

STAND. COM. REP. NO. 864

Honolulu, Hawaii

MAR 15 2013

RE: H.B. No. 1150
H.D. 1
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Madam:

Your Committee on Commerce and Consumer Protection, to which was referred H.B. No. 1150, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO CONTRACTS,"

begs leave to report as follows:

The purpose and intent of this measure is to exempt an owner's agreement with an attorney to file a claim as to identified property or contest the administrator's denial of a claim from the application of section 523A-25, Hawaii Revised Statutes.

Your Committee received testimony in support of this measure from the Collection Law Section of the Hawaii State Bar Association.

Your Committee finds that Act 229, Session Laws of Hawaii 2012, limited compensation for the recovery of property presumed abandoned to ten percent of the total value of the property. Your Committee further finds that the majority of property held by the Department of Budget and Finance is valued at less than \$5,000. If any difficulties are encountered when attempting to release property from the Department of Budget and Finance, the cost for the claimant to hire an attorney in the majority of unclaimed property cases will increase beyond the ten percent limit rather quickly. The ten percent limit on compensation for recovery therefore creates a barrier for members of the public who wish to



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hire an attorney to assist with the recovery of unclaimed funds or property.

Your Committee notes that the Senate companion to this measure, S.B. No. 1265, S.D. 1, which was previously passed by the Senate, contains language that increases the limit on compensation for attorneys to twenty-five percent of the total value of the property, rather than completely removing the limit on compensation. Your Committee additionally finds that the language in S.B. No. 1265, S.D. 1, is preferable because it ensures that members of the public are still able to retain attorneys to handle the claims process, while also ensuring that attorneys' fees for this process remain at reasonable levels.

Your Committee has heard testimony that a twenty-five percent limit on compensation for attorneys may prohibit certain clients from recovering unclaimed funds or property. Although your Committee appreciates that there may be difficulties or complexities that arise during the claims process, your Committee is concerned by the notion that an attorney who has been working with a client to recover the client's funds or property will reach the twenty-five percent limit on compensation and cease assisting the client. Nevertheless, your Committee finds there is merit in allowing judicial discretion to approve owner's agreements with attorneys that provide for compensation that exceeds twenty-five percent, if the agreement is with an attorney to maintain an action in Circuit Court.

Accordingly, your Committee has amended this measure by:

- (1) Replacing its contents with the contents of S.B. No. 1265, S.D. 1, a substantively similar measure, which exempts an owner's agreement with an attorney to file a claim as to identified property or contest the administrator's denial of a claim from the application of section 523A-25, Hawaii Revised Statutes; provided that an owner's agreement with an attorney that provides for compensation shall not exceed twenty-five percent of the total value of the property and inserts an effective date of July 1, 2050; and
- (2) Further amending the measure by:
 - (A) Specifying that an owner's agreement with an attorney to maintain an action in Circuit Court

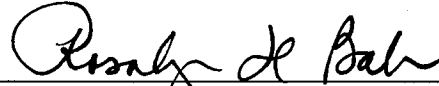


under section 523A-16, Hawaii Revised Statutes, may provide for compensation that exceeds twenty-five percent of the total value of the property only upon approval of the court; and

- (B) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

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 H.B. No. 1150, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1150, H.D. 1, 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-Seventh Legislature
State of Hawai'i

Record of Votes
Committee on Commerce and Consumer Protection
CPN

Bill / Resolution No.:* HB 1150, HD1	Committee Referral: CPN, JDL	Date: 3/12/13		
<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)	✓			
GALUTERIA, Brickwood (VC)	✓			
NISHIHARA, Clarence K.				✓
SOLOMON, Malama	✓			
TANIGUCHI, Brian T.				✓
WAKAI, Glenn				✓
SLOM, Sam	✓			
TOTAL	4			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