

ACT 22

H.B. NO. 294

A Bill for an Act Relating to Personal Liability of Trustee to Third Parties.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 560:7-306, Hawaii Revised Statutes, is amended to read as follows:

“§560:7-306 Personal liability of trustee to third parties. (a) Unless otherwise provided in the contract, a trustee is not personally liable on contracts entered into in the trustee’s fiduciary capacity in the course of administration of the trust estate~~[-]~~, unless the trustee fails to disclose the trustee’s representative capacity and identify the trust estate in the contract.

(b) A trustee is personally liable for obligations arising from ownership or control of property of the trust estate [~~and~~] or for torts committed in the course of administration of the trust estate~~[-]~~ only if the trustee is personally at fault.

(c) Claims based on contracts entered into by a trustee in the trustee’s fiduciary capacity, on obligations arising from ownership or control of the trust estate, or on torts committed in the course of trust administration may be asserted against the trust estate by proceeding against the trustee in the trustee’s fiduciary capacity, whether or not the trustee is personally liable therefor.

(d) Any judgment obtained against the trustee in the trustee’s fiduciary capacity may be collected against the trust estate. The question of liability as between the trust estate and the trustee [~~personally~~] individually may be determined in a proceeding for accounting, surcharge or indemnification or other appropriate proceeding.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2009.

(Approved April 29, 2009.)