



*The Judiciary, State of Hawai'i*

**Testimony to the House Committee on Judiciary**  
Representative Scott Y. Nishimoto, Chair  
Representative Joy A. San Buenaventura, Vice Chair

Thursday, February 22, 2018, 2:00 PM  
State Capitol, Conference Room 325

By

Calvin C. Ching  
Deputy Chief Court Administrator  
District Court of the First Circuit

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** House Bill No. 2200, House Draft 1, Relating to Public Safety.

**Purpose:** Allows an employer to seek a temporary restraining order and injunction against further harassment of an employee or invitee who may be harassed at the employer's premises or worksite, provided that the provisions do not apply to the Department of Labor and Industrial Relations or any of its employees with investigatory duties and responsibilities. (HB2200 HD1)

**Judiciary's Position:**

The Judiciary takes no position on the intent of House Bill No. 2200, HD1, but notes that the current language of the Bill may (1) impose unintended costs and complications for employers; (2) create uncertainty in the application of the law; and (3) create a remedy where one already exists.

**Unintended Costs and Complications**

Under current law, a corporation can only appear in court through an attorney. Oahu Plumbing & Sheet Metal v. Kona Constr., 60 Haw. 372, 374 (1979). If an employer is a corporation, then any filing of a petition and court appearance by the corporation-employer on behalf of an employee would have to be through an attorney. The cost of the attorney may not be recoverable under the Bill even if the corporation-employer prevails.



Existing law would permit the employee-victim to file a petition for an injunction against harassment without hiring an attorney. Many temporary restraining order cases proceed through resolution without the involvement of an attorney.

#### Uncertainty in the Application of the Law

The Bill creates uncertainty in the application of the law. The Bill states “that an employee organization that represents employees of the employer shall be allowed to intervene in a proceeding under this section.” In a case in which one employee is harassed by another employee, it is unclear if an employee organization would be allowed to intervene on behalf of a respondent-employee or both parties. There is no provision for notice to an employee organization for either petitioner-employee or respondent-employee. The court is required to allow the intervention, but the Bill does not provide guidance on how to resolve a conflict between the right to intervene and a right to a hearing within 15 days. In light of the absence of any service requirement on the employee organization, there is a possibility that the employee organization does not receive notice of the temporary restraining order at the same time as the respondent. Furthermore, if the employer does intervene on behalf of an unwilling employee or invitee and an injunction is granted there is the question whether the unwilling employee or invitee may file a motion to amend the injunction or seek to have the injunction terminated without the participation of the employer.

The Bill has no provision or guidance on what should happen if the employer submits a petition on behalf of the invitee or employee and does not succeed in obtaining an injunction. If the employee seeks their own injunction after the employer’s attempt fails, this places an unfair burden on the respondent, who may incur attorney fees having to defend essentially the same restraining order case multiple times.

#### A Viable Remedy Presently Exists

This Bill is unnecessary as employers have the ability to prohibit unwanted people from entering their property. Section 708-814 HRS allows an owner or lessee to protect a commercial property from unwanted visitors without application to a court by issuing a reasonable warning. If the individual fails to abide by the trespass warning, that individual will face arrest and criminal prosecution.

Thank you for the opportunity to testify on this measure.



Testimony to the  
House Committee on Judiciary  
February 22, 2018  
2:00 pm  
State Capitol - Conference Room 325

RE: HB 2200 Relating to Public Safety

Aloha Chair Nishimoto, Vice Chair San Buenaventura and members of the committee:

On behalf of the Society for Human Resource Management – Hawaii Chapter (“SHRM Hawaii”), we are writing in support of HB 2200 HD1, Relating to Public safety. This bill is an important step toward contributing to workplace safety.

Human resource management professionals are responsible for the alignment of employees and employers to achieve organizational goals. HR professionals seek to balance the interests of employers and employees with the understanding that the success of each is mutually dependent. SHRM Hawaii represents more than 800 human resource professionals in the State of Hawaii. We look forward to contributing positively to the development of sound public policy and continuing to serve as a resource to the legislature on matters related to labor and employment laws.

Mahalo for the opportunity to testify.





TO: Chair Nishimoto  
Vice Chair San Buenaventura  
Members of the Committee

FR: Nanci Kreidman, M.A

Re: Testimony in Opposition to HB 2200 HD1, Relating to Public Safety

We offer this testimony in opposition to HB 2200, HD1.

DVAC works hard to assess partner violence and assist survivors in making their best choices for safety, employment, education, parenting, housing, and self-sufficiency.

It is not clear where this Bill originated, or what its real purpose is. It is our perspective that a victim needs the freedom to make decisions that are in her/his best interests and those of her/his family. An employer is not positioned well to do this. As much of what transpires is beyond their knowledge and expertise.

May we respectfully suggest that employers create a safe work environment, have appropriately trained human resource and supervisory personnel, create clear workplace policies, and make accommodations for employees who are victims and need support.

Thank you.

**HB-2200-HD-1**

Submitted on: 2/21/2018 12:56:34 PM

Testimony for JUD on 2/22/2018 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rachel L. Kailianu	Individual	Support	Yes

Comments:

# hscadv



HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE  
1164 Bishop Street, Suite 1609, Honolulu, HI 96813

DATE: February 21, 2018

TO: STATE OF HAWAII, HOUSE OF REPRESENTATIVES  
COMMITTEE ON JUDICIARY  
REP. SCOTT Y. NISHIMOTO, CHAIR  
REP. JOY A. SAN BUENAVENTURA, VICE CHAIR  
REP. TOM BROWER  
REP. GREGG TAKAYAMA  
REP. CHRIS LEE  
REP. BOB MCDERMOTT  
REP. DEE MORIKAWA  
REP. CYNTHIA THIELEN

FROM: Carmen Golay  
HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

RE: TESTIMONY IN OPPOSITION to HB2200, HD1

Aloha:

On behalf of the Hawaii State Coalition Against Domestic Violence (HSCADV) and our 22 member organizations across the state, I am submitting testimony opposing HB2200 which would allow employers to obtain temporary restraining orders on behalf of an employee.

We understand the intent of the bill is to protect the parties, but we believe victims of harassment, particularly those in domestic violence should have the right to self-determination and to make their own decisions in regards to restraining orders. As well intentioned as an employer may be, there are often many things they do not know or understand about a situation. Employers CAN support victims of domestic violence and other harassment by creating a safe work environment, creating clear workplace policies and seeking training on how best to support and make accommodations for survivors of violence who need community support.

As stated above, HSCADV opposes HB2200.

Thank you for your consideration of our feedback. If you would like to discuss this or have questions, I can be reached at 808.832.9613x4 or via email at [cgolay@hscadv.org](mailto:cgolay@hscadv.org).

*Together we can do amazing things*



# Chamber of Commerce HAWAII

*The Voice of Business*

**Testimony to the House Committee on Judiciary  
Thursday, February 22, 2018 at 2:00 P.M.  
Conference Room 325, State Capitol**

**LATE**

**RE: HOUSE BILL 2200 HD 1 RELATING TO PUBLIC SAFETY**

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

The Chamber of Commerce Hawaii ("The Chamber") **supports** HB 2200 HD1, which allows an employer to seek a temporary restraining order and injunction against further harassment of an employee or invitee who may be harassed in connection with a worksite.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 2,000+ 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.

We support the effort and ability of the employer to maintain safe working environments for their employees. Incidents of harassment at an employee's workplace not create a safety issue but may also increase the risk of incidents with other employees and individuals. Passage of this bill will allow employers to prevent further harassment of employees and maintain a safe workplace for employees and their customers.

Thank you for the opportunity to testify.



**TESTIMONY OF TINA YAMAKI  
PRESIDENT  
RETAIL MERCHANTS OF HAWAII  
February 22, 2018**

**Re: HB 2200 HD1 Relating to Public Safety**

Good afternoon Chairperson Nishimoto and members of the House Committee on Judiciary. 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 committed to supporting 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 SUPPORTS HB 2200 HD1 Relating to Public Safety. In the news we hear about workplace violence where workers who been attacked, stalked, threatened, or killed. Retailers continue to be concerned about the safety and wellbeing of not only the employees but our customers and the community as well, especially since brick and mortar stores and shopping centers are open to the public. This bill would be a step in the right direction of combatting work place violence. Employers would be allowed to seek a temporary restraining order and injunction against further harassment of an employee or invitee who may be harassed at store or shopping center.

Mahalo for this opportunity to testify.





**MAUI**  
CHAMBER OF COMMERCE  
VOICE OF BUSINESS

**LATE**

**HEARING BEFORE THE HOUSE COMMITTEE ON JUDICIARY  
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 325  
THURSDAY, FEBRUARY 22, 2018 AT 2:00 P.M.**

To The Honorable Scott Y. Nishimoto, Chair;  
The Honorable Joy A. San Buenaventura, Vice Chair; and  
Members of Committee on Judiciary;

**TESTIMONY IN STRONG SUPPORT OF HB 2200 RELATING TO PUBLIC SAFETY**

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce. I am writing share our strong support of HB 2200.

Harassment and domestic violence frequently occur on business property and it is imperative that businesses have the tools to create a safe working environment for all employees. We strongly support this bill because it adds another layer of protection for businesses and their employees. We do ask that this bill be modified with a more clear definition of "invitee" and that advance notice is addressed.

We feel that the current definition of "invitee" in the bill is not clear in regards to the language on implied invitation. We feel that an implied invitation should be if the business is open for businesses and believe that businesses should have the ability to protect against anyone who has committed harassment or violence from returning to their location.

In addition, businesses should not be required to give advanced notification to a party they do not have a direct employer-employee relationship with as they would have no way of notifying the individual themselves.

We appreciate the opportunity to testify on this matter and ask that this bill be passed.

Sincerely,

*Pamela Tumpap*

Pamela Tumpap  
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.