

# HB2200 HD1

Measure Title: RELATING TO PUBLIC SAFETY.

Report Title: Public Safety; Workplace Violence; Restraining Orders

Description: 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)

Companion: [SB2994](#)

Package: None

Current Referral: LBR

Introducer(s): JOHANSON

<u>Sort by</u> <u>Date</u>		<u>Status Text</u>
1/22/2018	H	Pending introduction.
1/24/2018	H	Introduced and Pass First Reading.
1/26/2018	H	Referred to LAB, JUD, referral sheet 8
2/1/2018	H	Bill scheduled to be heard by LAB on Tuesday, 02-06-18 8:30AM in House conference room 309.
2/6/2018	H	The committees on LAB recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 7 Ayes: Representative(s) Johanson, Holt, Evans, Ichiyama, Keohokalole, Yamashita, Matsumoto; Ayes with reservations: none; Noes: none; and Excused: none.
2/16/2018	H	Reported from LAB (Stand. Com. Rep. No. 604-18) as amended in HD 1, recommending passage on Second Reading and referral to JUD.
2/16/2018	H	Passed Second Reading as amended in HD 1 and referred to the committee(s) on JUD with none voting aye with reservations; none voting no (0) and Representative(s) DeCoite, Ing, Nakamura, Onishi, Woodson excused (5).
2/20/2018	H	Bill scheduled to be heard by JUD on Thursday, 02-22-18 2:00PM in House conference room 325.
2/22/2018	H	The committees on JUD recommend that the measure be PASSED, UNAMENDED. The votes were as follows: 8 Ayes: Representative(s) Nishimoto, San Buenaventura, Brower, C. Lee, Morikawa, Takayama, McDermott, Thielen; Ayes with reservations: none; 0 Noes: none; and 0 Excused: none.
3/2/2018	H	Reported from JUD (Stand. Com. Rep. No. 1003-18), recommending passage on Third Reading.
3/2/2018	H	Passed Third Reading with none voting aye with reservations; none voting no (0) and Representative(s) Ing, San Buenaventura, Say, Yamane excused (4). Transmitted to Senate.
3/6/2018	S	Received from House (Hse. Com. No. 200).
3/6/2018	S	Passed First Reading.
3/8/2018	S	Referred to LBR/JDC.
3/20/2018	S	Re-Referred to LBR.
3/21/2018	S	The committee(s) on LBR has scheduled a public hearing on 03-27-18 2:45PM in conference room 229.

**S** = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment

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## HB2200 HD1



*The Judiciary, State of Hawai'i*

**Testimony to the Senate Committee on Labor**

Senator Jill N. Tokuda, Chair  
Senator J. Kalani English, Vice Chair

Tuesday, March 27, 2018, 2:45 PM  
State Capitol, Conference Room 229

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

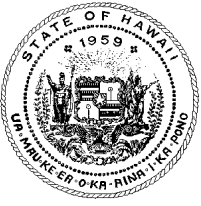
The Bill creates uncertainty in the application of the law. The Bill states “that an employee organization that represents employees of the employer shall be allowed to intervene in a proceeding under this section.” In a case in which one employee is harassed by another employee, it is unclear if an 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.



# HAWAI‘I CIVIL RIGHTS COMMISSION

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

March 27, 2018  
Rm. 229, 2:45 p.m.

To: The Honorable Jill N. Tokuda, Chair  
Members of the Senate Committee on Labor

From: William D. Hoshijo  
Executive Director  
Hawai‘i Civil Rights Commission

Re: H.B. No. 2200, 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 stated purpose of H.B. No. 2200, H.D.1, found in Section 1 of the bill, is to allow employers to obtain temporary restraining orders and injunctions to protect against harassment of employees or invitees at the employer’s premises and worksites. **The HCRC has not taken a position in support or opposition to H.B. No. 2200, H.D.1, but offers comments, raising a concern about potential unintended consequences affecting our statute prohibiting discrimination in places of public accommodation, HRS chapter 489, and offering a suggested amendment that would address this concern.**

Section 2 of the bill amends HRS § 604-10.5, and includes the addition of a new subsections 604-10.5(n) and (o), providing for employer immunity for good faith actions taken under the amended law, and establishing a presumption of good faith:

(n) No civil liability shall attach or be imposed upon any employer for:

(1) Initiating a proceeding under this section; or

(2) Conducting an investigation of any alleged act or threat of violence or harassment in the workplace for purposes of determining the feasibility of or initiating a proceeding under this section.

(o) An employer or an employer's agent who acts in accordance with this section shall be presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, shall be immune from civil liability for actions taken under this chapter.

No employer or agent of an employer who fails to use the procedures authorized by this section shall be liable for negligence nor shall evidence of a failure to use those procedures be admissible as evidence of negligence.

### **HCRC concern**

Both state and federal law, HRS chapter 489 and Title III of the Americans with Disabilities Act (ADA), prohibit discrimination on the basis of disability in places of public accommodation, including businesses that offer goods, services, and facilities to the public as customers, clients, or visitors. Under both state and federal law, a business cannot deny service to a person with a disability because they have a disability. We are concerned that under the proposed new statute a business could deny service to a person with a disability and seek a TRO, and then raise statutory immunity pursuant to the new HRS § 604-10.5 immunity provisions, without having to proffer a legitimate nondiscriminatory reason for the denial of service. This would undermine the state law prohibition against discrimination in public accommodations and contravene the protections provided by federal law, and would likely target and impact persons with mental or psychiatric disabilities who businesses find inconvenient, annoying, or undesirable to serve.

Although probably less likely to occur, the same immunity defense issue could arise with regard to discrimination in public accommodations based on race or national origin/ancestry, which is also prohibited under state and federal law, HRS chapter 489 and Title II of the Civil Rights Act of 1964. (e.g., if a place of business refused service to members of an unpopular racial or national origin/ancestry minority, and then sought a TRO).

## **Suggested amendment**

The HCRC's concern could be addressed by an amendment adding a new subsection 604-10.5(p), inserted after the new subsections 604-10.5(n) and (o), providing:

(p) Subsections (n) and (o) notwithstanding, immunity from civil liability for taking action under this section and the presumption of good faith and immunity from civil liability for actions taken under this chapter shall not apply to claims for violation of state and federal laws prohibiting discrimination in public accommodations, chapter 489, and the Americans with Disabilities Act, Title III, 42 U.S.C. § 12101, *et seq.*, and Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a, *et seq.*

Thank you for your consideration.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO  
PROSECUTING ATTORNEY



CHASID M. SAPOLU  
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE JILL N. TOKUDA, CHAIR**  
**SENATE COMMITTEE ON LABOR**  
**Twenty-Ninth State Legislature**  
**Regular Session of 2018**  
**State of Hawai'i**

March 27, 2018

**RE: H.B. 2200, H.D. 1; RELATING TO PUBLIC SAFETY.**

Chair Tokuda, Vice Chair English, and members of the Senate Committee on Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in support of H.B. 2200, H.D. 1.

The purpose of H.B. 2200, H.D. 1 is to allow employers to obtain temporary restraining orders and injunctions to protect against harassment of employees or invitees at the employer's premises and worksites.

Currently, employers are unable to protect their workplace and/or employees through the use of a temporary restraining order or injunction when one of their employees or invitees is the subject of harassment. Yet, section 396-6 of the Hawaii Revised Statutes states that "Every employer shall furnish to each of the employer's employees employment and a place of employment which are safe as well as free from recognized hazards." With the statutory responsibility of providing a safe working environment for their employees and invitees, H.B. 2200, H.D. 1, provides an additional tool in which employers can provide and assure the safety of the workplace.

Although there are concerns that H.B. 2200, H.D. 1 may take away the freedom of the victim to make decisions pertaining to his/her interest or the interest of his/her family, the safeguard proposed in this bill would not infringe upon a victim's freedom to make personal choices, nor would it compel the victim to participate in the employer's application in any way. When the inherent dangers involved with harassment (directed towards one employee) expand to and/or affect other employees at the workplace, it is critical that employers be authorized to act,

to ensure everyone at the workplace are kept safe, and protect the employer's ability to continue operating as smoothly as possible.

For all of the foregoing reasons, the Department supports the passage of H.B. 2200, H.D.  
1. Thank you for the opportunity to testify on this matter.





# Chamber of Commerce HAWAII

*The Voice of Business*

**Testimony to the Senate Committee on Labor  
Tuesday, March 27, 2018 at 2:45 P.M.  
Conference Room 229, State Capitol**

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

Chair Tokuda, Vice Chair English, 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.



**MAUI**  
CHAMBER OF COMMERCE  
VOICE OF BUSINESS

**HEARING BEFORE THE SENATE COMMITTEE ON LABOR  
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 229  
TUESDAY, MARCH 27, 2018 AT 2:45 P.M.**

To The Honorable Jill N. Tokuda, Chair;  
The Honorable J. Kalani English, Vice Chair; and  
Members of Committee on Labor;

**TESTIMONY IN 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 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.

**HB-2200-HD-1**

Submitted on: 3/21/2018 3:57:38 PM

Testimony for LBR on 3/27/2018 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lindsey Dymond	Testifying for Kalapawai Market & Cafes	Support	No

Comments:



Testimony to the  
Senate Committee on Labor  
March 27, 2018  
2:45 pm  
State Capitol - Conference Room 229

RE: HB 2200 HD1 Relating to Public Safety

Aloha Chair Tokuda, Vice Chair English 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.





**TESTIMONY OF TINA YAMAKI  
PRESIDENT  
RETAIL MERCHANTS OF HAWAII  
MARCH 27, 2018**

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

Good afternoon Chairperson Tokuda and members of the Senate Committee on 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 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 have 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.

**HB-2200-HD-1**

Submitted on: 3/22/2018 9:16:31 AM

Testimony for LBR on 3/27/2018 2:45:00 PM

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

Comments:



TO: Chair Senator Jill Tokuda  
Vice Chair Senator Kalani English  
Members of the Labor 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.



Randy Perreira  
President

# HAWAII STATE AFL-CIO

345 Queen Street, Suite 500 • Honolulu, Hawaii 96813

Telephone: (808) 597-1441  
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The Twenty-Ninth Legislature, State of Hawaii  
Hawaii State Senate  
Committee on Labor

Testimony by  
Hawaii State AFL-CIO

March 27, 2018

H.B. 2200, H.D.1 – RELATING TO PUBLIC  
SAFETY

The Hawaii State AFL-CIO strongly opposes H.B. 2200, H.D.1 which 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.

The Hawaii State AFL-CIO has serious concerns that workers who legally exercise their rights to organize or seek evidence that an employer may be violating certain labor laws could be issued a Temporary Restraining Order (TRO). In addition, workers may not be the only ones issued TRO's – union organizers, worksite investigators among others could potentially be issued a TRO for simply doing their job. We feel the bill as drafted does not go far enough to ensure employees including the other workers mentioned above are adequately protected.

Further, under current law, most businesses are private property and can ban or remove people from entering their property if they become violent or create problems for customers or staff. In addition, any worker or customer can file a restraining order against anyone today. If someone is violent or creating an unsafe environment employees or customers have the legal right to file a restraining order. Under most restraining orders the individual found threatening is not allowed to be near the person's residence or place of work. Violation of the restraining order could result in a significant financial penalty or even jail time.

And lastly it should be made very clear that we strongly disagree that businesses or employers should be considered as people as H.B. 2200, H.D.1 implies. People file restraining orders – not businesses or employers. This is eerily similar to the Citizens United Supreme Court case where the justices ruled that corporations are people and can spend unlimited amounts of money on political issues. Over eighty percent of the general public agrees that corporations are not people and disagrees with the Supreme Court's ruling. And we agree. And while this bill is not Citizens United, it affirms that the Supreme Court correctly ruled that corporations are people. As a Democratic legislature we cannot move forward with such a bill and strongly urge the Senate Committee on Labor to defer H.B. 2200, H.D.1 indefinitely.

Thank you for the opportunity to testify.

Respectfully submitted,

Randy Perreira  
President



# IBEW1260

‘A‘OHE HANA NUI KE ALU ‘IA

March 27, 2018

The Twenty-Ninth Legislature  
Hawaii State Senate  
Committee on Labor

## HB2200 - RELATING TO PUBLIC SAFETY

Chair Tokuda, Vice Chair English, and Members of the Committee,

The International Brotherhood of Electrical Workers Local Union 1260, AFL-CIO (IBEW1260), represents more than 3500 members, has advocated for all workers in the State of Hawaii for over seventy-five years and respectfully offers the following testimony in **STRONG OPPOSITION** to House Bill 2200 (HB2200).

IBEW1260 is concerned that HB2200 allows an employer to seek a restraining order and injunction against Union representatives, Officers, or Organizers performing activities protected under the National Labor Relations Act (NLRA or Act), ultimately limiting rights guaranteed by the Act. Courts have found (*CKS Tool & Eng'g, Inc., 332 NLRB 1578, 1586*) that in the context of labor negotiations, language that is accusatory, stinging, and harsh; (*Am. Tel. Co. V N.L.R.B, 521 F .2d 1159, 1161*) a certain amount of salty language and defiance will be tolerated in bargaining sessions, in respect to grievances recognizing that passions run high in labor disputes. Additionally, it was recognized that without this, (*Consol. Diesel Co. v. NLRB, 263 F.3d 345*) there would be nothing left of the NLRA if every time someone exercised their rights under the Act, in a way that was somehow offensive to someone, action could be taken.

As such, IBEW1260 finds HB2200 to have the unintended consequence of weakening collective bargaining rights by tilting the balance of power and providing the employer disproportional influence at the bargaining table, in organizing drives and throughout the grievance process. For these reasons, IBEW1260 respectfully asks **HB2200 be deferred** sending a message that collective bargaining rights matter in Hawaii.

Mahalo for the opportunity to testify on this issue.

Respectfully,



Michael M. Brittain  
Asst. Business Manager  
IBEW1260 / AFL-CIO

**HB-2200-HD-1**

Submitted on: 3/26/2018 9:47:01 AM

Testimony for LBR on 3/27/2018 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	Testifying for Oahu County Committee on Legislative Priorities of the Democratic Party of Hawai'i	Oppose	No

Comments:

The Senate  
The Twenty-Ninth Legislature  
Regular Session of 2018

Committee on Labor

Rep. Jill N. Tokuda, Chair  
Rep. J. Kalani English, Vice Chair  
State Capitol, Conference Room 229  
Tuesday, March 27 2018, 2:45 p.m.

**STATEMENT OF ILWU LOCAL 142**  
**HB 2200, HD 1, RELATING TO PUBLIC SAFETY**

Thank you for the opportunity to present testimony regarding H.B. 2200, H.D. 1. ILWU Local 142 vigorously opposes this bill.

H.B. 2200, H.D.1 is fraught with peril. First, it gives unscrupulous employers a new, judicially-sanctioned weapon to attack union activists or dissident employees in non-union environments who are exercising their right to engage in protected concerted activity or free speech under the guise of protecting workplace safety or harmony. Section 2(d) of the bill does not even require that the Employer consult with the employee who is the victim of the harassment before seeking a temporary restraining order, thus exacerbating the likelihood that injunctions will be sought for improper reasons other than bonafide safety and harassment concerns.

Second, H.B. 2200 H.D. 1 is simply unnecessary. If an employer currently fears violence from a hostile employee it can: 1) order a medical or psychological examination to verify or disprove the propensity for violence; 2) temporarily suspend the employee with or without pay; 3) given adequate proof, trespass the employee under existing criminal law; 4) if a threat is direct to a specific management official, *that official* can seek the temporary restraining order under existing law against the perpetrator; or 5) management can summon law enforcement of officials to preserve the peace, as any other citizen can always do.

Third, H.B. 2200, H.D. 1 will upset the well-established statutory scheme that determines when the right of organize unions or engage in protected concerted activity has been violated because it will transfer the determination of some of these decisions from the Hawaii Labor Relations Board and the National Labor Relations Board where they have been adjudicated for half a century or more, to our district courts, which lack the specialized expertise to make these unique decisions. The proposed legislation makes reference to Chapters 377 HRS and 380 HRS in section "m", which prohibit temporary or permanent injunctions growing out of labor disputes, and claims in section "l" to exempt constitutionally protected activity from the reach of the injunctions this bill authorizes.

Thus, decisions about whether workplace harassment are in fact harassment or simply union organizing, protected concerted activity by employees, or constitutionally protected free speech advocacy will be rendered by ordinary district court judges bypassing the administrative tribunals vested with specialized expertise in adjudicating these complex issues. It is not a sign of disrespect to the district court judiciary to point out that unless the judges were previously labor lawyers or constitutional litigators that they will rarely, if ever, have encountered these subjects in the past and are likely to be ill-equipped to render these determinations. Further, there is a serious and unresolved question about whether district courts making determinations about what is or is not valid union organizing in the private sector are preempted from doing so by the federal government's promulgation of the National Labor Relations Act. Proper debate about issues in the workplace safety, gender equality, environmental safety, or any host of other appropriate concerns may also be stifled by the threat of employer-initiated injunctions.

Fourth, H.B. 2200 H.D. 1 continues the exclusivity of workers' compensation protection under Chapter 386 HRS. This is inappropriate because it is an attempt to insulate an employer who initiates a false temporary restraining order from civil liability because workers' compensation is made the exclusive remedy for any harm the accused employee. In other words, the employee against whom the false TRO is filed cannot sue in tort for monetary damages, slander or defamation, or intentional infliction of emotional distress. All the employee can claim is workers' compensation.

That is a wholly inadequate deterrent and remedy because the employee's emotional distress will be limited by the arbitrary rules and formulas utilized by the workers' compensation system. Employers bent on stopping union activism will use the TRO to stop activists and be emboldened by the feeble remedy workers' compensation allows.

Fifth, the bias inherent in H.B. 2200, H.D. 1 is evidenced by the fact that it actually relieves the employer of civil liability for its actions unless they are proven to lack good faith by "clear and convincing evidence" rather than the normal, less stringent standard "by preponderance of the evidence" in Subsection (o). Where a witness or employee participates in an investigation they are also granted immunity unless it can be shown that the individual had a "malicious intent" or knowledge of the falsity of her statements. This will also be a difficult standard to meet, and the bill is effectively allowing allegations of violence and harm to be made indiscriminately, without those making the allegations accountable for their statements through normal legal standards of proof.

Sixth, and perhaps less obviously, it erodes the normal zone of privacy that exists between an employee's private life and work life. It permits the employer to intrude on the employee's domestic life rather than keeping those spheres reasonably separate and distinct. When an employer's problems away from the workplace intrude and affect the employee's performance at work, the employer has every right to require competent job performance but that should not become a license to meddle or upset the balance of the employee's domestic life. Employer intervention as permitted by H.B. 2200, H.D. 1 has the clear potential to destabilize and disrupt the private lives of innocent employees.

Employers have maintained peace in the workplace and civil and harmonious relationships for decades without the TRO mechanism proposed in this bill using the five alternatives listed three paragraphs above this one. If there are situations where the bill might have been useful, they should be scrutinized to see if the harassment or violence could not have been fully prevented by a sincere and attentive employer using the five alternatives listed above that are available under current law without any new legislation.

When major sectors of the business community propose changes in law that affect the workplace, their ideas are normally worthy of serious consideration. However, where as here, the need for change has simply not been empirically demonstrated, the changes proposed do not improve the status quo but usurp important statutory and constitutional rights, the prudent course of legislative action is restraint rather than empty enactment. H.B. 2200, H.D. 1 should therefore be held.

Testimony of  
Christopher Delaunay, Government Relations Manager  
Pacific Resource Partnership

THE SENATE  
THE TWENTY-NINTH LEGISLATURE  
REGULAR SESSION OF 2018

COMMITTEE ON LABOR  
Senator Jill N. Tokuda, Chair  
Senator J. Kalani English, Vice Chair

Tuesday, March 27, 2018  
2:45 p.m.  
State Capitol  
Conference Room 309

Aloha Chair Tokuda, Vice Chair English and Members of the Committee:

Pacific Resource Partnership (PRP) respectfully opposes HB 2200, HD1 relating to Public Safety which 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.

We are concerned with the measure as an unlawful employer could use the temporary restraining order (TRO) as a tool to protect their illegal business operations at the expense of the health and well-being of the employee the employer claims to be protecting.

Unlawful employers could abuse this TRO option in an attempt to prevent human rights groups, worker organizations, and community members from assisting employees who have been exploited by an employer to get the help they need from law enforcement or government agencies. Vulnerable populations that have been exploited by an employer, including immigrant workers, may not be familiar with labor laws or may be intimidated by going to a government office or law enforcement agency to file a complaint without the assistance of an advocacy group or community member. These organizations and individuals could play a vital role in ensuring that government and law enforcement agencies are aware of employee mistreatment, including wage and hour and occupational health and safety law violations.



**(Continued From Page 1)**

Moreover, existing law already permits a person who has been subject to harassment to petition the district court for a TRO and an injunction from further harassment. There are also specialized organizations that could help individuals obtain a TRO.

Thank you for allowing us to express our opinion on HB 2220, HD1, and we respectfully request that this bill be held your committee

About PRP

*Pacific Resource Partnership (PRP) is a not-for-profit organization that represents the Hawaii Regional Council of Carpenters, the largest construction union in the state, and more than 240 of Hawaii's top contractors. Through this unique partnership, PRP has become an influential voice for responsible construction and an advocate for creating a stronger, more sustainable Hawaii in a way that promotes a vibrant economy, creates jobs and enhances the quality of life for all residents.*

Testimony of The Labor Caucus of the Democratic Party of Hawai'i  
Senate Committee on Labor  
Tuesday, March 27<sup>th</sup>, 2018  
2:45PM, Room 229

Attention: Seantor Jill N. Tokuda, Chair  
Senator J. Kalani English, Vice Chair

Re: Opposition to HB2200 Relating to Public Safety

The Labor Caucus of the Democratic Party of Hawai'i writes in opposition to HB2200. We take issue with several aspects to this bill. First, it is unnecessary to achieve the stated purposes the proponents have put forward. Second, it has the potential to interfere with attempts to investigate and hold accountable employers who are violating labor laws and engaging in generally exploitative behavior. Third it could disrupt the ability of members of the community from protesting, picketing, and showing solidarity with workers attempting to organize. Lastly, the stated purpose, to protect employees, is paternalistic and positions the employer as the gate-keeper of victims' rights, which is especially troubling given that employers are often victimizers. This bill is unnecessary and holds the potential to do more harm than good for employees. Corporations are not people and we have seen the way that employers will take advantage of any concession on this point. For these reasons we urge that this measure be held.



**HB-2200-HD-1**

Submitted on: 3/21/2018 9:01:00 PM

Testimony for LBR on 3/27/2018 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Karin Nomura	Individual	Support	No

Comments:

While I believe that it is the employers duty to ensure that the job is a safe one, not filled with hostile intent. That in a fair world, an employer would automatically do what is in the best interest and keep from harm any employee that may be working for them. The reality is, while I believe that this law should be passed, that there will be employees let go, rather than supported and protected – as this would probably be for one employee. Especially for those who may work in a customer service oriented environment. So hope that while this bill is passed, that further consideration into protecting the employee/individual is also considered.