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March 21, 2017

To: The Honorable Gilbert S.C. Keith-Agaran, Chair,  
The Honorable Karl Rhoads, Vice Chair, and  
Members of the Senate Committee on Judiciary and Labor

Date: Tuesday, March 21, 2017  
Time: 9:30 a.m.  
Place: Conference Room 016, State Capitol

From: Linda Chu Takayama, Director  
Department of Labor and Industrial Relations (DLIR)

**Re: H.B. No. 213 H.D. 1 Family Leave**

**I. OVERVIEW OF PROPOSED LEGISLATION**

HB213 HD1 extends protected job status to the care of a sibling or upon the death of a child, spouse, reciprocal beneficiary, sibling, or parent, under the Hawaii Family Leave Law (HFLL), chapter 398, Hawaii Revised Statutes (HRS).

DLIR offers comments on the measure.

**II. CURRENT LAW**

The HFLL, chapter 398, HRS, provides four weeks of protected leave (distinct from paid leave) for employees of employers with 100 or more employees, on the birth or adoption of a child or to care for a family member who is seriously ill.

**III. COMMENTS ON THE HOUSE BILL**

HFLL currently provides protected leave from a job if a family member needs care because of a serious illness. This measure includes siblings as eligible family members that would allow a worker to take protected leave.

In addition, the measure adds protected leave for the death of the employee's child, spouse, sibling, reciprocal beneficiary or parent. A common inquiry to the Wage Standards Division is when an employee who has taken protected leave to care for a

family member and has not exhausted the leave when the family member dies, whether the employee can use family leave. Employees cannot use family leave after the death of a family member.

DLIR notes that this proposal expands opportunity for paid leave in conjunction with the federal Family and Medical Leave Act (FMLA). Employers with fifty or more employees are required to give employees twelve weeks of protected leave for the birth of a child, or care of family member with a serious illness, in addition to the employee's own illness under the FMLA. Where reasons for leave are covered under both the federal and state jurisdictions, the leave is taken concurrently.

Under HFLL, this measure would expand the available protected leave under some circumstances to sixteen weeks in a twelve-month period. For example, if a father dies, the employee could take up to four weeks of HFLL, and then if the same employee has to take time to care for the serious illness of the mother, the employee would be entitled to twelve more weeks of protected leave in a year.



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TO: COMMITTEE ON JUDICIARY & LABOR

Senator Gilbert Keith-Agaran, Chair

Senator Karl Rhoads, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION

Lauren Zirbel, Executive Director

DATE: Tuesday, March 21, 2017

TIME: 9:30 a.m.

PLACE: Conference Room 016

RE: HB213, HD1 (Family Leave)

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 we understand the intent of this measure, we have several concerns.

First, we believe that including siblings in Hawaii's family leave law is overreaching and will result in additional costs that will negatively affect local businesses and our communities. The bill lacks a definition of "sibling" and there is no clarification with regard to important considerations such as age, physical and cognitive abilities, and income. Is it reasonable to mandate leave for an employee whose sibling has a spouse and grown children who are able to provide care under current law?

Second, having personally lost family members, we humbly understand the difficulties faced following the death of a loved one. At the same time, we are concerned that adding another category to Hawaii's family leave law will negatively impact local businesses and our communities by forcing them to bear the additional costs needed to fulfill this proposal.

Please keep in mind that profit margins are already quite sparse for grocers, which generally operate at a profit margin of around one percent. Hawaii's food prices can be up to seventy percent more than the national average and any additional costs will drive up grocery prices, punish low-income consumers and burden businesses.

Thank you for the opportunity to testify.



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To:      Sen. Gilbert S.C. Keith-Agaran, Chair  
            Sen. Karl Rhoads, Vice Chair  
            Members of the Committee on Judiciary and Labor

From:    Victor Lim, Hawaii Restaurant Association

Subj:    HB213, HD 1 Relating to Family Leave

Date:    March 17, 2017

The Hawaii Restaurant Association representing about 3,500 restaurants with about 90,000 food service jobs here opposes HB 213 HD 1 that allows an employee to take family leave in order to care for an employee's sibling.

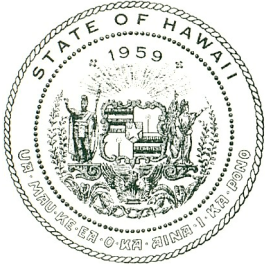
We believe that the addition of siblings to the Hawaii's Family Leave law will be overreaching and will result in additional costs to most businesses that are already struggling to survive today.

We have been trying to adjust with the current scheduled minimum wage increases and at the same time paying for the double digit increases in our Pre-Paid Healthcare Law where our employers carry most of the cost of the premiums because we can only charge our employees no more than 1.5 % of Gross Wages. All of these results in menu price increases meeting with consumer resistance resulting in a very tough year for the restaurant industry here in Hawaii.

For all of the above reasons, we urge you to not pass this bill out of your committee and thank you for allowing us to share our industry's point of view.

Aloha.

HAWAII  
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March 21, 2017

To: Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Karl Rhoads, Vice Chair  
Members of the Senate Committee on Judiciary and Labor

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

Re: Testimony in Support with Comments regarding HB 213

The Commission supports the intent of HB 213, but provides additional comments regarding current leave policy throughout the state, being mindful that most residents of Hawaii cannot take unpaid family leave and remain financially stable.

Current Access to Unpaid Family Leave

Currently, employees in Hawaii do not have any right to *paid* medical or family leave. While the federal Family Medical Leave Act (FMLA, which leaves out 40 percent of the workforce) allows for unpaid leave with job protection up to 12 weeks for employers with 50 or more employees, our own Hawaii Family Leave Act only applies to those with 100 or more employees and allows for job protection for up to 4 weeks. For employees at firms of less than 100 employees, the decision of whether you receive unpaid maternity leave, paternity leave, or leave to take care of an aging and ill parent or spouse is completely dependent on your employer. Most people working in Hawaii cannot take unpaid leave and still maintain financial stability.

It is clear that our current law needs to be revised and updated to provide true benefit to employees. Our workforce demographics are constantly changing. Today, women make up half of our workforce, yet 2/3 of women serve as sole or primary breadwinners for their families. Women make up the majority of caregivers to young children and elderly relatives.

Nationally and locally, the FMLA's coverage is narrow. As it is written, the FMLA excludes two-fifths of the workforce.<sup>1</sup> The only partial paid leave is our current Temporary Disability Insurance, or TDI program. However, TDI is time limited and men cannot take TDI for the birth of a child. For new mothers, using TDI means you may be able to receive partial wage replacement for 6 to 8 weeks, depending on the type of birth you have. Currently, state and government employees cobble together unused sick and vacation leave to take leave. However, state sick leave can only be used for a worker's own illness, which means male caregivers can only take their vacation leave (and not sick leave) to take care of a family member or new child. HB 213 would amend our current Hawaii Family Leave Law (HFLL) to include unpaid leave for a sibling's illness or a death in the family.

While the Commission supports broadening access to unpaid leave, the reality is that not many workers in Hawaii can take unpaid leave and remain financially stable. The Commission supports HB 213, while recognizing the overall need for access to *paid* leave throughout the State. Thank you for very much for this opportunity to provide testimony and comments regarding HB 213.

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<sup>1</sup> Family Values at Work, Updated FMLA Survey Results

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:**  
**Subject:** Submitted testimony for HB213 on Mar 21, 2017 09:30AM  
**Date:** Saturday, March 18, 2017 5:13:22 PM

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## **HB213**

Submitted on: 3/18/2017

Testimony for JDL on Mar 21, 2017 09:30AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dirk Koeppenkastrop	IL Gelato Hawaii	Oppose	Yes

Comments: My name is Dirk Koeppenkastrop and I am the founder and owner of IL Gelato Hawaii. I am a graduate from the University of Hawaii and as there are no higher-level jobs as a chemist my wife and I started a small business here in Honolulu six years ago. We make all natural high quality gelato (ice cream) here in Hawaii and sell wholesale to restaurants and operate two retail locations. We have approximately 45 employees and most of them part time. We have plans to grow and to expand our business so that we soon will have over 50 employees. The proposed Bill HB4 and HB213 will highly impact our payroll cost. The proposed bill in addition to increasing minimum wages will challenge the existence of our gelato business. In our gelato factory and stores we offer entry-level jobs to unskilled workers. If wages and associated payroll cost -introduced through mandatory paid sick leave also granted to siblings- will increase, we will have a problem to stay in business. We cannot pass additional cost to our customers. A scoop of ice cream at our store is \$3.75 and already considered to be too expensive for local families. We get a lot of comments via social media and Yelp reviews that we are too expensive. Our food costs in Hawaii are the highest of the nation. Our rents are the highest of the nation. Energy and insurance cost are higher than anywhere else. It is very very difficult to operate a business in Hawaii. We cannot increase our scoop prices, as we would loose our local customers. If payroll costs continues to increase so substantially to include siblings into the benefits, we need to close our business, which would challenge our existence and we could no longer offer employment. We strongly oppose to proceed with proposed bill HB213. Sincerely, Dirk Koeppenkastrop, Ph.D.

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The Twenty-Ninth Legislature  
Regular Session of 2017

THE SENATE

Committee on Judiciary and Labor  
Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Karl Rhoads, Vice Chair  
State Capitol, Conference Room 016  
Tuesday, March 21, 2017; 9:30 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 213, HD1  
RELATING TO FAMILY LEAVE**

The ILWU Local 142 **supports** H.B. 213, HD1, which permits an employee to take family leave in order to care for the employee's sibling with a serious health condition or upon the death of an employee's child, spouse, reciprocal beneficiary, sibling, or parent.

H.B. 213, HD1 would expand coverage under the Hawaii Family Leave Law (HFLL) to brothers and sisters. HFLL currently allows for unpaid family leave to employees working for employers with 100 or more employees to care for a child, spouse, reciprocal beneficiary or parent with a serious health condition. Expanding the scope of coverage to include brothers and sisters would recognize that the definition of "family" in Hawaii extends beyond the nuclear family to siblings who themselves may or may not have a spouse or children able to provide for their care. The concept of "ohana" involves a broader definition of family and responsibility.

The impact of covering siblings may or may not be significant to the employer, but the goodwill that is generated from this act of compassion to allow unpaid leave for the care of a sibling is immeasurable. Even if the leave is paid, the benefits far outweigh the costs.

H.B. 213, HD1 would also provide for leave upon the death of a child, spouse, reciprocal beneficiary, sibling, or parent. It is not clear what the leave would accomplish if the family member is deceased. Furthermore, we question whether this provision is legally permissible since, unlike the federal Family and Medical Leave Act (FMLA), Hawaii's family leave law does not provide for the illness of the employee himself.

With caution about the proposal to provide for family leave upon the death of a family member, the ILWU urges passage of H.B. 213, HD1. Thank you for the opportunity to offer testimony on this matter.



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**HB213**

Submitted on: 3/20/2017

Testimony for JDL on Mar 21, 2017 09:30AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michael Golojuch Jr	LGBT Caucus of the Democratic Party of Hawaii	Support	Yes

Comments:

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**From:** [Anthony Lenzer](#)  
**To:** [JDLTestimony](#)  
**Subject:** Comments on HB 4 HD 1 and HB 213 HD 1  
**Date:** Friday, March 17, 2017 12:27:37 PM

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To: [Committee on Judiciary and Labor](#)  
From: Anthony Lenzer, PhD  
Re: [Comments on HB 4 HD 1 and HB 213 HD 1](#)  
Hearing: Tuesday, March 21, 2017, 9:30 a.m.  
Conference Room 016, State Capitol

Chair Keith-Agaran and Committee Members:

On behalf of the Policy Advisory Board for Elder Affairs (PABEA) I am writing to offer comments on HB 4 HD 1, as well as HB 213 HD 1, both related to Family Leave. PABEA is an advisory body to the Executive Office on Aging (EOA) re issues related to aging, and serves as an advocate for Hawaii's Kupuna and their families. PABEA's views do not necessarily reflect those of the EOA.

We strongly support enactment of a Hawaii Paid Family Leave law, but have concerns about these measures as written. HB 4 HD 1 only requires employers to provide a minimum amount of paid sick leave, an amount related to the number of hours worked. We support a law which allows twelve weeks of paid leave. HB 213 HD 1 extends the scope of Hawaii's current law to allow unpaid time off to care for a sibling, or upon the death of a family member. While we have no objections to these changes, **we recommend that the Committee consider the stronger and more comprehensive policy described in HB1362.**

It is time for Hawaii to pass a strong Family Leave Insurance policy. Employees need subsidized time off of work to care for a newborn, newly adopted or foster child, or an ill family member. Paid Family Leave guarantees that employees can cover basic costs of living, and also provide care to family members when they need it most.

Four other states (California, New Jersey, Rhode Island, and New York) have passed laws that provide employees with paid family leave for parenting and caregiving for family members. A 10 year study of the California law found increased employee loyalty, a healthier workforce, longer breastfeeding rates, lower rates of postpartum depression, and more gender equity in child care and caregiving. Businesses report little negative consequences after the law was enacted, and laws such as this do not impose additional financial burdens on the State.

Under federal and state law, the only leave allowed to families with a newborn child or unexpected caregiving responsibilities is unpaid leave. Hawai'i has no paid family leave, unless an employer willingly provides it.

**Ideally, Legislative Proposals for Paid Family Leave Should Include:**

- Universal paid family leave--- all employees pay in, and all employees can take out.

- A broad definition of family to encompass Hawaii's cultural views of the term "family."
- Wage replacement program for caregivers. More progressive wage replacement for lower income workers is preferred, in order for low income workers to actually be able to utilize the leave.
- A cap on wage replacement so higher income workers do not exhaust the fund.
- At least 12 weeks. Biological mothers should not be foreclosed from also using TDI.

Thank you for the opportunity to testify on this important subject.

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**TESTIMONY OF TINA YAMAKI  
PRESIDENT  
RETAIL MERCHANTS OF HAWAII  
March 21, 2017  
Re: HB 213 HD1 RELATING TO FAMILY LEAVE**

Good morning Chairman Keith-Agaran and members of the Senate Committee on Judiciary and Labor. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii (RMH) is a statewide 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.

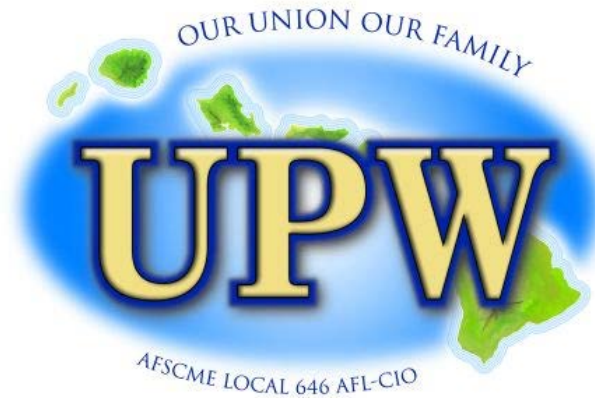
The Retail Merchants of Hawaii strongly opposes HB 213 HD1 Relating to Family Leave. This bill would require employers to provide family leave to employees to be used to care for a sibling who is ill or upon the death of a family member.

Employers are already required by law to provide Family Leave to employees that includes protected leave to care for family members who are ill, or for the birth or adoption of a child. While we understand the intent of this measure, we are very concerned that there is no definition of who is considered a sibling, especially with Hawaii's "hanai" family culture. We wonder why could their spouse or their adult children not take care of them? Are there physical or mental disabilities involved? Is age a factor? Is income level being considered?

We feel for those whose family member have passed away. It is never easy. However, this new category would be another added costly mandate to doing business in Hawaii and retailers are already operating on a very thin margin.

Policy makers should be focusing on eliminating obstacles to business growth, job creation and economic stability and not adding additional costs that employers cannot afford.

We respectfully ask that you hold this measure. Mahalo again for this opportunity to testify.



THE HAWAII STATE SENATE  
The Twenty-Ninth Legislature  
Regular Session of 2017

COMMITTEE ON JUDICIARY AND LABOR

Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Karl Rhoads, Vice Chair

DATE OF HEARING: Tuesday, March 21, 2017  
TIME OF HEARING: 9:30 a.m.  
PLACE OF HEARING: State Capitol, Rm. 016  
415 South Beretania Street

**TESTIMONY ON HOUSE BILL 213, HD1 RELATING TO FAMILY LEAVE**

By DAYTON M. NAKANELUA,  
State Director of the United Public Workers,  
AFSCME Local 646, AFL-CIO ("UPW")

My name is Dayton M. Nakanelua, State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW is the exclusive bargaining Representative for approximately 14,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 01 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

HB213, HD1 provides two important amendments to the Hawaii Family Leave law. It permits an employee to take family leave in order to care for the employee's sibling with a serious health condition or upon the death of an employee's child, spouse, reciprocal beneficiary, sibling or parent. During a bereavement period, not too many employees are able to cope with a family member's death while the employee is working. A parent should not have to choose between work and taking some leave to mourn the loss of a family member. This bill is establishes a compassionate policy and is the right thing to do for Hawaii's workers.

The UPW supports this bill and requests the committee to pass it out.

Thank you for the opportunity to submit this testimony.



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**HB213**

Submitted on: 3/20/2017

Testimony for JDL on Mar 21, 2017 09:30AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Andrew Chun	Individual	Oppose	No

Comments: Andrew Chun 808 987 5529

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**HB213**

Submitted on: 3/18/2017

Testimony for JDL on Mar 21, 2017 09:30AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mike Golojuch	Individual	Support	No

Comments: I support HB213.

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**HB213**

Submitted on: 3/17/2017

Testimony for JDL on Mar 21, 2017 09:30AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Richard Mizusawa	Individual	Support	No

Comments:

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