

Honolulu, Hawaii

April 6, 2015

RE: S.B. No. 1219
S.D. 2
H.D. 1

Honorable Joseph M. Souki
Speaker, House of Representatives
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawaii

Sir:

Your Committee on Labor & Public Employment, to which was referred S.B. No. 1219, S.D. 2, entitled:

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

begs leave to report as follows:

The purpose of this measure is to ensure that the employment security law for independent contractors is applied consistently and appropriately by the Department of Labor and Industrial Relations (Department) by:

- (1) Codifying the Internal Revenue Service's 20 common law factors for determining whether an employer-employee relationship exists, in addition to the "ABC" test in section 383-6, Hawaii Revised Statutes;
- (2) Including definitions for "client" and "independent contractor"; and
- (3) Requiring the Department to report to the Legislature on the guidelines developed by the Unemployment Insurance Coverage Committee and covered employment determinations.

The Chamber of Commerce Hawaii; Envisions Entertainment & Productions, Inc.; Maui Chamber of Commerce; National Federation of Independent Business; Society for Human Resource Management;



The Maui Closet Company; Feed My Sheep; Pacific Whale Foundation; and several concerned individuals supported this measure. The ILWU Local 142, Hawaii State AFL-CIO, and a concerned individual opposed this measure. The Department of the Attorney General, Department, and Hawaii Association of Realtors commented on this measure.

Your Committee has amended this measure by:

- (1) Replacing the Internal Revenue Service's 20 factors with the 20 factors and definitions prescribed in section 12-5-2, Hawaii Administrative Rules, which are used by the Department to determine whether an employer-employee relationship exists;
- (2) Removing the definitions of "client" and "independent contractor";
- (3) Specifying that the Department shall consider and address all of the 20 factors in making their determination;
- (4) Specifying that the annual report regarding covered employment determinations shall be submitted for five years;
- (5) Changing the effective date to July 1, 2115; and
- (6) Making technical, nonsubstantive amendments for clarity, consistency, and style.

Your Committee has concerns over the inability of businesses to have some predictability regarding the outcomes of employer-employee audits. Your Committee recommends that the Department develop a program for institutionalizing these findings to establish the basis for greater predictability in the determination process. The Department should also incorporate into its practices, the ongoing training of auditors, peer reviews, and case studies, to ensure that the application of the law is consistent.



As affirmed by the record of votes of the members of your Committee on Labor & Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1219, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1219, S.D. 2, H.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Labor & Public
Employment,



MARK M. NAKASHIMA, Chair



State of Hawaii
House of Representatives
The Twenty-eighth Legislature

HSCR 1368

Record of Votes of the Committee on Labor & Public Employment

Bill/Resolution No.: SB 1219 SD2	Committee Referral: LAB	Date: 3-27-15		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
LAB Members	Ayes	Ayes (WR)	Nays	Excused
1. NAKASHIMA, Mark M. (C)	/			
2. KEOHOKALOLE, Jarrett (VC)	/			
3. AQUINO, Henry J.C.	/			
4. HAR, Sharon E.	/			
5. ICHIYAMA, Linda	/			
6. JOHANSON, Aaron Ling	/			
7. LoPRESTI, Matthew S.	/			✓
8. SAN BUENAVENTURA, Joy A.	/			
9. TAKAYAMA, Gregg	/			
10. TAKUMI, Roy M.	/			
11. YAMASHITA, Kyle T.	/			
12. TUPOLA, Andria P.L.				/
TOTAL (12)	11			1
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. <div style="text-align: center; font-size: 0.8em;">committee acronym(s)</div>				
Vice Chair's or designee's signature:				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO				