



**Testimony to the Senate Committee on Judiciary and Labor
Tuesday, February 5, 2013
10:00 a.m.
State Capitol - Conference Room 016**

RE: SENATE BILL NO. 1263 RELATING TO LABOR

Chair Hee, Vice Chair Shimabukuro, and members of the committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** SB 1263 Relating to Labor.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 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.

SB 1263 requires employers to provide meal breaks for employees and imposes penalties for failure to provide meal breaks. The Chamber believes the Bill is unnecessary and opposes the Bill for the following reasons:

First, the Bill will cause confusion and litigation regarding the calculation of overtime payments due to the unintended effect of altering current law on calculating employees' regular rate of pay for overtime purposes. For example, under FLSA, employers can exclude premium pay given for work on holidays or weekends when calculating the employee's regular rate of pay for overtime purposes. Under Hawaii law, if the bill passes, an employer would have to factor in premium pay in calculating the regular rate because the only method of calculating the regular rate of pay under Hawaii law is to take the total earnings for the period and divide by the number of hours worked.

Second, a meal break, we believe is unnecessary. Most employers already provide meal breaks, and in many cases provide meal breaks longer than 30 minutes.

Third, the bill will hurt employees who would rather work through their lunch or take shorter breaks in order to shorten their work day. Employers who currently operate ten hour shifts would be required to force employees to take an unpaid 30 minute meal break before the fifth and again before the tenth hour of work, thereby prolonging an already long work day.

Fourth, the bill will require employers to carefully monitor employees to ensure that they take meal breaks before 5 continuous hours of work have passed. To avoid paying this penalty, employers will have to send supervisors to every employee's cubicle and work location to make sure that employees have taken lunch breaks on time.

Finally, this bill imposes a significant administrative weight on employers, requiring them to create procedures to record meal breaks and to record whether a person elects to forego a meal break in order to obtain overtime pay. The bill may require employers to revise, rewrite or reprogram their payroll systems to recognize the one-half hour per day overtime allocation.

Hawaii's businesses are in the process of recovering from an economic stagnation. The Chamber firmly believes that the enactment of this mandate at this time will greatly hamper the efforts to revitalize the economic climate.

Overall, this bill will significantly increase the cost of doing business in Hawaii. For these reasons, the Chamber opposes this measure. Thank you very much for the opportunity to testify.

Senator Clayton Hee, Chair
Senator Maile S. L. Shimabukuro, Vice Chair
Committee on Judiciary and Labor
State Capitol, Honolulu, Hawaii 96813

HEARING Tuesday, February 05, 2013
10:00 am
Conference Room 016

RE **SB1263, Relating to Labor**



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 one of the largest employers in the state, employing 25% of the labor force.

RMH strongly opposes SB1263, which requires employers to provide meal breaks for employees who work more than a total of five hours a day and imposes penalties on employers who fail to provide meal breaks. This mandate is unnecessary and will increase costs in an already uncertain economy.

We particularly are concerned with Section 2, subsection (g) which provides "that if an employee who is scheduled to work a total of six hours chooses, the employee may be allowed to work uninterrupted for five hours and thirty minutes without a bona fide meal period, to complete the scheduled work hours at least thirty minutes early." If an employee is scheduled to work a six-hour shift, the mandated bona fide meal break would add an additional one-half hour to his/her schedule. The option described in subsection (g) essentially reduces the employee's shift to five and one-half hours.

More importantly, the employer **MUST** have complete authority to determine the work schedule, and any changes that the employee chooses **MUST** be approved by the employer. In the highly competitive, customer-directed retail industry where superior service is tantamount to success, retailers develop staffing schedules that ensure attention to and assistance for consumers while providing ample rest and meal breaks for their associates. The employer must be allowed to determine when the employee takes that break in order to avoid inadequate staffing and possible imposition and hardship on other employees. It is quite possible that there could be a situation when all the employees within a particular area decide to take their breaks at the same time, leaving the area without staffing and subjecting sales associates in nearby areas to the wrath of annoyed customers.

From the standpoint of the part-time employee working a five-hour shift, requiring a one-half-hour meal break will add additional time at the workplace that could interfere with other commitments. For example, a working mother's schedule might be to drop off children at school, report to work for a five-hour shift, then rush to pick up the children. A student might be in a similar situation with a break between classes. Rather than a benefit, this mandate is a detriment to the employee.

The members of the Retail Merchants of Hawaii respectfully urge you to hold SB1263. Thank you for the opportunity to comment on this measure.

Carol Pregill, President

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

"Building Better Communities"

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Testimony to the Senate Committee on Judiciary and Labor Tuesday, February 5, 2013 10:00 a.m. State Capitol - Conference Room 016

RE: S.B. 1263, RELATING TO LABOR

Dear Chair Hee, Vice-Chair Shimabukuro, and members of the committee:

My name is Gladys Marrone, Government Relations Director for the Building Industry Association of Hawaii (BIA-Hawaii), the voice of the construction industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, affiliated with the National Association of Home Builders.

BIA-Hawaii **strongly opposes** S.B. 1263, which mandates employers to provide meal breaks for employees and imposes penalties for failure to provide meal breaks.

BIA-Hawaii's membership is comprised of mostly small businesses. This bill imposes an administrative burden on employers, requiring them to create procedures to record meal breaks and to record whether a person elects to forego a meal break in order to obtain overtime pay. These small businesses will be burdened by these additional procedures.

Mandating a meal break, we believe, is unnecessary. Most employers already provide meal breaks and, in many cases, provide meal breaks longer than 30 minutes. This bill will hurt employers with employees who would rather work through their lunch or take shorter breaks in order to shorten their work day.

In December, 2012, the Small Business & Entrepreneurship Council's 17th "U.S. Business Policy Index", which ranks states on policy measures and costs impacting small business and entrepreneurship, put Hawaii at No. 45 among the 50 states and Wash., D.C.

At a time when the State is placing an emphasis on jobs and the economy, this measure, and any other mandate that creates perceived or real additional costs, will undermine those efforts, hinder economic progress and entrepreneurial activity, and deter business investment in our State. Passage of this measure would be unfortunate and devastating for Hawaii's economic recovery.

Senator Clayton Hee Chair
Judiciary and Labor
February 5, 2013
SB 1263

Small businesses are especially vulnerable to any increase in costs, especially those who operate on low margins. In order to adjust to the consequences of this measure, many small employers will be required to offset higher costs through lower wages to their employees, fewer work hours, less pay raises, decreased discretionary benefits, and higher health care costs. Furthermore, increased cost of doing business is ultimately passed on to the consumer. Even worse, for those companies on the "tipping point," any increase may force them to close shop.

For the foregoing reasons, BIA-Hawaii is **strongly opposed** to S.B. 1263.

Thank you for the opportunity to express our views on this matter.



Hawaii Business League

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February 5, 2013

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

Presented By: Tim Lyons
President

Subject: S.B. 1263 – RELATING TO LABOR

Chair Hee and Members of the Committee:

I am Tim Lyons, President of the Hawaii Business League, a small business organization. We are opposed to this bill based not on its intent but because we believe it is unnecessary.

We are also not opposed to this bill because we think that employees should have to work forever without meal breaks however, we do find that the complaints in this area seem to be almost nonexistent; at least, we have not heard of any.

Secondly, most employers are aware of the fact that employees need periodic breaks from their work and they will accommodate this without requiring employees to work straight through if

for no other reason than productivity is better when employees are in good health and get the proper nourishment.

In fact, we know of situations where employers, because of extreme circumstances have had to require their employees to work straight through without a break but then give them additional time off at the end of the day or reward them with some other type of bonus. Drivers stuck in traffic, construction crews with fifteen (15) minutes more needed to close a job instead of returning the next day, a retail salesperson in the middle of a sales transaction all come to mind as to situations where the employee delaying a break could be essential. To mandate as a requirement, particularly with a one and one half hour penalty provision, not only will work against the employer but we believe in many cases, will work to the employee's disadvantage as well.

Based on the above, we do not support this bill.

Thank you.