

HB141

Testimony



46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Legislative Director

TESTIMONY ON HOUSE BILL 141, HOUSE DRAFT 1, SENATE DRAFT 1, RELATING TO THE HAWAII PENAL CODE

**Senate Committee on Judiciary and Labor
Hon. Clayton Hee, Chair
Hon. Maile S.L. Shimabukuro, Vice Chair**

**Thursday, April 7, 2011, 9:30 AM
State Capitol, Conference Room 016**

Honorable Chair Hee and committee members:

I am Kris Coffield, representing the IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 60 local members. On behalf of our members, we offer this testimony in strong support of the proposed draft of HB 141, HD1, SD1, relating to the penal code, with suggestions for amendments.

Currently, Hawaii is one of only five states without an anti-trafficking statute or adequate legal protection for victims of sex and labor trafficking. HB 141, HB1, SD1 seeks to remedy that problem, however, by establishing class A and B felony offenses for the perpetrators of labor trafficking, while creating the subsidiary crimes of nonpayment of wages and unlawful conduct with respect to documents. Such measures are urgently needed at a time when Hawaii is embroiled in the largest labor trafficking case in United States history, in which Global Horizons Manpower, Inc., a Los Angeles based employment contractor riddled with litigation, is alleged to have coerced over 400 Thai nationals into agricultural work, including 44 farmers who paid recruiters \$20,000 each for the chance to work at Oahu's Aloun Farms. According to FBI reports, workers were chronically underpaid, forced to live in modified storage containers, and threatened with deportation and other forms of economic damage, after having their passports taken by the farm's owners, Alec Souphone Sou and Mike Mankone Sou. Had a statute been in place several years ago, the state could have taken action against the alleged traffickers. Unfortunately, the lack of a comprehensive law forced the state to wait until federal law enforcement officials performed their own investigation before taking action.

Nonetheless, the IMUAlliance believes the measure can be strengthened prior to final passage through the adoption of several amendments. First, the current composition of this measure predicates violations upon a state of mind that diverges from the state of mind incorporated within laws defining connected crimes, such as extortion and kidnapping. To alleviate this conflict, we recommend amending §707-B(1) and §707-C(1) to say "a person commits the offense of labor trafficking...if the person

intentionally or knowingly...,” thereby bringing the bill’s language regarding state of mind into consonance with corresponding kidnapping and extortion statutes, §707-720 and §707-764, respectively. Furthermore, the draft provision of §707-B(1)(d) proscribes provision of labor through “force, threat, or intimidation,” but does not define these terms or cite other definitions within the Hawaii Revised Statutes. Accordingly, we encourage the committee to amend this subsection to, instead, prohibit the obtainment of labor by “force, deadly force, or unlawful force,” while also revising the list of definitions contained in §707-A by adding the following: “Force” means any bodily impact, restraint, or confinement, or the threat thereof,” “Deadly force” means force which the actor uses with the intent of causing or which the actor knows to create a substantial risk of causing death or serious bodily harm, excluding a threat to cause death or serious bodily injury by the production of a weapon or otherwise,” and “Unlawful force” means force which is employed without the consent of the person against whom it is directed and the employment of which constitutes an offense or would constitute an offense except for a defense not amounting to a justification to use force.” Likewise, the list of means outlined in §707-B(1)(d) defining labor trafficking in the first degree does not include sexual assault, and, thus, should be modified with the addition of a subsection integrating sexual assault in violation of §707-730, §707-731, or §707-732 (first, second, and third degree sexual assault) within the section’s list of enumerated means. Similarly, §707-C(2) of this measure provides that labor trafficking in the second degree is a class B felony if affiliated with a first degree violation that involves “aggravated sexual abuse or the attempt to commit aggravated sexual abuse.” Since aggravated sexual abuse is not defined within state law, this passage should be discarded, with the phrase “sexual assault or the attempt to commit sexual assault” substituted in its place. Additionally, we understand that concerns have been raised about the lack of definition in §707-E, specifically regarding the term “permanent or life-threatening bodily injury.” To rectify this problem, we suggest substituting the term “substantial bodily injury,” as defined in §707-700, for the offense affiliated with an additional five years of imprisonment, while replacing the term “permanent or life-threatening bodily injury” with the term “serious bodily injury” for the offense associated with an additional fifteen years of imprisonment. Finally, the proposed language of §707-G, relating to the nonpayment of wages, could, as the Office of the Public Defender has expressed, criminalize the withholding of wages for legitimate, legal reasons, per authorization under §388-6. Therefore, we encourage the committee to amend §707-G(1) to state: “A person commits the offense of nonpayment of wages if the person, ~~willfully~~ intentionally or knowingly or with intent to defraud fails or refuses to pay wages to the employee, except where required by federal or state statute or by court process.” Implementing this change brings the bill’s language into comportment with preexisting regulations regarding the withholding of wages, thereby resolving the problem.

Mahalo for the opportunity to testify in strong support of this bill.

Sincerely,
Kris Coffield
Legislative Director
IMUAlliance