

Honolulu, Hawaii

APR 05 2012

RE: H.B. No. 341
H.D. 4
S.D. 1

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred
H.B. No. 341, H.D. 4, entitled:

"A BILL FOR AN ACT RELATING TO EMPLOYMENT PRACTICES,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Prohibit any employer with one hundred or more employees or a labor organization from barring or discharging from employment, withholding pay from, or demoting an employee because the employee uses accrued and available sick leave, with an exception; and
- (2) Allow any employer with one hundred or more employees or labor organization to bar or discharge from employment, withhold pay from, or demote an employee if the employee is unable to fulfill the essential job functions or requirements of the employee's position.

Prior to the hearing on this measure, your Committee posted a proposed S.D. 1 for review and comment. The proposed S.D. 1 deletes the contents of this measure and inserts language to address the health and safety needs of Hawaii's workers and their families by requiring employers to provide paid sick and safe leave to employees in order to care for themselves or a family member who is ill, needs medical care, or is a victim of domestic



violence, sexual assault, or stalking. Specifically, the proposed S.D. 1 creates a new chapter in the Hawaii Revised Statutes to:

- (1) Require employers to:
 - (A) Provide their employees who work for more than an unspecified amount of hours in a year paid sick and safe leave; and
 - (B) Allow their employees to accrue a minimum of one hour of paid sick and safe leave for an unspecified number of hours worked and limit, with an unspecified number of hours, the number of accrued paid sick and safe leave hours in a calendar year;
- (2) Establish that an employee's paid sick and safe leave hours begin to accrue at the commencement of employment and allow the employee to use any accrued paid sick and safe leave time after an unspecified period of time;
- (3) Allow any unused paid sick and safe leave hours to be carried over to the following calendar year, but limit the number of hours that may be used in each calendar year;
- (4) Entitle an employee to any previously accrued and unused paid sick or safe leave upon transfer to another entity under the same employer or upon separation and reinstatement within an unspecified period of time with the same employer;
- (5) Establish criteria and procedures by which an employee may use accrued paid sick and safe leave;
- (6) Establish certain employee rights, provide protections for employees to exercise these rights, and prohibit employers from taking retaliatory or discriminatory action for their employees exercising these rights;
- (7) Require employers to post notice regarding paid sick and safe leave and the requirements and procedures associated with the leave;
- (8) Require employers to maintain records documenting the number of hours worked by their employees and the paid



sick and safe leave taken by their employees for a period of five years; and

- (9) Provide enforcement procedures and relief for any violations.

Your Committee received testimony in support of the proposed S.D. 1 from the Hawaii State Commission on the Status of Women; Hawaii State Coalition Against Domestic Violence; International Longshore and Warehouse Union Local 142; Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO; and three private individuals. Testimony in opposition to the proposed S.D. 1 was submitted by the Department of Human Resources Development; Department of Human Resources of the City and County of Honolulu; The Chamber of Commerce of Hawaii; Hawaii Food Industry Association; Molokai Chamber of Commerce; Hawaii Automobile Dealers Association; Hawaii Business Roundtable; Hawaii Island Contractors Association; Hawaii Water Service Company; Building Industry Association; William C. Loeffler Construction, Inc.; Crazy Shirts; Fair Wind Cruises; Hawaiian Electric Company, Inc.; Maui Electric Company, Ltd.; Friendly Market Center, Ltd.; Marukai Wholesale Mart; Maui Economic Opportunity, Inc.; Ocean Sports; Retail Merchants of Hawaii; Society for Human Resources Management; Waltz Engineering, Inc.; Ito En; Kanoelehua Industrial Area Association; National Federation of Independent Business; Kona-Kohala Chamber of Commerce; Government Employees Insurance Company; Hawaii Island Contractors' Association; Hawaii Pacific Health; Alan Shintani, Inc.; Young Brothers, Limited; Mary Begier Realty; ABC Stores; Kona Zodiac, Ltd.; Hawaii Island Chamber of Commerce; Abbey Vacation Rentals; Tesoro Hawaii; Starwood Hotels and Resorts, Hawaii and French Polynesia; Hawaii Credit Union League; Foodland Super Market, Ltd.; Jack Harter Helicopters; The Coffee Bean & Tea Leaf Hawaii; RMA Sales; Gentry Homes, Ltd.; and one hundred fifty-six private individuals. The Department of Labor and Industrial Relations submitted comments.

Your Committee finds that vacation and sick leave benefits for employees vary from employer to employer. At times, employees must choose between caring for themselves or a family member due to illness and earning income. The proposed S.D. 1 provides for a minimum amount of paid sick and safe leave to allow employees to care for themselves or their family members. Of particular note, the proposed S.D. 1 enables victims of domestic violence, sexual assault, or stalking to participate in legal proceedings, receive medical treatment, or obtain other necessary services while



maintaining a sense of financial freedom without the fear of being fired due to taking time off from work.

Your Committee notes the testimony in opposition submitted by the Hawaii Restaurant Association and The Chamber of Commerce of Hawaii which indicated the proposed S.D. 1 will have a negative impact on small businesses due to its "one size fits all" approach. According to their testimony, this broad approach hinders an employer's flexibility in providing paid leave benefits and results in additional direct and indirect costs. Small businesses with fewer than ten employees who do not typically provide paid time off will need to give up to five days off to their employees under the proposed S.D. 1. As a result, an already financially struggling small business may need to choose between providing paid leave benefits to their employees or closing down. Thus, the "one size fits all" approach may not be best suited for different industries with varying workforce needs. However, your Committee emphasizes that the proposed S.D. 1 applies to employers with one hundred or more employees. Thus small businesses with less than one hundred employees are exempt.

Your Committee recognizes that although the proposed S.D. 1 establishes a minimum number of hours of accrued paid sick and safe leave for employees, there are currently a number of employers with over one hundred employees that already offer paid sick leave benefits to their employees that exceed this minimum requirement. The language in the proposed S.D. 1 ensures that certain employers who do not yet offer paid sick and safe leave will have to do so.

Your Committee also recognizes the concerns raised by the Department of Human Resources Development that state and county employees are entitled to twenty-one days paid sick leave that can be used for family or safe leave. As such, your Committee believes that public employees should be exempt from the proposed S.D. 1.

Accordingly, your Committee has adopted the proposed S.D. 1 and amended the measure further by:

- (1) Defining "employee" and "employer" to mean the same as defined under section 388-1, Hawaii Revised Statutes, which will exempt public employers and accordingly public employees;



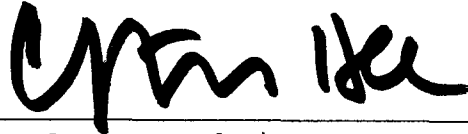
- (2) Inserting language to:
 - (A) Provide employees who work for more than six hundred eighty hours in a year to have the right to paid sick and safe leave;
 - (B) Establish that employees are entitled to accrue a minimum of one hour of paid sick and safe leave for every forty hours worked and that employees cannot accrue more than forty hours of paid sick and safe leave in a calendar year;
 - (C) Establish that employees are entitled to use any accrued paid sick or safe leave beginning ninety calendar days following the commencement of their employment;
 - (D) Limit the use of paid sick and safe leave in each calendar year to no more than forty hours;
 - (E) Allow the reinstatement of previously accrued and unused paid sick or safe leave within six months between separation and reemployment with the same employer; and
 - (F) Set the statute of limitations to two years from the date the alleged violation occurred;
- (3) Clarifying that small businesses are exempt from the requirements of providing paid sick and safe leave;
- (4) Clarifying that an employer may not require documentation to explain details regarding the nature of an illness or to domestic violence, sexual assault, or stalking as a condition to providing paid sick and safe leave;
- (5) Prohibiting an employer from disclosing any documentation provided by an employee to substantiate the use of paid sick or safe leave;
- (6) Deleting any references to public sector employees or collective bargaining agreements; and



- (7) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 341, H.D. 4, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 341, H.D. 4, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



