

STAND. COM. REP. NO.

1094

Honolulu, Hawaii

MAR 24 2017

RE: H.B. No. 208  
H.D. 2  
S.D. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Twenty-Ninth State Legislature  
Regular Session of 2017  
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred  
H.B. No. 208, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO LABOR,"

begs leave to report as follows:

The purpose and intent of this measure is to authorize the  
Director of Labor and Industrial Relations or the Director's  
designee to issue a stop-work order to an employer, until the  
employer complies with section 386-121, Hawaii Revised Statutes,  
relating to security for workers' compensation coverage.

Your Committee received testimony in support of this measure  
from the Hawaii Construction Alliance, Hawaii Regional Council of  
Carpenters, RAM Corporation dba Allied Builders System, Pacific  
Resource Partnership, and Building Industry Association of Hawaii.  
Your Committee received comments on this measure from the  
Department of Labor and Industrial Relations, Chamber of Commerce  
Hawaii, and General Contractors Association of Hawaii.

Your Committee finds that when an employer fails to secure  
workers' compensation coverage in accordance with chapter 386,  
Hawaii Revised Statutes, the employer is liable for monetary  
penalties; however, these penalties are not always effective  
deterrents, and in some cases, employers continue to operate  
illegally. This measure seeks to provide the Department of Labor



and Industrial Relations (DLIR) with greater enforcement mechanisms in an effort to increase employer compliance.

Your Committee shares the concerns stated in the testimony of the DLIR that this measure, in its current form, may be problematic in achieving its intended purpose and may abrogate due process required prior to the imposition of penalties. Your Committee also notes the concerns of the DLIR regarding the difficulties in collecting penalties from mainland companies and prevention of businesses knowingly misrepresenting themselves or closing the existing business and opening under another name.

Your Committee further finds that an employer is liable for monetary penalties if the employer fails to pay wages and other compensation in accordance with chapter 388, Hawaii Revised Statutes, without justification, and, similarly to cases involving violations of chapter 386, Hawaii Revised Statutes, these penalties are not always effective deterrents. S.B. No. 854, S.D. 1, Regular Session of 2017, seeks to provide the DLIR with greater enforcement mechanisms under chapter 388, Hawaii Revised Statutes, and can be included in this measure.

To address these concerns, your Committee has amended this measure by:

- (1) Specifying that an employer may request a hearing to protest a work-stop order for failure to secure workers' compensation coverage within twenty days of receiving the order, the hearing must be held within thirty days of the request, and a written decision must be issued to all parties within three hours of the conclusion of the hearing;
- (2) As recommended by the DLIR:
  - (A) Requiring a party who appeals a court decision regarding a stop-work order for failure to secure workers' compensation coverage to file a surety bond or letter of credit with the Director of Labor and Industrial Relations in an amount equal to ten percent of the penalty amount;



- (B) Restoring statutory language that allows the Director of Labor and Industrial Relations, for good cause shown, to remit all or part of a penalty in excess of \$500 if the employer complies with section 386-121, Hawaii Revised Statutes, relating to security for workers' compensation coverage;
  - (C) Restoring and amending statutory language that allows the circuit court to enjoin an employer who for a period of fourteen days is in violation of section 386-121, Hawaii Revised Statutes, from carrying on the employer's business in the State until the employer is in compliance;
  - (D) Specifying that stop-work orders and any penalties imposed for failure to secure workers' compensation coverage shall be effective against any successor entity that has one or more of the same principals or officers as the corporation, association, partnership, limited liability company, sole proprietorship, or other legal business entity against which the stop-work order was issued;
  - (E) Inserting, as part II, proposed language in the testimony of the DLIR, similar to language in S.B. No. 854, S.D. 1, Regular Session of 2017, which allows the DLIR to issue orders of wage payment violation to employers in violation of chapter 388, Hawaii Revised Statutes, relating to the payment of wages and other compensation;
  - (F) Imposing a penalty of not less than \$500 or \$100 for each violation, whichever is greater, for an employer who violates chapter 388, Hawaii Revised Statutes, or administrative rules, to be paid into the general fund; and
  - (G) Deleting sections 1 and 2;
- (3) Inserting an effective date of January 7, 2059, to encourage further discussion; and



- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

Your Committee notes that the DLIR indicated in their oral testimony that in cases where multiple entities are working at the same site, such as a subcontractor and general contractor, that a stop-work order and other applicable penalties would be issued against only the entity in violation of chapter 386, Hawaii Revised Statutes.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 208, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 208, H.D. 2, S.D. 1, and be referred to your Committee on Ways and Means.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary and  
Labor,

  
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GILBERT S.C. KEITH-AGARAN, Chair



The Senate  
 Twenty-Ninth Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Judiciary and Labor**  
**JDL**

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 208 HD2	JDL, WAM	3/15/17		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310		
<input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
KEITH-AGARAN, Gilbert S.C. (C)	✓			
RHOADS, Karl (VC)	✓			
GABBARD, Mike	✓			
KIM, Donna Mercado	✓			
THIELEN, Laura H.	✓			
<b>TOTAL</b>	5	0	0	0
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <i>Karl Rhoads</i>				
Distribution:				
Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	Goldenrod Committee File Copy	

\*Only one measure per Record of Votes