

Honolulu, Hawaii

Feb 29, 2008

RE: H.B. No. 2520
H.D. 3

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

Sir:

Your Committee on Finance, to which was referred H.B. No. 2520, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO CAREGIVERS,"

begs leave to report as follows:

The purpose of this bill is to improve the ability of employees who need time off from work to care for a family member with a serious health condition by amending Hawaii's temporary disability insurance (TDI) Law to permit an eligible employee to collect up to two weeks of TDI benefit payments to care for a family member with a physical or mental condition that warrants the participation of the employee to provide care during the period of treatment or supervision by a health care provider.

The Policy Advisory Board for Elder Affairs, Hawaii Teamsters and Allied Workers, Local 996, ILWU Local 142, Hawaii Aging Advocates Coalition, National Multiple Sclerosis Society, and several concerned individuals testified in support of this bill. The Department of Labor and Industrial Relations (DLIR), National Federation of Independent Businesses in Hawaii, Society for Human Resource Management - Hawaii Chapter, General Contractors Association of Hawaii, Hawaii Bankers Association, and Building Industry Association of Hawaii opposed this measure. The Kokua Council, Hawaii Government Employees Association, and The Chamber of Commerce of Hawaii offered comments.



Serving as a family caregiver for a family member who needs assistance with their activities of daily living often comes at a price. Many workers providing care for an ill or injured family member are forced to take time off from work, oftentimes taking unpaid leave. This creates a financial burden on the worker attempting to fulfill family obligations and, ultimately, affects the family unit as a whole. Allowing workers who also serve as family caregivers to claim TDI benefits in order to provide this assistance to their ill or injured family member will help ease some of these burdens.

While the intent of this measure is laudable, your Committee recognizes that this is a complex issue and that there remains a number of questions and concerns regarding the provision of TDI benefits for persons other than the ill or injured employee, including increased costs to business, possible conflicts with other statutes such as the Hawaii Family Leave Law, and possible conflicts with federal laws and regulations, including pre-emption by the Employee Retirement Income Security Act, otherwise known as ERISA. However, your Committee notes that although the question of preemption would ultimately need to be decided by the judicial system, the Legislature has taken the position in the past that changes to employment laws such as the TDI law would not be pre-empted by ERISA.

Nevertheless, this measure is a work in progress. As it continues to move through the legislative process, a balanced approach needs to be taken to address the needs and concerns of both employers and employees to tackle a difficult, yet important, issue.

Upon further consideration, Your Committee has amended this bill by:

- (1) Providing employment and employment benefit protections for an employee who takes leave and uses TDI benefits when the employee's family member suffers a disability;
- (2) Specifying that while more than one employee may claim and receive TDI benefits while caring for a common family member, these benefits may not be claimed concurrently;
- (3) Increasing the duration of TDI benefit payments for the period of disability of an employee's family member from two to four weeks;



- (4) Clarifying that the provision of medical information about a disabled family member to DLIR is necessary for DLIR to ensure compliance with the provisions contained in this measure;
- (5) Clarifying that the duration of benefits for the period of disability of an employee's family member along with any other components of an employer plan or agreement providing TDI benefits should be considered when determining whether that plan or agreement offers benefits at least as favorable as the benefits required under Hawaii's TDI law;
- (6) Reinstating language allowing any amount of "sick leave" in excess of the minimum statutory equivalent as provided under Hawaii's Family Leave Law, as determined by DLIR, to be used for family leave if the benefits fall within the definition of "sick leave" as defined in Hawaii's Family Leave Law; and
- (7) Requiring DLIR, as part of its interim report to the Legislature, to:
 - (A) Identify any inconsistencies between Hawaii's Family Leave Law and Hawaii's TDI Law that may impede the implementation of either law; and
 - (B) Recommend legislation that will remedy these inconsistencies and further the intent of this measure.

Other technical, nonsubstantive amendments were made for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2520, H.D. 2, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2520, H.D. 3.



Respectfully submitted on
behalf of the members of the
Committee on Finance,

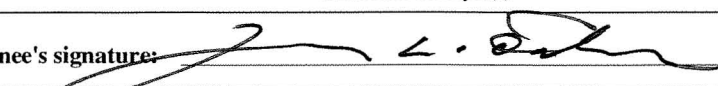
Marcus R. Oshiro
MARCUS R. OSHIRO, Chair



State of Hawaii
House of Representatives
The Twenty-fourth Legislature

HSCR 1033-08

Record of Votes of the Committee on Finance

Bill/Resolution No.: HB 2520	Committee Referral: FIN	Date: 2-20-2008		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
FIN Members	Ayes	Ayes (WR)	Nays	Excused
1. OSHIRO, Marcus R. (C)	✓			
2. LEE, Marilyn B. (VC)	✓			
3. AWANA, Karen Leinani	✓			
4. BELATTI, Della Au				✓
5. BROWER, Tom	✓			
6. CARROLL, Mele	✓			
7. HANOHANO, Faye P.	✓			
8. HAR, Sharon E.	✓			
9. KARAMATSU, Jon Riki				✓
10. MAGAOAY, Michael Y.	✓			
11. MANAHAN, Joey	✓			
12. MIZUNO, John	✓			
13. NAKASONE, Bob				✓
14. RHOADS, Karl	✓			
15. SAGUM, Roland D., III	✓			
16. TOKIOKA, James Kunane	✓			
17. MEYER, Colleen Rose		✓		
18. PINE, Kymberly Marcos		✓		
19. WARD, Gene, Ph.D.		✓		
TOTAL (19)	13	3	0	3
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. committee acronym(s)				
Vice Chair's or designee's signature: 				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office				