

STAND. COM. REP. NO.

1282

Honolulu, Hawaii

MAR 23 2007

RE: H.B. No. 833
H.D. 2
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Madam:

Your Committee on Human Services and Public Housing, to which
was referred H.B. No. 833, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO EMPLOYMENT,"

begs leave to report as follows:

The purpose of this measure is to exempt Medicaid waiver
service from the scope of certain employment-related law.

Adult Foster Home Association; Catholic Charities Hawai'i;
Supporting Exceptional Citizens of Hawaii; Home & Community
Services of Hawaii, Inc.; Easter Seals Hawai'i; Philippine Nurses
Association Hawaii; Congress of Visayan Organizations; the
National Federation of Filipino American Associations; United
Filipino Council of Hawaii; Filipino Coalition for Solidarity;
Oahu Filipino Community Council; Nursing, Advocates & Mentors,
Inc.; and forty-three individuals submitted testimony in support
of this measure. The State Council on Developmental Disabilities
and Responsive Caregivers of Hawaii submitted testimony in support
of the intent of this measure. One individual submitted testimony
in opposition to this measure. The Department of Labor and
Industrial Relations, the Attorney General, and Aloha Habilitation
Services submitted comments.

Your Committee finds that chapters 386, 392, and 393, Hawaii
Revised Statutes (HRS), currently provide an exemption from the
definition of "employer" under those chapters for domestic
services, which includes certain attendant care and day care

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services performed by an individual in the employ of a recipient of social service payments. It appears that the lack of a definition of the term "recipient of social service payments" has caused confusion and disparity in the application of these chapters and chapter 383, HRS, amongst the home care community and threatens the provision of these critical services: services that enable many disabled individuals to remain in the community.

It is the intent of your Committee to attempt to create certainty and consistency in the application of these laws.

Your Committee has amended this measure by:

- (1) Replacing all of its provisions with the provisions of S.B. No. 1780, S.D. 2, which deals with the same subject matter;
- (2) Changing the amendment to section 383-7, HRS, to exclude the following service from the definition of employment:

Domestic service, which includes in-home and community-based services for persons with developmental disabilities and mental retardation under the Medicaid Home and Community-based Services Program pursuant to 42 Code of Federal Regulations sections 440.180 and 441.300, and 42 Code of Federal Regulations part 434, subpart A, as amended, including chore, personal assistance and habilitation, residential habilitation, supported employment, respite, and skilled nursing services, except for adult day health services, as the terms are defined by the Department of Human Services, performed by an individual under a contract between the individual and a recipient of social service payments, which shall be presumed to be an independent contractor relationship unless the Director can demonstrate that the individual is engaged in a common law employer-employee relationship with the recipient of social service payments or the recipient of social service payments elects in writing to employ the individual;

- (3) Amending sections 386-1, 392-5, and 393-5, HRS, to exclude the aforementioned service from the definition of employment under those sections, as well;



- (4) Adding more explanative language to the purpose section;
- (5) Changing the effective date from July 1, 2059 to upon approval; and
- (6) Making technical, nonsubstantive changes for the purposes of clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Human Services and Public Housing that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 833, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 833, H.D. 2, S.D. 1, and be referred to the Committee on Judiciary and Labor.

Respectfully submitted on
behalf of the members of the
Committee on Human Services and
Public Housing,

Suzanne Chun Oakland
SUZANNE CHUN OAKLAND, Chair



The Senate
Twenty-Fourth Legislature
State of Hawaii

Record of Votes
Committee on Human Services and Public Housing
HSP

Bill / Resolution No.:* HB 833 HDZ	Committee Referral: HSP, JDL	Date: 3-22-07		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="text-align: center;"> <input type="checkbox"/> Pass, unamended 2312 </div> <div style="text-align: center;"> <input checked="" type="checkbox"/> Pass, with amendments 2311 </div> <div style="text-align: center;"> <input type="checkbox"/> Hold 2310 </div> <div style="text-align: center;"> <input type="checkbox"/> Recommit 2313 </div> </div>				
Members	Aye	Aye (WR)	Nay	Excused
CHUN OAKLAND, Suzanne (C)	✓			
IHARA, Jr., Les (VC)	✓			
HOOSER, Gary L.				✓
SAKAMOTO, Norman	✓			
HEMMINGS, Fred				✓
TOTAL	3	0	0	2
Recommendation: <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted </div>				
Chair's or Designee's Signature:				
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> Distribution: Original File with Committee Report </div> <div style="width: 45%;"> Yellow Clerk's Office </div> <div style="width: 45%;"> Pink Drafting Agency </div> </div>				

*Only one measure per Record of Votes