

Honolulu, Hawaii

FEB 17 2012

RE: S.B. No. 3002

S.D. 1

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawaii

Sir:

Your Committee on Commerce and Consumer Protection, to which was referred S.B. No. 3002 entitled:

"A BILL FOR AN ACT RELATING TO REAL ESTATE BROKERS AND SALESPERSONS,"

begs leave to report as follows:

The purpose and intent of this measure is to allow the Hawaii Real Estate Commission to impose penalties or fines on real estate brokers and salespersons who negligently or intentionally make misrepresentations or false promises, or negligently or intentionally fail to ascertain and disclose material facts.

Your Committee received testimony in support of this measure from the Hawaii Association of REALTORS, Honolulu Board of REALTORS, and Prudential Locations LLC. Your Committee received testimony in opposition to this measure from the Hawaii Real Estate Commission. Your Committee received comments on this measure from the Regulated Industries Complaints Office of the Department of Commerce and Consumer Affairs.

Your Committee finds that the amendments proposed by this measure add a state of mind requirement as grounds for disciplinary action by the Hawaii Real Estate Commission for misrepresentations, false promises, and failure to ascertain and disclose material facts by real estate brokers and salespersons.

Your Committee has heard the concerns that the addition of a state of mind requirement may restrict the Hawaii Real Estate



Commission's ability to respond to conduct and the Regulated Industries Complaints Office's ability to investigate allegations of misconduct. Your Committee has also heard the concerns that the measure's strict liability standard requires punishment for any violation, no matter how inconsequential.

Your Committee therefore finds that amendments to narrow the focus of this measure, while still preserving the investigative powers of the Regulated Industries Complaints Office and the Hawaii Real Estate Commission, are necessary.

Your Committee has amended this measure by:

- (1) Deleting the language that specified state of mind requirements;
- (2) Clarifying that a real estate broker or salesperson shall not be held liable for misrepresentations in a real estate transaction if the misrepresentations were based on a good faith reliance on information provided by third-party individuals or provided in public records;
- (3) Clarifying that a real estate broker or salesperson shall not be held liable for failure to ascertain and disclose all material facts concerning a property if the real estate broker or salesperson had a good faith reliance on a prepared disclosure statement; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

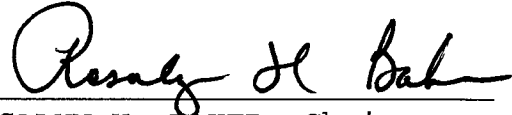
Your Committee notes that administrative relief, not legislation, should be the first level of redress. Accordingly, interested parties have requested the Hawaii Real Estate Commission to address this matter administratively later this month. This measure is progressing in case an appropriate resolution cannot be reached through those means.

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. 3002, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B.



No. 3002, S.D. 1, and be referred to the Committee on Judiciary and Labor.

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

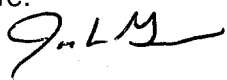


ROSALYN H. BAKER, Chair



The Senate
 Twenty-Sixth Legislature
 State of Hawai'i

Record of Votes
Committee on Commerce and Consumer Protection
CPN

Bill / Resolution No.:*	Committee Referral:	Date:		
SB 3002	CPN, JDL	2/15/12		
<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)	✓			
TANIGUCHI, Brian T. (VC)				✓
GALUTERIA, Brickwood				✓
GREEN, M.D., Josh	✓			
NISHIHARA, Clarence K.	✓			
SOLOMON, Malama				✓
SLOM, Sam	✓			
TOTAL	4	0	0	3
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	Goldenrod Committee File Copy	

*Only one measure per Record of Votes