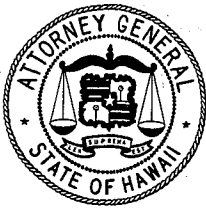


LATE

SB 2369



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

ON THE FOLLOWING MEASURE:

S.B. NO. 2369, RELATING TO DOMESTIC VIOLENCE.

BEFORE THE:

SENATE COMMITTEES ON LABOR AND ON HUMAN SERVICES

DATE: Tuesday, February 9, 2010 **TIME:** 3:30 p.m.

LOCATION: State Capitol, Room 224

TESTIFIER(S): Mark J. Bennett, Attorney General, or
Susan R. Kern, Deputy Attorney General

LATE

Chairs Takamine and Chun Oakland and Members of the Committees:

The Department of the Attorney General requests that section 15 on pages 29-30 be deleted from this bill and that section 4 on pages 8-9 be amended in its application to the state government.

The bill seeks to benefit victims of domestic or sexual violence. It does this in a number of ways, mainly by providing a variety of benefits for employees who take leaves of absence due to the domestic or sexual violence, and by making it unlawful for an employer, as well as for an agency providing public assistance benefits, to discriminate against an individual because the individual is or is perceived to be a victim of domestic or sexual violence.

Section 15 of the bill requires that the Attorney General (1) monitor the Department of Human Services' (DHS) activities to ensure that public assistance recipients are not discriminated against on this basis, (2) make sure that DHS provides the public assistance recipient with the benefits that were lost or denied by reason of DHS's unlawful discrimination against the domestic violence victim, and (3) adopt rules to effectuate these requirements.

The Attorney General objects to section 15 of the bill for four reasons. First, the Attorney General does not have authority over DHS to mandate its actions. Second, the bill does not provide a mechanism by which the Attorney General is to meet the obligations of section 15. Third, the Attorney General does not have the resources to develop and implement a monitoring and enforcement program. Fourth, section 346-12, Hawaii Revised Statutes (HRS), presently grants a public assistance recipient the right to appeal an adverse benefits decision. Chapter 91, HRS, and rules adopted by DHS provide public assistance recipients with due process protections, including the right to appeal the DHS decision to circuit court. When a public assistance recipient prevails in an appeal of an adverse financial assistance or support services decision, section 17-602.1-16(d)(1), Hawaii Administrative Rules (HAR), provides that DHS "shall promptly make necessary corrective payments, retroactive to the date the incorrect action was taken." Similar provisions apply with respect to food stamps and medical assistance programs, respectively, as set out at sections 17-602-1-41(c) and 17-1703-15(d)(1), HAR.

Thus, a mechanism is already in place to address wrongful denials of public assistance benefits, and a duplicative mechanism is unnecessary to ensure that public assistance recipients are not unlawfully discriminated against.

For the foregoing reasons, we respectfully ask this bill be amended by deleting all of section 15, as set out at page 29, lines 9-22, and page 30, lines 1-5.

In addition, section 4 on pages 8-10 of the bill may greatly increase the exposure of the State. These provisions appear to, or may potentially, conflict with section 662-2, HRS, which mandates that the State "shall not be liable for interest

prior to judgment or for punitive damages" and section 662-8, HRS, regarding the State's liability for post-judgment interest. The provisions related to the applicable statute of limitations also differ from existing limitations protecting the State - i.e. section 661-5, HRS, and section 662-4, HRS. Therefore, sections 4 and 5 of the bill should be amended, at a minimum, to make its provisions consistent with the existing protections the State has under chapters 661 and 662.

LINDA LINGLE
GOVERNOR



LILLIAN B. KOLLER, ESQ.
DIRECTOR
HENRY OLIVA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

LATE

February 9, 2010

MEMORANDUM

TO: The Honorable Dwight Y. Takamine, Chair
Senate Committee on Labor

The Honorable Suzanne Chun Oakland, Chair
Senate Committee on Human Services

FROM: Lillian B. Koller, Director

SUBJECT: **S.B. 2369 – RELATING TO DOMESTIC VIOLENCE**

Hearing: Tuesday, February 9, 2010; 3:30 p.m.
Conference Room 224, State Capitol

PURPOSE: The purpose of S.B. 2369 is to provide emergency, nonrecurring benefits for victims of domestic or sexual violence and expands current provisions for unemployment insurance, emergency leaves of absence, and insurance protections.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) respectfully opposes Part III and Part IV of this bill because it is redundant of what the Department already is required to do.

Part III, Emergency Leave Benefits, details that DHS shall receive and approve applications, on an expedited basis, for non-recurring short-term emergency benefits for an applicant that is seeking emergency leave benefits as a result of being a victim in a domestic violence situation. It also details that such benefits

would be released not later than seven days after the applicant submits an application.

The Department currently provides for expedited application processing for Supplemental Nutrition Assistance Program (SNAP) benefits, as well as certain medical services. In addition, all assistance programs under DHS have application processing deadlines which must be adhered to or else DHS takes on the liability of issuing benefits in lieu of determining whether an applicant is eligible or not.

With the reduction in staffing, and the uncertainty of the number of potential applicants this measure is considering, the Department has concerns that it will be able to meet the processing timeline this measure is proposing.

DHS also respectfully opposes Part IV, Public Assistance, that details prohibited practices for any public agency as it relates to the denial or termination of assistance to a recipient due to involvement as a victim in a domestic violence situation. Domestic violence services and assistance is provided by the Department through several different Federal funding sources (at least four) as well as State general funds. Codifying the domestic violence requirements as proposed in this bill could be inconsistent with the requirements of other programs and will be in violation of Federal statute and requirements if these are amended by the Federal government which would prevent the receipt of Federal fund essential to maintain these important services.

For example, the Department already provides assistance to applicants and recipients of TANF and TAONF who are victims of domestic violence as required by Federal statute. Such provisions must be included in the State of Hawaii's TANF State Plan to receive federal approval. An excerpt of the TANF State Plan specifically detailing "Domestic Violence Victim Status" is attached to our testimony.

Thank you for the opportunity to provide comments on this bill.

LINDA LINGLE
GOVERNOR



DARWIN L.D. CHING
DIRECTOR

COLLEEN Y. LaCLAIR
DEPUTY DIRECTOR

**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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LATE

February 8, 2010

To: The Honorable Suzanne Chun Oakland, Chair
and Members of the Senate Committee on Human Services

The Honorable Dwight Y. Takamine, Chair
and Members of the Senate Committee on Labor

Date: February 9, 2010

Time: 3:30 p.m.

Place: Conference Room 016, State Capitol

From: Darwin L.D. Ching, Director
Department of Labor and Industrial Relations

S.B. 2369 - Relating to Domestic Violence

I. OVERVIEW OF PROPOSED LEGISLATION

S.B. 2369 proposes to:

- Add a new section to Chapter 383, HRS, to provide training on domestic violence and confidentiality of such matters for unemployment insurance (UI) staff.
- Amends section 383-1 to add the following definitions:
 - “Domestic abuse”
 - “Domestic or sexual violence”
 - “Sexual assault”
 - “Stalking”
 - “Victim services organization”
- Amends section 383-7.6 to move the definitions to section 383-1, ensure that UI applicants are aware of the provisions in this section, and provide that any other federal, state or local law providing greater UI benefits shall not be superseded by this law.

II. CURRENT LAW

Section 383-7.6 was added to Chapter 383 by Act 171 which was enacted on July 2, 2009.

III. SENATE BILL

The Department has the following concerns about this measure:

1. While the Department does not have major objections to the training of staff, there are no funds provided in the bill for this requirement. The Department requests that this measure include the list of approved training providers that offer domestic violence training that meet the requirements of this bill and the adequate funding to cover the costs of such training.
2. In regards to the confidentiality of information, the Department already operates under strict statutes and regulations which prevent the disclosure of any UI information. In adjudicating separations, information is corroborated between the individual and the individual's former employer or any other third party provided by the individual to determine the reason for separation.
3. The Department recommends that the language in 383-7.6(d) be revised to read: "Where the provisions of this section apply, the department shall provide adequate information to the public." Since not all individuals who apply for unemployment insurance (UI) are involved in job separations relating to domestic or sexual violence, the notification to all UI applicants or all individuals inquiring about compensation is not necessary. Individuals who have job separation issues will have their cases reviewed by a claims examiner who will properly advise such individuals about the provisions of this section prior to their investigations.



TO: Chair Suzanne Chun-Oakland
Vice Chair Les Ihara
Members of the Committee

Chair Brian Taniguchi
Vice Chair Dwight Takamine
Members of the Committee

FR: Nanci Kreidman, M.A
Chief Executive Officer

RE: S.B. 2369

Aloha. We have been seeking remedies for victims of domestic violence in many ways over the last 20 years. The efforts to improve our community's system response, improve laws, increase access to program services and ultimately bring peace to our island families have been largely successful. The Bill before you today contributes further to these efforts. It remains our goal to help island businesses deepen their understanding of the role domestic violence plays in the life of an employee.

Resources and employment have a significant impact on a victim's attempts to get free and safe. The ability to gain self-sufficiency, provide for one's expenses, and support their children (if they have them) is key to decision making for women (and men) who are battered. If a person is forced to leave their job, for safety, or services, unemployment benefits are very helpful.

The provisions about training and confidentiality contained in the Bill are very important. Living in a small community, as we do, places families at greater risk of danger and exposure.

Thank you for your consideration of this measure.

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'Oahu Helpline: 808 531-3771 Toll-free: 800 690-6200 Administration: 808 534-0040 Fax 808 531-7228
www.stoptheviolence.org



Conference room: 224
Testifier position: support
Testifier will be present: No
Submitted by: erin rutherford
Organization: Individual
Address:
Phone:
Submitted on: 2/8/2010

Comments:

domestic violence is a big issue in our community and EVERYONE should be trained in the warning signs and what to do if they encounter a victim. then we may be able to avoid the tragic deaths in our state from domestic violence.

HSCADV HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

TO: Chair Chun Oakland, Chair Takamine and Members of the Committee

FR: Jane Seymour, Hawaii State Coalition Against Domestic Violence

LATE

Hearing date and time: Tuesday, February 09, 2010

RE: Support for SB 2369: Relating to Domestic Violence

Aloha, my name is Jane Seymour and I am representing the HSCADV, a private non-profit agency which serves as a touchstone agency for the majority of domestic violence programs throughout the state. For many years HSCADV has worked with the Hawaii Legislature by serving as an educational resource and representing the many voices of domestic violence programs and survivors of domestic violence.

HSCADV supports SB 2369

Financial independence is vital for victims of domestic violence as they escape an abusive relationship. Ensuring that victims of domestic violence are able to find and maintain stable employment is important in enabling women and their children to gain financial freedom from their abuser.

Many victims of domestic violence need to attend court hearings, doctor's appointments, school meetings, counseling and other appointments that may require them to miss work in order to deal with family and personal issues resulting from the abuse. It is important that a victim of domestic violence not be penalized by her employer or potential employer for the behaviors and actions of the abuser. This bill helps to ensure that victims of domestic violence will be able to take the necessary leave from work and still maintain financial security.

Thank you for the opportunity to testify.


SB 1391

Com. on Human Services and Com. on Labor
Chairs Chun Oakland and Takamine

My name is Reg White, I am VP, project development for Paradise Cruise, Ltd and its sister company RegStar Hawaii Transit. We presently employ 460 people. After 9-11 we made a disaster preparedness plan and it has worked. In the past two years we have not laid off one single employee. As a matter of fact, in the past six months we have hired a net of 46 new employees. To accomplish this during a recession has put our backs to the wall and it will not take a very large push at this point to destroy all that we have accomplished. In Section 386 (c) this proposed rule gives me great cause for concern. In this text you state every employer + every employee shall contribute not more than one cent per hour into the fund. Including vacation time there are 2080 working hours in each year. That comes out to \$20.80 contributed by the employer and \$20.80 by the employee or a total per employee of \$41.60 each year. Why then do you finish subparagraph (c) by saying "or not more than \$200.00 per year for each employee, whichever is less"? It leads me to think that just perhaps you only meant \$0.01 per hour as a placeholder until you can reword the language to \$1.00 per

hour. Let's face it, this will be counterproductive as that will mean that we may well have to layoff good employees at all and/or most certainly it will stop hiring of new employees due to the rising costs. Which is it here? \$41.60 per year or \$2,000.00 per year. Let us be very clear and straight forward, then we can truly support or oppose this bill for the correct reasons.

Respectfully

Reg White 

Vp product development, Paradise Cruise, Ltd + Royal Star Hawaii Transit

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