

**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.hawaii.gov/labor
Phone: (808) 586-8842 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

February 25, 2008

To: The Honorable Marcus Oshiro, Chair
and Members of the House Committee on Finance

Date: February 26, 2008

Time: 4:30 p.m.

Place: Conference Room 308, State Capitol

From: Darwin L.D. Ching, Director
Department of Labor and Industrial Relations

**Testimony in SUPPORT
of
H.B. 1969, HD1 – Relating to Workers’ Compensation**

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

House Bill 1969, HD1, proposes to amend the definition of “employment” within Section 386-1, Hawaii Revised Statutes (“HRS”). This bill will allow small business owners to forgo the purchase of workers’ compensation coverage if they meet one of the three proposed exclusions:

1. Services performed by a partner of a partnership, within the meaning of section 425-101, HRS;
2. Service performed by a partner of a limited liability partnership, if the partner is an individual and has a transferable interest, within the meaning of section 425-127, HRS, in the partnership of at least 50 percent;
3. Services performed by a member of a limited liability company, if the member is an individual with distributional interest as defined in section 428-501, HRS, of at least fifty percent in the company; and
4. Services performed by a sole proprietorship.

H.B 1969, HD1, also ensures that no employee will be required to become a member or partner as a condition of employment.

II. CURRENT LAW

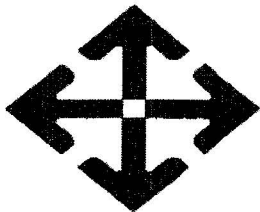
Currently, members of a limited liability company, partners in a partnership and partners in a limited liability partnership who provide services to the company are considered employees and are required to obtain workers' compensation coverage for themselves.

However, section 386-1, HRS, specifies if an individual owns at least 50% of a corporation, they are excluded from workers' compensation coverage.

III. HOUSE BILL

The Department of Labor and Industrial Relations strongly supports H.B. 1969, HD1, for the following reasons:

1. Hawaii's current workers' compensation law currently provides similar exclusions for corporation stockholders.
2. Limited Liability Company ("LLC"), Partners of a Partnership, and Limited Liability Partnership ("LLP") are a new type of business organization, owners and/or partners of a small business – regardless of the type of business entity – should be allowed to be exempt from purchasing workers' compensation coverage for themselves.
3. Employers/business entities would still be required to obtain workers' compensation coverage for their employees.
4. It is uncommon for an employer to sue himself, or file for workers' compensation.
5. The intent of workers' compensation is to protect employees from medical costs and lost wages, it should not necessarily be mandated upon employers or partners who do not wish to be covered.
6. This bill will clarify existing practice that sole proprietors are excluded from obtaining workers' compensation insurance for themselves.
7. Hawaii small businesses, organized as an LLC, Partner of a Partnership, and LLP will see immediate cost savings on workers' compensation insurance premium costs.



The Hawaii Business League

820 Mililani St., Ste. 810 Honolulu, Hawaii 96813-2938
Phone: (808) 533-6819 ♦ Facsimile: (808) 533-2739

February 26, 2008

Testimony To: House Committee on Finance
Representative Marcus R. Oshiro, Chair

Support

Presented By: Tim Lyons
Executive Vice President

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

Chair Oshiro and Members of the Committee:

I am Tim Lyons, Executive Vice 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.



Before the House Committee on Finance

DATE: February 26, 2008

TIME: 4:30 p.m.

PLACE: Conference Room 308

Re: HB 1969, HD1 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 pass **HB 1969, HD1**. NFIB supports this measure in its current form.

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.

We strongly support this measure and believe that it a major step toward supporting small business in Hawaii.

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.



HIIA

Hawaii Independent Insurance Agents Association

February 25, 2008

To: Representative Marcus Oshiro, Chair
Committee on Finance

From: Sonia M. Leong , Executive Director
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 not be misguided 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 opportunity to testify.

Testimony of Thomas J. Smyth, CEcD

Before the

House Committee on Finance

Tuesday, February 26, 2008

4:30 p.m. Room 308

on

HB1969 HD 1 Relating to Worker's Compensation

Chair Oshiro, Vice Chair Lee, 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 regulatory relief.

Legislation passed in 1993 to exclude 50% corporate owners. Eventually, support was obtained from organized labor 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 the exclusion provisions in HB1969 HD1.

When LLC's were authorized in 1996, we did a quick survey with DCCA and DLIR to determine what HRS changes were needed 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 the language included 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. Organized labor 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 HD1, 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 Worker's Compensation "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.

Memo

To: Representative Marcus Oshiro, Chair
Committee on Finance

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

Date: February 25, 2008

RE: HB 1969 HD1, Relating to Workers' Compensation Insurance – Employment Exclusion

Chair Marcus Oshiro and members of the Committee on Finance, thank you for reviewing this testimony. I am one of four 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 ANY form of business organization should be excluded**.

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.
- The Special Compensation Fund of the DLIR is funded by levying insurers as needed and will not be impacted by a reduction in premium created by this exclusion. Besides, "funding" is certainly not an appropriate justification to continue charging business owners discriminately.
- 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. Many employers provide benefits that are more beneficial to employees than statutory benefits. Continued or increased costs of statutory benefits reduce an employer's ability to provide voluntary additional benefits.

This bill should be passed with an effective date within the year. Using an effective date of 7/1/2009 to *allow for more dialogue* neglects the fact that this exclusion has been proposed every year at the legislature for many years. Every issue raised by opponents of this bill has been more than adequately addressed. It's time to act.

Thank you for the opportunity to testify.

