

Honolulu, Hawaii

March 18, 2016

RE: S.B. No. 2694  
S.D. 1  
H.D. 1

Honorable Joseph M. Souki  
Speaker, House of Representatives  
Twenty-Eighth State Legislature  
Regular Session of 2016  
State of Hawaii

Sir:

Your Committee on Labor & Public Employment, to which was referred S.B. No. 2694, S.D. 1, entitled:

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

begs leave to report as follows:

The purpose of this measure is to clarify the application of Hawaii's employment security law by clarifying how the Department of Labor and Industrial Relations (Department) determines whether an individual is an independent contractor by:

- (1) Changing references to the common law relationship of "master and servant" to "employee and employer";
- (2) Clarifying criteria used by the Department of Labor and Industrial Relations to determine whether an individual is an independent contractor, including by specifying twenty factors to be used as guidelines for the Department's determination;
- (3) Requiring the Director of Labor and Industrial Relations to submit a report to the Legislature prior to the convening of the Regular Session of 2017 on the guidelines developed by the Unemployment Insurance Coverage Committee to assist auditors during investigations; and



- (4) Requiring the Director of Labor and Industrial Relations to submit an annual report to the Legislature regarding independent contractor and covered employment determinations.

The Chamber of Commerce Hawaii; Maui Chamber of Commerce; Envisions Entertainment & Productions, Inc.; and five individuals testified in support of this measure. The Hawaii State AFL-CIO and ILWU Local 142 testified in opposition. The Department of the Attorney General, Department of Labor and Industrial Relations, and one individual provided comments.

Your Committee has amended this measure by:

- (1) Clarifying that only one of the three current statutory requirements must be met to determine whether an individual is an independent contractor;
- (2) Clarifying that application of the twenty guideline factors is subject to the Department's discretion; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

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. 2694, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2694, S.D. 1, H.D. 1, and be referred to your Committee on Judiciary.

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

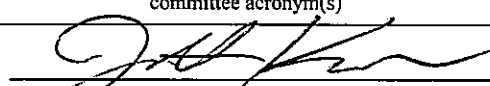


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MARK M. NAKASHIMA, Chair



Record of Votes of the Committee on Labor & Public Employment

Bill/Resolution No.: SB 2694 SDI	Committee Referral: LAB, JUD, FIN	Date: 3/15/16		
<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. TAKUMI, Roy M.	/			
10. YAMASHITA, Kyle T.	/			
11. TUPOLA, Andria P.L.				/
TOTAL (11)	9	1		1
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. <small>committee acronym(s)</small>				
Vice Chair's or designee's signature: 				
Distribution: Original (White) – Committee    Duplicate (Yellow) – Chief Clerk's Office    Duplicate (Pink) – HMSO				