

Honolulu, Hawaii

May 1, 2007

RE: H.B. No. 833
H.D. 2
S.D. 2
C.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Sir and Madam:

Your Committee on Conference on the disagreeing vote of the House of Representatives to the amendments proposed by the Senate in H.B. No. 833, H.D. 2, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO EMPLOYMENT,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this bill is to assist individuals who provide attendant care and day care services authorized by the Department of Human Services (DHS) by:

- (1) Creating certain exemptions under Hawaii's Employment Security Law, Workers' Compensation Law; Temporary Disability Insurance Law; and Prepaid Health Care Law; and
- (2) Requiring the Department of Labor and Industrial Relations (DLIR) to submit a report to the Legislature on the financial impact and consequences of the exclusions from employment related laws for service providers who provide



Medicaid waiver service for persons with developmental disabilities and mental retardation.

Currently, numerous individuals provide a valuable service to the State of Hawaii by serving as domestic caregivers, many of them through contracts with DHS. Recently, questions have arisen as to whether these caregivers, especially those attached to a provider agency, are independent contractors or employees. When these individuals have been ruled as employees, they have been subjected to Hawaii's employment laws resulting in skyrocketing operational costs, a situation that could threaten the existence of these caregivers and seriously affect Hawaii's health and human services system.

Your Committee on Conference finds that the exemptions provided in this measure benefit the State of Hawaii by ensuring that valuable and necessary Medicaid waiver services will continue to be provided to disabled and elderly adults in Hawaii without disruption. This is evident because the exemptions, as clarified, are consistent with existing law and reflect the practices of Medicaid waiver service providers who have provided these services for many years under the prior determinations of law by the Director of Labor and Industrial Relations.

While your Committee on Conference did contemplate amending this measure to include its retroactive application, this is unnecessary since the existing exemptions under sections 386-1, 392-5, and 393-5, Hawaii Revised Statutes, already exclude individuals in the employ of the "recipient of social service payments" as the term is defined in this measure. Further, the Director of DLIR has previously testified that the decision in In Re Manawa Lea was limited to and only applied to Manawa Lea. Therefore, the decision does not create a precedent and it need not be addressed by this measure.

However, specific concerns were raised by both the Attorney General and Director of DLIR regarding the broad scope of the exemptions, determinations as to whether an individual is an employee or independent contractor, and compliance with the Federal Unemployment Tax Act (FUTA).

Your Committee on Conference has amended this measure by:

- (1) Allowing the terms identifying specific waiver services to be amended by DHS;



- (2) Narrowing the scope of the exemptions to specifically identify waiver services exempted from Hawaii's Employment Security Law, Workers' Compensation Law; Temporary Disability Insurance Law; and Prepaid Health Care Law;
- (3) Stipulating that the exempted individual voluntarily agree in writing to be considered an independent contractor prior to the application of the exemption;
- (4) Limiting the application of the exemption from Hawaii's Employment Security Law to individuals not covered by FUTA; and
- (5) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of H.B. No. 833, H.D. 2, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 833, H.D. 2, S.D. 2, C.D. 1.

Respectfully submitted on behalf of the managers:

ON THE PART OF THE SENATE

ON THE PART OF THE HOUSE


 SUZANNE CHUN OAKLAND, Chair


 CLAYTON LEE, Co-Chair


 ALEX M. SONSON, Co-Chair


 MAILE SHIMABUKURO, Co-Chair


 BOB NAKASONE, Co-Chair



Hawaii State Legislature

CCR 142

Record of Votes of a Conference Committee

Bill / Concurrent Resolution No.: HB 833, HD 2, SD 2 Date/Time: April 27, 2007 / 2:35pm

- The recommendation of the House and Senate managers is to pass with amendments (CD).
The Committee is reconsidering its previous decision.
The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure
The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.

Table with columns for Senate Managers and House Managers, each with sub-columns for A, WR, N, E. Includes names like CHUN OAKLAND, Suzanne, Chr. and SONSON, Alex M., Co-Chr. and a totals row.

A = Aye WR = Aye with Reservations N = Nay E = Excused

Senate Recommendation is: [X] Adopted [] Not Adopted
House Recommendation is: [X] Adopted [] Not Adopted

Senate Lead Chair's or Designee's Signature: [Signature]
House Lead Chair's or Designee's Signature: [Signature]

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