



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

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January 28, 2008

To: The Honorable Josh Green, Chair  
and Members of the House Committee on Health

Date: Wednesday, January 30, 2008  
Time: 8:00 a.m.  
Place: Conference Room 309, State Capitol

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

**In Opposition  
to  
H.B. 2126- Relating to Healthcare**

**I. OVERVIEW OF PROPOSED LEGISLATION**

House Bill 3368 proposes to require that hospitals establish a safety and health policy and program that identifies, assesses, and develops strategies to control the risk of injury to patients and healthcare workers and nurses associated with lifting and moving patients.

H.B. 3368 provides employee protections for reporting safety violations. Additionally, it gives the Department of Health the ability to investigate and fine a hospital \$500 to \$5,000 for each violation.

Finally, H.B. 3368 provides tax deduction for hospitals that purchase equipment for the moving of patients.

**II. CURRENT LAW**

Hawaii currently operates a federally approved "State Plan" regarding job safety and health for public and private employers. Hawaii's "state plan" is approved by the Occupational Safety and Health Administration ("OSHA"), which also monitors the HIOSH activities and provides up to 50 percent of HIOSH's operating costs.

LATE  
January 30, 2008

Chapter 396, Hawaii Revised Statutes (“HRS”) and §12-60-2, Hawaii Administrative Rules (“HAR”), requires that all employers (public and private) eliminate or control all existing and potential hazards within the workplace in a timely manner. Additionally, employers are required to comply with all HIOSH safety and health standards, which are reviewed and approved by the OSHA administration.

### **Written Safety and Health Plans**

§12-60-2(b), HAR, requires every employer with 25 or more employees to have a written safety and health program. The program must be made available to the employee upon request.

### **Whistleblower Protection**

Chapter 396-8(e), HRS, and §12-57-1, HAR, gives all employee, public and private, the right to file a safety and health complaint with the Department of Labor and Industrial Relations (“Department”) Hawaii Occupational Safety and Health (“HIOSH”) division. Additionally, Section 396-8(e) also provides “whistleblower” protection to employees who file complaint of an unsafe practice to the HIOSH. This section of law prohibits any employer, or their agent, from discharging or in any manner discriminating against any employee because the employee filed a complaint with the HIOSH.

Section 396-8(e) protections also extend to employees who are seeking a HIOSH inspection, participating in an HIOSH inspection, and participating or testifying in any proceeding related to an HIOSH inspection.

A person filing a complaint of discrimination or retaliation will be required to show that he or she engaged in protected activity, the employer knew about that activity, the employer subjected him or her to an adverse employment action, and the protected activity contributed to the adverse action. Adverse employment action is generally defined as a material change in the terms or conditions of employment. Depending upon the circumstances of the case, "discrimination" can include:

- Firing or laying off
- Blacklisting
- Demoting
- Denying overtime or promotion
- Disciplining
- Denial of benefits
- Failure to hire or rehire
- Intimidation
- Reassignment affecting prospects for promotion
- Reducing pay or hours

### **General Duty Clause**

HISOH can also cite an employer under the "General Duty Clause" (§12-60-2, HAR) which imposes an obligation on employers to maintain a safe and healthful workplace. The general duty clause requires every employer to provide every employee with a place of employment that is free from recognized hazards that are causing or are likely to cause death or serious physical harm. This obligation is an open-ended one because it is designed to protect employees in situations where there are no established standards.

### **Penalties**

HIOSH penalties range from \$0 to \$70,000, depending upon how likely the violation is to result in serious harm to employees. Other-than-serious violations often carry no penalties but may result in penalties of up to \$7,000. Serious violations may have penalties up to \$7,000. Repeat and willful violations may have penalties as high as \$70,000. Penalties may be discounted if an employer has a small number of employees, has demonstrated good faith, or has few or no previous violations.

## **III. HOUSE BILL**

The Department is opposed to H.B. 2126 for the following reasons:

1. H.B. 2126 duplicates the protections already provided to employees, as well as employer requirements, under Chapter 396, HRS and the related safety and health standards found in HAR.
2. Federal and State law task the Director of the Department with promulgating employee safety and health laws. This requirement is mandated to ensure that state safety and health standards are at "least as effective" as federal standards.

As such, any proposed safety and health standards adopted by the State is required to be reviewed and approved by federal OSHA. This is the "trade off" for allowing the State to regulate its own state safety and health program.

3. The Department has concerns regarding how this law would affect federal OSAs approval of Hawaii's "state plan". The enactment of this bill would in effect create a second regulatory agency, violation scheme, and penalty amounts regarding workplace safety and health for employees in the healthcare industry. This situation would likely lead to litigation as to who has jurisdiction over employee safety and health.
4. The proper avenue to address these concerns would be the administrative rule process.

Any party can propose a safety and health standard to the Department for consideration.

# Hawaii Pacific Health

55 Merchant Street • Honolulu, Hawaii 96813 • hawaiipacifichealth.org

LATE  
Testimony

[5 Copies]

Wednesday, January 30, 2008 – 8:00am  
Conference Room 329

## The House Committee on Health

To: The Honorable Joshua Green, M.D., Chair  
The Honorable John Mizuno, Vice Chair

From: Art Gladstone  
Chief Nurse Executive, Hawaii Pacific Health  
Chief Operating Officer, Straub Clinic & Hospital

**Re: Testimony in Opposition to HB 2126 - Relating to Healthcare**

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Dear Honorable Committee Chairs and Members:

My name is Art Gladstone, Chief Nurse Executive for Hawaii Pacific Health (HPH) and Chief Operating Officer for Straub Clinic & Hospital. For more than a century, families in Hawaii and the Pacific Region have relied on the hospitals, clinics, physicians and staff of Hawaii Pacific Health as trusted healthcare providers. Our non-profit integrated healthcare system is the state's largest healthcare provider and is committed to improving the health and well-being of the people of Hawaii and the Pacific Region through its four hospitals -- Kapi`olani Medical Center for Women & Children, Kapi`olani Medical Center at Pali Momi, Straub Clinic & Hospital and Wilcox Memorial Hospital -- 18 outpatient centers and a team of 1,100 physicians on the islands of Oahu, Kauai and Lanai.

While we believe in taking steps to ensure the safest possible work environment for all our employees, we **oppose HB 2126** as this bill duplicates employee safety efforts already in place at most hospitals. For example, we have an Environment of Care (EOC) Committee, which meets regularly to monitor the safe work environment at each of our facilities. This committee includes the safety officer, chief nurse executive, facilities manager, and nurses among other clinical staff. Additionally, hospital safety is reviewed nationally by the Joint Commission (formerly the Joint Commission on Accreditation of Healthcare Organizations) which accredits hospitals based upon thorough regular inspections. Mandating an additional layer of government reporting would only serve to increase the cost of delivering healthcare.

A final shortcoming of the bill is that it assumes that the availability of income tax credits would induce additional capital purchasing to employee patient safety. However, the overwhelming majority of hospitals in Hawaii are not-for-profit, so they would not receive any tax benefits from this bill.

We ask that you hold HB 2126. Thank you for the opportunity to testify.

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KAPIOLANI  
MEDICAL CENTER  
AT PALI MOMI



KAPIOLANI  
MEDICAL CENTER  
FOR WOMEN & CHILDREN



**Straub**  
CLINIC & HOSPITAL



*Wilcox Health*



**TESTIMONY OF THE STATE ATTORNEY GENERAL  
TWENTY-FOURTH LEGISLATURE, 2008**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 2126, RELATING TO HEALTHCARE.

**BEFORE THE:**

HOUSE COMMITTEE ON HEALTH

**LATE  
Testimony**

**DATE:** Wednesday, January 30, 2008 **TIME:** 8:00 AM

**LOCATION:** State Capitol, Room 329

*Deliver to: Committee Clerk, Room 436, 5 copies*

**TESTIFIER(S):** Mark J. Bennett, Attorney General  
or Andrea J. Armitage, Deputy Attorney General

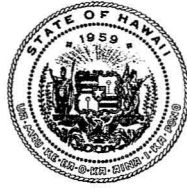
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Chair Green and Members of the Committee:

The Attorney General takes no position on this bill, but notes that there is an inconsistency that would cause legal problems with its implementation. Among other things, H.B. No. 2126 provides tax incentives for hospitals to purchase equipment for the moving of patients.

In section 1, at page 8, lines 17-21, the bill adds a section to chapter 321, Hawaii Revised Statutes (HRS), to provide for a tax **credit** to a hospital that purchases equipment for moving patients. It also refers to a new section being added to chapter 235, HRS. In section 2, at page 9, of the bill, the new chapter 235 section is set forth, but the new section allows for a tax **deduction**, not a tax credit.

Because a tax credit is different from a tax deduction, we would recommend that one of the sections be rewritten to make the two sections consistent to avoid the legal ambiguity as to what the Legislature intended.



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

LATE  
Testimony

In reply, please refer to:  
File:

**House Committee on Health**

**HB 2126, RELATING TO HEALTHCARE**

**Testimony of Chiyome Leinaala Fukino, M.D.  
Director of Health**

**January 30, 2008  
8:00 a.m.**

1 **Department's Position:** The Department appreciates the intent of this bill, but must respectfully  
2 oppose it as currently drafted.

3 **Fiscal Implications:** Staff time will be required to develop rules for the implementation of this  
4 measure, to monitor annual reports submitted by hospitals, to provide training to department surveyors  
5 on work- related ergonomic guidelines, and to investigate violations or suspected violations of this part.

6 **Purpose and Justification:** Current state licensing regulations for hospitals are in place aimed at  
7 preventing injuries to patients while being lifted or moved by hospital employees (HAR Title 11 Chapter  
8 93). Under these rules, hospitals are required to have written policies and procedures for moving  
9 patients in a safe manner, an ongoing quality assurance program to review and evaluate injuries, and  
10 annual staff training for accident prevention. The safety of hospital employees is regulated exclusively  
11 by the Hawaii Department of Labor and Industrial Relations Occupational Health and Safety Division as  
12 mandated by the federal government. We defer to the Department of Taxation on components relating  
13 to the tax credit, but we would like to point out that numerous other types of health facilities face similar  
14 conditions (nursing homes, care homes, etc) and our not-for profit hospitals would not be eligible for  
15 this assistance.

16 Thank you for the opportunity to testify.

# LATE Testimony

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**May Mizuno**

**From:** Jackson, Susan J. [susan.jackson@doh.hawaii.gov]  
**Sent:** Tuesday, January 29, 2008 6:44 PM  
**To:** HLTtestimony  
**Cc:** Aquino, Julie A.  
**Subject:** HB 2126\_HTH\_01-30-08\_HLT Testimony 8 AM  
**Importance:** High

HB 2126 Relating to Healthcare - Testimony from Department of Health  
Testifier - Susan Jackson, Deputy Director  
House Health Committee Hearing 8 AM Wed, January 30.

Susan Jackson  
Deputy Director  
Hawaii Department of Health  
808-586-4412 (Tel)  
808-586-4368 (Fax)  
[Susan.Jackson@doh.hawaii.gov](mailto:Susan.Jackson@doh.hawaii.gov) (NEW)  
or  
[Susan.J.Jackson@hawaii.gov](mailto:Susan.J.Jackson@hawaii.gov)



## May Mizuno

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**From:** Ken Obayashi [kenobayashi@hotmail.com]  
**Sent:** Wednesday, January 30, 2008 1:17 AM  
**To:** HLTtestimony  
**Subject:** HB 2126

**LATE**  
**Testimony**

TESTIMONY SUPPORTING HB 2126 RELATING TO HEALTHCARE WORKER SAFETY.

To: Chair Josh Green, MD, and Vice Chair John Mizuno  
House Committee on Health

From: Kenneth K. Obayashi, RN  
1448 Young St., Apt. 207  
Honolulu, HI 96814

Date: January 29, 2008

Dear Chair Green, Vice Chair Mizuno, and members of the Committee on Health:

I've been a Registered Nurse for 16 years working in California and here in Hawaii and I am testifying in support of HB 2126. I have seen too many of my coworkers get injured on the job from lifting and turning patients to slipping on wet floors. A seriously injured nurse often goes out on temporary disability and adds to the nursing shortage. I have seen back injuries, cracked ribs, broken wrists and arms, knee injuries, and stress from overwork.

HR 2126 is needed by the bedside nurse and other caregivers to help minimize injuries and loss of employment and help protect our patients as well.

Mahalo nui loa,

Ken Obayashi, RN  
Hawaii Medical Center East  
Hawaii Nurses Association

Claudine M. Tomasa, RN

1268 Mokapu Boulevard

Kailua, Hawaii 96734

TESTIMONY SUPPORTING HB 2126 RELATING TO HEALTHCARE WORKER SAFETY

To: Chair Josh Green, MD, and Vice Chair John Mizuno

House Committee on Health

From: Claudine M. Tomasa, RN

Date: January 30, 2006

Re: House Bill No 2126 Relating to Health and Safety; Nursing; Healthcare

Good morning Chair Green, Vice Chair Mizuno, and members of the Committee on Health.

My name is Claudine Tomasa. I am a Registered Nurse and I am testifying in support of HB 2126. This bill is intended to protect Hawaii's healthcare workers and their patients from unnecessary risks, and exposure to injuries associated with lifting and moving patients.

As a Registered Nurse for 33 years, I have witnessed many coworkers/colleagues suffering from a work related muscular-skeletal injury. Many injured nurses and healthcare workers are unable to return to work –at full duty. I am aware of several injured nurses who are unable to return to the profession that they dearly love – caring for Hawaii's patients or, bedside nursing – thus, adding to the nursing shortage.

These injuries could have been prevented with the availability of lifting equipment or lift teams- to minimize manual lifting/repositioning of patients. HB 2126 will promote a safer environment for both patient and the healthcare worker by: 1)providing protection to any healthcare worker who-in good faith- reports to the Dept. of Health, a violation that he/she believes may expose workers/patients to unacceptable injury, 2) provides authority to the DOH to invoke penalty should unsafe conditions are not addressed by a hospital, and 3) provides tax credit for hospitals purchasing equipment for the moving of patients.

All parties win with the passing of HB2126. Thank for allowing me to testify in support of HB2126 Relating to Health and Safety; Nursing; Healthcare.