

A Bill for an Act Relating to Costs and Fees.

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

SECTION 1. The purpose of this Act is to amend section 607-18(b) to carry out the original intention of that section. The section was initially enacted to authorize a trustee to receive an additional compensation if the trustee performed clerical and bookkeeping services rather than hiring third parties to perform those services. However, as the result of the unintended effect of subsequent amendments, the section, read literally, now prohibits the additional compensation in all cases and is meaningless.

The amendment now proposed would eliminate the inconsistency between section 607-18(b) and section 554A-3(c) and give effect to the intention of the legislature to preclude a trustee from receiving the additional compensation only to the extent the trustee employs others to perform bookkeeping and clerical services at the expense of the estate.

In addition, it would make section 607-18(b) consistent with section 554A-3(c) of the Uniform Trustees' Powers Act which eliminated the requirement for court authorization to pay compensation of the trustee or for the trustee to employ persons to assist in the performance of administrative duties as provided in section 554A-3(c)(23).

SECTION 2. Section 607-18, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Upon the principal of the estate, trustees shall be allowed as commissions one per cent on the value at the inception of the trust payable at the inception out of the principal, one per cent on the value of all or any part of the estate upon final distribution payable at the termination out of the principal, and two and one-half per cent upon all cash principal received after the inception of the trust and neither being nor representing principal upon which the two and one-half per cent has previously at any time been charged, payable at 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 trust estates created under a trust document which authorizes the trustees to employ others to perform bookkeeping and clerical services at the expense of the estate, unless first approved by the court, nor shall such five-tenths of one per cent be allowed when such authority is granted by statute. For the purposes of this subsection, the value of the estate shall be determined in such manner as the court may approve.] 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.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall apply to existing estates as well as to new estates.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 15, 1993.)