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March 13, 2024

Committee on Judiciary & Hawaiian Affairs  
Rep. David A. Tarnas, Chair  
Rep. Gregg Takayama, Vice Chair  
415 South Beretania Street, Conference Room 325  
State Capital  
Honolulu, HI 96813

Re: Testimony in Opposition of S.B. 2569  
Hearing: March 14, 2024, 2:00 PM

Dear Chair Tarnas, Vice Chair Takayama and Committee Members:

This letter is in opposition of S.B. 2569 which adds new language to permit a person who employs or contracts with a health care worker who suffers an act of violence to report the violent event to law enforcement.

S.B. 2569 will cause significant negative impact on the employer-employee relationship. This bill will necessitate the employer to inquire into the employee's personal life because S.B. 2569 is not limited to events that occur in the context of the employee's employment. The employer will have to delve into the employee's personal life and the discussion will be intrusive into the employee's family and intimate relationships. Most, if not all, employees will find the employer's inquiry as to the specifics of the violent episode and the nature of the relationship with the perpetrator not only intrusive, but offensive, interfering and nosey. S.B. 2569 requires the employer to cross the line that separates work and private life. S.B. 2569 will place requirements upon the employer that will be disruptive to the employer-employee relationship involving health care workers who are a highly organized and assertive workforce.

Despite language to the contrary, S.B. 2569 does not insulate the employer from civil liability but will instead trigger liability for the employer. S.B. 2569 places upon the employer the obligation to discuss the violent event with the employee, which potentially includes the employee's personal life and occurrences leading up to the violent event. Notably, for each violent event the employee experiences, the employer must, at minimum, consult and discuss with the employee whether the employee consents to the employer reporting the event to law enforcement. Should the employer fail to discuss the violent event with the employee, the

employer's selective enforcement may create a cause of action against the employer, especially should the employee be subjected to later acts of violence.

Another concern of S.B. 2569 is that it essentially provides free legal counsel for the employer. The bill provides for costs and fees, including attorney fees to be paid for. This provision, along with the civil implications, will encourage employers to file claims, especially for costs and fees.

S.B. 2569 requires the employer to pry into the employee's private and personal life which is outside the scope of the employee's work life. This intrusion will irreversibly change the employer-employee relationship and trigger civil liabilities. It will also unjustifiably provide legal counsel for the employer. S.B. 2569 is unnecessary. Any witness to a violent event can call law enforcement. Moreover, health care workers are intelligent, assertive and organized individuals. Thank you for taking these comments into consideration.

Sincerely,  
/s/ Taryn Tomasa  
Deputy Public Defender



**Testimony to the House Committee on Judiciary and Hawaiian Affairs  
Thursday, March 14, 2024; 2:00 p.m.  
State Capitol, Conference Room 325  
Via Videoconference**

**RE: SENATE BILL NO. 2569, SENATE DRAFT 2, RELATING TO WORKPLACE SAFETY.**

Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

The Hawaii Primary Care Association (HPCA) is a 501(c)(3) organization established to advocate for, expand access to, and sustain high quality care through the statewide network of Community Health Centers throughout the State of Hawaii. The HPCA **OFFERS COMMENTS** on Senate Bill No. 2569, Senate Draft 2, RELATING TO WORKPLACE SAFETY.

By way of background, the HPCA represents Hawaii's Federally Qualified Health Centers (FQHCs). FQHCs provide desperately needed medical services at the frontlines to over 150,000 patients each year who live in rural and underserved communities. Long considered champions for creating a more sustainable, integrated, and wellness-oriented system of health, FQHCs provide a more efficient, more effective and more comprehensive system of healthcare.

This bill, as received by your Committee, would allow a person who employs or contracts with a health care worker who suffers an act of violence to report the event to law enforcement and petition for a temporary restraining order and injunction under certain circumstances.

This measure would take effect upon its approval.

All employers have an affirmative duty to ensure that the place of employment is safe for their employees. While the HPCA commends the introducer and supporters for seeking to make the workplace safer, we are concerned that the enactment of this measure might have unintended consequences.

While the affirmative duty of employers to provide a safe work environment is firmly established in both federal and state statutes, the concept originated under the common law. Over time, countless decisions were rendered in Hawaii and across the nation that further refine and augment the responsibilities placed on the employer at the time employment begins.

**Testimony on Senate Bill No. 2569, Senate Draft 2**  
**Thursday, March 14, 2024; 2:00 p.m.**  
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The HPCA is concerned that the enactment of this bill would expand the liability exposure of health care employers. While the bill explicitly provides certain immunities for actions taken by the employer such as filing a report to law enforcement or petitioning for a temporary restraining order (TRO), it is unclear whether liability would extend to the employer if the employer chooses NOT to act.

Page 11, lines 8 through 17 state:

*“(m). A person who employs or contracts with health care workers, or the person’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 take under this chapter. No person who employs or contracts with health care workers, or agent of the person, who fails to use the procedure 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. . .” [Emphasis added.]*

Would failure to act demonstrate the employer’s “lack of good faith”? The establishment of a good faith standard would seemingly conflict with the next sentence that “. . . [n]o person who. . . fails to use the procedure. . . shall be liable for negligence nor shall evidence of failure to use those procedures be admissible as evidence of negligence. . .”

One could argue that if this law was enacted, and an employer, for whatever reason, chooses not to file a report or petition for a TRO, and subsequently an act of violence occurs against an employee, the employer would fail to provide a safe work environment for employees, as required under federal and state labor and occupational safety laws. If that is indeed the case, then while the black letter of this bill is permissive, the material change to the employer’s affirmative duty would have the practical effect of making reporting to law enforcement and petitioning for a TRO directive.

In addition, what impact would the enactment of this bill have on liability insurance for health care providers?

Ever since this bill came to our attention, the HPCA has been consulting with various employment and human resources organizations to gain a clearer picture on the obligations this bill will place on our members. Because of the complexity of these issues, we are still trying to ascertain the best course of action for our members.

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**In light of the foregoing, we urge this Committee to proceed cautiously with this measure.**

Thank you for the opportunity to testify. Should you have any questions, please do not hesitate to contact Public Affairs and Policy Director Erik K. Abe at 536-8442, or [eabe@hawaiiipca.net](mailto:eabe@hawaiiipca.net).



**WAIANAЕ COAST  
COMPREHENSIVE  
HEALTH CENTER**

Aloha Chair David Tarnas, Vice Chair Gregg Takayama, and Members of the Committee on Judiciary & Hawaiian Affairs:

I write on behalf of Waianae Coast Comprehensive Health Center (WCCHC) to express our **strong support** for SB 2569 SD2, an important piece of legislation aimed at enhancing the safety and security of healthcare workers by allowing employers to report acts of violence and petition for temporary restraining orders (TROs) and injunctions under specific conditions.

This bill is important for WCCHC, where our commitment to the well-being of our employees directly correlates with our ability to serve our community effectively. The healthcare sector has witnessed a concerning rise in workplace violence, with healthcare workers facing threats and physical harm at an alarming rate. Notably, in 2018, healthcare workers accounted for 73 percent of all nonfatal workplace injuries due to violence, a rate five times higher than other sectors. Canopy, a safety device manufacturer, shared new 2023 data showing violence impacted more than 10% of hospital staff last year in every role. Hospital staff with their devices triggered 22,000 alerts requesting immediate help with an emerging threat or active violence among 200,000 employees. While the largest share of these alerts originated in emergency departments (40.5%), nearly two-thirds occurred in other areas.

Our experience mirrors this national trend, with numerous instances of threats against our staff. Regrettably, obtaining adequate and timely responses from local law enforcement has been challenging, contributing to increased employee burnout and absenteeism. For instance, one of our dedicated doctors had to take three separate shifts off work to navigate the complex process of obtaining a TRO, underscoring the inefficiencies of the current system.

States including Arkansas, California, Colorado, Georgia, and others have enacted similar provisions empowering employers to be able to file for TROs on behalf of their employees. SB 2569 SD2 offers a practical step in the right direction by allowing health centers to take proactive steps to secure TROs on behalf of their employees, fostering a safer work environment and, by extension, a healthier community.

Mahalo for your consideration,

Ian Ross  
Public Affairs Director  
ianross@wcchc.com

**SB-2569-SD-2**

Submitted on: 3/14/2024 10:02:32 AM

Testimony for JHA on 3/14/2024 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Andy Kagemoto	Individual	Support	Written Testimony Only

Comments:

In strong support-aloha!

**SB-2569-SD-2**

Submitted on: 3/14/2024 10:04:54 AM

Testimony for JHA on 3/14/2024 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Michael Honda	Individual	Support	Written Testimony Only

Comments:

Thank you chair and committee members for considering this bill. Mahalo!