may be recovered by the director of regulatory agencies in a civil action before any court of competent jurisdiction.”

SECTION 4. Section 416-142, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 416-142 Definitions.** As used in this part:

- (1) “Professional services” means any type of professional services which may be lawfully rendered only by persons licensed pursuant to chapters 442, 448, 453, 455, 458, 459, 460, 461, 466, 471, and 605, or appointed pursuant to section 554-2.
- (2) “Professional corporation” means a corporation organized under this part which is engaged in rendering professional services in a single profession, pursuant to a certificate of registration issued by the regulating board of the profession as herein provided, or pursuant to appointment made as provided in section 554-2.
- (3) “Licensed person” means any natural person who is licensed under chapters 442, 448, 453, 455, 458, 459, 460, 461, 466, 471, or 605, to render the same professional services as are or will be rendered by the professional corporation of which he is, or intends to become, an officer, director, shareholder, or employee, or any natural person who is appointed or who is a stockholder of a professional corporation which is appointed under section 554-2.
- (4) “Disqualified person” means a licensed person who for any reason becomes legally disqualified either temporarily or permanently, to render the same professional services which the particular professional corporation of which he is an officer, director, shareholder, or employee is or was rendering.
- (5) “Regulating board” means the board which is charged with the licensing and regulation of the practice of the profession which the professional corporation is organized to render, or in the case of attorneys, the supreme

court of the State, or in the case of trustees appointed under section 554-2, the court supervising the administration of the trust.”

SECTION 5. Section 416-144, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 416-144 Formation of corporation.** A corporation may be formed under this chapter for the purposes of qualifying as a professional corporation. The articles of association of a professional corporation shall contain a specific statement that the corporation is a professional corporation within the meaning of this part. No professional corporation shall render professional services in this State without a currently effective certificate of registration issued by the regulating board of the profession in which the corporation is or proposes to be engaged or a currently effective order of appointment of the supervising court in the case of trustees appointed pursuant to section 554-2. No such certificate of registration shall be withheld without cause or arbitrarily withheld.”

SECTION 6. Section 416-147, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 416-147 Transfer of shares.** Shares in a professional corporation may be transferred only to a licensed person or to the professional corporation, and any transfer in violation of this restriction shall be void.

A professional corporation may purchase and redeem its own shares without regard to any restrictions provided in this chapter upon the purchase and redemption of shares of its own stock by a corporation, if at least one share remains issued and outstanding after such purchase and redemption.

If the corporation fails to acquire all of the shares of a disqualified or deceased shareholder, or if the disqualified shareholder or the representative of a deceased shareholder fails to transfer said shares to the corporation or to a licensed person, within ninety days following the date of disqualification, or within six months following the date of death of such shareholder, as the case may be, then the certificate of registration or order of appointment of the professional corporation may be suspended or revoked by the regulating board of the profession in which the corporation is engaged. In the event of such suspension or revocation the corporation shall cease forthwith to render professional services.”

SECTION 7. Section 416-149, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 416-149 Name.** A professional corporation may adopt any name permitted by a law expressly applicable to the profession in which the corporation is engaged or by a rule or regulation of the regulating board of such profession or, in the case of a professional corporation appointed pursuant to section 554-2, any name which is otherwise allowed by this chapter; provided, that such name shall not be substantially the same as the name of a domestic corporation, the name of a foreign corporation which is authorized to transact business in this State, or a name which is under reservation for another corporation. The director of regulatory agencies may require proof by affidavit or otherwise establishing that the name of the professional corporation complies with the requirements of this section, and of the law governing the profession in which the professional corporation is engaged, and of the rules or

regulations of the regulating board of the profession. The statements of fact in such affidavits may be accepted by the director of regulatory agencies as sufficient proof of the facts.”

SECTION 8. Chapter 406, Hawaii Revised Statutes, is hereby amended by adding a new section to be appropriately designated and to read as follows:

“Sec. 406- Authority of corporate fiduciaries with respect to securities. Notwithstanding any other provision of law to the contrary, every trust company as defined in this chapter may deposit with a clearing corporation, as defined in section 490:8-102(3), securities held in a fiduciary or an agency capacity by such trust company, in the absence of a specific provision to the contrary in the governing instrument or court order under which such trust company is acting. When such securities are so deposited, they may be merged and held in bulk in the name of a nominee of the clearing corporation with other securities of the same class of the same issuer deposited with the clearing corporation by any person, regardless of the ownership of the securities, and certificates representing such securities may be consolidated in one or more certificates of larger denomination. Ownership of, and other interests in, such securities may be transferred by bookkeeping entries on the books of the clearing corporation, without physical delivery of certificates representing the securities. The records of such trust company shall show at all times the names of the persons for whose accounts securities are on deposit with the clearing corporation and an inventory of those securities. On demand by a person for whose account securities have been deposited with the clearing corporation, such trust company shall certify to that person the securities so deposited by such trust company for the account of that person. On demand by any party to a judicial proceeding for settlement of an account of such trust company in a particular fiduciary capacity, or on demand by an attorney for any such party, such trust company shall certify to that party the securities deposited with the clearing corporation by such trust company in that capacity.”

SECTION 9. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 10. This Act shall take effect upon its approval.

(Approved June 6, 1979.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.