

SB3078

Measure Title:
RELATING TO WORKSITE WELLNESS PROGRAMS.

Report Title:
Worksite Wellness Programs

Description:
Gives State and counties immunity from liability for injury and damage that occur as a result of voluntary participation in state and county worksite wellness programs.

Package:
Governor

Companion:
HB3156

Introducer(s):
HANABUSA (BR)

Current Referral:
HTH, JDL



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HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

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The Twenty Fourth Legislature, State of Hawaii
Hawaii State Senate
Committee on Health
Committee on Commerce, Consumer Protection, and Affordable Housing

Testimony by
HGEA/AFSCME, Local 152, AFL-CIO
February 13, 2008

S.B. 3078 - RELATING TO WORKSITE WELLNESS PROGRAMS

The Hawaii Government Employees Association, Local 152, AFL-CIO, supports S.B. 3078. The Department of Health has implemented a demonstration pilot project to encourage employees to increase their physical activity level and to eat healthier. There was concern about employees who might sustain an injury while participating in this voluntary program. This bill addresses the issue of liability which has been a major concern of employers considering adopting this program. This bill provides the employer immunity from liability should an employee sustain an injury while in the program. Additionally, employees will be eligible for Workers Compensation benefits while participating in this program.

A worksite wellness program would encourage employees to improve their overall fitness level and mental alertness on the job. Healthier employees should have a positive impact by reducing the amount of sick leave taken by employees. Operational costs such as over time pay should also be reduced for the employer. In the long run, healthcare costs to the employer should be reduced.

We respectfully urge the passage of S.B. 3078 from your committee. Thank you for the opportunity to submit our testimony in support of this bill.

Respectfully Submitted,

Nora A. Nomura
Deputy Executive Director



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**TESTIMONY BEFORE THE SENATE COMMITTEE ON
HEALTH**

RE: SB 3078 – RELATING TO WORKSITE WELLNESS PROGRAMS.

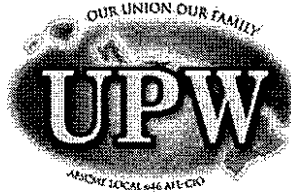
February 13, 2008

**ROGER TAKABAYASHI, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION**

Chair Ige and Members of the Committee:

The Hawaii State Teachers Association supports SB 3078 which gives the state and counties immunity from liability for injury and damage that occur as a result of voluntary participation in state and county worksite wellness programs.

Thank you for the opportunity to testify.



**THE SENATE
COMMITTEE ON HEALTH
COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND
AFFORDABLE HOUSING
WEDNESDAY, FEBRUARY 13, 2008, 1:15 P.M.**

**TESTIMONY IN SUPPORT OF SB 3078
DAYTON M. NAKANELUA, STATE DIRECTOR, UNITED PUBLIC WORKERS**

Chair Ige, Vice Chair Fukunaga, Chair Kokubun, Vice Chair Ige, and members of Senate Committee on Health, and Senate Committee on Commerce, Consumer Protection, and Affordable Housing, thank you for this opportunity to testify on Senate Bill 3078.

My name is Dayton M. Nakanelua, and I am the State Director of United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). UPW represents blue collar, non-supervisory employees in Bargaining Unit 1 and institutional, health, and correctional employees in Bargaining Unit 10 in the State of Hawaii, and the various counties. UPW also represents members in the private sector. As a statewide union with 13,000 plus members, UPW supports Senate Bill 3078 with reservation.

SB 3078 proposes that State and counties will implement worksite wellness program with employees to encourage increasing physical activity. Such a program in a State or county worksite is intended to assist employees in making voluntary behavioral changes that reduce their health and injury risks, improve their health consumer skills, and enhance their individual productivity and well-being.

UPW has more than 10,000 members working for the State and counties, and the program will be beneficial for them. Although SB 3078 provides that an employee injured during voluntary participation in the worksite wellness program shall be eligible for workers compensation benefits as described in section 386-3, the bill also proposes that the State and counties shall be immune from liability for injury and damage result from the program. This immunity is not for the best interest of State and county employees, and UPW is opposed to this point.

In conclusion, UPW supports the purpose and intent of SB 3078. However, the union is opposed to any adverse impact this legislation may create to employee rights and benefits presently provided by Chapter 386, HRS.

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE CONSUMER
LAWYERS OF HAWAII (CLH) REGARDING S.B. NO. 3078**

February 13, 2008

To: Chairman David Ige and Members of the Senate Committee on Health:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Consumer Lawyers of Hawaii (CLH) regarding S.B. No. 3078.

This bill seeks to encourage worksite wellness programs by state and county government by expressly providing workers compensation benefits to employees injured during voluntary participation in worksite wellness programs. The bill also provides that the governmental agency shall be immune from liability for injury and damage that result from voluntary participation in worksite wellness programs. The bill does not state whether this immunity from liability applies to injuries to the employee, to a third-party who may be injured by an employee participant, or both the injured employee and the third-party.

Current workers compensation law already provides immunity from claims by injured employees who are eligible for workers compensation benefits, so that the immunity granted with respect to injured employees is redundant of existing law. CLH does not object to the granting of such immunity where the injured worker is provided workers compensation benefits in lieu of a personal injury claim against their government employer. CLH opposes the immunity provision if it is intended to apply to third-parties who are not participants of the worksite wellness program and who are not accorded workers compensation benefits under this measure.

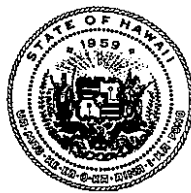
If the immunity is intended to apply only to the injured worker who is given workers compensation benefits, then this measure should be amended to specifically state that “the state

and the counties shall be immune from liability for injury and damage to an employee that result from voluntary participation in a state or county worksite wellness program.”

If immunity provision is intended to apply to third-parties who may be injured by employees participating in government worksite wellness programs, it is requested that an indemnity provision similar to the provision agreed upon by the Department of Health for S.B. No. 3077 be inserted.

Thank you very much for this opportunity to testify regarding S.B. No. 3078.

LINDA LINGLE
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.
DIRECTOR OF HEALTH

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

In reply, please refer to:
File:

SENATE COMMITTEE ON HEALTH

SB3078, RELATING TO WORKSITE WELLNESS PROGRAMS

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

February 13, 2008
1:15 PM

1 **Department's Position:** The Department strongly supports this Administration bill.

2 **Fiscal Implications:** None

3 **Purpose and Justification:** This bill amends Chapter 321 of the Hawaii Revised Statutes by adding a
4 new section, "Worksite Wellness." This measure would grant the State and counties immunity from
5 liability for injury and damage that occur as a result of voluntary participation in state and county
6 worksite wellness programs except for willful and wanton misconduct, gross negligence, or intentional
7 misconduct.

8 Currently, state and county agencies may be liable for injury and damage that occurs through
9 voluntary participation in worksite wellness programs such as departmental lunch walking groups and
10 stairwell promotions to increase physical activity during the work day. While departments and
11 employees may be supportive of physical activity and health promotion activities, the threat of liability
12 has had a dampening effect.

13 In Hawaii, about half of the population are at a healthy weight and meet the recommendations
14 for physical activity and one fifth eat a minimum of five servings of fruits and vegetables a day. The
15 options and accepted practices in the workplace contribute to these health statistics. Worksite wellness

1 programs have been shown effective in promoting healthy behaviors. The Department requests your
2 support so State and county agencies can encourage voluntary participation in worksite wellness
3 programs without the disincentive of liability.

4 There have been further discussions on this measure regarding workers compensation benefits.
5 The Department will return with proposed amendments to the language.

6 Thank you for the opportunity to provide testimony.