

STAND. COM. REP. NO.

705

Honolulu, Hawaii

February 17, 2017

RE: H.B. No. 347
H.D. 2

Honorable Joseph M. Souki
Speaker, House of Representatives
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which was referred H.B. No. 347, H.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 Hawaii's employment security law particularly with regard to how the Department of Labor and Industrial Relations (Department) determines whether an individual is an independent contractor.

Specifically, this measure:

- (1) Specifies twenty factors to be used as guidelines for the Department's determination of whether an individual is an independent contractor;
- (2) Requires the Director of Labor and Industrial Relations (Director) to submit a report to the Legislature prior to the convening of the Regular Session of 2018 on the guidelines developed by the Unemployment Insurance Coverage Committee to assist auditors during investigations; and
- (3) Requires the Director to submit an annual report to the Legislature regarding independent contractor and covered employment determinations.



The Maui Chamber of Commerce, Envisions Entertainment & Productions, Inc., Manutea Nui E LLC, and several concerned individuals testified in support of this measure. The Hawaii State AFL-CIO, International Longshore and Warehouse Union Local 142, Screen Actors Guild-American Federation of Television and Radio Artists Hawaii Local, International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts Local 665, American Federation of Musicians Local 677, and Hawaii Teamsters and Allied Workers Local 996 testified in opposition to this measure. The Department of Labor and Industrial Relations provided comments.

Under current law, the Department determines whether an individual is considered an independent contractor or an employee of a business using certain criteria. Depending on the determination rendered by the Department, a business or independent contractor may be subject to Hawaii's employment security law. However, your Committee notes that there have been numerous complaints from both businesses and independent contractors that the Department often misclassifies individuals as employees rather than independent contractors, particularly in the events and entertainment industries, and that clarification of Hawaii's employment security law is necessary.

Your Committee finds that proponents of this measure suggested that simply requiring the Department to find a preponderance of the specific twenty-point test to determine an individual's status as an independent contractor would allow for a more consistent and clear application of Hawaii's employment security law. Accordingly, your Committee has amended this measure by:

- (1) Requiring rather than allowing the Department to use twenty specified factors for the Department's determination, provided that a preponderance of those factors are met; and
- (2) Aligning the twenty specified factors with the twenty factors currently being used as guidelines and set forth in the rules adopted by the Department.

Technical, nonsubstantive amendments were also made for clarity, consistency, and style.



As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 347, H.D. 1, as amended herein, and recommends that it be referred to your Committee on Finance in the form attached hereto as H.B. No. 347, H.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Consumer
Protection & Commerce,



ANGUS L.K. MCKELVEY, Chair



