

**HB519,HD1**

**Testimony**



**Testimony to the Senate Committee on Judiciary and Labor  
Tuesday, March 15, 2011  
9:30 a.m.  
Conference Room 016**

**RE: HOUSE BILL NO. 519 HD1 RELATING TO WORKERS' COMPENSATION**

Chair Hee, Vice Chair Shimabukuro, 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. 519 HD1, 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.

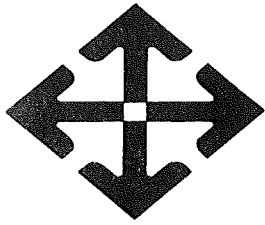
Workers' compensation provides medical insurance and wage loss for work related injuries for employees while protecting employers from civil liability resulting from such injuries. The Chamber believes that this measure is consistent with the intent of protecting employees while helping employers reduce 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.



# The Hawaii Business League

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March 15, 2011

Testimony To: Senate Committee on Judiciary and Labor  
Senator Clayton Hee, Chair

Presented By: Tim Lyons  
President

Subject: H.B. 519, HD 1 – RELATING TO WORKERS' COMPENSATION

Chair Hee 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.



**Integrated Economic Solutions, LLC**  
**Harbor Tower, Suite 2303**  
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**Honolulu, 96813**

**Testimony of Thomas J. Smyth, CEcD**  
**Before the**  
**Senate Committee on Judiciary and Labor**  
**Tuesday, March 15, 2011, 9:30 am Room 016**  
**On**  
**HB 519 HD 1 Relating to Workers' Compensation**

Chair Hee, Vice Chair Shimabukuro, and Members of the Committee:

**I strongly support HB 519 HD1 that excludes those with 50% interest in a Limited Liability Company or Limited Liability Partnership, individual partners and sole proprietors, from mandatory workers' compensation insurance coverage.**

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

I do appreciate the strong support for this bill from DLIR and the business organizations that represent many similar LLC's. Arguments about "coverage gaps" or "costs to the government" are really not a factor in this measure. Worker's Compensation is insurance purchased by an employer from a private insurance company or through self-insurance. There is no added cost to the state if some persons are not covered. The opposite could be argued: that continuing to require this coverage adds to the Disability Compensation Division work load and costs.

It took us two years to get legislation passed in 1993 to exclude 50% corporate owners. Eventually, support was obtained from all concerned, including those representing organized labor, when the provision that an employer would not make an employee form a corporation to avoid insurance coverage was added. The same language is in the exclusion provisions in HB 519 HD1.

When LLC's were authorized in 1996, DBEDT 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 in Chapter 386 that were 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 would need 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 broadened the exclusion as in HB 519, have not passed.

**This is a simple matter of fairness and equity.** Majority owners in these types of business structures should be able to voluntarily opt out of coverage and provide their own insurance as they can for corporations. The important "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. Most other states that mandate workers' compensation do allow majority managers of LLCs and partnerships to opt out of coverage. Hawaii looks very "business-unfriendly" to companies we are working hard to attract, if this provision is not in place.

**I urge you to pass this bill that will affect thousands of LLCs. With this committee's strong support this time it may make it through to enactment.**

Thank you for the opportunity to provide testimony.



## **Before the Senate Committee on Judiciary and Labor**

DATE: Tuesday, March 15, 2011

TIME: 9:30 a.m.

PLACE: Conference Room 016

### **HB 519 HD1: Relating to Workers' Compensation Testimony of Melissa Pavlicek for NFIB Hawaii**

Thank you for the opportunity to testify in support of HB 519 HD1. 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.





Senator Clayton Hee, Chair  
Senator Maile Shimabukuro, Vice Chair  
Committee on Judiciary & Labor  
State Capitol, Honolulu, Hawaii 96813

HEARING      Tuesday, March 15, 2011  
                    9:30 am  
                    Conference Room 016

**RE:    HB519 HD1, Relating to Workers' Compensation**

Chair Hee, Vice Chair Shimabukuro, and Members of the Committee:

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, HD1**, 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, HD1. Thank you for your consideration and for the opportunity to comment on this measure.

Carol Pregill, President



# HIIA

## *Hawaii Independent Insurance Agents Association*

March 15, 2011

To: Senator Clayton Hee, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair  
Committee on Judiciary & Labor

From: Sonia M. Leong , Executive Director  
Hawaii Independent Insurance Agents Association

Re: Hearing: Tuesday, March 15, 2011 9:30 am Conference Room 016  
HB 519 HD1 HSCR694, Relating to Workers Compensation  
Employment Exclusion

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The Hawaii Independent Insurance Agents supports HB 519 HD1 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. We are a non profit trade association of independent insurance producers dedicated to assisting the insurance buying public with their insurance needs.

We support the intent of HB519 HD1 which would help 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.

Because this exclusion has not been clearly stated in the past, the Department of Labor & Industrial Relations (DLIR) took the conservative approach 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 HB 519. The positive outcome of HB 519 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 provide testimony.