

STAND. COM. REP. NO.

3634

Honolulu, Hawaii

APR 11 2006

RE: S.R. No. 135
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 Human Services, to which was referred S.R. No. 135 entitled:

"SENATE 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,"

begs leave to report as follows:

The purpose of this measure is to clarify and declare that providers of domestic services who are authorized and subsidized by the Department of Human Services to provide domestic services are excluded from the application of the State's Workers' Compensation Law, Temporary Disability Law, and Prepaid Health Care Law.

Your Committee drafted a proposed Senate Draft on this measure that, among other things, requested that:

- (1) The Legislative Reference Bureau, with the assistance of the Attorney General and the Departments of Labor and Industrial Relations, Human Services, and Taxation, conduct a study on the exemptions of domestic services authorized by the Department of Human Services under the Social Security Act to:



- (A) Provide clarification on the relationship between providers as recipients of social service payments and those employed to provide domestic services; and
 - (B) Analyze the propriety of the exemption of these domestic services from the Employment Security Law (chapter 383, Hawaii Revised Statutes);
- (2) The Attorney General, the Departments of Labor and Industrial Relations, Human Services, and Taxation, and other relevant agencies defer any enforcement action related to chapters 383 (Employment Security), 386 (Workers' Compensation), 392 (Temporary Disability), and 393 (Prepaid Health Care), Hawaii Revised Statutes, until the end of the 2007 Regular Session; and
 - (3) A report and proposed legislation be submitted to the Legislature on this issue not later than twenty days prior to the convening of the 2007 Regular Session.

Your Committee finds that the Department of Human Services contracts with social care providers, including corporations and private agencies, to perform attendant care and day care services authorized under the Social Security Act, as amended.

Sections 386-1, 392-3 and 393-5, Hawaii Revised Statutes, exclude "domestic" services from the definitions of "employment" for individuals who perform attendant care and day care services authorized under the Social Security Act, as amended, in the employ of social care providers.

However, the "domestic" exemption is not included in the Hawaii Employment Security Law, chapter 383, Hawaii Revised Statutes.

Your Committee finds that it is in the public interest, benefit, and welfare to exclude from the definition of "employment" in chapters 383, 386, 392 and 393, Hawaii Revised Statutes, those individuals who perform attendant care and day care services authorized under the Social Security Act, as amended, in the employ of social care providers. This would ensure that social care providers continue to operate and use their resources to provide services to elderly and disabled adults in Hawaii.



Your Committee further finds that it is in the public interest, benefit, and welfare to have a friendly regulatory environment for businesses, including consistent employment benefit laws. Therefore, your Committee finds that it is contrary to the public interest, benefit, and welfare to have inconsistent laws that exclude the "domestic" exemption in the Hawaii Employment Security Law but include the "domestic" exemption in the Hawaii Workers' Compensation law, Temporary Disability Law, and Prepaid Health Care Law.

Your Committee also finds that it would be in the public interest if the Department of Labor and Industrial Relations and other state agencies would act consistently with the intent of the Legislature to exclude social care providers and their employees who perform social services from the definition of "employment" in chapters 383, 386, 392, and 393, Hawaii Revised Statutes.

Your Committee finds that actions not consistent with this intent may jeopardize and seriously impair the ability of social care providers to continue to operate and to use their resources to provide services to elderly and disabled adults in Hawaii.

Accordingly, your Committee has amended this measure by:

- (1) Changing its title to read: "REQUESTING THE ATTORNEY GENERAL TO PROVIDE A DEFINITIVE LEGAL OPINION REGARDING WHETHER CHAPTERS 383, 386, 392, AND 393, HAWAII REVISED STATUTES, EACH EXCLUDE FROM THE DEFINITION OF "EMPLOYMENT" THOSE INDIVIDUALS WHO PERFORM ATTENDANT CARE AND DAY CARE SERVICES AUTHORIZED UNDER THE SOCIAL SECURITY ACT, AS AMENDED, IN THE EMPLOY OF PERSONS, INCLUDING CORPORATIONS AND PRIVATE AGENCIES, WHO CONTRACT WITH THE DEPARTMENT OF HUMAN SERVICES AND WHO ARE THE RECIPIENTS OF SOCIAL SERVICE PAYMENTS";
- (2) Replacing the request that the Legislative Reference Bureau conduct a study with a request to the Attorney General to:
 - (A) Provide a definitive legal opinion (as soon as possible) regarding whether sections 386-1, 392-3 and 393-5, Hawaii Revised Statutes, exclude from each section's definition of "employment" those individuals who perform attendant care and day care



services authorized under the Social Security Act, as amended, in the employ of persons (including corporations and private agencies) who contract with the Department of Human Services to provide care services and who are the recipients of social service payments;

- (B) Provide a definitive legal opinion (as soon as possible) regarding whether chapter 383, Hawaii Revised Statutes, excludes from the chapter's definition of "employment" those individuals who perform attendant care and day care services authorized under the Social Security Act, as amended, in the employ of persons (including corporations and private agencies) who contract with the Department of Human Services to provide care services and who are the recipients of social service payments; and
- (C) Provide proposed legislation, if the Attorney General opines that these individuals are not already excluded from the definition of "employment", to amend chapters 383, 386, 392, and 393, Hawaii Revised Statutes, to retroactively and prospectively exclude, from each section's definition of "employment", those individuals who perform attendant care and day care services authorized under the Social Security Act, as amended, in the employ of persons (including corporations and private agencies) who contract with the Department of Human Services to provide care services and who are the recipients of social service payments; and
- (3) Ensuring that social care providers continue to operate and use their resources to provide services to elderly and disabled adults in Hawaii by requesting that the Attorney General, the Department of Labor and Industrial Relations, the Department of Taxation, and other state agencies and private entities suspend all application and enforcement, until June 30, 2007, of all of the relevant provisions of chapter 383, 386, 392, and 393, Hawaii Revised Statutes, regarding insurance, withholdings, payments, and all similar requirements on persons, including corporations and private agencies,



contracting with Department of Human Services to provide attendant care and day care services authorized under the Social Security Act, as amended, as these laws relate to individuals who perform attendant care and day care services authorized under the Social Security Act, as amended, in the employ of these contracting persons; and

- (4) Making technical nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Human Services that is attached to this report, your Committee concurs with the intent and purpose of S.R. No. 135, as amended herein, and recommends that it be referred to the Committee on Labor, in the form attached hereto as S.R. No. 135, S.D. 1.

Respectfully submitted on
behalf of the members of the
Committee on Human Services,

Suzanne Chun Oakland
SUZANNE CHUN OAKLAND, Chair



