

STAND. COM. REP. NO.

138

Honolulu, Hawaii

FEB 7, 2007

RE: H.B. No. 833

H.D. 1

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

Sir:

Your Committees on Labor & Public Employment and Human Services & Housing, to which was referred H.B. No. 833 entitled:

"A BILL FOR AN ACT RELATING TO EMPLOYMENT,"

beg leave to report as follows:

The purpose of this bill is to assist individuals who provide attendant care and day care services authorized by the Department of Human Services by creating new exemptions under Hawaii's:

- (1) Workers' Compensation Law;
- (2) Temporary Disability Insurance Law; and
- (3) Prepaid Health Care Law.

The United Filipino Council of Hawaii, Home & Community Services of Hawaii, Inc., Catholic Charities Hawaii, Filipino Chamber of Commerce of Hawaii, Oahu Filipino Community Council, Adult Foster Home Association of Hawaii, and numerous individuals testified in support of this bill. Responsive Caregivers of Hawaii testified in opposition to this measure. The Department of the Attorney General (Attorney General), Department of Human Services (DHS), and Department of Labor and Industrial Relations (DLIR) submitted comments.

Currently, numerous individuals provide a valuable service to the State of Hawaii by serving as domestic caregivers, many of

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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.

Although your Committee recognizes the concerns raised by the Attorney General and DLIR regarding the possible federal implications associated with this bill with regard to the Federal Unemployment Tax Act (FUTA) and the Employee Retirement Income Securities Act (ERISA), failure to provide relief from Hawaii's employment laws to these businesses may result in a public health crisis.

While this measure is deserving of further consideration, your Committee respectfully requests that the Attorney General and Director of DLIR obtain information regarding the effect this bill may have on ERISA and FUTA benefits experienced by the State and present this information to the Committee on Finance. Your Committee also respectfully requests that the Committee on Finance further look at the concerns raised by the Attorney General and DLIR.

Your Committee has amended this measure by:

- (1) Clarifying the definition of "Recipient of social service payments";
- (2) Changing the effective date to July 1, 2059; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

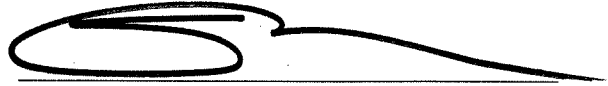
As affirmed by the records of votes of the members of your Committees on Labor & Public Employment and Human Services & Housing that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 833, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 833, H.D. 1, and be referred to the Committee on Finance.



Respectfully submitted on  
behalf of the members of the  
Committees on Labor & Public  
Employment and Human Services &  
Housing,



MAILE SHIMABUKURO, Chair



ALEX M. SONSON, Chair





