

Honolulu, Hawaii

MAR 05 2009

RE: S.B. No. 105
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Madam:

Your Committee on Judiciary and Government Operations, to which was referred S.B. No. 105 entitled:

"A BILL FOR AN ACT RELATING TO PROTECTIVE PROCEEDINGS,"

begs leave to report as follows:

The purpose of this measure is to clarify the conservatorship law by requiring:

- (1) The court, in appointing a conservator or in making a protective order, to make a determination that there is clear and convincing evidence that the individual is unable to manage property and business affairs effectively because of an impairment in ability to receive and evaluate and communicate decisions, because of another physical, mental, or health impairment or because the individual is missing, detained, or unable to return to the United States; and
- (2) A petition to appoint a conservator or for a protective order that alleges a physical, mental, or health impairment to state or contain a brief description of the nature and extent of the respondent's alleged impairment.

Your Committee received testimony in support of this measure from the Judiciary-Uniform Probate Code and Probate Court Practices Committee. Copies of written testimony on this measure are available for review on the Legislature's website.



Your Committee finds that this measure restores flexibility in the criteria applied by the court in deciding whether the appointment of a conservator is appropriate, without impairing the rights of respondents in protective proceedings.

The testimony of the Uniform Probate Code and Probate Court Practices Committee indicated that the current statutory language has had unintended consequences: the court cannot appoint a conservator for an individual with physical challenges who might welcome and benefit from a protective arrangement if the individual can receive and evaluate information and can make and communicate decisions. As a remedy, this measure partially restores criteria applicable prior to January 1, 2005 (when Act 161, Session Laws of Hawaii 2004, the Uniform Guardianship and Protective Proceedings Act took effect). This measure will improve conditions for those seeking protection without detriment to those who do not.

Your Committee has amended this measure by making a technical, nonsubstantive amendment.

As affirmed by the record of votes of the members of your Committee on Judiciary and Government Operations that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 105, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 105, S.D. 1, and be placed on the calendar for Third Reading.

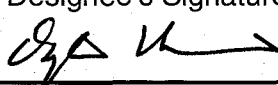
Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Government Operations,


BRIAN T. TANIGUCHI, Chair



The Senate
Twenty-Fifth Legislature
State of Hawaii

Record of Votes
Committee on Judiciary and Government Operations
JGO

Bill / Resolution No.:* <div style="font-size: 1.2em; font-family: cursive;">SIB 105</div>	Committee Referral: <div style="font-size: 1.2em; font-family: cursive;">JGO</div>	Date: <div style="font-size: 1.2em; font-family: cursive;">2/6/09</div>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div><input type="checkbox"/> Pass, unamended <small>2312</small></div> <div><input checked="" type="checkbox"/> Pass, with amendments <small>2311</small></div> <div><input type="checkbox"/> Hold <small>2310</small></div> <div><input type="checkbox"/> Recommit <small>2313</small></div> </div>				
Members	Aye	Aye (WR)	Nay	Excused
TANIGUCHI, Brian T. (C)	✓			
TAKAMINE, Dwight Y. (VC)	✓			
BUNDA, Robert	✓			
GABBARD, Mike	✓			
NISHIHARA, Clarence K.	✓			
SLOM, Sam	✓			
TOTAL	6	0	0	0
Recommendation: <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted </div>				
Chair's or Designee's Signature: <div style="font-size: 1.5em; font-family: cursive; margin-top: 10px;">  </div>				
Distribution: <div style="display: flex; justify-content: space-between; font-size: 0.8em;"> <div>Original File with Committee Report</div> <div>Yellow Clerk's Office</div> <div>Pink Drafting Agency</div> <div>Goldenrod Committee File Copy</div> </div>				

*Only one measure per Record of Votes