

Honolulu, Hawaii

FEB 17 2012

RE: S.B. No. 2487
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
S.B. No. 2487 entitled:

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

begs leave to report as follows:

The purpose and intent of this measure is to make abusive
conduct against an employee in the workplace an occupational
safety violation by:

- (1) Defining abusive conduct and an abusive work environment;
- (2) Including abusive conduct as a work injury for which workers' compensation benefits may be paid;
- (3) Creating a private cause of action for emotional distress caused by:
 - (A) Another employee who is claiming to have made abusive conduct and the vicarious liability of the employer; or
 - (B) The employer who directly commits abusive conduct or whose workplace is an abusive work environment;
- (4) Establishing procedures for complaints, enforcement, judgment, and remedies for abusive conduct in the workplace; and



- (5) Requiring the Department of Labor and Industrial Relations to establish an education program for employers regarding abusive work environment and its legal consequences, and requiring employers to educate their employees accordingly.

Your Committee received testimony in support of this measure from the International Longshore and Warehouse Union Local 142 and five private individuals. Testimony in opposition to this measure was submitted by the Chamber of Commerce of Hawaii.

Your Committee finds that instances of bullying, abuse, and verbal harassment in the workplace caused by the abusive conduct of a coworker may cause employees to experience physical and psychological harm that may negatively impact their job performance and safety. Existing occupational safety and health laws obligate employers to provide a safe work environment. However, these laws do not provide for a safe work environment free from abusive conduct from employees. This measure provides protection against abusive conduct in the workplace as well as cause of action and remedies.

Your Committee appreciates the courage of two employees who appeared before your Committee to share their stories about the emotional distress they suffered as a result of their supervisor's abusive conduct toward them. In 2008, they and two other coworkers filed a workplace violence complaint against their supervisor at the Department of Transportation and for a temporary restraining order to protect themselves in the event of retaliation. In lieu of the temporary restraining order, these employees were granted by the court a three-year mutual injunction against harassment. However, after the order was granted, the harassment continued for two more years. During this time, the employees sought assistance from the Department of Labor and Industrial Relations, but were told that because they were not considered part of any protected category, the Department was unable to provide them further assistance or redress. In 2010, these employees filed in circuit court a complaint against the Department of Transportation and their supervisor. The lawsuit was settled in 2011. The employees indicated to your Committee that settling their case was in their best interests because existing law did not provide them protection or redress. As such, your Committee recognizes the emotional distress these employees suffered as a result of the abusive conduct of their supervisor,



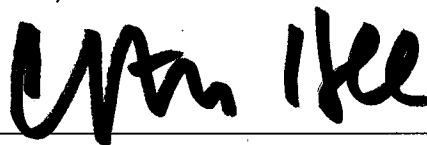
and believes that this measure will provide safer work environments and better work productivity and efficiency.

Your Committee has amended this measure by:

- (1) Inserting the statutory contents of this measure as amendments to chapter 78, Hawaii Revised Statutes, rather than to chapter 396, Hawaii Revised Statutes; to make abusive conduct against a public employee by another public employee a workplace safety and health violation with oversight by the Department of Human Resources Development;
- (2) Inserting an effective date of July 1, 2050, to ensure further discussion; and
- (3) 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 S.B. No. 2487, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2487, S.D. 1, and be referred to the Committee on Ways and Means.

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



CLAYTON HEE, Chair



The Senate
 Twenty-Sixth Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB 2487	Committee Referral: JDL, WAM	Date: 2/16/12		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile (VC)	✓			
GABBARD, Mike	✓			
IHARA, Jr., Les	✓			
SLOM, Sam	✓			
TOTAL	5			
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes