



## *The Judiciary, State of Hawaii*

### **Testimony to the Senate Committee on Commerce and Consumer Protection**

The Hon. Rosalyn H. Baker, Chair  
The Hon. Brian T. Taniguchi, Vice Chair

Wednesday, January 29, 2014  
9:00 a.m.  
State Capitol, Conference Room 229

by

### **WRITTEN TESTIMONY ONLY**

Lori Ann M. Okita  
Chief Court Administrator, First Circuit

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**Bill No. and Title:** Senate Bill No. 2229, Relating to the Uniform Power of Attorney Act

**Purpose:** Establishes the Uniform Power of Attorney Act. Defines the levels of authority granted in a power of attorney to the principal's agent. Requires the agent to act in good faith and within the scope of authority granted in the power of attorney. Provides sample documents to be used to create a statutory form power of attorney. Repeals Chapter 551D, Hawaii Revised Statutes.

### **Judiciary's Position:**

The Judiciary takes no position on the merits of Senate Bill No. 2229. However, the Judiciary respectfully suggests exempting powers of attorney regarding care of minors and disabled adults for the following reasons.

1. The bill is entirely focused on matters of "property" as defined on page 3, from line 4.
2. The exemption suggested by the Judiciary is similar to the bill's exemption of health care decisions (page 4, line 18).



3. Powers of attorney regarding the care of minors and disabled adults are widely used in this state because of the strength of families. For example, many kupuna (grandparents) have the responsibility of raising their grandchildren due to a variety of factors such as the parents being too immature; they may need to work on another island, or they may be incapacitated because of substance abuse. Another example would be one sibling taking care of a disabled adult sibling. These families will probably have no knowledge of this law and may be subject to unintended consequences caused by the passage of this bill.

We respectfully suggest the following amendment to this bill by adding the following language at page 5, from line 4:

(5) A power created by a legal parent or legal guardian placing the care of a minor or a disabled adult under another person.

The Judiciary also notes that subsection -12 provides certain listed persons “may petition a court to construe a power of attorney or review the agent’s conduct, and grant appropriate relief” without specifying a particular court and/or case type in which to submit the petition.

The Judiciary has further concerns regarding subsection -16 and subsection -41. Subsection -16 regarding liability for refusal to accept acknowledged power of attorney may prevent the Land Court from questioning documents that have been signed by an attorney-in-fact if the receiving clerk fails to note it upon receipt, even when the Power of Attorney was not recorded as required by Section 501-174, Hawaii Revised Statutes. Additionally, subsection -41 may be interpreted by some persons as authorizing an attorney-in-fact to become a successor trustee in a trust.

Thank you for the opportunity to provide written comments on this matter.