

Honolulu, Hawaii

FEB 17

, 2006

RE: S.B. No. 3021
S.D. 1

Honorable Robert Bunda
President of the Senate
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committee on Labor, to which was referred S.B. No. 3021
entitled:

"A BILL FOR AN ACT RELATING TO EMPLOYMENT PRACTICES,"

begs leave to report as follows:

The purpose of this measure is to prohibit an employer or
labor organization from discharging, withholding pay from,
demoting, or otherwise disciplining an employee with a serious
health condition who uses accrued and available sick leave in
accordance with a valid collective bargaining agreement or valid
employment policy.

This measure also:

- (1) Establishes procedures for an aggrieved employee to file
a complaint against an employer in violation of the law;
- (2) Provides for penalties for an employer in violation of
the law; and
- (3) Provides an aggrieved party the opportunity for judicial
review of an order of the department of labor and
industrial relations.

Testimony in support of this measure was submitted by the
ILWU Local 142, the Hawaii State AFL-CIO, the IBEW Local 1186, the
IBEW Local 1260, the IBEW Local 1357, the Hawaii State Teachers
Association, and one individual. Testimony in opposition to this



measure was submitted by the Department of Labor and Industrial Relations, the Department of Human Resources Development, the Chamber of Commerce of Hawaii, Hawaii Pacific Health, and the Society for Human Resource Management - Hawaii Chapter. Comments on the measure were also submitted by Hawaiian Telcom.

Your Committee finds that although many employers offer their employees sick leave benefits, the ability of the employees to legitimately make use of their sick leave benefits may be hampered by employees feeling threatened if they take their sick leave which subjects them to discipline under an attendance policy. The implementation of no-fault attendance policies seems to unfairly penalize an employee who exercises the right to use accrued and available sick leave when the employee is ill or injured. The result of this type of policy can be that an employee is unjustly punished or otherwise prevented from further advancement. Your Committee believes that an employee who abuses sick leave benefits and an employee who appropriately utilizes sick leave benefits, including by providing proof of illness or injury from a physician, should not be treated in the same manner.

Accordingly, your Committee has amended this measure by:

- (1) Deleting the section that created a new part within chapter 378, Hawaii Revised Statutes, to:
 - (A) Prohibit employers or labor organizations from penalizing employees with a serious health condition from utilizing accrued and available sick leave;
 - (B) Establish procedures for an aggrieved employee to file a complaint against an employer in violation of the law;
 - (C) Establish penalties for an employer in violation of the law; and
 - (D) Provide an aggrieved party the opportunity for judicial review of an order of the department of labor and industrial relations; and
- (2) Amending subsection 378-32, Hawaii Revised Statutes, to:



- (A) Prohibit an employer or labor organization from penalizing an employee that utilizes accrued and available sick leave;
- (B) Require an employee who uses more than one day of sick leave to provide the employer with written validation of an illness or injury from the employee's physician;
- (C) Allow the employer to require the employee to be medically evaluated by a physician if the employee has used more than one day of sick leave on at least three separate occasions during the prior six-month period; and
- (D) Exclude from liability actions by an employer or labor organization that are in accordance with a valid, negotiated attendance policy.

As affirmed by the record of votes of the members of your Committee on Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3021, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3021, S.D. 1, and be referred to the Committee on Judiciary and Hawaiian Affairs.


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


BRIAN KANNO, Chair



The Senate
Twenty-Third Legislature
State of Hawaii

Record of Votes of the
Committee on Labor
(Bills and Resolutions)

Measure:*	Committee Referral:	Date:		
SB 3021	LBR, JHW	2-6-06		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is to:				
<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	Ayes	Ayes(WR)	Nays	Excused
KANNO, Brian (C)	✓			
IHARA, Jr., Les (VC)	✓			
TANIGUCHI, Brian T.				✓
SLOM, Sam			✓	
TOTAL	2	0	1	1
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Do not list more than one measure per Record of Votes.