

STAND. COM. REP. NO. 1464

Honolulu, Hawaii  
March 23, 2007

RE: S.B. No. 1780  
S.D. 2  
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 S.B. No. 1780, S.D. 2, 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) Unemployment Insurance (UI) Law;
- (2) Workers' Compensation Law;
- (3) Temporary Disability Insurance (TDI) Law; and
- (4) Prepaid Health Care Law.

The United Filipino Council of Hawaii, Home & Community Services of Hawaii, Inc., Catholic Charities Hawaii, Oahu Filipino Community Council, Filipino Coalition for Solidarity, Congress of Visayan Organizations, National Federation of Filipino American Associations, Nursing Advocates & Mentors, Inc., Philippine Nurses Association-Hawaii, Aloha Habilitation Services, Inc., Adult Foster Home Association of Hawaii, and numerous individuals testified in support of this bill. The State Council on

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Developmental Disabilities testified in support of the intent of this measure. Responsive Caregivers of Hawaii testified in opposition to this measure. The Department of the Attorney General (Attorney General), Department of Labor and Industrial Relations (DLIR), and a concerned individual submitted comments.

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 nongovernmental 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 Committees recognize 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 Committees respectfully request the Committee on Finance further look at the effect this bill may have on ERISA and FUTA benefits experienced by the State and the impact this may have on the State's finances.

Your Committees also have concerns that, as currently written, the measure may have unintended consequences. Accordingly, your Committees have amended this bill by:

- (1) Clarifying that domestic service excluded from "employment" under Hawaii's UI Law also includes chore services and any other in-home and community based service as defined the Department of Health and Department of Human Services, for persons with developmental disabilities and mental retardation under the Medicaid Home and Community-Based Services Program;
- (2) Clarifying that adult day health services are not excluded from "employment" under Hawaii's UI law if the services are performed by:
  - (A) An individual who is under a contract between the individual and the recipient of social service



payments and who shall be presumed to be in an independent contractor relationship unless the Director of Labor and Industrial Relations can demonstrate that the individual is engaged in a common law employer-employee relationship with the recipient of social service payments;

- (B) A government employee;
  - (C) A nonprofit organization; or
  - (D) Indian tribes;
- (3) Allowing a recipient of social services payments to elect, in writing, to enter into an employee-employer relationship with the individual; and
- (4) Inserting language that includes chore service, residential habilitation, personal assistance/habilitation, skilled nursing, respite services, and any other in-home and community based services for persons with developmental disabilities and mental retardation under the Medicaid Home and Community-Based Services Program, with the exception of adult day health services performed by an individual whose services are contracted by a recipient of social service payments as domestic services, excluded from the requirements of Hawaii's TDI, Workers Compensation, and Prepaid Healthcare laws.

Your Committees have further amended this measure by:

- (1) Inserting a repeal date of July 1, 2061; and
- (2) 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 S.B. No. 1780, S.D. 2, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 1780, S.D. 2, 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,



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MAILE SHIMABUKURO, Chair



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ALEX M. SONSON, Chair





