

STAND. COM. REP. NO.

1210

Honolulu, Hawaii

APR 08 2011

RE: H.B. No. 924
H.D. 2
S.D. 2

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred H.B. No. 924, H.D. 2, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO INSURANCE,"

begs leave to report as follows:

The purpose and intent of this measure is to clarify that the terms of a liability insurance policy issued to a construction professional shall be interpreted according to the reasonable expectations of the parties at the time that the insurance policy was issued.

Your Committee finds that the construction industry is vital to Hawaii's economy and is a major economic driver in the public and private sectors. Your Committee further finds that, because of the potential for great economic and personal harm inherent in the construction process, reliable insurance against loss is vital to the industry. Your Committee holds the decisions of Hawaii's appellate courts and their function in interpreting the law in the highest regard and recognizes the deference due to the courts by the Legislative Branch. However, your Committee finds that the decision rendered by Hawaii's Intermediate Court of Appeals in *Group Builders, Inc. v. Admiral Ins. Co.*, 231 P.3d 67 (Haw. Ct. App. 2010), creates a public policy emergency by invalidating certain insurance coverage for construction projects that are underway or have already been completed.



Your Committee notes that settled constitutional law permits a legislative body to exercise its inherent police powers to regulate contract matters where a legitimate public purpose is at stake and where a less drastic alternative is not reasonably available.

In the present case, at least two equally important public purposes are at stake. First, since the potential for loss to life and property due to construction activity is enormous and ever-present despite the parties' best efforts to avoid such loss, reliable insurance against damages is essential to allow recovery for injured persons. Secondly, the State has a vested interest in ensuring that contracts entered into and paid for under a mutual understanding of contract terms are honored, especially when the contract involves an industry regulated by the State. In the present case, your Committee finds that construction professionals and insurers contracted for insurance coverage under a shared understanding that bodily injury and property damages due to construction defects would be covered occurrences. The court's decision in *Group Builders* undermines the agreement of the parties and intrudes on the prerogative of the Legislature to regulate private industry in the State for the purpose of preserving the health, safety, and welfare of its citizens.

Your Committee has amended this measure by making technical, nonsubstantive amendments for the purposes of clarity and consistency.

Your Committee finds that this measure, as amended, ensures that the intent of parties at the time a liability insurance construction contract is created is preserved. This measure as amended, also ensures that insurance coverage for bodily injury and property damage caused by construction defects is available for construction projects in progress and already completed within the State.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 924, H.D. 2, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 924, H.D. 2, S.D. 2.



Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



The Senate
 Twenty-Sixth Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* HB924, HD2, SDI	Committee Referral: CPN, JDL	Date: 4/6/11		
<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
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile (VC)	✓			
GABBARD, Mike	✓			
IHARA, Jr., Les	✓			
SLOM, Sam	✓			
TOTAL	5			
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