

Ronald I. Heller
700 Bishop Street, Suite 1500
Honolulu, Hawaii 96813

phone 808 523 6000 fax 808 523 6001
rheller@torkildson.com

**TESTIMONY BEFORE HOUSE COMMITTEE
ON ECONOMIC REVITALIZATION & BUSINESS**

Re: House Bill 519

**Thursday, February 3, 2011 at 11:00 am
State Capitol – Conference Room 312**

Chair McKelvey, Vice-Chair Choy, and Members of the Committee:

My name is Ronald Heller. I am an attorney, and my clients include many small businesses in Hawaii. I support House Bill 519.

The Workers' Compensation law in Hawaii allows owner-employees, in certain circumstances, to decide not to buy Workers' Compensation insurance coverage for themselves. The current law, however, is irrational and unfair.

Under current law, the rules for Limited Liability Companies ("LLCs") are different from the rules for corporations. For corporations, current law provides that an owner-employee holding at least 50% of the stock is exempt from the requirement of Workers' Compensation coverage. (The owner-employee *may* choose to buy coverage on himself or herself, but it's not required.) If a business is organized as an LLC, however, then there is no exemption at all, regardless of the percentage owned. This is totally irrational – if a business is incorporated, a 50% owner is not required to have Workers' Comp coverage, but if that same business is an LLC, then even an 80% or 90% owner has to be covered.

There is no logical reason for this difference -- it's just a historical accident. The Workers' Compensation law was written before LLCs existed in Hawaii, so LLCs were not mentioned. The law we have today reflects the business world of 25 years ago.

The Twenty-Sixth Legislature
Regular Session of 2011

HOUSE OF REPRESENTATIVES

Committee on Economic Revitalization & Business

Rep. Angus L.K. McKelvey, Chair

Rep. Isaac W. Choy, Vice Chair

Committee on Labor & Public Employment

Rep. Karl Rhoads, Chair

Rep. Kyle T. Yamashita, Vice Chair

State Capitol, Conference Room 312

Thursday, February 3, 2011; 11:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 519
RELATING TO WORKERS' COMPENSATION**

The ILWU Local 142 opposes H.B. 519, which excludes services performed by an individual who is a member of a limited liability company or a partner of a limited liability partnership who has a distributional interest in the company or partnership of at least fifty percent, a partner or a partnership, and a sole proprietor from the definition of "employment" under the workers' compensation law.

Our main objection to this proposal is that these exemptions, while seemingly minor, could lead to more exemptions that will eventually undermine the workers' compensation system. Furthermore, if employees seeking exemption should become injured on the job, the cost of their medical care will be foisted onto the employer's health plan, thus increasing experience on the health plan while exempting workers' compensation where the care for the injury rightfully belongs.

The ILWU urges that H.B. 519 be held. Thank you for considering our views.

**Testimony to the House Committees on Economic Revitalization & Business
and Labor & Public Employment
Thursday, February 03, 2011
11:00 a.m.
Conference Room 312**

RE: HOUSE BILL NO. 519 RELATING TO WORKERS' COMPENSATION

Chairs McKelvey and Rhoads, Vice Chairs Choy and Yamashita, and members of the committees:

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. 519, relating to Workers' Compensation.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

This measure excludes services performed by an individual who is a member of a LLC or a partner of a LLP who has a distributional interest in the company or partnership of at least 50%, a partner of a partnership, and a sole proprietor from the definition of "employment" under the workers' compensation law.

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:

- 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.
- 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.
- 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. Many states have some statutory provision that make workers' compensation coverage elective for sole proprietors and some statutory provision that makes workers' compensation coverage elective for LLC members.

For these reasons, the Chamber urges your Committee to pass this measure. Thank you very much for the opportunity to testify.



**Before the House Committee on Economic Revitalization and Business and
the House Committee on Labor and Public Employment**

DATE: February 3, 2011
TIME: 11:00 a.m.
PLACE: Conference Room 312

Re: HB 519
Relating to Workers' Compensation
Testimony of Melissa Pavlicek for NFIB Hawaii

Thank you for the opportunity to testify in support of HB 519. NFIB strongly supports this measure.

NFIB has long supported making the workers compensation law with respect to limited liability company owners equitable as compared to the owners of corporations and recommends this measure for approval. Because the state Workers' Compensation law predates the existence of the LLC in Hawaii, this bill will resolve an oversight in the language of the law. The law should be amended to allow LLC's the option to purchase Workers' Compensation insurance since often partners make up their entire workforce. This measure has the potential to save small business owners in Hawaii a sizeable amount each year that was unfairly and unnecessarily charged to them. We recognize and appreciate the efforts of legislators to address small business concerns.

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.



Representative Angus McKelvey, Chair
Representative Isaac Choy, Vice Chair
Committee on Economic Revitalization & Business

Representative Karl Rhoads, Chair
Representative Kyle Yamashita, Vice Chair
Committee on Labor & Public Employment

State Capitol, Honolulu, Hawaii 96813

HEARING Thursday, February 03, 2011
 11:00 am
 Conference Room 312

RE: HB519 Relating to Workers' Compensation

Chairs McKelvey and Rhoads, Vice Chairs Choy and Yamashita, and Members of the Committees:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. The retail industry is the one of the largest single employers in the state, employing almost 24% of the labor force.

RMH supports HB519, which excludes services performed by an individual who is a member of a limited liability company or a partner of a limited liability partnership who has a distributional interest in the company or partnership of at least 50%, a partner of a partnership, and a sole proprietor from the definition of "employment" under the workers' compensation law.

A business owner who is not actively involved in the day-to-day activities of the business most likely would not suffer a work-related injury and therefore would not benefit from workers' compensation insurance. Even if the owner does work at the business, there would be little or no gain to file a worker's compensation claim, which would result in increased premium costs borne by the business. In the case of a sole proprietorship, an injury would likely result in the termination of the business operations.

Admittedly, worker's compensation insurance imposes additional costs on the business. This exclusion would provide additional and much needed financial resources to the small business person.

The members of the Retail Merchants of Hawaii respectfully request that you pass HB519. Thank you for your consideration and for the opportunity to comment on this measure.

Carol Pregill, President

RETAIL MERCHANTS OF HAWAII
1240 Ala Moana Boulevard, Suite 215
Honolulu, HI 96814
ph: 808-592-4200 / fax: 808-592-4202