



GOV. MSG. NO. **678**

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 6, 2010

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith SB2883 SD1 HD2 CD1, without my approval, and with the statement of objections relating to the measure.

SB2883 SD1 HD2 CD1

A BILL FOR AN ACT
RELATING TO EMPLOYMENT PRACTICES.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 6, 2010

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2883

Honorable Members
Twenty-Fifth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 2883, entitled "A Bill for an Act Relating to Employment Practices."

The purpose of this bill is to make it an unlawful practice for an employer to bar or discharge from employment, withhold pay from, or demote an employee because the employee uses accrued and available sick leave. The prohibition applies to employers who have a collective bargaining agreement and employ one hundred or more employees.

This bill is objectionable because the bill gives to the State Department of Labor and Industrial Relations the authority to find an employer in violation of state law if the employer bars, discharges from employment, or withholds pay from an employee. This determination will likely require the interpretation of the employer's negotiated sick leave and negotiated sick leave policies under a collective bargaining agreement. In Lingle v. Norge, 486 U.S. 399, 406, 108 S. Ct. 1877, 1881 (1988), the United States Supreme Court held that under section 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. section 185(a), state law is preempted if the state law depends upon the interpretation of the meaning of the collective bargaining agreement. This bill will likely require such an interpretation and therefore is preempted by federal statute.

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SENATE BILL NO. 2883
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This bill is also objectionable because the terms "legitimate use" of sick leave and "abuse of sick leave" used in the bill are vague and not defined, making enforcement and administration of its provisions difficult.

For the foregoing reasons, I am returning Senate Bill No. 2883 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "L. Lingle", written in a cursive style.

LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO EMPLOYMENT PRACTICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 378-32, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§378-32 Unlawful suspension, discharge, or**
4 **discrimination.** (a) It shall be unlawful for any employer to
5 suspend, discharge, or discriminate against any of the
6 employer's employees:

7 (1) Solely because the employer was summoned as a
8 garnishee in a cause where the employee is the debtor
9 or because the employee has filed a petition in
10 proceedings for a wage earner plan under Chapter XIII
11 of the Bankruptcy Act; [~~or~~]

12 (2) Solely because the employee has suffered a work injury
13 which arose out of and in the course of the employee's
14 employment with the employer and which is compensable
15 under chapter 386 unless the employee is no longer
16 capable of performing the employee's work as a result
17 of the work injury and the employer has no other
18 available work which the employee is capable of



1 performing. Any employee who is discharged because of
2 the work injury shall be given first preference of
3 reemployment by the employer in any position which the
4 employee is capable of performing and which becomes
5 available after the discharge and during the period
6 thereafter until the employee secures new employment.
7 This paragraph shall not apply to any employer in
8 whose employment there are less than three employees
9 at the time of the work injury or who is a party to a
10 collective bargaining agreement which prevents the
11 continued employment or reemployment of the injured
12 employee;

13 (3) Because the employee testified or was subpoenaed to
14 testify in a proceeding under this part; or

15 (4) Because an employee tested positive for the presence
16 of drugs, alcohol, or the metabolites of drugs in a
17 substance abuse on-site screening test conducted in
18 accordance with section 329B-5.5; provided that this
19 provision shall not apply to an employee who fails or
20 refuses to report to a laboratory for a substance
21 abuse test pursuant to section 329B-5.5.



1 (b) It shall be an unlawful practice for an employer or
2 labor organization to bar or discharge from employment, withhold
3 pay from, or demote an employee solely because the employee
4 legitimately uses accrued and available negotiated sick leave in
5 accordance with the employer's attendant and negotiated sick
6 leave policies, except for abuse of sick leave.

7 (c) Employers and labor organizations are not prohibited
8 from barring or discharging from employment, withholding pay
9 from, or demoting an employee if the employee is unable to
10 fulfill the essential job functions or requirements of the
11 employee's position.

12 (d) Subsections (b) and (c) shall only apply to employers
13 who have:

14 (1) A collective bargaining agreement with their
15 employees; and

16 (2) One hundred or more employees."

17 SECTION 2. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun before its effective date.

20 SECTION 3. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

22



1 SECTION 4. This Act shall take effect on July 1, 2010.

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