

STAND. COM. REP. NO.

1024

Honolulu, Hawaii

MAR 02 2007

RE: S.B. No. 1780
S.D. 2

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

Madam:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 1780, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO EMPLOYMENT,"

begs leave to report as follows:

The purpose of this measure is to exempt recipients of social service payments from the scope of employment under related state laws and define "recipients of social service payments" as it relates to chapters 383, 386, 392, and 393, Hawaii Revised Statutes.

The organizations affected by this measure manage the Social Security benefits for their Social Security - Supplemental Security Income (SSI) clients. These benefits include programs and services for SSI clients who are developmentally disabled. These programs and services may include residential habilitation, personal habilitation/habilitation, skilled nursing, and respite services.

In the late 1970's, parents of the developmentally disabled children asked the Legislature to establish programs and services to allow citizens with developmental disabilities to live in the least restrictive environment. This movement to deinstitutionalize the developmentally disabled recognized the various levels of disabilities within this group and from the highly challenged to those who can lead productive lives in the community with minimal assistance. Institutions like Waimano Home

SB1780 SD2 SSCR JDL.doc



faded away and the future brought a new beginning for our developmentally disabled.

In the late-1980's, at the request of the State of Hawaii Departments of Health and Human Services, organizations contracted with the State to provide Medicaid Home and Community Based Waiver services for the developmentally disabled and continuing the State's commitment to these citizens to live in the least restrictive environments outside of a institution.

Home Care Providers not covered under the Hawaii Unemployment Insurance Laws.

In a May 3, 1990 Letter, the Department of Labor and Industrial Relations (DLIR) recognized that these organizations would not be covered under the Hawaii Unemployment Insurance Laws. The Department stated, ". . . concerning unemployment insurance coverage of 'home care providers' who care for handicapped or other individuals that cannot care for themselves and are cared for in the 'providers' private home. The provider's services would not be covered under the Hawaii Unemployment Insurance Laws."

Home Care Providers not covered under Hawaii Workers' Compensation and Temporary Disability Laws

On September 16, 1991, the DLIR recognized that ". . . "home care providers" who are 'providers' in their private homes and are contracted through the State Department of Human Services . . . are excluded from the term 'employment' as specified under Section 386-1, HRS, of the Workers' Compensation (WC) Law. . . . The Temporary Disability Insurance (TDI) Law, under Section 392-5, HRS, contains an identical exclusion. Therefore, you are not required to provide TDI coverage to the 'home care providers'."

In August, 2006, the Director of Labor and Industrial Relations made a new determination that "home care providers" were not exempted from Unemployment, Workers' Compensation and Temporary Disability Laws even though Section 392-5(19), Hawaii Revised Statutes, recognized and stated:

"Domestic, which includes attendant care, and day care services authorized by the department of human services under the Social Security Act, as amended, performed by an individual in the employ



of a recipient of social service payments;"
(emphasis added)

This measure clarifies and reiterates the original determinations in 1990 and 1991 by the DLIR excluding home care services authorized by the Department of Human Services under the Social Security Act, as amended, performed by an individual in the employ of a recipient of social service payments from Hawai'i's Unemployment Insurance, Workers' Compensation and Temporary Disability Laws.

This measure also reminds the State of its rich history in supporting the developmentally disabled and the Legislature's continuing support to enable Hawai'i's developmentally disabled to lead rich and full productive lives in the least restrictive environment.

Testimony in support of this measure was received from numerous agencies such as Supporting Exceptional Citizens of Hawaii (SECOH); Home & Community Services of Hawaii, Inc., individually, and through Kobayashi, Sugita & Goda; United Filipino Council of Hawaii; Cable Adult Foster Home; Tapat Foster Home; Daligcon Expanded Care; Guerrero Foster Home; Febereo Foster Home; Bagasol DDD Home; Catholic Charities Hawaii; Gusman Adult Foster Home; Espiritu Foster Care Home; Dalmacio Adult Foster Home; Apostol Adult Care; E&R ARCH; Alonzo Adult Foster Home; Domingo Foster Home and ten private citizens.

Opposing testimony was received from the Department of Labor and Industrial Relations, State Attorney General, Easter Seals Hawaii, The Arc in Hawaii, Responsive Caregivers of Hawaii, and the State Council on Developmental Disabilities.

The home care providers in support of this measure stated that if they were not exempt under Section 89-5, Hawaii Revised Statutes, they would be forced to close their business.

Questions were raised stating that the federal laws, ERISA and FUTA, pre-empt states from expanding the present state statutes. It is the Committee's belief that this measure does not expand on the present exemptions but merely define the exemptions more specifically to continue the original intent by the Legislature more than ten years ago.



In addition, the organizations that are affected by the new DLIR ruling are conduits to manage and distribute the SSI benefits for the recipient's needs. In essence, it is the SSI recipient that dictates the type of home care needed and at times receives these services at their home. Therefore, another interpretation of this situation could treat the recipients of SSI benefits as "employers" and therefore subject to the above-mentioned state laws. Your Committee does not believe that Congress' intent in establishing SSI benefits would have included recognizing the SSI recipients as "employers". On the same basis, Congress would have also not intended that the organizations managing SSI benefits for the Department of Human Services and for the SSI recipient would ever be considered "employers".

Your Committee has amended the measure to include language proposed by a consortium composed of members from the State Council on Developmental Disabilities, SECOH, and Home & Community Services of Hawaii, Inc., through Kobayashi, Sugita & Goda. All references related to independently licensed or certified adult foster home or care home provider has been deleted. A delayed effective date and technical, nonsubstantive changes recommended by Legislative Reference Bureau have been made.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1780, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 1780, S.D. 2.

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



CLAYTON HEE, Chair



The Senate
Twenty-Fourth Legislature
State of Hawaii

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB 1780 SD/ HSP, JDL	Committee Referral: HSP, JDL	Date: 2/28/07		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <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	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	/			
KOKUBUN, Russell S. (VC)	/			
INOUE, Lorraine R.				/
NISHIHARA, Clarence K.	/			
GABBARD, Mike	/			
TOTAL	4			1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <div style="text-align:center; font-family: cursive; font-size: 1.2em;">Russell S. Kohl</div>				
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*Only one measure per Record of Votes