

STAND. COM. REP. NO. 2483

Honolulu, Hawaii

FEB 19 2016

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

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 2694 entitled:

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

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Clarify Hawaii's employment security law for independent contractors by:
 - (A) Establishing twenty factors to be used as guidelines for the Department of Labor and Industrial Relations when determining by a preponderance whether an individual could be an independent contractor;
 - (B) Retaining the ability of the Department of Labor and Industrial Relations to determine if an individual is an independent contractor and clarifying that the degree of importance of each factor may vary on a case-by-case basis; and
 - (C) Adding the definitions of "client" and "independent contractor";
- (2) Require 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

- (3) Require the Director of Labor and Industrial Relations to submit an annual report to the Legislature regarding covered employment determinations prior to the convening of every regular session.

Your Committee received testimony in support of this measure from Chamber of Commerce Hawaii; Maui Chamber of Commerce; and Envisions Entertainment & Productions, Inc. Your Committee received testimony in opposition to this measure from the Department of Labor and Industrial Relations; Hawaii State AFL-CIO; Hawaii Bar Owners Association; and International Longshore and Warehouse Union, Local 142. Your Committee received comments on this measure from the Department of the Attorney General.

Your Committee finds that independent contractors are an important part of Hawaii's business community and economy. However, many individuals may not be aware of the criteria used by the Department of Labor and Industrial Relations when making determinations as to whether an individual is in an employment relationship or is a bona fide independent contractor. This measure clarifies the law that determines who qualifies as an independent contractor in order to offer proper protections to legitimate independent contractors and the businesses with which they contract.

Your Committee has amended this measure by:

- (1) Deleting preponderance as a standard by which the Department of Labor and Industrial Relations is to make its determination of whether an individual could be an independent contractor;
- (2) Clarifying under the definition of "independent contractor" that an independent contractor is an individual engaged, rather than customarily engaged, in an independently established trade, occupation, profession, or business, among other requirements, and making a conforming amendment to reflect the deletion of "customarily"; and



- (3) Making a technical, nonsubstantive amendment for the purposes of clarity and consistency.

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

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


GILBERT S.C. KEITH-AGARAN, Chair



The Senate
 Twenty-Eighth Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB 2694	Committee Referral: JDL, CPH	Date: 2/16/16		
<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)	/			
SHIMABUKURO, Maile S.L. (VC)	/			
GABBARD, Mike	/			
KIM, Donna Mercado	/			
THIELEN, Laura H.	/			
SLOM, Sam		/		
TOTAL	5	1		
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes