

HB

303

HD1

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# A BILL FOR AN ACT

RELATING TO OCCUPATIONAL HEALTH AND SAFETY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

- 1           SECTION 1. (a) There is established a patient lift task  
2 force within the department of labor and industrial relations  
3 for administrative purposes to consist of the following members:
- 4           (1) A representative from the department of labor and  
5                 industrial relations' occupational safety and health  
6                 division;
- 7           (2) A representative from the Hawaii nurse's association;
- 8           (3) A representative from United Public Workers;
- 9           (4) A representative from a state hospital, to be chosen  
10                 by the director of labor and industrial relations or  
11                 the director's designee;
- 12           (5) A representative from a private hospital, to be chosen  
13                 by the director of labor and industrial relations or  
14                 the director's designee; and
- 15           (6) Any other stakeholders deemed necessary by the  
16                 director of labor and industrial relations or the  
17                 director's designee.



1 (b) The director of labor and industrial relations or the  
2 director's designee shall chair the task force.

3 (c) The purpose of the task force is to develop proposed  
4 legislation to address issues of employee health and safety in  
5 the lifting and transportation of patients in a hospital setting  
6 that are currently unaddressed or under-addressed by existing  
7 state law. The task force shall submit a report of its findings  
8 and recommendations, including any proposed legislation, to the  
9 legislature no later than twenty days prior to the convening of  
10 the regular session of 2020.

11 (d) The members of the task force shall serve without  
12 compensation, but shall be reimbursed by the department of labor  
13 and industrial relations for necessary expenses, including  
14 travel expenses, incurred for service on the task force. No  
15 member of the task force shall be made subject to section 84-17,  
16 Hawaii Revised Statutes, solely because of that member's  
17 participation on the task force. The task force shall be exempt  
18 from chapter 92, Hawaii Revised Statutes.



1 (e) The task force shall serve until twenty days prior to  
2 the convening of the regular session of 2020, or until it has  
3 accomplished the purpose of this Act, whichever occurs first.

4 SECTION 3. This Act shall take effect on July 1, 2050.



**Report Title:**

Hospitals; Patient Lift Plan; Patient Lift Task Force

**Description:**

Creates a Patient Lift Task Force to address employee health and safety in lifting and transporting patients in a hospital setting. Requires a report, including proposed legislation, to the Legislature. (HB303 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*



DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LIEUTENANT GOVERNOR



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

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February 20, 2019

To: The Honorable Roy M. Takumi, Chair,  
The Honorable Linda Ichiyama, Vice Chair, and  
Members of the House Committee on Consumer Protection & Commerce

Date: Wednesday, February 20, 2019  
Time: 2:00 p.m.  
Place: Conference Room 329, State Capitol

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

**Re: H.B. No. 303 HD1 RELATING TO OCCUPATIONAL HEALTH AND SAFETY**

**I. OVERVIEW OF PROPOSED LEGISLATION**

HB303HD1 creates a Patient Lift Task Force to address employee health and safety in lifting and transporting patients in a hospital setting. Requires a report, including proposed legislation, to the Legislature no later than twenty days prior to the convening of the regular session of 2020.

DLIR appreciates the intent of this measure to increase employee health and safety during the lifting and transportation of patients, but opposes the measure as drafted as there are no pertinent Occupational Safety and Health Administration (OSHA) standards that Hawaii Safety and Health Law could complement. Because there are no standards, the only enforceable tenet of law is the OSHA General Duty Clause.

The ongoing, critical challenge facing HIOSH involves staff recruitment and retention. DLIR strongly prefers HIOSH to continue to focus on that and other issues identified for prioritization rather than the ill-fitting emphasis contained in the proposal.

**II. CURRENT LAW**

The Occupational Safety and Health Division (HIOSH) is statutorily assigned to administer Chapter 396 Hawaii Occupational Safety and Health Law. HIOSH adopts safety and health standards (administrative rules) in accordance with Chapter 91,

HRS and generally adopts Federal OSH standards.

Neither OSHA or HIOSH have adopted standards for the lifting or transporting of patients for health care facilities like “Broad service hospitals”. OSHA does not have a standard since OSHA has found that it is extremely difficult to have fixed ergonomic standards. Because there are no standards, any complaints or accidents about lifting or transporting patients would be subject to the OSHA general duty clause.

The OSHA general duty clause, Section 5(a)(1) of the Occupational Safety and Health Act, requires that each employer furnish to each of its employees a workplace that is free from recognized hazards that are causing or likely to cause death or serious physical harm. The general duty provision can be used by HIOSH only where there is no standard that applies to the particular hazard and the employer has its own employees exposed to the alleged hazard. The general duty is also the most difficult to prove.

Furthermore, the rules and standards are enforced through workplace inspections. Inspections are also conducted as a part of an inspection scheduling system (ISS) that identifies industries or work processes that are considered “high-hazard”. Inspections are also conducted in response to an event (i.e. accident, complaint, referral, or results from a previous inspection). HIOSH does not have any recent complaints nor reported accidents involving patient lifting or transferring.

### **III. COMMENTS ON THE HOUSE BILL**

Although the DLIR appreciates the measure’s intent of supporting the safety and health of workers, the DLIR opposes the measure due to concerns about the lack of established OSHA standards and existing constraints on limited resources. The following is excerpted from the latest FY 2017 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report of HIOSH by OSHA.

“In April 2017, an Operational Status Agreement (OSA) was signed, completing the transfer of coverage back to the State of Hawaii following the temporary enforcement assistance by OSHA. This transfer of authority was in alignment with the OSA, signed on July 12, 2012, that temporarily suspended enforcement authority in specific industries until HIOSH was able to rebuild its program. The State Plan will operate under 18(b) status until it applies for 18(e) status and receives final approval.

HIOSH's designation as a high-risk grantee was successfully removed at the end of FY 2017. Going into FY 2017, OSHA had serious concerns with the overall performance of the program. A low number of inspections were conducted, and responses to federal program changes and adoption of standards were not timely in FY 2016.

Cooperative programs were not utilized to provide the regulated community with a balanced approach and state and local government workplaces were not provided with consultation, outreach and education opportunities. To assist in restoring an effective program, mandatory activities and timelines were established for FY 2017.

All established mandatory activities were met or exceeded and as a result, the designation as a high-risk grantee was removed.”

In considering the lack of specific standards and if a task force were convened, DLIR suggests other entities are more well-suited to effectuate the purposes of the measure. HIOSH continues to endeavor to maintain and improve its services, and although appreciative of the intent of this proposal, suggests other entities may have the resources, expertise, and experience to more effectively address the issues identified and under other regulatory schemes.



Wednesday, February 20, 2019 at 2:00 PM  
Conference Room 329

**House Committee on Consumer Protection & Commerce**

To: Representative Roy Takumi, Chair  
Representative Linda Ichiyama, Vice Chair

From: Michael Robinson  
Vice President, Government Relations & Community Affairs

Re: **Comments on HB 303, HD1  
Relating to Occupational Health and Safety**

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My name is Michael Robinson, Vice President, Government Relations & Community Affairs at Hawai'i Pacific Health. Hawai'i Pacific Health (HPH) is a not-for-profit health care system comprised of its four medical centers – Kapi'olani, Pali Momi, Straub and Wilcox and over 70 locations statewide with a mission of creating a healthier Hawai'i.

Thank you for the opportunity to provide comments on HB 303, HD1 which creates a Patient Lift Task Force to develop legislation to increase employee health and safety during the lifting and transportation of patients in a hospital setting.

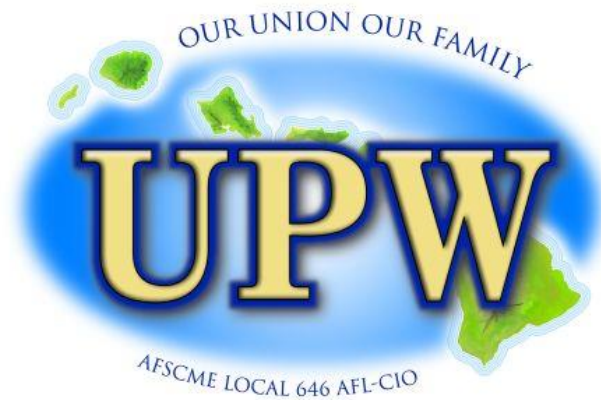
At HPH we understand the necessity to utilize appropriate lifting equipment and devices to lift and transfer patients who lack the ability or mobility to assist themselves to avoid injuries to the patients as well as the staff. We have spent at least \$2 million on in-room ceiling lifts, portable lifts, and lateral transferring devices. Our belief is that all caregivers should have the equipment and training to move patients in a safe and timely manner. Lift teams cannot be in every room at the time a patient needs to be repositioned or transferred

Nurses and other health care workers routinely suffer debilitating and even career-ending musculoskeletal disorders (MSDs) due to patient handling. In 2011 we implemented the Safe Patient Handling and Mobility Program which is in our policies. Through the Safe Patient Handling and Mobility Program our hospitals have trained nurses and other health care workers in the appropriate use and means of safely transferring patients. Training in Safe Patient Handling and Mobility Program is ongoing and has resulted in decreased staff injuries and positive patient metrics.

As HPH already has a system and policy for safe patient handling in place, we believe HB 303 is unnecessary and may interfere with our policy. We request that any legislation contemplated not prevent us from continuing our endeavors to ensure the safety of our patients and staff. We are willing to assist with the task force if needed.

Thank you for the opportunity to testify.





THE HAWAII STATE HOUSE OF REPRESENTATIVES

The Thirtieth Legislature  
Regular Session of 2019

Committee on Consumer Protection & Commerce

Representative Roy M. Takumi, Chair  
Representative Linda Ichiyama, Vice Chair

Date of Hearing: Wednesday, February 20, 2019  
Time of Hearing: 2:00 p.m.  
Place of Hearing: Conference Room 329  
State Capitol

**TESTIMONY ON HOUSE BILL HB303, \*HD1 RELATING TO OSHA**

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

The UPW **supports** HB303, HD1 that creates a Patient Lift Task Force to address employee health and safety in lifting and transporting patients in a hospital setting.

Thank you for the opportunity to submit this testimony.

**HB-303-HD-1**

Submitted on: 2/19/2019 12:14:50 PM

Testimony for CPC on 2/20/2019 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Joan Kutzer	Hawaii Nurses Association, OPEIU local 50	Support	No

Comments:

Dear Chair Takumi, Vice Chair Ichiyama, and the members of the Committee on Consumer Protection & Commerce. Hawaii Nurses Association is in strong support of HB 303 HD1. We are thankful to be included in this proposed task force. Tremendous progress has been made in worker safety, but so much more needs to be done to reduce injuries. Healthcare Workers still have a much higher rate of musculoskeletal injury compared to other trades. Please vote in favor of HB303 to protect the health of those caring for the health of our people. Thank you, Joan Kutzer, RN, Hawaii Nurses Association.



**February 20, 2019 at 2:00 pm**  
**Conference Room 329**

**House Committee on Consumer Protection and Commerce**

To: Chair Roy M. Takumi  
Vice Chair Linda Ichiyama

From: Paige Heckathorn Choy  
Director of Government Affairs  
Healthcare Association of Hawaii

Re: **Submitting Comments**  
**HB 303 HD 1, Relating to Occupational Health and Safety**

The Healthcare Association of Hawaii (HAH), established in 1939, serves as the leading voice of healthcare on behalf of 170 member organizations who represent almost every aspect of the healthcare continuum in Hawaii. Members include acute care hospitals, skilled nursing facilities, home health agencies, hospices, assisted living facilities and durable medical equipment suppliers. In addition to providing access to appropriate, affordable, high quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing over 20,000 people statewide.

Thank you for the opportunity to **submit comments** on HB 303 HD 1, which would establish a patient lift task force within the Department of Labor and Industrial Relations to propose legislation to address issues of employee safety in the lifting and transportation of patients in a hospital setting that may be unaddressed or under-addressed by state law. While we appreciate the intent of this measure, we do not believe it is necessary. Hospitals in the state have adopted policies, procedures, and training opportunities that meet or exceed standards and guidelines from state and national regulatory and accrediting bodies. Further, this task force would only focus on state laws; however, hospitals must comply with multiple federal standards, such as those promulgated by The Joint Commission or the Centers for Medicare and Medicaid Services.

Preventing injury among healthcare workers is of utmost importance to hospitals, which is why they have developed comprehensive plans and training opportunities on lifting and transporting patients. Thank you for your consideration of these comments.

**HB-303-HD-1**

Submitted on: 2/19/2019 12:51:59 PM

Testimony for CPC on 2/20/2019 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jessica Fernandez	Individual	Support	No

Comments:

**HB-303-HD-1**

Submitted on: 2/19/2019 9:54:42 PM

Testimony for CPC on 2/20/2019 2:00:00 PM

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

Comments:

**HB-303-HD-1**

Submitted on: 2/19/2019 4:21:48 PM

Testimony for CPC on 2/20/2019 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Holly Arthur	Individual	Support	No

Comments:



**HB-303-HD-1**

Submitted on: 2/19/2019 6:24:16 PM

Testimony for CPC on 2/20/2019 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments: