

1 "Collective bargaining service fee" means a fee deducted by
2 the State from the compensation of an independent direct support
3 provider who is not a member of the exclusive representative of
4 independent direct support providers, which is paid to the
5 exclusive representative. The collective bargaining service fee
6 shall not exceed eighty-five per cent of the amount payable as
7 dues by members of the exclusive representative, and shall be
8 deducted in the same manner as dues deducted from the
9 compensation of independent direct support providers who are
10 members of the exclusive representative, and shall be used to
11 defray the costs incurred by the labor organization in
12 fulfilling its duty to represent independent direct support
13 providers in their relations with the State.

14 "Exclusive representative" means the labor organization
15 that has been certified under this chapter and has the right to
16 represent independent direct support providers for the purpose
17 of collective bargaining.

18 "Grievance" means the exclusive representative's formal
19 written complaint regarding the improper application of one or
20 more terms of the collective bargaining agreement, the failure
21 to abide by any agreement reached, or the discriminatory



1 application of a rule that has not been resolved to a
2 satisfactory result through informal discussion with the State.

3 "Independent direct support provider" means any individual
4 who provides home- and community-based services to a service
5 recipient and is employed by the service recipient, shared
6 living provider, or surrogate.

7 "Labor organization" means an organization of any kind in
8 which independent direct support providers participate and that
9 exists, in whole or in part, for the purpose of representing
10 independent direct support providers.

11 "Service recipient" means a person who receives home- and
12 community-based services administered by the department of human
13 services.

14 "Shared living provider" means a person who operates under
15 a contract with an authorized agency and provides individualized
16 home support for one or two people who live in the person's
17 home. An authorized agency includes a designated agency for
18 developmental services.

19 "Surrogate" means a service recipient's authorized family
20 member, legal guardian, or a person identified in a written
21 agreement as having responsibility for the care of a service
22 recipient.



1 § -2 Rights of independent direct support providers.

2 Independent direct support providers shall have the right to:

3 (1) Organize, form, join, or assist a labor organization
4 for the purposes of collective bargaining without
5 interference, restraint, or coercion;

6 (2) Bargain collectively through their chosen
7 representatives;

8 (3) Engage in concerted activities for the purpose of
9 supporting or engaging in collective bargaining or
10 other mutual aid or protection;

11 (4) Pursue grievances through the exclusive representative
12 as provided in this chapter; and

13 (5) Refrain from any or all activities, subject to the
14 requirements of section -4(b)(3).

15 § -3 Rights of the State. Subject to the rights
16 guaranteed by this chapter and subject to all other applicable
17 laws and rules, nothing in this chapter shall be construed to
18 interfere with the right of the State to:

19 (1) Carry out the mandate and goals of the department of
20 human services and to use personnel, methods, and
21 means in the most appropriate manner possible;



1 (2) With the approval of the governor, take whatever
2 action as may be necessary to carry out the mission of
3 the department of human services in an emergency
4 situation;

5 (3) Comply with federal and state laws;

6 (4) Enforce rules and regulatory processes;

7 (5) Develop rules and regulatory processes that do not
8 impair existing contracts, subject to the duty to
9 bargain over mandatory subjects of bargaining and to
10 the legislative power of the legislature; and

11 (6) Solicit and accept for use any grant of money,
12 services, or property from the federal government, the
13 State, or any political subdivision or agency of the
14 State, including federal matching funds, and to
15 cooperate with the federal government or any political
16 subdivision or agency of the State in making an
17 application for any grant.

18 § -4 Establishment of limited collective bargaining;
19 scope of bargaining. (a) Independent direct support providers,
20 through their exclusive representative, shall have the right to
21 bargain collectively with the State, through the governor's
22 designee, under this chapter.

1 (b) Mandatory subjects of bargaining under this section
2 shall be limited to:

3 (1) Compensation rates, workforce benefits, and payment
4 methods and procedures, except that independent direct
5 support providers shall not be eligible to participate
6 in the employees' retirement system or the employer-
7 union health benefits trust fund solely by virtue of
8 bargaining under this chapter;

9 (2) Professional development and training, except that the
10 issue of whether the State may choose directly to
11 create and administer a professional development or
12 training program shall be a permissive subject of
13 bargaining;

14 (3) The collection and disbursement of dues or fees to the
15 exclusive representative, provided that a collective
16 bargaining service fee may not be required of
17 nonmembers unless the exclusive representative has
18 established and maintained a procedure to provide
19 nonmembers with:

20 (A) An audited financial statement that identifies
21 the major categories of expenses, and divides



1 them into chargeable and nonchargeable expenses;

2 and

3 (B) An opportunity to object to the amount of the
4 agency fee sought, any amount reasonably in
5 dispute to be placed in escrow, subject to prompt
6 review and determination by the board to resolve
7 any objection over the amount of the collective
8 bargaining fee, as provided for in subsection
9 (d);

10 (4) Procedures for resolving grievances against the State,
11 provided that the final step of any negotiated
12 grievance procedure, if required, shall be a hearing
13 and final determination by the board in accordance
14 with board rules; and

15 (5) Access to job referral opportunities within covered
16 programs, except that the issue of whether the State
17 may choose directly to create and administer a
18 referral registry shall be a permissive subject of
19 bargaining.

20 (c) For the purpose of this chapter, the obligation to
21 bargain collectively is the performance of the mutual obligation
22 of the State and the exclusive representative of the independent



1 direct support providers to meet at reasonable times and confer
2 in good faith with respect to all matters bargainable under this
3 chapter; provided that the failure or refusal of either party to
4 agree to a proposal, or to change or withdraw a lawful proposal,
5 or to make a concession shall not constitute, or be evidence of,
6 direct or indirect, a breach of this obligation. Nothing in
7 this chapter shall be construed to require either party during
8 collective bargaining to accede to any proposal or proposals of
9 the other party.

10 (d) Any dispute raised by a nonmember concerning the
11 amount of a collective bargaining service fee, as provided under
12 subsection (b)(3), may be resolved by the board, which shall
13 review and determine the matter promptly, in accordance with the
14 board's rules.

15 § -5 Election; bargaining unit. (a) Petitions and
16 elections shall be conducted in like manner pursuant to the
17 procedures provided in section 89-7 for employee organizations,
18 and the exclusive representative shall be the exclusive
19 representative for the purpose of collective bargaining.

20 (b) A representation election for independent direct
21 support providers conducted by the board shall be by mail
22 ballot.



1 (c) The bargaining unit for purposes of collective
2 bargaining pursuant to this chapter shall be one statewide unit
3 of independent direct support providers. Eligible independent
4 direct support providers shall have the right to participate in
5 a representation election but shall not have the right to vote
6 on or otherwise determine the collective bargaining unit.
7 Eligible independent direct support providers shall all be
8 independent direct support providers who have been paid for
9 providing home- and community-based services within the previous
10 one hundred eighty days.

11 (d) At least quarterly, the State shall compile and
12 maintain a list of names and addresses of all independent direct
13 support providers who have been paid for providing home- and
14 community-based services to service recipients within the
15 previous one hundred eighty days. The list shall not include
16 the names of any recipient, or indicate that an independent
17 direct support provider is a relative of a recipient or has the
18 same address as a recipient. Upon request, the State shall
19 provide within seven days the most recent list of independent
20 direct support providers in its possession to any organization
21 which has as one of its primary purposes the collective
22 bargaining representation of independent direct support

1 providers in their relations with state or other public
2 entities, including the labor organization certified as the
3 exclusive representative under this chapter.

4 § -6 Mediation; fact-finding; last best offer. (a) If,
5 after a reasonable period of negotiation, the representative of
6 the collective bargaining unit and the State reach an impasse,
7 the board, upon petition of either party, may authorize the
8 parties to submit their differences to mediation. Within five
9 days after receipt of the petition, the board shall appoint a
10 mediator who shall communicate with the parties and attempt to
11 mediate an amicable settlement; provided that no person may be
12 appointed as a mediator unless the person shall be of high
13 standing and not actively connected with labor or management.

14 (b) If, after a reasonable period of time, no fewer than
15 fifteen days after the appointment of a mediator, the impasse is
16 not resolved, the mediator shall certify to the board that the
17 impasse continues.

18 (c) The board shall appoint a fact finder who has been
19 mutually agreed upon by the parties. If the parties fail to
20 agree on a fact finder within five days, the board shall appoint
21 a neutral third party to act as a fact finder pursuant to rules
22 adopted by the board. A member of the board or any individual



1 who has actively participated in mediation proceedings for which
2 fact-finding has been called shall not be eligible to serve as a
3 fact finder under this section, unless agreed upon by the
4 parties.

5 (d) The fact finder shall conduct hearings pursuant to
6 rules of the board. Upon request of either party or of the fact
7 finder, the board may issue subpoenas of persons and documents
8 for the hearings and the fact finder may require that testimony
9 be given under oath and may administer oaths.

10 (e) Nothing in this section shall prohibit the fact finder
11 from endeavoring to mediate the dispute at any time prior to
12 issuing recommendations.

13 (f) The fact finder shall consider the following factors
14 in making a recommendation:

15 (1) The needs and welfare of consumers, including their
16 interest in greater access to quality services;

17 (2) The nature and needs of the personal care assistance
18 program;

19 (3) The interest and welfare of independent direct support
20 providers;

21 (4) The history of negotiation between the parties,
22 including those leading to the proceedings;



1 (5) Changes in the cost of living; and

2 (6) Generally accepted labor-management relations
3 practices in the State.

4 (g) Upon completion of the hearings provided in subsection
5 (d), the fact finder shall transmit its written findings and
6 recommendations to both parties.

7 (h) The costs of witnesses and other expenses incurred by
8 either party in fact-finding proceedings shall be paid directly
9 by the parties incurring them, and the costs and expenses of the
10 fact finder shall be divided equally by the parties. The fact
11 finder shall be paid a rate mutually agreed upon by the parties
12 for each day or any part of a day while performing fact-finding
13 duties and shall be reimbursed for all reasonable and necessary
14 expenses incurred in the performance of the fact finder's
15 duties. A statement of fact-finding per diem and expenses shall
16 be certified by the fact finder and submitted to the board for
17 approval. The board shall provide a copy of approved fact-
18 finding costs to each party with its order apportioning half of
19 the total to each party for payment. Each party shall pay its
20 half of the total within fifteen days after receipt of the
21 order. Approval by the board of fact-finding and the fact



1 finder's costs and expenses and its order for payment shall be
2 final as to the parties.

3 (i) If the dispute remains unresolved twenty days after
4 transmittal of findings and recommendations, each party shall
5 submit to the board its last best offer on all disputed issues
6 as a single package. Each party's last best offer shall be
7 certified to the board by the fact finder. The board may hold
8 hearings and consider the recommendations of the fact finder.
9 Within thirty days of the certifications, the board shall select
10 between the last best offers of the parties, considered in their
11 entirety without amendment, and shall determine its cost. The
12 board shall not issue an order under this subsection that:

- 13 (1) Is in conflict with any statute;
14 (2) Is in conflict with any rule, unless the rule relates
15 to a mandatory subject of bargaining; or
16 (3) Determines an issue that is not a mandatory subject of
17 bargaining.

18 The board shall determine the cost of the agreement
19 selected and recommend to the legislature its choice with a
20 request for an appropriation. If the legislature appropriates
21 the requested amount of funds, the agreement shall become
22 effective and legally binding at the beginning of the next



1 fiscal year. If the legislature appropriates a different amount
2 of funds, the terms of the agreement affected by that
3 appropriation shall be renegotiated based on the amount of funds
4 actually appropriated by the legislature, and the agreement with
5 the negotiated changes shall become effective and binding at the
6 beginning of the next fiscal year. No portion of any agreement
7 shall become effective separately without the mutual consent of
8 the parties.

9 § -7 **General duties and prohibited conduct; unfair labor**
10 **practices.** (a) The State, the independent direct support
11 providers, and their representatives shall make every reasonable
12 effort to make and maintain agreements concerning matters
13 allowed under this chapter and to settle all disputes, whether
14 arising out of the application of, or concerning, those
15 agreements. Upon request of either party, all disputes shall be
16 considered within fifteen days of the request or at such times
17 as may be mutually agreed to and, if possible, settled with all
18 expedition in conference between representatives designated and
19 authorized to confer by the State or the independent direct
20 support providers; provided that neither party shall be
21 compelled to make any agreements or concessions.

22 (b) It shall be an unfair labor practice for the State to:



- 1 (1) Interfere with, restrain, or coerce independent direct
2 support providers in the exercise of their rights
3 under this chapter or by any law or rule;
- 4 (2) Dominate or interfere with the formation or
5 administration of any labor organization or contribute
6 financial or other support to it;
- 7 (3) Discriminate in regard to referral practices or
8 eligibility for work opportunities within covered
9 programs for an independent direct support provider,
10 or to encourage or discourage membership in any labor
11 organization;
- 12 (4) Take negative action against an independent direct
13 support provider because the provider has taken
14 actions demonstrating the provider's support for a
15 labor organization, including signing a petition,
16 grievance, or affidavit or giving testimony under this
17 chapter;
- 18 (5) Refuse to bargain collectively in good faith with the
19 exclusive representative; or
- 20 (6) Discriminate against an independent direct support
21 provider based on race, color, creed, religion, age,
22 gender, sexual orientation, gender identity, or



1 national origin, or because the provider is a
2 qualified individual with a disability.

3 (c) It shall be an unfair labor practice for a labor
4 organization to:

5 (1) Restrain or coerce independent direct support
6 providers in the exercise of the rights guaranteed
7 them by law or rule; provided that a labor
8 organization may prescribe its own rules with respect
9 to the acquisition or retention of membership;
10 provided further that the rules are not
11 discriminatory;

12 (2) Refuse to bargain collectively in good faith with the
13 State;

14 (3) Cause, or attempt to cause, the State to discriminate
15 against an independent direct support provider in
16 violation of subsection (b); or

17 (4) Threaten to or cause a provider to strike or curtail
18 the provider's services in recognition of a picket
19 line of any employee or labor organization.

20 (d) An independent direct support provider shall not
21 strike or curtail the provider's services in recognition of a
22 picket line of any employee or labor organization.



1 § -8 Prevention of unfair labor practices. (a) The
2 board may prevent the State or a labor organization from
3 engaging in any unfair labor practice listed in section -7.
4 Whenever a charge is made that the State or a labor organization
5 has engaged in or is engaging in any unfair labor practice, the
6 board may issue and cause to be served upon that party a
7 complaint stating the charges in that respect and containing a
8 notice of hearing before the board at a place and time therein
9 fixed at least seven days after the complaint is served. The
10 board may amend the complaint at any time before it issues an
11 order. No complaint shall be filed based upon any unfair labor
12 practice that occurred more than six months prior to the filing
13 of the complaint with the board and the service of a copy
14 thereof upon the party against whom such complaint is made,
15 unless the person aggrieved thereby was prevented from filing
16 the complaint by reason of service in the United States armed
17 forces, in which event the six-month period shall be computed
18 from the day of the person's discharge.

19 (b) The party complained of shall have the right to file
20 an answer to the original or amended complaint and appear in
21 person or otherwise and present evidence in connection therewith
22 at the time and place fixed in the complaint. In the discretion

1 of the board, any other person may be permitted to intervene and
2 present evidence in the matter. Any proceeding under this
3 section shall, so far as practicable, be conducted in accordance
4 with the Hawaii rules of evidence adopted under chapter 626.

5 The board shall provide for the making of a transcript of the
6 testimony presented at the hearing.

7 (c) The board shall have power to administer oaths and
8 take testimony under oath relative to the matter of inquiry. At
9 any hearing ordered by the board, the board shall have the power
10 to subpoena witnesses and to demand the production of books,
11 papers, records, and documents for its examination. Officers
12 who serve subpoenas issued by the board and witnesses attending
13 hearings conducted by the board shall receive fees and
14 compensation at the same rates as officers and witnesses in
15 cases brought in the circuit court, to be paid by the board.

16 (d) If upon the preponderance of the evidence, the board
17 finds that any party named in the complaint has engaged in or is
18 engaging in any unfair labor practice, it shall state its
19 finding of fact in writing and shall issue and cause to be
20 served on that party an order requiring that party to cease and
21 desist from the unfair labor practice, and to take any
22 affirmative action as will carry out the policies of this



1 chapter. If upon the preponderance of the evidence, the board
2 does not find that the party named in the complaint has engaged
3 in or is engaging in any unfair labor practice, it shall state
4 its findings of fact in writing and dismiss the complaint.

5 (e) In determining whether a complaint shall issue
6 alleging a violation of section -7, and in deciding those
7 cases, the same rules of decision shall apply irrespective of
8 whether or not a labor organization affected is affiliated with
9 a labor organization national or international in scope.

10 § -9 Negotiated agreement; funding termination; renewal;
11 enforcement. (a) If the State and the exclusive representative
12 reach an agreement, the governor shall request from the
13 legislature an appropriation sufficient to fund the agreement in
14 the next operating budget. If the legislature appropriates
15 sufficient funds, the negotiated agreement shall become
16 effective and binding at the beginning of the next fiscal year.
17 If the legislature appropriates a different amount of funds, the
18 terms of the agreement affected by that appropriation shall be
19 renegotiated based on the amount of funds actually appropriated
20 by the legislature and shall become effective and legally
21 binding in the next fiscal year.



1 (b) Collective bargaining agreements shall remain in
2 effect for a maximum term of two years and shall not be subject
3 to cancellation or renegotiation during the term without the
4 mutual consent in writing of both parties; provided that the
5 consent shall be filed with the board. Upon the filing of the
6 consent, an agreement may be supplemented, cancelled, or
7 renegotiated.

8 (c) The agreement shall terminate upon the expiration of
9 its specified term. Negotiations for a new agreement to take
10 effect upon the expiration of the preceding agreement shall be
11 commenced at any time within one year next preceding the
12 expiration date upon the request of either party and may be
13 commenced at any time previous thereto with the consent of both
14 parties.

15 (d) If the State and the collective bargaining unit are
16 unable to arrive at an agreement and no existing agreement is in
17 effect, the existing contract shall remain in force until a new
18 contract is ratified by the parties; provided that nothing in
19 this subsection shall prohibit the parties from agreeing to a
20 modification of certain provisions of the existing contract
21 that, as amended, shall remain in effect until a new contract is
22 finalized and funded by the legislature.



1 (e) The board may enforce compliance with all provisions
2 of a collective bargaining agreement upon the complaint of
3 either party. If a complaint is made by either party to an
4 agreement, the board shall proceed in the manner prescribed in
5 section -8 relating to the prevention of unfair labor
6 practices.

7 § -10 **Rights unaltered.** (a) A collective bargaining
8 agreement shall not infringe upon any rights of service
9 recipients or their surrogates to hire, direct, supervise, or
10 discontinue the employment of any particular independent direct
11 support provider.

12 (b) Nothing in this section shall alter the rights and
13 obligations of private sector employers and employees under the
14 National Labor Relations Act, 29 U.S.C. section 151 et seq.

15 (c) Independent direct support providers shall not be
16 considered public employees for purposes other than collective
17 bargaining, including joint or vicarious liability in tort or
18 the limitation on liability in subsection (e). Independent
19 direct support providers shall not be eligible for participation
20 in the employees' retirement system or the Hawaii employer-union
21 health benefits trust fund solely by virtue of bargaining under
22 this chapter. Nothing in this chapter shall require the State



1 to alter its current practice with respect to independent direct
2 support providers of making payments regarding social security
3 and medicare taxes, federal or state unemployment contributions,
4 or workers' compensation insurance.

5 (d) Nothing in this chapter shall infringe upon the right
6 of the judiciary and the legislature to make programmatic
7 modifications to the delivery of state services through subsidy
8 or other programs.

9 (e) The State and its employees shall not be vicariously
10 liable for any act or omission by an independent direct support
11 provider or any claim arising out of the employment relationship
12 between a service recipient and an independent direct service
13 provider, nor shall the State be liable as a joint employer.

14 § -11 Rules. The board shall adopt rules in accordance
15 with chapter 91 as necessary to implement this chapter.

16 § -12 Appeal. (a) Any person aggrieved by an order or
17 decision of the board issued pursuant to this chapter may appeal
18 the order or decision to the intermediate court of appeals.

19 (b) An order of the board shall not automatically be
20 stayed pending an appeal. A stay shall first be requested from
21 the board. The board may stay the order or any part of it. If
22 the board denies a stay, then a stay may be requested from the



1 intermediate court of appeals. The intermediate court of
2 appeals may stay the order or any part of it and may order
3 additional interim relief.

4 § -13 **Enforcement.** (a) Orders of the board issued
5 under this chapter may be enforced by any party or by the board
6 by filing a petition with a circuit court located in the county
7 in which the action before the board originated. The petition
8 shall be served on the adverse party as provided for service of
9 process under the Hawaii rules of civil procedure. If, after
10 hearing, the court determines that the board had jurisdiction
11 over the matter and that a timely appeal was not filed or that
12 an appeal was timely filed and a stay of the board order or any
13 part of it was not granted or that a board order was affirmed on
14 appeal in pertinent part by the intermediate court of appeals or
15 on review by the supreme court following acceptance of an
16 application for writ of certiorari, the court shall incorporate
17 the order of the board as a judgment of the court. There shall
18 be no appeal from that judgment; provided that a judgment
19 reversing a board decision on jurisdiction may be appealed to
20 the intermediate court of appeals.



1 (b) Upon filing of a petition by a party or the board, the
2 court may grant temporary relief, including a restraining order,
3 as it deems proper pending a formal hearing.

4 (c) Orders and decisions of the board shall apply only to
5 the particular case under appeal, but any number of appeals
6 presenting similar issues may be consolidated for hearing with
7 the consent of the board. The board shall not modify, add to,
8 or detract from a collective bargaining agreement by any order
9 or decision.

10 § -14 Antitrust exemption. The activities of
11 independent direct support providers and their exclusive
12 representative that are necessary for the exercise of their
13 rights under this chapter shall be afforded state action
14 immunity under applicable federal and state antitrust laws. The
15 State intends that the "state action" exemption to federal
16 antitrust laws be available only to the State, to independent
17 direct support providers, and to their exclusive representative
18 in connection with these necessary activities. Exempt
19 activities shall be actively supervised by the State."

20 SECTION 2. This Act shall take effect upon its approval.

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INTRODUCED BY: BTal

H.B. NO. 2424

Report Title:

Collective Bargaining; Independent Direct Support Providers

Description:

Enables independent direct support providers to engage in collective bargaining with the State.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

