

STAND. COM. REP. NO.

384

Honolulu, Hawaii

FEB 20 2009

RE: S.B. No. 1044
S.D. 1

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

Madam:

Your Committee on Commerce and Consumer Protection, to which was referred S.B. No. 1044 entitled:

"A BILL FOR AN ACT RELATING TO ATTORNEYS,"

begs leave to report as follows:

The purpose of this measure is to amend the prohibition against the unauthorized practice of law under section 605-14, Hawaii Revised Statutes, to protect both licensed attorneys and other licensed professionals who are operating according to the terms of their professional licenses.

Your Committee received testimony in support of this measure from the Board of Public Accountancy; the Real Estate Commission; the Board of Professional Engineers, Architects, Surveyors and Landscape Architects; Hawaii Association of Realtors; Hawaii Insurers Council; Property Casualty Insurers Association of America; and Hawaii Association of Public Accountants. Testimony in opposition to this measure was received from the Department of the Attorney General and Hawaii State Bar Association. Testimony with comments on this measure was received from Hawaii Medical Board, Aloha Association of Executives, and State Farm Insurance Companies. Written testimony presented to the Committee may be reviewed on the Legislature's website.

Your Committee finds that the Legislature has a role to play in the regulation of the courts and the practice of law in the State. Your Committee has heard the testimony of the Hawaii State Bar Association that such matters are the exclusive purview of the



Hawaii Supreme Court; however your Committee finds this position to be unpersuasive. Your Committee notes that the Legislature does, in fact, regulate the courts and the practice of law as evidenced by the existence of Title 32, Hawaii Revised Statutes, which contains chapters regulating (1) the state courts generally, (2) the state courts of appeals, (3) the circuit courts, (4) the district courts, (5) attorneys, (6) court personnel including clerks, reporters, and interpreters, (7) court costs and fees, (8) judicial expenses and salaries, (9) jurors, and (10) the Center for Alternative Dispute Resolution.

Your Committee heard the testimony of the Department of the Attorney General that the exceptions in this measure for licensees acting within the scope of their professional licenses is overly broad and may limit the application of this measure. Your Committee does not agree. Your Committee finds that other states that statutorily regulate the unauthorized practice of law have statutes that contain similar exceptions, and one state has twenty-one pages of exceptions. It is your Committee's view that the existence of exceptions and their number does not necessarily make for a faulty measure.

Your Committee has amended this measure by:

- (1) Replacing its contents with the language of the proposed Hawaii State Bar Association rule prohibiting the unlicensed practice of law; and
- (2) Repealing section 605-14, Hawaii Revised Statutes.

Your Committee believes that moving the amended measure forward in the legislative process will facilitate a free and full discussion in the Judiciary and Government Operations Committee on the merits of the proposed exceptions and ultimately assist in more clearly defining the scope of the practice of law.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1044, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1044, S.D. 1, and be referred to the Committee on Judiciary and Government Operations.



Respectfully submitted on
behalf of the members of the
Committee on Commerce and
Consumer Protection,



ROSALYN H. BAKER, Chair



The Senate
Twenty-Fifth Legislature
State of Hawaii

Record of Votes
Committee on Commerce and Consumer Protection
CPN

Bill / Resolution No.:* SB 1044	Committee Referral: CPN, JAO	Date: 2/17/2009		
<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 type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	✓			
IGE, David Y. (VC)	✓			
ESPERO, Will	✓			
GREEN, M.D., Josh		✓		
IHARA, Jr., Les	✓			
SAKAMOTO, Norman				✓
HEMMINGS, Fred	✓			
TOTAL	5	1	0	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <div style="text-align:center;"><i>David Y. Ige</i></div>				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes