

**Testimony of Robert Toyofuku
On behalf of Hawaii Association for Justice
In OPPOSITION to
H.B. No. 294**

My name is Robert Toyofuku. I am testifying on behalf of the Hawaii Association for Justice (formerly known as CLH*) in Opposition to H.B. No. 294.

The Hawaii Association for Justice opposes H.B. No. 294 for technical reasons and offers non-substantive amendments to effectuate the bill's purpose and avoid unintended ambiguity.

The procedure for processing claims against a trust estate under current law requires that claims be first asserted against the trustee under section 560:7-306(c) and that the trustee then be reimbursed or indemnified by the trust estate pursuant to subsection (d) of the statute. It is a two step process that results in the trust estate paying for claims via an action against the trustee.

This measure could simplify the process by eliminating the first step of requiring that claims first be asserted against the trustee personally, then requiring the trustee to be reimbursed or indemnified by the trust estate, unless the trustee was personally responsible in some manner. The elimination of this first step however, creates an ambiguity because subsection (c) still requires that creditors and claimants asserting claims "against the trust estate" do so by "proceeding against the trustee in the trustee's fiduciary capacity." Thus the ambiguity that is created is that if the trustee (not the trust estate) must be sued, but the trustee is no longer liable under the proposed amendments, then who is responsible?

It intent of the bill appears to keep the trust estate ultimately responsible as is presently the case. To make this clear and avoid any future ambiguity or dispute, it is requested that the following sentence be added to the end of subsections (a), (b) and (c):

"The trust estate remains primarily liable to third parties,
except as provided herein, and questions of liability between
the trust estate and the trustee shall be determined pursuant
to subsection (d)."

This amendment will accommodate the purpose of avoiding vicarious personal liability on the part of an "innocent" trustee while avoiding the potential ambiguity that arises when the trustee is absolved of liability.

Thank you for this opportunity to testify in Opposition to H.B. No. 294.

* CLH has changed its name to conform to the name of its national organization the American Association for Justice.