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# 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 fair to  
8 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 of trustees.** (a) Unless the  
15 trust instrument otherwise provides, or the settlor and trustee  
16 otherwise agree, or after the settlor's death all the  
17 beneficiaries and the trustee otherwise agree, the trustee shall  
18 be entitled to the compensation set forth in this section and



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

4 (b) Banks and trust companies shall be entitled to  
5 compensation as set forth in their published fee schedules as  
6 those schedules may be amended from time to time.

7 (c) Except as provided in subsection (a), individuals  
8 serving as trustees shall be entitled to the following  
9 compensation:

10 (1) Annual Compensation:

11 ~~[(a)]~~ (A) Upon all moneys and other property received in  
12 the nature of revenue or income of the ~~[estate,~~  
13 trust, such as rents, interest, dividends, and  
14 general profits, trustees ~~[, except trustees of a~~  
15 ~~charitable trust,~~] shall be allowed as  
16 ~~[commissions]~~ compensation five per cent payable  
17 out of the income received during each year,  
18 ~~[seven per cent for the first \$5,000 and five per~~  
19 ~~cent for all over \$5,000 the commissions]~~ the  
20 compensation to be payable as and when the income  
21 is received ~~[, but not more often than once a~~  
22 ~~year.]~~;



1           ~~[(b)]~~ (B) Upon the principal of the ~~[estate,]~~ trust,  
2           trustees shall be allowed ~~[as commissions one per~~  
3           ~~cent on the value at the inception of the trust~~  
4           ~~payable at the inception out of the principal,~~  
5           ~~one per cent on the value of all or any part of~~  
6           ~~the estate upon final distribution payable at the~~  
7           ~~termination out of the principal, and two and~~  
8           ~~one half per cent upon all cash principal~~  
9           ~~received after the inception of the trust and~~  
10          ~~neither being nor representing principal upon~~  
11          ~~which the two and one half per cent has~~  
12          ~~previously at any time been charged, payable at~~  
13          ~~the receipt out of the principal, and two and~~  
14          ~~one half per cent upon the final payment of any~~  
15          ~~cash principal prior to the termination of the~~  
16          ~~trust, payable at the final payment out of the~~  
17          ~~principal, and in addition thereto five tenths of~~  
18          ~~one per cent on the value at the expiration of~~  
19          ~~each year during the continuance of the trust~~  
20          ~~payable annually out of the principal; provided~~  
21          ~~that such five tenths of one per cent on the~~  
22          ~~principal shall not apply to charitable trusts,~~



1 ~~nor to the extent the trustee has employed others~~  
2 ~~to perform bookkeeping and clerical services at~~  
3 ~~the expense of the estate as permitted by the~~  
4 ~~trust document or as provided in section 554A-3.]~~  
5 a total annual principal compensation based upon  
6 the gross fair market value of the principal  
7 assets as of the first business day of the  
8 trust's fiscal year as follows:

- 9 (i) 0.50 per cent of the first \$5,000,000;  
10 (ii) 0.30 per cent of the next \$3,000,000;  
11 (iii) 0.20 per cent of the next \$2,000,000; and  
12 (iv) 0.10 per cent of assets in excess of  
13 \$10,000,000.

14 Fees for the annual principal compensation shall  
15 be paid no more than once per quarter;

16 (C) Notwithstanding the foregoing, a trustee shall be  
17 entitled to a minimum annual compensation of  
18 \$3,000; and

19 (D) The amounts under subparagraphs (B) and (C) shall  
20 be adjusted for inflation in accordance with  
21 changes in the Consumer Price Index (CPI) using  
22 the year 2013 as the base. The "CPI" means the



1           Consumer Price Index (Annual Average) for All  
2           Urban Consumers (CPI-U); for the Honolulu area -  
3           All Items, (1982 - 84 = 100) reported by the  
4           Bureau of Labor Statistics, United States  
5           Department of Labor or its successor or, if the  
6           index is discontinued, an equivalent index  
7           reported by a federal authority. If no such  
8           index is reported, the term means the substitute  
9           index chosen by a court of competent  
10           jurisdiction;

11           (2) Inception Fee:

12           1.0 per cent inception fee based upon the gross fair  
13           market value of the trust assets at the date of the  
14           trustee's acceptance payable to:

15           (A) The first trustee who is not the settlor of the  
16           trust; and

17           (B) The first trustee of a trust created under a  
18           revocable living trust after the settlor's death  
19           or other administrative trust;

20           provided that the trustee shall not also be the  
21           trustee of the revocable living trust or



1 administrative trust that is the source of funding for  
2 the newly-created trust;

3 (3) Termination Fee:

4 1.0 per cent termination fee based upon the gross fair  
5 market value of the trust assets as of the termination  
6 date of the trust pursuant to the terms of the trust,  
7 which fee may be paid at any time after the  
8 termination date up to and including the date the  
9 trust assets are finally distributed; and

10 (4) Special Service Fees:

11 [~~(c) Such further allowances~~] Further compensation may  
12 be made as the court deems just and reasonable for  
13 services performed in connection with assuming the  
14 trusteeship, sales or leases of real estate, contested  
15 or litigated claims against the estate, the adjustment  
16 and payment of extensive or complicated estate or  
17 inheritance taxes, the preparation of estate and  
18 income tax returns, the carrying on of the decedent's  
19 business pursuant to an order of court or under the  
20 provisions of any will, litigation in regard to the  
21 property of the estate, and such other special  
22 services as may be necessary for the trustee to



1 perform, prosecute, or defend. [~~All contracts between~~  
2 ~~a trustee and a beneficiary other than the creator of~~  
3 ~~the trust, for higher compensation than is allowed in~~  
4 ~~this section shall be void.] If all of the  
5 beneficiaries agree to the trustee's special service  
6 fees, then court approval shall not be required.~~

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

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

19 [~~(d)~~] (f) This section shall apply [as well to future  
20 accounting in] to existing [estates] trusts as well as to new  
21 [estates.] trusts. This section shall not apply to charitable  
22 trusts."



1 SECTION 3. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4 SECTION 4. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 5. This Act shall take effect on July 1, 2050.





**Report Title:**

Compensation of Trustees

**Description:**

Clarifies and updates trustee compensation by setting out several categories of fees to which trustees are entitled. Effective 07/01/2050. (SD2)

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

