

STAND. COM. REP. NO.

922

Honolulu, Hawaii

MAR 24 2011

RE: H.B. No. 924
H.D. 2
S.D. 1

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

Sir:

Your Committee on Commerce and Consumer Protection, to which was referred H.B. No. 924, H.D. 2, 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 the law relating to the interpretation of commercial general liability insurance policies affecting construction professionals.

Your Committee received testimony in support of this measure from the Hawaii Laborers' Union, Wailea MF-9 Associates LLC, and Hawaii Carpenters Union. Your Committee received testimony in support of the intent of this measure from the Building Industry Association of Hawaii; Insurance Factors; Pacific Rim Partners, LLC; Ralph S. Inouye Co., Ltd.; King & Neel, Inc.; Robert M. Kaya Builders, Inc.; R. Clary Builders, Inc.; Heartwood Pacific LLC; Hawaiian Dredging Construction Company; Grace Pacific Corporation; Nordic PCL Construction, Inc.; Designer Built Systems, Inc.; Simmons Steel Corporation; PVT Land Company Limited; Royal Contracting Co., Ltd.; Victory Development, Inc.; KPRS Hawaii Construction, Inc.; Albert C. Kobayashi, Inc.; Williams Hawaii, Inc.; Complete Construction Services Corp.; Koga Engineering & Construction, Inc.; Curtis Law Construction; Foundations Hawaii, Inc.; General Contractors Association of Hawaii; Ledcor Construction Hawaii LLC; Jas W. Glover, Ltd.; Dale Moore, General Contractor; Delta Construction Corporation; S & M Sakamoto, Inc.; Alan Shintani Inc.; HSI Mechanical, Inc.; The Pacific Resource

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Partnership; Servco Home and Commercial Products; and Plumbers and Fitters Union, Local 675. Your Committee received testimony in opposition to this measure from the American Insurance Association; First Insurance Company of Hawaii, Ltd.; Island Insurance Companies; Hawaii Insurers Council; Hawaii Independent Insurance Agents Association; and State Farm Insurance Companies. Your Committee received comments on this measure from the Insurance Commissioner of the Department of Commerce and Consumer Affairs.

Your Committee finds that the construction industry is a vital part of the State's economy and is a major economic driver in the public and private sectors. Your Committee further finds that the 2010 decision of the Intermediate Court of Appeals in *Group Builders, Inc. and Tradewinds Insurance Company, Ltd. v. Admiral Insurance Company* (231 P.3d 67), which held that commercial general liability policies do not cover bodily injury or property damage arising from construction defects, creates uncertainty in the construction industry, and invalidates insurance coverage that was paid for and understood to exist by construction professionals. Your Committee notes that prior to the *Group Builders* decision, insurers routinely paid legitimate claims brought against construction professionals for damages resulting from construction defects, under the terms of commercial liability insurance policies issued and currently in force in this State.

Your Committee also finds that the *Group Builders* decision resulted in an interpretation of commercial liability insurance policies that is contrary to the reasonable understanding and good faith expectations of construction professionals that paid significant amounts in insurance premiums and now find themselves without protection from suits for alleged damages resulting from construction defects. Your Committee notes that the uncertainty resulting from the *Group Builders* decision has severely impacted the construction industry in Hawaii at a time of general economic malaise. Given the critical role of the construction industry in Hawaii's economy, your Committee finds that legislative intervention in this matter is warranted as a matter of public policy to stimulate the economy, create jobs, ensure the availability of redress for injury, and insure a healthy construction industry to mitigate further economic deterioration.

Your Committee has amended this measure by deleting its contents and replacing them with new language that:



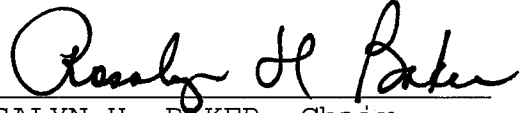
- (1) Adds a new purpose section to accurately reflect the policy of the Legislature with respect to this measure and the contents of this measure as amended;
- (2) Specifies that the term "occurrence" as used in a liability insurance policy that covers occurrences of damage or injury during the policy period and insures a construction professional for liability arising during construction-related work shall be construed according to the law as it existed at the time the insurance contract was issued;
- (3) Specifies that the provisions described above in paragraph (2) shall apply to all liability insurance policies in effect as of its effective date and to surplus lines of insurance;
- (4) Clarifies the meaning of "construction professional" and "liability insurance policy"; and
- (5) Changes the effective date to upon approval.

Your Committee notes that the language of this measure as amended is the result of collaboration among the proponents of this measure and reflects the agreement of stakeholders on this issue.

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. 924, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 924, H.D. 2, 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,

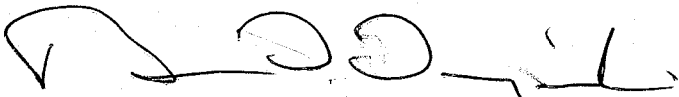


ROSALYN H. BAKER, Chair



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:		
HB 924, HD2	CPN, JDL	3/17/2011		
<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	5	0	0	2
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