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

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March 12, 2009

To: The Honorable Karl Rhodes, Chair  
and Members of the House Committee on Labor & Public Employment

The Honorable Angus L.K. McKelvey, Chair  
and Members of the House Committee on Economic Revitalization,  
Business, & Military Affairs

Date: March 13, 2009

Time: 10:30 a.m.

Place: Conference Room 309, State Capitol

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

**S.B. 782 S.D. 1 - Relating to Employment Security**

**I. OVERVIEW OF PROPOSED LEGISLATION**

S.B. 782 S.D. 1 proposes to add a new section to Chapter 383, HRS, to provide unemployment benefits to victims of domestic or sexual violence. This measure will allow unemployment benefits to an individual who is separated voluntarily or involuntarily from employment due to circumstances resulting from the individual or the individual's minor child being a victim of domestic or sexual violence. The bill also provides for good cause to refuse work due to an unreasonable risk of violence.

**II. CURRENT LAW**

Currently, sections 383-30(1) and (2) disqualify individuals who quit without good cause or are discharged or suspended for misconduct. Administrative rules that define "good cause" and "misconduct" provide the guidelines for non-disqualifying separations, depending on the unique circumstances of each case.

Administrative rule section 12-5-47(c)(7), Chapter 5, Title 12, provides for “good cause” for leaving employment where there is “evidence that the individual was a victim of domestic or sexual violence, including any circumstance which causes a reasonable person to believe that other available alternatives, such as a leave of absence, a transfer of jobs, or an alternate work schedule, would not be sufficient to guarantee the safety of the individual and that separation from employment was necessary to address the resulting physical and psychological effects, to seek or reside in an emergency shelter, or to avoid future domestic or sexual violence....”

Section 12-5-51, Administrative Rules, define “misconduct” in discharge or suspension cases as “actions which show a willful or wanton disregard of the employer’s interests, such as deliberate violations of or deliberate disregard of the standards of behavior which the employer has a right to expect of an employee, or carelessness, or negligence of such a degree or recurrence as to show wrongful intent or evil design. Mere inefficiency, unsatisfactory conduct, poor performance because of inability or incapacity, isolated instances of ordinary negligence or inadvertence, or good-faith errors in judgment or discretion are not misconduct.”

### III. SENATE BILL

**The Department believes that S.B. 1568 S.D. 2 is the more appropriate vehicle to address unemployment benefits for domestic or sexual violence victims, as such we ask that this bill be held.**

1. In order to qualify for a special transfer of federal funds provided by the American Recovery and Reinvestment Act (ARRA) of 2009, a State must meet two of four requirements. One of the four requirements is a provision allowing for non-disqualifying separations for “compelling family reasons,” including domestic violence. While S.B. 782 S.D. 1 does satisfy the domestic violence provision, S.B. 1568 S.D.2 contains both a domestic violence provision and a part-time work provision that satisfies the ARRA funding requirement.
2. The clause contained in section 4 of S.B. 782 S.D. 1 appears to address potential federal compliance issues. The Department would like to point out that ultimately the State must defer to the USDOL when issues of federal compliance arise.



# THE SEX ABUSE TREATMENT CENTER

*A Program of Kapi'olani Medical Center for Women & Children*

Executive Director  
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R. Carolyn Wilcox

DATE: March 13, 2009

TO: The Honorable Karl Rhoads, Chair  
The Honorable Kyle T. Yamashita, Vice Chair  
Committee on Labor & Public Employment

The Honorable Angus L.K. McKelvey, Chair  
The Honorable Isaac W. Choy, Vice Chair  
Committee on Economic Revitalization, Business, & Military Affairs

FROM: Adriana Ramelli, Executive Director  
The Sex Abuse Treatment Center

RE: Support for SB782 SD1  
Relating to Employment Security

Good morning Representatives Rhoads and Yamashita and members of the House Committee on Labor & Public Employment and on Economic Revitalization, Business, & Military Affairs. My name is Adriana Ramelli and I am the Executive Director of the Sex Abuse Treatment Center (SATC), a program of the Kapi'olani Medical Center for Women & Children (KMCWC), an affiliate of Hawaii Pacific Health.

The SATC supports bill SB782 SD1 which provides for unemployment insurance to those separated from their employment as a result of domestic or sexual violence. This proposed legislation acknowledges the serious impacts of violence on individuals and/or their minor children and the real world challenges many victims must face.

Many victims of sexual assault experience significant psychological trauma. Their lives are altered in fundamental ways and it takes support, treatment and time to recover. Immediately after the assault, it is not uncommon for victims to report feeling out of control of their lives, overwhelmed by reminders of the assault and fearful for their safety, particularly if the offender is someone they know. All of these factors can interfere with their employment. It is therefore reasonable and compassionate to allow victims to qualify for unemployment benefits while they or their minor child obtain treatment services and/or during the time it takes to change their place of employment if they have concerns about their safety should they remain with their previous employer.

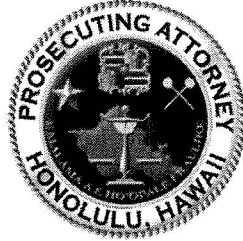
We urge you to pass SB782 SD1. It is sound legislation that addresses the safety and financial security of victims as they transition from victimization to stabilization and recovery.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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FIRST DEPUTY PROSECUTING ATTORNEY



**LATE**

**THE HONORABLE KARL RHOADS, CHAIR  
THE HONORABLE KYLE T. YAMASHITA, VICE CHAIR  
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT**

**THE HONORABLE ANGUS L.K. McKELVEY, CHAIR  
THE HONORABLE ISAAC W. CHOY, VICE CHAIR  
HOUSE COMMITTEE ON ECONOMIC REVITALIZATION, BUSINESS AND  
MILITARY AFFAIRS**

**TWENTY-FIFTH STATE LEGISLATURE  
REGULAR SESSION OF 2009**

March 13, 2009

**RE: SENATE BILL 782, S.D. 1; RELATING TO EMPLOYMENT SECURITY**

Good morning Chairs Rhoads and McKelvey and members of the Committee on Labor and Public Employment and the Committee on Economic revitalization, Business and Military Affairs, the Department of the Prosecuting Attorney provides the following testimony **in support of S.B. 782, H.D. 1, with amendments**, which proposes to provide eligibility for unemployment benefits for victims of domestic violence and sexual assault.

The purpose of H.B 782, S.D. 1 is to assure that victims of domestic violence and sexual assault who are forced to leave employment due to the effects of their victimization do not lose their eligibility for unemployment benefits. Domestic abusers will frequently target their spouse or partner's ability to make a living as a means of furthering their agenda of complete control over the victim. This places domestic abuse victims at greater risk of loss of employment. Since financial security is often a key factor in forcing victims back to their abuser, we believe that it is critical that victims of domestic violence and sexual assault remain eligible for unemployment benefits. To allow otherwise would only reward abusers for their violent behavior and aid them in cutting off the victim's means of support.

While we support the provisions of this bill as it stands, we would recommend inclusion of an additional section, as currently incorporated into H.B. 332, H.D. 2 as provided below:

Notwithstanding any provision of this chapter to the contrary, an individual who is a victim of domestic or sexual violence shall have good cause for not accepting otherwise suitable, available work if the individual reasonably believes that the employment will subject the individual, the individual's minor child, or other individuals in the workplace to an unreasonable risk of violence, despite the individual having sought appropriate assistance in responding to the domestic or sexual violence, including reporting the violence to the police, obtaining services from a victim services organization, or taking other appropriate legal action.

(c) The department may require an individual to provide certification demonstrating that the individual's failure to accept otherwise suitable, available work is due to an unreasonable risk of violence. To demonstrate the individual's eligibility for benefits, the department may request the following evidence:

- (1) A notarized written statement of the individual attesting to the status of the individual or the individual's minor child as a victim of domestic or sexual violence and explaining how the domestic or sexual violence creates an unreasonable risk of

further violence if the offer of otherwise suitable,  
available work were accepted;

(2) A signed written statement from:

(A) An employee, agent, or volunteer of a victim  
services organization;

(B) The individual's attorney or advocate;

(C) A minor child's attorney or advocate; or

(D) A medical or other professional from whom the  
individual or the individual's minor child has  
sought assistance related to the domestic or  
sexual violence,

attesting to the domestic or sexual violence and  
explaining how the domestic or sexual violence creates  
an unreasonable risk of further violence; or

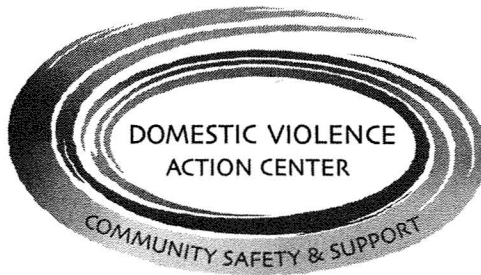
(3) A police or court record suggesting or demonstrating  
that the domestic or sexual violence may cause an  
unreasonable risk of further violence if otherwise  
suitable, available work were accepted.

(d) All information provided to the department pursuant to  
this section, including any statement of the individual or any  
other documentation, record, or corroborating evidence  
discussing or relating to domestic or sexual violence, and the  
fact that the individual has applied for, inquired about, or  
obtained unemployment compensation by reason of this section

shall be retained in the strictest confidence by the individual's former or current employer, and shall not be disclosed except to the extent that disclosure is requested or consented to by the employee, ordered by a court or administrative agency, or otherwise required by applicable federal or state law.

(e) As used in this section, the terms "domestic or sexual violence", "stalking", and "victim services organization" shall have the same meaning as in section 378-71."

For the reasons cited above, we request your support for S.B. 782, S.D. 1, with our proposed amendments. Thank you for your time and consideration.



LATE

TO: Chair Karl Rhoads  
Vice Chair Kyle T. Yamashita  
Members of the Committee

Chair Angus L.K. McKelvey  
Vice Chair Isaac W. Choy  
Members of the Committee

FR: Nanci Kreidman, M.A.  
Chief Executive Officer

Please accept this testimony in support of S.B. 782, SD1.

The importance of victims retaining work and also having the opportunity to seek safety if they are at risk, even when that means leaving employment cannot be overstated. Abusers will target their victim's workplace, which sometimes forces victims to leave otherwise good jobs.

We are working to try and educate the business community to understand the complexity of domestic violence and the complex challenges that victims face. In supportive work environments, opportunities are created for victims to keep their jobs, while making important decisions, relocating, seeking law enforcement and court protection-all of which are key to their safety, their legal rights and their future. If it is not possible for a victim to keep her employment, she must have means to obtain financial support. As a community, we must make this practical and achievable.

Thank you for giving full consideration to passage of the Bill.



yamashita1- Kathy

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**From:** Kurt [kakamine@ohanapacific.com]  
**Sent:** Thursday, March 12, 2009 9:09 PM  
**To:** LABtestimony  
**Subject:** SB 782 SD1 Committee on Labor

LATE

**NOTICE OF HEARING**

**DATE:** Friday, March 13, 2009  
**TIME:** 10:30 A.M.  
**PLACE:** Conference Room 309  
State Capitol  
415 South Beretania Street



3- 3420 Kuhio Highway, Suite 300  
Lihue, HI 96766

**March 9, 2009**

**SB 782 SD1 "Successor Employer"**

**Strongly Oppose**

**Chair Karl Rhodes**

My name is Kurt Akamine and I am the Chair of the Kauai Chamber of Commerce and the Director of Operation of a business on Kauai that employs 250 residents. I am testifying in opposition of HB 1622.

This bill creates a business environment that discourages growth and limit opportunities for businesses to perpetuate.

Many company owners seek to continue the business legacy that they created through their hard work and personal sacrifices. When they move to sell their business, this bill will severely impact the flexibility that any potential successor will have. Consequently, if there is no successor then not only will this legacy be unable to continue, but all of their employees will no longer have employment.

During these perilous economic times, we should be encouraging and supporting growth opportunities rather than limiting it, as what HB 1622 intends to do.

Please defeat this measure.

Respectfully,

**Kurt Akamine**

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**Kurt Akamine**

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