



**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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March 10, 2020

To: The Honorable Brian T. Taniguchi, Chair,
The Honorable Les Ihara, Jr., Vice Chair, and
Members of the Senate Committee on Labor, Culture and the Arts

Date: Tuesday, March 10, 2020
Time: 2:45 p.m.
Place: Conference Room 224, State Capitol

From: Scott T. Murakami, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 2273 H.D. 1 RELATING TO WAGES

I. OVERVIEW OF PROPOSED LEGISLATION

HB2273 HD1 proposes to amend sections 387-12 and 388-10(b), Hawaii Revised Statutes (HRS), by increasing the penalty for violation of wage laws to a class C felony.

DLIR supports this measure and suggests amendments.

II. CURRENT LAW

Section 387-12, HRS, provides for a fine of \$50 to \$500, or imprisonment for up to one year or both fine and imprisonment, to any employer, employer's agent, or any officer or agent of a corporation who agrees to or pays an employee less wages than the employee is entitled to under the Wage and Hour Law.

Section 388-10(b), HRS, provides for a fine of \$100 to \$10,000, or imprisonment for up to one year or both fine and imprisonment, to any employer or any officer of a corporation who fails to pay an employee's wages in accordance with the Payment of Wages Law.

III. COMMENTS ON THE HOUSE BILL

The DLIR supports the intent of increasing penalties for violation of wage laws. As drafted, the measure would require the Attorney General's Office to criminally charge

those that violate the Wage and Hour and Payment of Wages and Other Compensation Laws.

Section 706-641(1)(c), HRS provides that those who have been convicted of a Class C Felony may be sentenced to pay a fine not exceeding \$10,000. Although the fine for a Class C Felony does not have a minimum, the DLIR believes that \$500 would be an appropriate floor as it is consistent with the increases in fines that DLIR is pursuing in its Administration measure.

Therefore, the DLIR respectfully requests that monetary fines in the range of \$500 to \$10,000 be included as penalties so as to conform with the increased criminal penalty and to allow the Department to continue to effectively enforce these important laws.

HB-2273-HD-1

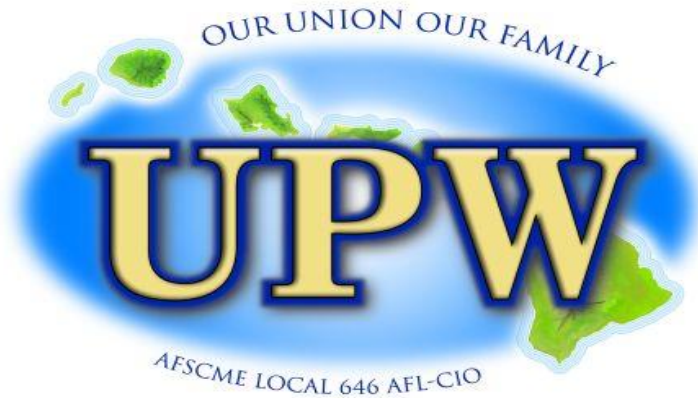
Submitted on: 3/7/2020 9:59:57 AM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Karin Nomura	Individual	Support	No

Comments:

This is a problem that needs to be addressed, and hope this bill passes.



THE HAWAII STATE SENATE

The Thirtieth Legislature
Regular Session of 2020

COMMITTEE ON LABOR, CULTURE AND THE ARTS

Senator Brian T. Taniguchi, Chair
Senator Les Ihara, Jr., Vice Chair

Date of Hearing: Tuesday, March 10, 2020
Time of Hearing: 2:45 p.m.
Place of Hearing: Conference Room 224
State Capitol
415 South Beretania Street

TESTIMONY IN SUPPORT OF HB 2273, HD1 RELATING TO WAGES

By 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 13,000 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 four counties. The UPW also represents about 1,500 members in the private sector.

HB2273, HD1 increases the penalty for violation of wages and hours laws (wage theft) to a class C felony. A class C felony is a mid-range crime but does not rise to the level of most serious crimes. Wage theft occurs when employers unlawfully keep employees from wages they deserve and earned. There are several ways that wage theft occurs: no over-time pay when entitled, misclassification of employee, violation of minimum wage pay, working off the clock when employee is asked to work before and after set hours without additional pay, illegal deductions from employee pay and the employee is not being paid at all.

According to the National Consumer League, “wage theft is endemic.” It is likely to occur in non-union workplaces. The NCL also points out that the industries with the most wage theft are in agriculture, poultry processing, janitorial services, restaurant work, garment manufacturing, long term care, home health care and retail industries.

In Hawaii, there have been recent cases of wage theft in late 2019. The U.S. DOL found workers misclassified while they performed duties of more highly skilled and higher paid positions. The U.S. DOL found violations in overtime pay, minimum wage, and child labor violations. These violations totaled more than \$698,000 in back wages for 339 employees plus \$60,000 in civil penalties for child labor violations. In 2018 thus far, there have been overtime violations on Maui, violations in minimum wage and inadequate maintenance of time records were also found. Several restaurants on Oahu failed to pay over-time to their employees. When is this thievery going to stop? This bill, HB2273, HD1 should get the attention of violators and those that believe they won’t be caught. All Hawaii workers deserve better.

The UPW strongly supports this measure.

Thank you for the opportunity to submit this testimony.

TESTIMONY BEFORE THE SENATE COMMITTEE ON
LABOR, CULTURE & THE ARTS

RE: HB 2273, - RELATING TO WAGES

TUESDAY, MARCH 10, 2020

MITZIE HIGA, LEGISLATIVE CHAIR
DEMOCRATIC PARTY OF HAWAII LABOR CAUCUS

Chair Taniguchi and Members of the Committee:

The Democratic Party of Hawaii Labor Caucus **supports HB 2273**, relating to wages. This bill, once passed into law, will increase the penalty for violation of wages and hours laws to a class C felony.

Other states have recently increased penalties for employers who willfully commit wage theft. Hawaii should provide all workers the same protections as Minnesota, Colorado, and other states that have increased penalties for employers who fail to pay their employees their lawfully earned wages.

The current \$50 to \$500 fine in section 387-12, HRS has remained the same since 1965. The current fine is not an effective deterrent. Thus changing the penalty for violation of wages and hour laws to a class C felony is needed. Our state labor laws should protect workers from employers who fail to pay their employees.

To protect all workers in Hawaii, the Labor Caucus asks your committee to **support** this bill.



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Paul Kosasa, ABC Stores, *Advisor*
Derek Kurisu, KTA Superstores, *Advisor*
Beau Oshiro, C&S Wholesale Grocers, *Advisor*
Toby Taniguchi, KTA Superstores, *Advisor*

TO:

Committee on Labor, Culture, and the Arts
Senator Brian T. Taniguchi, Chair
Senator Les Ihara, Jr., Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: March 10, 2020
TIME: 2:45pm
PLACE: Conference Room 224

RE: HB2273 HD1 Relating to Wages

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.

HFIA is in opposition to this measure. Section 1 discusses willful wage theft however the text of the measure does not make a clear distinction between wage theft and inadvertent wage errors. This measure would criminalize a situation that occurs unintentionally in businesses. If passed this would mean that the owner of a small local business with no accounting department would face the same criminal penalty for miscalculating an employee's over time as someone would for second degree assault.

Hawaii businesses care about their employees and we have not seen any evidence that wage theft in our state is a problem to a degree that would warrant such sharp increases in penalties with such severe unintended consequences. This measure is not the right choice for our State, and we ask that it be held. We thank you for the opportunity to testify.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the Senate Committee on Labor, Culture, and the Arts
Tuesday, March 10, 2020 at 2:45 P.M.
Conference Room 224, State Capitol**

RE: HB 2273 HD1, RELATING TO WAGES

Chair Taniguchi, Vice Chair Ihara, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **has concerns** with HB 2273 HD1, which increases the penalty for violation of wages and hours laws to a Class C felony.

The Chamber is Hawaii's leading statewide business advocacy organization, representing 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.

The Chamber has concerns about the impact that this bill would have on employers who may make an unintentional error that would be considered a violation under this proposed bill. This bill could create an unnecessary burden that could expose HR professionals, benefit administrators and others who are responsible for payroll to the very severe penalties of a Class C felony. Criminalizing payroll typos and oversights could drive the existing workforce and qualified candidates towards other, less risky business opportunities. Rather than trying to impose such penalties, efforts should be made to increase the outreach and education for employers to ensure that they are promoting and complying with proper compliance of the payment of wages law.

Thank you for the opportunity to testify on HB 2273 HD1.