



HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

March 22, 2016
Rm. 325, 2:00 p.m.

To: The Honorable Karl Rhoads, Chair
The Honorable Joy San Buenaventura, Vice-Chair
Members of the House Committee on Labor & Public Employment

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: S.B. No. 2313, S.D.2, H.D. 1

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services. The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

The HCRC strongly supports S.B. No. 2313, S.D.2, H.D. 1 which amends our state equal pay law, HRS § 378-2.3. The bill would amend the statute by adding a new subsection § 368-2.3(b), to provide that an employer may not prohibit an employee from disclosing wages, or discussing, inquiring, aiding or encouraging any other employee from doing so. This amendment to the statute is a critically important substantive enhancement to our state equal pay law.

H..D. 1 amends HRS §368-2.3 to clarify and narrowly tailor the exceptions to the statute’s equal pay protections, and explain factors for wage differentials. HCRC supports the current language in H.D. 1, regarding exceptions. The HCRC strongly recommends one substantive change to the current bill, a return to the use of the term “substantially similar,” used in the original bill, and prior drafts, rather than the term “substantially equal,” in H.D. 1. Substantially similar is meant to encompass work that is similar, but may not be identical, and broaden the possibility of equal pay. Using broader language would require that employees be paid equally to other employees holding similar jobs, but with different titles such as a female housekeeper who cleans hotel rooms, and a male janitor who does substantially similar work cleaning the lobby and banquet halls, but receives higher wages.

Keeping in mind that current statutes have improved the pay gap between men and women, the goal is to eliminate gender wage gaps. New legislation, with new language, is needed.

The HCRC strongly supports this bill, and an end to pay disparity between men and women who do similar work. Equal pay for equal or substantially similar work will benefit families, and children, as well as women employees.



March 22, 2016

To: Representative Karl Rhoads, Chair
Representative Joy San Buenaventura, Vice Chair and
Members of the Committee on Judiciary

From: Jeanne Y. Ohta, Co-Chair

RE: SB 2313 SD2 HD1 Relating to Equal Pay
Hearing: Tuesday, March 22, 2016, 2:00 p.m., Room 325

POSITION: STRONG SUPPORT with amendments

The Hawai'i State Democratic Women's Caucus writes in strong support of SB 2313 SD2 HD1 Relating to Equal Pay. The Caucus supports amendments to the bill proposed by the Hawai'i State Commission on the Status of Women and also requests that the original language "substantially similar work" replace "substantially equal work."

The fact that the pay gap between men and women has been stagnant and has not continued narrowing, necessitates more effort in ensuring the concept of equal pay for equal work. California passed legislation improving their equal pay statute last year. In addition, approximately 24 states are considering updating their statutes this year.

This measure improves our current equal pay statute. It ensures that employees performing substantially similar work are paid equally; changes the requirement of "equal work" to "substantially similar work;"; revises the "bona fide factor other than sex" defense to require employers to prove a business necessity for using the factor; and ensures that any legitimate, non-sex related factor(s) relied upon are applied reasonably and account for the entire pay differential.

In addition, it prevents employers from retaliating against any employee who discusses her pay with others; because if employees cannot discuss their salaries, they cannot learn that they are being paid less.

Current statutes have "catch all" which allow loopholes for employers and have been difficult for employees to prove discrimination.

The Hawai'i State Democratic Women's Caucus is a catalyst for progressive, social, economic, and political change through action on critical issues facing Hawaii's women and girls. It is because of this mission that we respectfully request that the committee pass this bill.

Bernard P. Carvalho Jr.
Mayor

Jay Furfaro
Boards and Commissions Administrator

Nadine Nakamura
Managing Director



**COMMITTEE ON THE STATUS OF WOMEN
COUNTY OF KAUAI
Office of the Mayor
4444 Rice Street, Suite 150
Līhu'e, Hawai'i 96766**

March 20, 2016

To the Honorable Senate President Kouchi
The Senate Twenty-Eighth Legislature, 2016
State of Hawaii
415 South Beretania Street
Room 409
Honolulu, HI 96813

Dear Senate President Ronald Kouchi:

Testimony in Support of S.B. No. 2313/sd2 – Relating to Equal Pay

The Kaua'i County Committee on the Status of Women is a countywide committee which develops and promotes education, interactive opportunities on issues relating to women and girls, prevention of domestic violence, and health and wellness awareness.

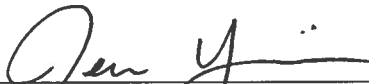
Queen Kaahumanu began the recognition in women's rights in the 1820's by becoming the co-leader with Prince Liholiho and abolishing 'ia kapu' prohibiting women from eating certain foods and eating separately from men.

We are writing you regarding Senate Bill No. 2313/sd2, relating to equal pay to promote gender equality in the workplace and close the pay gap between men and women. Women comprise 47% of the total U.S. labor force of 2016. Our purpose here is to emphasize identification and action on the opportunities, needs, problems and contributions of women in our community and throughout the state. Senate Bill 2313 culminates years of effort to recognize the need for wage equality for women in the workforce.

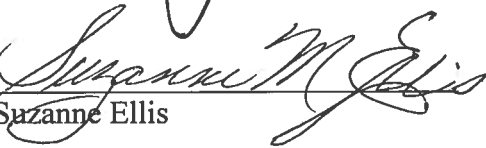
As representatives for women in the workforce today, we appeal to your sentiment to acknowledge the need for this bill to be enacted by the Legislature of the State of Hawaii. Thank you for your time and consideration on this important matter.

Mahalo,

Virginia Beck, Chair



Jenai Yoshii, Vice Chair

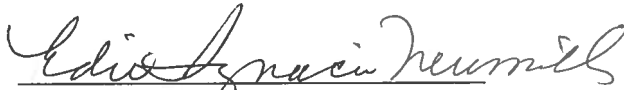


Suzanne Ellis



Kathy Crowell

Sharon Lasker



Edie Ignacio-Neumiller

Liza Cabal-Trinidad



Erika Valente



Executive Officers:
Derek Kurisu, KTA Superstores - Chairperson
John Erickson, Young's Market Company - Vice Chair
Bob Stout, Times Supermarkets - Secretary/Treasurer
Lauren Zirbel, Executive Director

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TO: COMMITTEE ON JUDICIARY
Rep. Karl Rhoads, Chair
Rep. Joy A. San Buenaventura, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: Tuesday, March 22, 2016
TIME: 2:00 p.m.
PLACE: Conference Room 325

RE: SB2313, SD2, HD1

Position: Oppose

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers, and distributors of food and beverage related products in the State of Hawaii.

While HFIA understands the intent of HB1909, HD1, we oppose it for the reasons below.

Need for Statistical Context

The bill states that, "... in 2014, the gender wage gap in Hawaii stood at 14.2 cents on the dollar" compared to "the national average of 79 cents to the dollar." When presented on a stand-alone basis, the calculations, while numerically correct, do not provide an accurate portrayal of the actual situation and may lead to premature conclusions. In order to better understand the scope of the issue and to put the figures into perspective, context is needed. With regard to wage disparity, a 2009 report prepared for the U.S. Department of Labor states:

Some of the factors are consequences of differences in decisions made by women and men in balancing their work, personal, and family lives including their human capital development, their work experience, the occupations and industries in which they work, and interruptions in their careers.

Wage differences are due primarily to an array of factors, including but not limited to, individual decisions about education and career (e.g., working full-time vs. part-time), personal choices and familial obligations, rather than blatant gender discrimination.

Existing Law

We believe that this bill is unnecessary because existing state (i.e., HRS sec. 378-2.3) and federal laws (e.g., Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, Lilly Ledbetter Fair Pay Act) more than adequately cover gender wage discrimination.

Lack of Due Process

As written, this bill appears to render the employer guilty of wage discrimination and puts the burden of proof on them to prove their innocence. In addition, we are deeply concerned that it severely limits an employer's legal flexibility in determining compensation by permitting only three exemptions for wage differentials in the bona fide categories of seniority, merit and occupational qualification. With such limited factors, this section could result in many frivolous and costly lawsuits against employers, including small businesses that are already struggling to keep afloat.

Workplace Morale

We believe the section on disclosure of wages is unnecessary and could lead to morale problems in the workplace. The National Labor Relations Act already provides protections for the sharing of wage information.

- Section 7 provides employees the right to make efforts to organize and discuss the terms of their employment, including salary and benefits packages.
- Section 8 further reinforces employees' rights to discuss payment policies by making it an unfair labor practice to enact policies that prohibit employees from discussing their compensation packages or make any other effort to circumvent the organization and discussion rights.

For these reasons, we request that the bill be held.

Thank you for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 19, 2016 11:59 AM
To: JUDtestimony
Cc: laurie.field@ppvnh.org
Subject: *Submitted testimony for SB2313 on Mar 22, 2016 14:00PM*

SB2313

Submitted on: 3/19/2016

Testimony for JUD on Mar 22, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Field	Planned Parenthood Votes Northwest and Hawaii	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Honolulu, Hawai'i 96813
(808) 538-7061

www.ywcaoahu.org

To: Honorable Karl Rhoads, Chair
Honorable Joy San Buenaventura, Vice Chair
House Committee on Judiciary

From: Noriko Namiki, Chief Executive Officer
YWCA O'ahu

Re: Testimony of in support of SB2313, SD2, HD1 – Relating to Equal Pay
Tuesday, March 22, 2016, 2:00 p.m. - Hawaii State Capitol, Rm. 325

Good afternoon Chair Rhoads, Vice Chair San Buenaventura, and members of the committee. On behalf of YWCA O'ahu we thank you for the opportunity to share our testimony in **strong support of SB 2313** with the amendments offered by the State Commission on the Status of Women.

In Hawaii, women are paid 86 cents for every dollar paid to men, amounting to a yearly wage gap of \$6,624 between men and women who work full time in the state. This gap is larger for women of color, especially Pacific Islander, African American and Latina women.

Hawaii women and families cannot afford discrimination and lower wages. Job creation and economic opportunity are critical issues for women, many of whom continue to struggle with economic insecurity and pay discrimination. Many Hawaii women are breadwinners and are responsible for the economic security of their families. Due to the wage gap, families, businesses and the economy suffer. Lost wages mean families have less money to spend on goods and services that help drive economic growth.

We need public policies such as SB2313 to address the gender wage gap. More than 50 years after passage of the federal Equal Pay Act of 1963, it's clear the pay gap is unlikely to go away on its own. Wages overall are stagnating and the gender wage gap has barely budged over the last ten years. A new study from the Institute of Women's Policy Research shows that women will not see equal pay with men until 2058. Unfortunately, Hawaii has little protection, remedies, and preemptive action laws when it comes to Equal Pay Laws.

SB2313 will not only ensure that employees performing substantially similar work are paid equally, but will also remove stigma and negative consequences of discussing pay. We strongly support and encourage implementing a pay secrecy ban in efforts to eliminate pay discrimination. It is an important and necessary step in eliminating the persisting wage gap in our State.

Thank you for your consideration and for the opportunity to provide testimony on this matter.

HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



Chair
LESLIE WILKINS

COMMISSIONERS:

SHERRY CAMPAGNA
CYD HOFFELD
JUDY KERN
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March 21, 2016

To: Representative Karl Rhoads, Chair
Representative Joy San Buenaventura, Vice Chair
Members of the House Committee on Judiciary

From: Cathy Betts, Executive Director
Hawaii State Commission on the Status of Women

Re: Testimony in Support, SB 2313, SD2, HD1, Relating to Equal Pay

Thank you for this opportunity to provide testimony in support of SB 2313, SD2, HD1, which would amend Hawaii's equal pay statute, HRS 378-2.3, thereby strengthening equal pay protection for women and providing further guidance to employers and employees. The inclusion of "substantially equal" in HD 1 is derived from our federal Equal Pay Act (EPA), which also uses "substantially equal". It should be noted that the term "substantially equal" instead of "substantially similar" weakens the bill and will make it more difficult for women to prove compensation discrimination. Currently, at least 14 other states use varied language less stringent than the EPA.ⁱ The Commission requests this Committee replace the term "substantially equal" with "substantially similar".

Currently, the wage gap for Hawaii's women is at a standstill, with women making roughly 86 cents for every dollar paid to a man for substantially similar work. Throughout the past 30 years, the wage gap has stagnated. At the current rate, the wage gap will not close in Hawaii until 2058. 40% of American families depend on a woman as both the primary caregiver and the primary or sole breadwinner. Families largely depend on women's wages to be economically self-sufficient, which makes the stagnated wage gap a real and tangible daily problem for working families everywhere, including Hawaii. Women in Hawaii who are employed full time lose a combined total of more than *1.4 billion dollars* annually due to the wage gap.ⁱⁱ This wage gap exists regardless of industry, occupational choice or educational level, and it is felt the moment a woman receives her first job, whether out of high school, college, graduate school, etc.^{iii iv v} Further, the wage gap affects single native Hawaiian women more negatively than any other ethnic group.

Pay inequity is largely linked to poverty. If women's hourly earnings rose to the level of similarly qualified men, poverty rates among working families would be reduced by 50%. This is a real problem with real effects on women and families, and in turn, the economy. Our equal pay statute has not been litigated, so there is very little guidance for employers or employees on what constitutes compensation discrimination, or the remedies an employee may have under the law. By revising the language in HRS 378-2.3, we have an opportunity to hasten the closing of the wage gap, thereby benefiting all women and families in Hawaii. Thank you for allowing the Commission to submit written testimony in support of SB 2313, SD2, HD1.

ⁱ Alaska (“work of comparable character”), California, Arkansas, Idaho, Illinois (same or substantially similar), Kentucky, Maine, Maryland (“work of comparable character”), Massachusetts (“of like or comparable character”), North Dakota, Oklahoma, Oregon (“work of comparable character”), South Dakota, Tennessee, West Virginia

ⁱⁱ U.S. Census Bureau. (2015). American Community Survey 1-Year Estimates 2014, Geographies: All States within United States and Puerto Rico, Table B20017: Median Earnings in the Past 12 Months by Sex by Work Experience in the Past 12 Months for the Population 16 Years and Over with Earnings in the Past 12 Months. Available at:
http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_1YR_B20017&prodType=table

ⁱⁱⁱ U.S. Census Bureau. (2015). American Community Survey 1-Year Estimates 2014, Table S2404: Industry by Sex and Median Earnings in the Past 12 Months for the Full-Time, Year-Round Civilian Employed Population 16 Years and Over. Retrieved 17 September 2015, from
http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_1YR_S2404&prodType=table

^{iv} U.S. Census Bureau. (2015). Current Population Survey, Annual Social and Economic (ASEC) Supplement: Table PINC-06: Occupation of Longest Job in 2014--People 15 Years and Over, by Total Money Earnings in 2014, Work Experience in 2014, Race, Hispanic Origin, and Sex. Retrieved 17 September 2015, from
http://www.census.gov/hhes/www/cpstables/032015/perinc/pinc06_000.htm

^v U.S. Census Bureau (2015). Current Population Survey, Annual Social and Economic (ASEC) Supplement: Table PINC-03. Educational Attainment--People 25 Years Old and Over, by Total Money Earnings in 2014, Work Experience in 2014, Age, Race, Hispanic Origin, and Sex. Retrieved 17 September 2015, from
http://www.census.gov/hhes/www/cpstables/032015/perinc/pinc03_000.htm



**Testimony to the House Committee on Judiciary
Tuesday, March 22, 2016 at 2:00 P.M.
Conference Room 325, State Capitol**

RE: SENATE BILL 2313 SD2 HD1 RELATING TO EQUAL PAY

Chair Rhoads, Vice Chair San Buenaventura, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **opposes** SB 2313 SD2 HD1, which clarifies affirmative defenses that an employer may use in a pay differential case and prohibits employer actions regarding wage disclosure. Also prohibits an employer from discriminating between employees because of sex by paying wages to employees at a rate less than the rate at which the employer pays wages to employees of the opposite sex for substantially equal work and under similar working conditions, with certain exceptions. Further prohibits prospective employers from requesting or considering a job applicant's wage or salary history as part of the employment application process.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 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 members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

Not the Whole Picture

We support the equal pay in the workplace. However, like many difficult issues there is complexity. Supporters of this legislation often cite statistics that say that on average, women earn 77 cents on the dollar as compared to men. This often leads to the assumption that there must be wide spread wage discrimination by employers. However, this does not tell the whole picture or provide details on what is happening in the workplace. The 2009 report (see, U.S. Department of Labor, Consad Research Corporation, An Analysis of Reasons for the Disparity in Wages Between Men and Women) prepared for the U.S. Department of Labor, provides some insight into the factors that include the fact that a larger percentage of women work in part-time jobs, a larger percentage of women leave the work force at some point for family responsibilities to name a few.

Another telling report comes from Pew Research. Below are some of other parts of the story.

- The BLS study looks at weekly earnings and not hourly earnings which leads to a larger gap, especially since women are twice as likely as men to work part time.
- The BLS study restricts the estimate to full time workers which leaves out a significant share of workers, both men and women. Also men report working longer



Chamber of Commerce HAWAII

The Voice of Business

- hours – 26% of full time men say they work more than 40 hours per week compared to 14% of women.
- Occupation, negotiation of wages and tradeoffs of compensation for other amenities such as flexible work hours are other attributes for the wage differential.
 - For young women, the pay gap is smaller at 93%.
 - The presence of discrimination is more difficult to quantify.

Existing Law

It is already against the law for an employer to discriminate in setting employee wages based on gender. At the state level we have the Equal Pay Law, which clearly states that no employer shall discriminate based on gender when setting wages. At the federal level, the Equal Pay Act says that employers must pay equal wages to women and men in the same establishment for performing substantially equal work.

In 2009, Congress passed the Lilly Ledbetter Fair Pay Act, which extended the statute of limitations for filing an equal pay lawsuit. We believe these laws already cover the issue of gender wage discrimination.

No Due Process for Employers

We disagree and oppose the presumption that the employer is guilty of wage discrimination, and puts the burden of proof on them to prove their innocence. The bill amends Hawaii's Equal Pay Law to limit three allowable "bona fide" factors for wage differentials to a seniority system, a merit system, and an occupational qualification. This ties the hands of the employers in any legal flexibility in compensation.

This section could create many frivolous lawsuits against employers. Lawsuits (threatened or filed) have a substantial impact on small business owners. We have heard story after story of small business owners spending countless hours and sometimes significant sums of money to settle, defend, or work to prevent a lawsuit.

Sharing of Wage Information

While federal law protects certain sharing of wage information, the bill goes much farther than present federal law. This is unfair to employers as it could allow competitors to learn what a company is paying their employees. Compensation is proprietary information and critical to the success of a company. We also believe that this section could lead to morale problems in the workplace.

Other Reasons

In closing, we support the principle of equal pay, however we believe this legislation would ultimately impose enormous burdens and risks on employers; devalue important factors in establishing wages, such as training, experience, education, and skill; and expand litigation opportunities. If the concern is truly prohibiting discriminations then we believe enforcement should be the focus and not a change in the law. Lastly, it could tie the hands of employers in offering other benefits that employees may value for their own individual situation.



Chamber *of* Commerce HAWAII
The Voice of Business

Please defer this bill.

Thank you for the opportunity to testify.

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 21, 2016 4:47 PM
To: JUDtestimony
Cc: knoborik@gmail.com
Subject: *Submitted testimony for SB2313 on Mar 22, 2016 14:00PM*

SB2313

Submitted on: 3/21/2016
Testimony for JUD on Mar 22, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Kaylee Noborikawa	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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LATE

Testimony Presented Before the
House Committee on Judiciary
March 22, 2016 at 2:00 p.m.

by
Hawai'i Coalition for Immigrant Rights
of Faith Action for Community Equity (FACE)

S.B. 2313 S.D. 2 H.D. 1— RELATING TO EQUAL PAY

Dear Chair Rhoads, Vice Chair Buenaventura, and Members of the Committees,

On behalf of the Hawai'i Coalition for Immigrant Rights, the immigration arm of Faith Action for Community Equity (FACE), I would like to thank the Committee for this opportunity to testify. The Coalition **strongly supports** S.B. 2313 S.D. 2 H.D. 1, which would work to eliminate gender asymmetry in wealth.

The Hawai'i Coalition for Immigrant Rights is the only organization in the state that coordinates policy advocacy to advance immigrant rights. U.S.-born women working full-time in Hawai'i are paid 86 cents for every dollar paid to U.S.-born men, non-citizen women face a double pay gap.¹ Non-citizen women in Hawai'i are paid just 53 cents per every dollar paid to U.S.-born men, amounting to a yearly wage gap of over \$23,000.² The tenacious imbalance in pay among men and women engaged in substantially similar work continues to have wide consequences that restrict women's mobility and safety. If a woman earns less than her male partner, she cannot assert yourself in the home on equal footing. This promotes economic dependency and renders women and children less able to exit situations of domestic abuse.

We ask that you favorably consider an amendment of certain key terminology by reverting "substantially equal" to "substantially similar," as urged by the Hawaii State Commission on the Status of Women.

Thank you for this opportunity to testify in support of S.B. 2313.

Sincerely,

Khara Jabola-Carolus

¹ National Partnership for Women and Families, *Hawaii Women and the Wage Gap* (Oct. 2015), <http://www.nationalpartnership.org/research-library/workplace-fairness/fair-pay/9-2015-hi-wage-gap.pdf>.

² Migration Policy Institute, *Hawaii* (2013), <http://www.migrationpolicy.org/data/state-profiles/state/demographics/HI>.

LATE



March 15, 2016

Representative Karl Rhoads, Chair
House Committee on Judiciary

Re: S.B. 2313, S.D.2, H.D. 1 Relating to Equal Pay

Hearing: Tuesday, March 22, 2016, 2:00 p.m.

Dear Chair Rhoads and Members of the Committee on Judiciary:

Hawaii Women Lawyers submits testimony in **support** of S.B.2313, S.D.2, H.D. 1, with amendments. This measure clarifies affirmative defenses that an employer may use in a pay differential case, prohibits employer actions regarding wage disclosure, and prohibits employers from discriminating between employees because of sex by paying wages to employees at a rate less than the rate at which the employer pays wages to employees of the opposite sex for substantially equal work and under similar working conditions.

The mission of Hawaii Women Lawyers is to improve the lives and careers of women in all aspects of the legal profession, influence the future of the legal profession, and enhance the status of women and promote equal opportunities for all.

The current pay gap between men and women impacts women and families at all income levels, regardless of occupation or education level. Women currently make approximately 86 cents for every dollar paid to a man for substantially similar work. Moreover, the wage gap contributes to the higher statewide poverty rate among women.

Although a pay gap exists, the ability to make a claim against an employer for wage discrimination is difficult because these claims are exceedingly difficult to prove in the workplace.

This measure improves Hawaii's existing equal pay statute by, among other things, ensuring that employees performing "substantially similar work" (rather than the "same work") are paid equally, ensuring that employers apply job qualifications without discrimination, and prohibiting retaliation or discrimination against employees who discuss their own or co-workers' wages for the purpose of exercising rights under the law.

This measure will strengthen existing Hawaii law on equal pay by ensuring that women are treated fairly and equally in the workplace.

We respectfully request that the Committee pass S.B. 2313, S.D.2, H.D.1, with amendments to restore language stating that equal pay is for “substantially similar work” rather than the current language which states “substantially equal work.”

Thank you for the opportunity to submit testimony on this measure.

LATE

NFIB

The Voice of Small Business.®

Before the House Committee on Judiciary

DATE: March 22, 2016

TIME: 2:00 p.m.

PLACE: Conference Room 325

Re: SB 2313, SD 2, HD1, Relating to Equal Pay

Testimony of Melissa Pavlicek for NFIB Hawaii

Aloha Chair Rhoads, Vice Chair San Buenaventura, and members of the Committee:

We are testifying on behalf of the National Federation of Independent Business (NFIB) to respectfully **oppose** this measure. NFIB and our members support equal pay in that we agree with the principle that an equal day's work deserves an equal day's pay. We mahalo the House Labor Committee which previously heard and amended this measure, removing the phrase "substantially similar" and replacing it with "substantially equal". We remain, however, unable to support SB 2313 in its current form, as we believe that it is shifting the burden too far on employers to prove a negative -- that they didn't violate the law.

It is already against the law for an employer to discriminate in setting employee wages based on gender. At the state level we have the Equal Pay Law, which clearly states that no employer shall discriminate based on gender when setting wages. At the federal level, The Equal Pay Act says that employers must pay equal wages to women and men in the same establishment for performing substantially equal work.

Additional protections are afforded under Title VII of the Civil Rights Act, which prohibits employers with at least 15 employees from discriminating against their employees based on a variety of factors, including gender. In 2009, Congress passed the Lilly Ledbetter Fair Pay Act, which extended the statute of limitations for filing an equal pay lawsuit. We believe these laws already cover the issue of gender wage discrimination.

In closing, while we agree with the principle of equal pay, we believe this legislation would ultimately impose burdens and risks on employers and expand litigation opportunities for plaintiffs. Please defer this bill.



LATE

Testimony to the House Judiciary Committee
March 22, 2016 at 2:00 p.m.
State Capitol - Conference Room 325

RE: SB 2313, SD2, HD1 Relating to Equal Pay

Aloha members of the committee:

I am John Knorek, the Legislative Committee chair for the Society for Human Resource Management – Hawaii Chapter (“SHRM Hawaii”). SHRM Hawaii represents more than 800 human resource professionals in the State of Hawaii.

We are writing to respectfully oppose SB 2313, SD2, HD1. This bill amends the provisions for equal pay and sex discrimination for substantially equal work. It prohibits employer actions regarding wage disclosure and applicant wage histories.

Most significantly, we believe that it will undermine use of reasonable factors in establishing wages, such as training, education and skill – and that utilizing these factors to determine pay is beneficial to employees and employers. In addition, this measure would pose substantial implementation challenges and administrative burden.

Human resource professionals are attuned to the needs of employers and employees. We are the frontline professionals responsible for businesses’ most valuable asset: human capital. We truly have our employers’ and employees’ interests at heart. We will continue to review this bill and, if it advances, request to be a part of the dialogue concerning it.

Thank you for the opportunity to testify.



LATE



SB2313 SD2 HD1
RELATING TO EQUAL PAY
House Committee on Judiciary

March 22, 2016

2:00 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB2313 SD2 HD1, which strengthens important civil rights statutes relating to sex discrimination in pay, and includes important pay disclosure protections that allow employees to discuss their wages without reprisal. This bill aligns with OHA's strategic priority of improving the economic self-sufficiency of Native Hawaiians.

This legislation strengthens our civil rights enforcement statutes, and may help to combat systemic discrimination and implicit biases that can be at the root of economic disparities. OHA notes the preamble includes information on wage inequality for African American, Latina, and Asian American women in Hawai'i, showing that pay inequality may contribute to higher poverty rates for women of color. OHA further notes that data also shows extreme disparities in income for Native Hawaiians, and particularly for Native Hawaiian women, suggesting that gender and race discrimination in pay may significantly impact the Native Hawaiian community. For example, despite participating in the labor force at higher rates than the statewide population, Native Hawaiians earn substantially less than the state average income.¹ Meanwhile, a greater percentage of Native Hawaiian women have bachelor's degrees or higher educational qualifications compared to Native Hawaiian men,² and a greater percentage of employed Native Hawaiian women are in management and other typically higher-paying occupations compared to employed Native Hawaiian men;³ however, Native Hawaiian women workers' median income is only 85.44% of their Native Hawaiian male counterparts. Notably, Native Hawaiian women workers also earn only 88.95% of the median income of total state female workers and **75.36% of the median income of total state male workers**. These disparities are even more pronounced for single mothers, with Native Hawaiian single mothers earning only 60.5% of the median income for Native Hawaiian single fathers, and 76% of the median income for all single mothers in the state.⁴

¹ See OFFICE OF HAWAIIAN AFFAIRS, INCOME INEQUALITY AND NATIVE HAWAIIAN COMMUNITIES IN THE WAKE OF THE GREAT RECESSION: 2005 TO 2013 (2014) <http://www.oha.org/wp-content/uploads/2014/05/Income-Inequality-and-Native-Hawaiian-Communities-in-the-Wake-of-the-Great-Recession-2005-2013.pdf>.

² 17.9% of Native Hawaiian women have bachelor's degrees compared to 15.0% of Native Hawaiian men. See 2014 American Community Survey, 1 Year Table SO201.

³ 31.5% of Native Hawaiian women are employed in management, business, science, and arts occupations compared to 18.8% of Native Hawaiian men. See *Id.*

⁴ In 2014, Native Hawaiian single mother's median income was \$37,649 or 60.45% of Native Hawaiian single fathers income of \$62,277, and 76% of single mothers' median income statewide of \$49,797. See *Id.*

SB2313 SD2 HD1 may help to alleviate the economic disparities resulting from implicit biases and systemic discrimination in the workplace. The specific provisions regarding sex discrimination will provide civil rights enforcement agencies with the ability to more adequately ensure employees are paid equally, regardless of gender. Moreover, the pay disclosure protections may also help to address both sex and racial discrimination, by allowing employees to evaluate their wages in comparison to their peers.

Accordingly, OHA urges the Committee to **PASS** SB2313 SD2 HD1. Mahalo nui for the opportunity to testify on this important measure.

LATE



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**TESTIMONY FOR SENATE BILL 2313, SENATE DRAFT 2, HOUSE DRAFT
1, RELATING TO EQUAL PAY**

**House Committee on Judiciary
Hon. Karl Rhoads, Chair
Hon. Joy A. San Buenaventura, Vice Chair**

**Tuesday, March 22, 2016, 2:00 PM
State Capitol, Conference Room 325**

Honorable Chair Rhoads and committee members:

I am Kris Coffield, representing the IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 350 local members. On behalf of our members, we offer this testimony in strong support of SB 2313, SD2, HD1, relating to equal pay.

In Hawai'i, women currently make 86 cents for every dollar paid to men for substantially similar, and often the same, work. According to data from the U.S. Census Bureau, the gender pay gap in the islands is not projected to close until 2058, leaving another four decades of women unjustly lagging economically behind their male colleagues. Moreover, labor and census statistics cited by the Hawaii Commission on the Status of Women reveal that women working full-time lose more than \$1.4 billion annually due to the local wage gap, which exists across industrial, educational, racial, and ethnic demographics.

Finally, combating pay inequity reduces poverty, at a time when Hawai'i is facing a statewide houseless crisis. According to the latest point-in-time count, Hawai'i has 7,620 people living without housing, a 10 percent increase from the previous year. Our state's homeless population has reached its highest number in five years, boosted by a dramatic increase in the number of unsheltered houseless persons. Unsheltered persons now total 3,843 people, while sheltered individuals total 3,777. On O'ahu, in 2015, the houseless population rose to 4,903, up from 4,712 in 2014. The Big Island of Hawai'i totaled 1,241 houseless persons, up from 869 a

year ago—a shocking 43 percent increase. Maui County saw its houseless population rise to 1,137, last year, up from 959 the previous year.

A report from the Center for American Progress (“A Woman’s Nation Pushes Back from the Brink,” 2014) concluded that normalizing women’s earnings to their male peers could cut poverty rates for working women by up to 50 percent. Economists Heidi Hartmann and Jeffrey Hayes of the Institute for Women’s Policy Research calculated that nationally, paying women who work full time, year-round, the same as men would boost their incomes by an average of \$6,250 a year, raising 3 million working women above the poverty line and boosting GDP by 2.9 percent, or \$450 billion. CAP’s report notes that one in three women in the U.S. either live in poverty or are “teetering on its brink,” totaling 42 million women who struggle financially. If anything, these numbers are exacerbated by the price of paradise in Hawai’i, which numerous indicators have demonstrated has the highest cost-of living and housing costs in the country, dragging down the purchasing power of workers’ paychecks.

Mahalo for the opportunity to testify in strong support of this bill.

Sincerely,
Kris Coffield
Executive Director
IMUAlliance