THE SENATE
THIRTY-FIRST LEGISLATURE, 2021
STATE OF HAWAII

S.B. NO. 793
S.D. 1
H.D. 1

A BILL FOR AN ACT

RELATING TO THE MINIMUM WAGE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1   SECTION 1. The legislature finds that the real problems of

2 disability arise not from the medical conditions themselves, but

3 rather from the low expectations, misinformation, and

4 socially-constructed systemic barriers associated with the

5 conditions. Individuals with disabilities are subject to low

6 expectations particularly in employment and the system preparing

7 them for employment, such as education and rehabilitation

8 programs.

9   Section 14(c) of the Fair Labor Standards Act

10 (Section 14(c)) denies people the guarantee of a minimum wage

11 for potentially any job and at any point in their career, based

12 on their disability status. As reported by the Arizona Advisory

13 Committee on the U.S. Commission on Civil Rights in its 2020

14 submittal, "Subminimum Wages for Persons with Disabilities Under

15 Section 14(c) of the Fair Labor Standards Act," in a world after

16 the enactment of the Americans with Disabilities Act,

17 Section 14(c) can be considered a federal law that discriminates

1 against individuals with disabilities. Section 14(c) is

2 different from its counterpart sections 14(a) and 14(b) in that

3 the bases for allowing payment of below minimum wage in those

4 sections are the job being performed or the particular stage in

5 the individual's career, which can be temporary, whereas an

6 individual's disability status can be lifelong.

7   The original intent of Section 14(c) was to serve as a

8 platform to train and prepare individuals with disabilities to

9 gain open-market competitive jobs. However, the Arizona

10 Advisory Committee reported that Section 14(c) cannot be

11 justified as a policy to increase open-market employment

12 opportunities for individuals with disabilities. It has been

13 shown that Section 14(c) simply provided a subsidy for sheltered

14 workshops that do not support movement of their workers to

15 competitive employment. Section 14(c) no longer fulfills its

16 original intent and runs contrary to the American with

17 Disabilities Act, which was enacted subsequently. Section 14(c)

18 is an outdated law that only serves to perpetuate

19 misinformation, stigma, and stereotypes of individuals with

20 disabilities.

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1   The purpose of this Act is to repeal existing law that

2   exempts individuals with disabilities from minimum wage

3   requirements as a cost neutral initiative with great positive

4   impact on the lives of individuals with disabilities.

5   SECTION 2. Section 103D-1001, Hawaii Revised Statutes, is

6   amended by amending the definition of "qualified community

7   rehabilitation program" to read as follows:

8   ""Qualified community rehabilitation program" means a

9   nonprofit community rehabilitation program for [persons]

10   individuals with disabilities that:

11   (1)   Is organized and incorporated under the laws of the

12   United States or this State, and located in this

13   State;

14   (2)   Is operated in the interest of and [+]employs[+

15   persons] individuals with disabilities;

16   (3)   Does not inure any part of its net income to any

17   shareholder or other individual;

18   (4)   Complies with all applicable occupational health and

19   safety standards required by the federal, state, and

20   county governments; and

1   (5)   [Holds a current certificate from the United States

2   Department of Labor pursuant to the Fair Labor

3   Standards Act, Title 29 United States Code

4   section 214(c), and is certified by the state

5   department of labor and industrial relations under

6   section 387-9 and applicable administrative rules

7   relating to the employment of persons with

8   disabilities.] Maintains a disabled to non-disabled

9   employee ratio equal to or greater than one to three

10   at all times. To ensure integrated employment of

11   individuals with disabilities, this one-to-three ratio

12   is to include all levels of employment, management,

13   and sub-contracting."

14   SECTION 3. Section 387-9, Hawaii Revised Statutes, is

15 amended by amending its title and subsection (a) to read as

16 follows:

17   "§387-9 Special minimum wages for learners; apprentices;

18 full-time students; paroled wards of Hawaii youth correctional

19 facility[; handicapped workers]. (a) Notwithstanding the

20 provisions of section 387-2, the director [may], by rule, may

21 provide for the employment[÷

1   [(1)   Of] of learners[, of]; apprentices[, of]; part-time

2   employees who are full-time students attending public

3   or private schools other than colleges, universities,

4   business schools, or technical schools[,]; and [of]

5   wards paroled from the Hawaii youth correctional

6   facility, under special certificates issued by the

7   director, at [such] wages lower than the applicable

8   minimum wage and subject to [such] limitations as to

9   time, number, proportion, and length of service as the

10   director shall prescribe[; and

11   [(2)   Of individuals whose earning capacity is impaired by

12   old age or physical or mental deficiency or injury,

13   under special certificates issued by the director, at

14   such wages lower than the applicable minimum wage and

15   for such period as shall be fixed in the

16   certificates]."

17   SECTION 4. This Act does not affect rights and duties that

18 matured, penalties that were incurred, and proceedings that were

19 begun before its effective date.

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1   SECTION 5. Statutory material to be repealed is bracketed

2 and stricken. New statutory material is underscored.

3   SECTION 6. This Act shall take effect on December 25,

4 2040.

Report Title:
Employment; Individuals with Disabilities; Minimum Wage; Deaf and Blind Task Force

Description:
Repeals the exemption of individuals with disabilities from minimum wage requirements. Effective 12/25/2040. (HD1)

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