

MAR 15 2006

SENATE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS TO CONDUCT A STUDY ON THE EXCLUSION OF DOMESTIC SERVICES, AUTHORIZED AND SUBSIDIZED BY THE DEPARTMENT OF HUMAN SERVICES, FROM THE STATE EMPLOYMENT SECURITY LAW, WORKERS' COMPENSATION LAW, TEMPORARY DISABILITY INSURANCE LAW, AND THE PREPAID HEALTH CARE LAW.

1 WHEREAS, the Department of Human Services contracts with
2 providers, including corporations, to perform attendant care and
3 day care authorized under the Social Security Act, as amended;
4 and

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6 WHEREAS, under the Department of Human Services contracts,
7 the providers are the recipients of social service payments; and

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9 WHEREAS, the providers subcontract with and employ
10 individuals to provide attendant care and day care services; and

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12 WHEREAS, sections 386-1, 392-3, and 393-5, Hawaii Revised
13 Statutes, exclude from the definitions of "employment"
14 "domestic, which includes attendant care, and day care services
15 authorized by the department of human services under the Social
16 Security Act, as amended, performed by an individual in the
17 employ of a recipient of social service payments"; and

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19 WHEREAS, in 1978, the Senate, in Standing Committee Report
20 No. 314-78, and the House, in Standing Committee Report No.
21 743-78, both found that because the Department of Labor and
22 industrial Relations and the Internal Revenue Service had
23 classified this type of domestic service as an employer-employee
24 relationship, all pertinent employer contributions relating to
25 Employment Security Law, Workers' Compensation Law, Temporary
26 Disability Insurance Law, and the Prepaid Health Care Law would
27 be assessed on and paid for by the eligible recipients; and

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29 WHEREAS, the Standing Committees of the Senate and the
30 House also found that domestic employment should be excluded



1 from the statutory requirements of Employment Security Law,
2 Workers' Compensation Law, Temporary Disability Insurance Law,
3 and the Prepaid Health Care Law in order to better facilitate
4 the receipt of social services by eligible recipients; and
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6 WHEREAS, Act 110, Session Laws of Hawaii 1978, excluded
7 domestic services from the definitions of employment under State
8 Workers' Compensation Law, Temporary Disability Insurance Law,
9 and the Prepaid Health Care Law, no similar exclusion was made
10 from the Employment Security Law; and
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12 WHEREAS, prior to enactment of Act 110, Session Laws of
13 Hawaii 1978, the House amended the measure to delete a section
14 that may have been the amendment to the Employment Security Law
15 to exclude domestic services from the definition of employment;
16 and
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18 WHEREAS, it is unclear from available information as to why
19 the services were not excluded from Employment Security Law
20 requirements; now, therefore,
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22 BE IT RESOLVED by the Senate of the Twenty-third
23 Legislature of the State of Hawaii, Regular Session of 2006, the
24 House of Representatives concurring, that the Department of
25 Labor and Industrial Relations is requested to conduct a study
26 on the exemptions of domestic services authorized by the
27 Department of Human Services under the Social Security Act, as
28 amended, to:
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- 30 (1) Provide clarification on the relationship between
31 providers as recipients of social service payments and
32 those employed to provide domestic services; and
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34 (2) Analyze the propriety of the exemption of these
35 domestic services from the Employment Security Law;
36 and
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38 BE IT FURTHER RESOLVED that the Department of Labor and
39 Industrial Relations is requested to submit a report to the
40 Legislature on its findings, recommendations, and proposed
41 legislation, if appropriate, no later than twenty days prior to
42 the convening of the Regular Session of 2007; and
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1 BE IT FURTHER RESOLVED that certified copies of this
2 Concurrent Resolution be transmitted to the Director of Labor
3 and Industrial Relations and the Director of Human Services.
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OFFERED BY: *Erzanne Chun Oakland*

