

STAND. COM. REP. NO.

1218

Honolulu, Hawaii

APR 09 2009

RE: H.B. No. 294
H.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Madam:

Your Committee on Judiciary and Government Operations, to which was referred H.B. No. 294, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO PERSONAL LIABILITY OF TRUSTEE TO THIRD PARTIES,"

begs leave to report as follows:

The purpose of this measure is to clarify the liability of the trust estate and the trustee when a third party brings an action against them.

This measure:

- (1) Provides that a trustee is not personally liable on contracts entered into in the trustee's fiduciary capacity unless the trustee fails to disclose the trustee's fiduciary status and identify the trust estate in the contract; and
- (2) Provides that a trustee is personally liable for all obligations arising out of the ownership or control of property under the trust estate or for torts committed in the course of administration of the trust estate only if the trustee is personally at fault.

Your Committee received testimony in support of this measure from two organizations. Written testimony presented to the Committee may be reviewed on the Legislature's website.



This measure is a product of the Standing Committee on the Uniform Probate Code and Probate Court Practices of the Judiciary of the State of Hawaii (Probate Committee). The intent of this measure is to make the statute governing personal liability of a trustee to third parties more consistent with the Uniform Probate Code and the Hawaii law governing personal representatives of probate estates, as the role of a personal representative and a trustee in relation to third parties is functionally the same.

Current law provides that a trustee is personally liable on contracts entered into in the trustee's fiduciary capacity unless the contract provides otherwise. Consistent with the Uniform Probate Code and Hawaii law governing personal representatives of probate estates, this measure provides that a trustee is not personally liable on contracts unless the trustee fails to disclose the fiduciary status and identify the trust estate in the contract.

Additionally, current law provides that a trustee is personally liable for obligations arising from ownership or control of property of the trust estate. Consistent with the Uniform Probate Code and the Hawaii law governing personal representatives of probate estates, this measure provides that a trustee is personally liable to third parties only if the trustee is personally at fault.

Your Committee notes that this measure is not intended to affect a beneficiary's ability to pursue claims against a trustee for breach of fiduciary duty for damage arising during the administration of the trust.

As affirmed by the record of votes of the members of your Committee on Judiciary and Government Operations that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 294, H.D. 1, and recommends that it pass Second Reading and be placed on the calendar for Third Reading.



Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Government Operations,

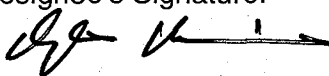


BRIAN T. TANIGUCHI, Chair



The Senate
Twenty-Fifth Legislature
State of Hawaii

Record of Votes
Committee on Judiciary and Government Operations
JGO

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 294, HD1	JGO	3/23/2009		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input checked="" type="checkbox"/> Pass, unamended 2312 <input type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
TANIGUCHI, Brian T. (C)	✓			
TAKAMINE, Dwight Y. (VC)	✓			
BUNDA, Robert	✓			
GABBARD, Mike				✓
NISHIHARA, Clarence K.	✓			
SLOM, Sam	✓			
TOTAL	5	0	0	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes