

Honolulu, Hawaii

MAR 02 2017

RE: S.B. No. 314  
S.D. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Twenty-Ninth State Legislature  
Regular Session of 2017  
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred  
S.B. No. 314 entitled:

"A BILL FOR AN ACT RELATING TO ARBITRATION,"

begs leave to report as follows:

The purpose and intent of this measure is to amend the law  
regarding the disclosure requirements of an arbitrator in an  
arbitration by:

- (1) Clarifying that an interest or relationship that is required to be disclosed by an arbitrator includes a known, direct, and material financial or personal interest in the outcome of the arbitration proceeding, or an existing or past substantial relationship with any of the parties to the agreement to arbitrate or other interested parties to the arbitration proceeding; and
- (2) Clarifying that if the court determines the arbitrator failed to disclose an interest or relationship that a reasonable person would consider likely to affect the impartiality of the arbitrator, then the court may determine that such a failure to disclose constituted evident partiality and vacate an award made by the arbitrator.

Your Committee received testimony in support of this measure from five individuals.



Your Committee finds that two recent decisions by the Supreme Court of Hawaii in *Nordic PCL Construction, Inc. v. LPIHGC, LLC*, 136 Hawaii 29 (2015) and *Noel Madamba Contracting LLC v. Romero*, 137 Hawaii 1 (2015) have resulted in implications to the arbitration process and have possible unintended consequences. Specifically, these two decisions affected the law relating to the disclosure requirements of an arbitrator that authorizes the trial court to vacate an arbitration award if the arbitrator failed to disclose a known fact that a reasonable person would consider likely to affect the impartiality of the arbitrator. In these two cases, the court held that an arbitrator's nondisclosure of information that may affect the arbitrator's impartiality constituted evident partiality as a matter of law and that the court was required to vacate the arbitrator's decision. This measure authorizes the trial court to determine the facts then impose relief that is appropriate and provides specific standards to enable the trial court to determine whether the arbitrator failed to disclose an interest or relationship that a reasonable person would consider likely to affect the impartiality of the arbitrator and whether to vacate an award made by an arbitrator who failed to disclose that information.

Your Committee has amended this measure by:

- (1) Inserting an effective date of January 7, 2059, to encourage further discussion; and
- (2) 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 Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 314, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 314, S.D. 1, and be placed on the calendar for Third Reading.



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

  
GILBERT S.C. KEITH-AGARAN, Chair



The Senate  
 Twenty-Ninth Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Judiciary and Labor**  
**JDL**

Bill / Resolution No.:* <b>SB 314</b>	Committee Referral: <b>JDL</b>	Date: <b>2/1/17</b>
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The Committee is reconsidering its previous decision on this measure.  
 If so, then the previous decision was to: \_\_\_\_\_

The Recommendation is:

Pass, unamended 2312    
  Pass, with amendments 2311    
 Hold 2310    
 Recommit 2313

Members	Aye	Aye (WR)	Nay	Excused
KEITH-AGARAN, Gilbert S.C. (C)	✓			
RHOADS, Karl (VC)	✓			
GABBARD, Mike	✓			
KIM, Donna Mercado	✓			
THIELEN, Laura H.	✓			
<b>TOTAL</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>0</b>

Recommendation:    
 Adopted    
 Not Adopted

Chair's or Designee's Signature:  
*Karl Rhoads*

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\*Only one measure per Record of Votes