

ACT 133

H.B. NO. 26

A Bill for an Act Relating to the Compensation of Trustees.

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

SECTION 1. Section 607-18, Hawaii Revised Statutes, is amended to read as follows:

“§607-18 Compensation of trustees. (a) Unless the trust instrument otherwise provides, or the settlor and trustee otherwise agree, or, after the settlor’s death, all the beneficiaries and the trustee otherwise agree, the trustee shall be entitled to the compensation set forth in this section and the compensation shall be deemed to be reasonable. For good cause shown, the court may also approve any other fee arrangement that it deems reasonable.

(b) Banks ~~[and]~~, trust companies, and individuals who in the ordinary course of business serve as fiduciaries shall, when serving as trustees ~~[shall]~~, be entitled to reasonable compensation, which may be set forth in their published fee schedules and may be amended from time to time; provided that advance written notice of any amendment to the fee schedule is provided to the settlor or, after the settlor’s death, to all beneficiaries~~[-]~~ who are vested at the time of the notice.

(c) Except as provided in ~~[subsection]~~ subsections (a)[5] and (b), individuals serving as trustees shall be entitled to the following compensation:

(1) Compensation Upon Inception of the Trust:

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

(B) One per cent based upon the gross fair market value of the trust assets of the trust created under the revocable living or administrative trust on the date of the trustee’s acceptance shall be payable to the first trustee of any trust created under a revocable living trust after the settlor’s death or other administrative trust; provided that the trustee shall not also be the trustee of the revocable living trust or administrative trust that is the source of funding for the newly-created trust;

~~[provided that if more than one individual serves as trustee, then the compensation shall be divided equally between the then-acting trustees unless otherwise agreed by the trustees. If one or more individuals are serving as co-trustees with a bank or trust company, then the individual trustees shall be entitled to fifty per cent of the compensation provided for under this paragraph described herein, which shall be divided among the then-serving individual co-trustees as they may agree. A bank or trust company serving as co-trustee shall be entitled to the compensation described in subsection (b).]~~

(2) Annual Compensation:

- (A) Upon all moneys and other property received in the nature of revenue or income of the trust, such as rents, interest, dividends, and general profits, five per cent of the income received during ~~[each] the year shall be payable to the trustee, [as and when the income is received:] and paid not more than once per quarter;~~
- (B) Upon the principal 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
 - (iv) One-tenth of one per cent of assets in excess of \$10,000,000,
 based upon the gross fair market value of the principal assets as of the first ~~[business]~~ day of the trust's fiscal year; ~~and~~
- (C) Notwithstanding subparagraphs (A) and (B), a trustee shall be entitled to a minimum total annual compensation of \$3,000; ~~and~~
- ~~(D) The threshold dollar amounts in subparagraph (B) and the dollar amounts in subparagraph (C) shall be increased by an amount equal to (i) the dollar amount from subparagraph (B) or (C), as applicable, multiplied by (ii) a cost-of-living adjustment with changes in the Consumer Price Index (CPI) using the year 2014 as the base. The "CPI" means the Consumer Price Index (Annual Average) for All Urban Consumers (CPI-U); for the Honolulu area — All Items, reported by the Bureau of Labor Statistics, United States Department of Labor or its successor or, if the index is discontinued, an equivalent index reported by a federal authority. If no such index is reported, the term means the substitute index chosen by a court of competent jurisdiction. If any amount as adjusted is not a multiple of \$10,000, such amount shall be rounded down to the next lowest multiple of \$10,000;]~~
- (3) Compensation Upon Termination of the Trust: One per cent based upon the gross fair market value of the trust assets as of the termination date of the trust pursuant to the terms of the trust, shall be payable to the trustee at any time after the termination date, up to and including the date the trust assets are finally distributed; and
- (4) Compensation for Special [Service Fees:] Services: Further compensation may be made as the court deems just and reasonable for services performed in connection with assuming the trusteeship, sales or leases of real estate, contested or litigated claims against the estate, the adjustment and payment of extensive or complicated estate or inheritance taxes, the preparation of estate and income tax returns, the carrying on of the decedent's business pursuant to an order of court or under the provisions of any will, litigation in regard to the property of the estate, and such other special services as may be necessary for the trustee to perform, prosecute, or defend; provided that if all of the beneficiaries agree to the trustee's compensation for special [service fees,] services, then court approval shall not be required[-]; provided that if more than one individual serves as trustee, then the compensation due pursuant to paragraphs (1), (2), and (3), as applicable, shall be divided

equally between the then-acting trustees, unless otherwise agreed by the trustees. If one or more individuals are serving as trustees with a bank or trust company, then the individual trustees shall be entitled to fifty per cent of the compensation due pursuant to paragraphs (1), (2), and (3), as applicable, which shall be divided among the then-serving individual trustees as they may agree. An individual who in the ordinary course of business serves as a fiduciary, serving together with one or more individuals as trustees, or a bank or trust company serving together with one or more individuals as trustees, shall be entitled to the compensation described in subsection (b).

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

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

(f) This section shall apply to future accounting ~~in~~ periods of existing trusts as well as to new trusts. This section shall not apply to charitable trusts."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

SECTION 4. This Act shall take effect upon its approval.

(Approved June 19, 2015.)