

HOUSE OF REPRESENTATIVES  
THE TWENTY-FOURTH LEGISLATURE  
REGULAR SESSION OF 2008

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Robert N. Herkes, Chair  
Rep. Angus L.K. McKelvey, Vice Chair

Date: Monday, February 4, 2008

Time: 2:00 p.m.

Place: Conference Room 325, State Capitol

TESTIMONY FRED GALDONES/ILWU LOCAL 142

RE: HB 1969, HD 1, RELATING TO WORKERS' COMPENSATION

Thank you for the opportunity to present testimony regarding HB 1969. We oppose this myopic bill.

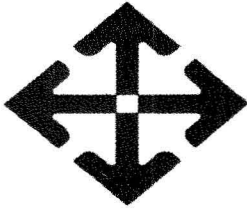
H.B. 1969, HD 1 proposes to amend Hawaii's worker's compensation statute by removing four categories of individuals from the definition of "employment". These categories are: 1) services performed by a partner for a partnership; 2) services performed by a partner of a limited liability partnership who possesses a 50% transferable interest; 3) services performed by a member of a limited liability company if the individual has a distributional interest of 50% or more in the limited liability company; and 4) services performed by a sole proprietor for the sole proprietorship. In short, all four of these categories of individuals will be made exempt from workers' compensation coverage.

We believe this bill is short-sighted because by creating gaps in what was intended to be virtually universal coverage afforded by Chapter 386 HRS it will cause an even greater proliferation of exceptions from coverage making an already questionable market even less attractive to insurers. In recent decades, the legislature has already allowed innumerable exclusions from coverage, exempting domestics, real estate agents, corporate officers who are 25% stock holders; and 50% business owners from coverage. However, allowing further exclusions erodes the population of insured employees necessary to sustain reasonably affordable workers' compensation coverage, and in that fashion works to the detriment of other employers and all employees, while allowing a privileged few to opt out of this fundamental and necessary program of social insurance. If unchecked, granting more and more exceptions will reduce this population to the point where insurers will be compelled to increase premiums to maintain their operations and to provide coverage to an ever-diminishing number of employees.

While some have argued that owners of businesses have nothing to gain by "suing themselves" except higher premium costs when they have no need for protection, this is not accurate. Many business owners are actively engaged in working in their business and they suffer all of the mundane physical injuries, including such catastrophic injuries as strokes and

heart attacks precipitated by the pressures of being overworked, and they clearly would enjoy very substantial remedies under workers' compensation.

Ultimately, H.B. 1969, HD 1 is a symptom of the burgeoning economic inequality that afflicts this country and threatens to undermine the fundamental social safety net Hawaii has established for all of its workers. While it is common to hear criticism of the rising cost of workers' compensation insurance and to cast blame for such costs upon the injured worker, in reality, the exclusionary practices of those seeking to avoid their common obligation to protect their fellow workers through a comprehensive scheme of insurance coverage are at fault in contributing to unnecessary costs. If business enterprises and the legislature are truly committed to cost control in workers' compensation premiums, they should join ILWU Local 142 in rejecting this spurious proposal and defeating H.B. 1969, HD 1.



# The Hawaii Business League

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February 4, 2008

Testimony To: House Committee on Consumer Protection & Commerce  
Representative Robert N. Herkes, Chair

Presented By: Tim Lyons  
Executive Vice President

Subject: H.B. 1969, HD 1 - RELATING TO WORKERS' COMPENSATION

Chair Herkes and Members of the Committee:

I am Tim Lyons, President of the Hawaii Business League, a small business service organization.

We support this bill.

A few years ago the legislature provided for owner's of corporations who own 50% or more of their company to exempt out of worker's compensation. This was based on the fact that owners may have other income or they may be able to get some type of alternate disability insurance plan at a cheaper rate than they could for worker's compensation insurance coverage. Then, the concept of Limited Liability Corporation was born and there was some confusion as to whether these owners of 50% or more should be exempt since the LLC law refers to them as "members". Under corporate law the president of a corporation is considered an employee even though he may own 100% of the corporation. Based on fairness and in an effort for our

laws to stay up to date with current legal practices (the utilization of LLP's and LLC's) we support this bill.

Thank you for this opportunity to testify.



The Voice of Small Business®

**Before the House  
Consumer Protection & Commerce Committee**

DATE: February 4, 2008

TIME: 2 p.m.

PLACE: Conference Room 325

**Re: HB 1969  
Relating to Workers Compensation  
Testimony of Melissa Pavlicek for NFIB Hawaii**

Thank you for the opportunity to testify. On behalf of the thousands of business owners who make up the membership of the National Federation of Independent Businesses in Hawaii, we ask that you support HB 1969.

The National Federation of Independent Business is the largest advocacy organization representing small and independent businesses in Washington, D.C., and all 50 state capitals. In Hawaii, NFIB represents more than 1,000 members. NFIB's purpose is to impact public policy at the state and federal level and be a key business resource for small and independent business in America. NFIB also provides timely information designed to help small businesses succeed.

HB 1969 would put the owners of limited liability companies in Hawaii on the same footing as owners of corporations who are not legally required to purchase workers' compensation insurance for themselves. This is an important step toward helping Hawaii's small businesses. Please pass HB 1969.

# Risk Solution Partners

Insurance ■ Risk Management ■ Surety Bonds

To: Representative Robert Herkes, Chair  
Committee on Consumer Protection and Commerce

From: Jacinda Elias, Principal  
Risk Solution Partners, LLC.

Date: February 1, 2008

RE: HB 1969, Relating to Workers' Compensation Insurance – Employment Exclusion

Chair Robert Herkes and members of the Committee on Consumer Protection and Commerce, thank you for reviewing this testimony. I am one of 4 owners of Risk Solution Partners, which is an LLC with no majority owner, but more importantly RSP is an insurance agency representing 130 employers who purchase workers compensation insurance. Only a small percentage of our clientele use the LLC structure and of those very few have majority owners who would actually be excluded if this bill were passed.

It is imperative that this bill be passed. As you know, Section 386-1 definition of "employment" historically has allowed majority owners (at least 50%) of corporations and sole proprietors to be excluded from workers' compensation coverage. This same section did not define how majority owners of limited liability companies and limited liability partnerships should be handled and never adequately dealt with partners either. This bill finally clarifies that majority owners of these forms of business organizations should also be excluded, just as their corporate counterparts have always been.

Contrary to any testimony against passing this bill, there are no negative ramifications of clarifying this issue.

- If a corporate majority owner changes the company's status to an LLC, only the same majority owner would be excluded, who was previously excluded.
- Majority owners typically would not use workers compensation benefits to pay for medical, disability or wage loss, since they have other options and would not want to increase their workers compensation premium; therefore, it is really not appropriate to charge the owner premium for benefits he or she will not utilize.
- To argue that this would deplete funds from the DLIR is certainly not an appropriate reason to continue charging business owners unreasonably and is not substantiated by any facts.
- The cost to business owners in terms of taxes and insurance premiums are two of the highest expenses paid after salaries. Government should be looking for ways to reduce the cost of business and not continue or add unreasonable expenses.

In addition, this bill should be passed with an effective date within the year, certainly not more than 50 years into the future on 7/1/2059. To set a date so far into the future, which simply makes passage of this bill mute, to *allow for more dialogue* neglects the fact that this exclusion has been proposed every year at the legislature for many years. It's time to act.

Thank you for the opportunity to testify.



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# HIIA

## ***Hawaii Independent Insurance Agents Association***

February 1, 2008

To: Representative Robert Herkes, Chair  
Committee on Consumer Protection and Commerce

From: Hawaii Independent Insurance Agents Association

Re: HB 1969 H.D. 1, Relating to Workers Compensation – Employment  
Exclusion

The Hawaii Independent Insurance Agents would like to submit **supporting** comments for the **original draft of HB1969**. We are a non profit trade association of independent insurance producers dedicated to assisting the insurance buying public with their insurance needs.

We ask that the Committee's thinking not be clouded by the opponents who believe that the Special Compensation Fund will be adversely affected if the bill is passed. To the contrary, the Department of Labor & Industrial Relations (DLIR) is not dependent on funding by "employers". When the Director of DLIR determines that the Special Compensation Fund is unable to meet its current and projected obligations, the Director will levy the "Insurers". If funds are sufficient, then no levy is made. The most current SCF financial statement and forecast can be found at the DLIR website.

We support the intent of the original draft of HB1969 which was to clarify Section 386-1's definition of employment. Historically the statute allowed majority owners (at least 50%) of corporations and sole proprietors to be excluded from workers' compensation coverage. This same section did not specify how majority owners of limited liability companies and limited liability partnerships should be handled. The original HB1969 draft clarifies that majority owners of these forms of business organizations should be excluded from workers compensation coverage, just as their corporate counterparts have always been.

Because this exclusion has not been clearly stated in the past, the Department of Labor & Industrial Relations (DLIR) took the conservative route and advised insurers that they must include these individuals for coverage and therefore charge premium for the coverage. Although this step was taken to address the different practices used by the various insurers, the DLIR took a stance that was contrary to the real intent of this section.

There will be no negative ramifications from the passage of HB1969. The positive outcome of HB 1969 will include a comprehensive definition of employment and the change will provide guidance to the DLIR, insurance companies and agencies. The bill is to take effect upon signing.

Thank you for the opportunity to testify.

**Testimony of Thomas J. Smyth, CEcD**  
**Before the**  
**House Committee on Consumer Protection & Commerce**  
**Monday, February 4, 2008**  
**2:00 p.m. Room 325**  
**on**  
**HB1969 HD 1 Relating to Worker's Compensation**

Chair Herkes, Vice Chair McKelvey, and Members of the Committee:

**I strongly support HB 1969 HD 1 that excludes those with 50% interest in a Limited Liability Company or Limited Liability Partnership, individual partners and sole proprietors, from mandatory worker's compensation insurance coverage.**

I recently retired from the Department of Business, Economic Development & Tourism but my testimony today as an individual is based on over 20 years in direct support of small businesses, especially in the area of regulatory relief.

It took two years to get legislation passed in 1993 to exclude 50% corporate owners. Eventually, support was obtained from all concerned when the provision that an employer would not require an employee to form a corporation to avoid insurance coverage was added. That same language is in each of the exclusion provisions in HB1969. Without being too facetious, may I note that if an employer really wanted to exclude an employee from coverage, the employer could require the employee to become a sole proprietor, certainly easier and less costly than other forms of a business. However, if those restrictions are necessary to ensure full support for this important bill, I certainly have no objection.

When LLC's were authorized in 1996, we did a quick survey with DCCA and DLIR to determine what changes were needed to the HRS to provide for this new and different form of business structure. Over several years, a variety of changes were made to ensure that those forming an LLC would not be penalized or otherwise left out of statutory requirements or benefits. It was initially felt that the corporate exclusions in Chapter 386 would apply to LLC's but a closer look led DLIR to conclude that a separate provision was needed since "ownership" and "stockholder" were terms not applicable to an LLC.

We drafted an administration bill just excluding LLC's several years ago after DBEDT and the Small Business Regulatory Review Board received many complaints from companies switching from corporate to LLC structure who were told that even 100% owners needed WC coverage. Those advocating for total employee coverage initially opposed the bill, but eventually even those objections were reconciled. However that bill, and others like it that broaden the exclusion as in HB 1969, have not passed.



The total number of registered LLC's may well be 40,000; but very many of them have corporate or other LLC's as owners or have multiple owners with less than a 50% distributional interest. I have worked with dozens of LLC's and only a few had only one or two owners.

**This is a simple matter of fairness and equity.** Majority owners should be able to voluntarily opt out of coverage and provide their own insurance. The "social compact" that for so long has tied immediate employer insurance for medical costs and lost wages to the restriction on suits against the employer for the cause of the injury, is not appropriate for majority owners who certainly are not going to sue themselves.

**I urge you to pass this bill out. With this committee's strong support this time it may make it through to enactment.**

Thank you for the opportunity to provide testimony.



**Testimony to the House Consumer Protection & Commerce  
Monday, February 4, 2008; 2:00 p.m.  
Conference Room 325**

**RE: HOUSE BILL NO. 1969 HD1 RELATING TO WORKERS' COMPENSATION**

Chair Herkes, Vice Chair McKelvey and Members of the Committee:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). I am here to state The Chamber's strong support to House Bill No. 1969 HD1, relating to Workers' Compensation.

The Chamber is the largest business organization in Hawaii, representing over 1100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. The organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

This measure excludes services for a limited liability company or limited liability partnership from the definition of "employment" if the person performing services has a fifty per cent or higher transferable interest in the limited liability company or limited liability partnership.

Workers' compensation provides medical insurance and wage loss for work related injuries for employees while protecting employers from civil liability resulting from such injuries. The Chamber believes that this measure is consistent with the intent of protecting employees while helping employers reduce overhead costs by enabling businesses to save on workers' compensation premiums.

The Chamber supports this measure for the following reasons: The Chamber finds that owners who do not work at the business would more than likely not suffer a work-related injury; therefore they do not benefit from workers' compensation. Additionally, owners would not gain any benefit from suing his or her own company for any injury, even for one that was suffered and was related to the business. Similarly, owners who work at the business would also have little incentive to file a workers' compensation claim. Essentially, owners would have nothing to gain from suing themselves because such action would result in increased premium costs, and potentially affect the viability of their business.

Accordingly, it makes sense for owners to opt out of the mandatory workers' compensation coverage. Mandatory coverage imposes additional costs on businesses, especially on sole proprietors; therefore, the proposed exclusion will alleviate some of the high costs of doing business. At least 41 states have some statutory provision that make workers' compensation coverage elective for sole proprietors and at least 31 states have some statutory provision that makes workers' compensation coverage elective for LLC members.

For these reasons, The Chamber of Commerce of Hawaii urges your Committee to pass this measure,

Thank you very much for the opportunity to testify.