



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

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February 12, 2019

To: The Honorable John M. Mizuno, Chair,  
The Honorable Bertrand Kobayashi, Vice Chair, and  
Members of the House Committee on Health

Date: Tuesday, February 12, 2019  
Time: 9:00 a.m.  
Place: Conference Room 329, State Capitol

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

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

**I. OVERVIEW OF PROPOSED LEGISLATION**

HB303 adds a new section to Chapter 396 "Occupational Safety and Health," Hawaii Revised Statutes (HRS), to require acute care hospitals:

- To adopt a "zero lift policy,"
- Adopt a health care worker back injury prevention plan,
- Provide specialized training and require proficiency in safe techniques for lifting or transferring patients through "appropriate" use of lifting or transferring devices and equipment, and
- Prohibit the employer from disciplining employees under certain conditions and allowing discipline if the worker is appropriately trained and equipped.

The Department opposes the measure, noting a possible statutory conflict and a potential title issue.

**II. CURRENT LAW**

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

Standards via rule-making in their entirety as the floor, and in some cases adopts higher standards.

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).

The Consultation and Training Branch provides free on-site consultations for employers that identify workplace hazards, recommends corrective actions and evaluates and makes recommendations to improve an employer’s safety and health management system to prevent future hazards. Priority for the service is to smaller employers in high-hazard industries, or with high-hazard processes.

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

The DLIR appreciates the intent of the measure that supports the safety and health of workers, but opposes the measure due to concerns about statutory placement, existing constraints on limited resources, and potential unintended consequences.

The measure requires the adoption of a “zero lift policy,” but HIOSH does not enforce employers’ policies. Moreover, HIOSH does not have jurisdiction pertaining to disciplinary policies.

Currently, OSHA, hence HIOSH, does not have specific standards for health care facilities like “Broad service hospitals” and the like. HIOSH does not have any recent complaints nor reported accidents involving patient lifting or transferring. Because there are no OSHA standards, any complaints or accidents would be subject to the OSHA general duty clause, which is the most difficult type of case to prove.

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 provisions can be used by OSHA only where there is no standard that applies to the particular hazard and the employer has its own employees exposed to the alleged hazard.

All the following elements are necessary for HIOSH to prove a general duty clause violation:

1. The employer fails to keep the workplace free of a hazard to which its employees were exposed,
2. The hazard was recognized,
3. The hazard was causing, or was likely to cause, death or serious physical

harm, and

4. There was a feasible and useful method to correct the hazard.

Considering the above discussion in the context of the Federal-State cooperative agreement for safety and health, especially as it applies to safety and health standards, renders placement of the content in Chapter 396 inappropriate.

DLIR notes that the contents of this measure may conflict with the enabling chapter for the Department and specifically section “§371-7 Duties and powers of the department; rules, procedure for varying.” (§371-7(2)).

This proposal, especially in light of the above, would create significant, additional responsibilities on HIOSH, which has limited resources and is already over-burdened with over 30,000 plus employers that it must to inspect.

Lastly, the title of the measure does not match Chapter 396.

**HB-303**

Submitted on: 2/8/2019 9:34:19 PM

Testimony for HLT on 2/12/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Chiman Wong	Queens Medical Center	Support	No

Comments:



**February 12, 2019 at 9:00 am**  
**Conference Room 329**

**House Committee on Health**

To: Chair John M. Mizuno  
Vice Chair Bertrand Kobayashi

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

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

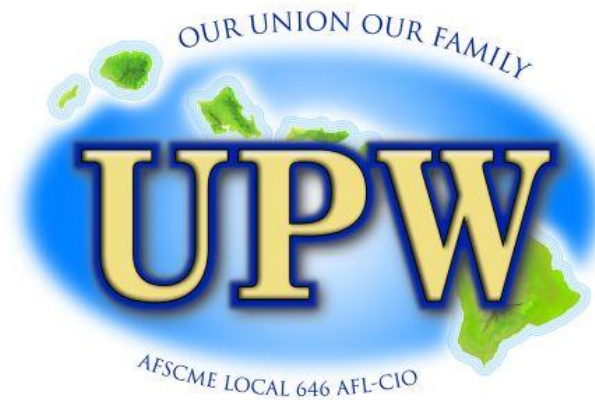
The Healthcare Association of Hawaii (HAH), established in 1939, serves as the leading voice of healthcare on behalf of 170 member organizations who represent almost every aspect of the healthcare continuum in Hawaii. Members include acute care hospitals, skilled nursing facilities, home health agencies, 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, which would require hospitals to adopt a back-injury prevention plan and complete a needs assessment. The hospital must also develop policies and plans for the appropriate use of teams, devices, and equipment and provide training for workers, among various other requirements.

We appreciate the importance of protecting workers from injuries on the job, which is why hospitals in the state have adopted policies, procedures, and training opportunities that meet or exceed the requirements in this bill. Further, the current policies and procedures that hospitals have implemented are developed with input from the hospital staff and are tailored to fit the needs and preferences of each facility. This bill seeks a more narrow and prescriptive way for hospitals to help prevent injury among staff, and we would prefer to maintain the flexibility of each facility to appropriately respond to the needs of their workers, especially if those responses exceed the standards required in this bill.

Thank you for your consideration of these comments.





THE HAWAII STATE HOUSE OF REPRESENTATIVES

The Thirtieth Legislature  
Regular Session of 2019

Committee on Health

Representative John Mizuno, Chair  
Representative Bertrand Kobayashi, Vice Chair

Date of Hearing: Tuesday, February 12, 2019,  
Time of Hearing: 9:00 a.m.  
Place of Hearing: Conference Room 329  
State Capitol

**TESTIMONY ON HOUSE BIL 303 RELATING TO OCCUPATIONAL HEALTH AND  
SAFETY**

By DAYTON M. NAKANELUA,  
State Director of the United Public Workers,  
AFSCME Local 646, AFL-CIO ("UPW")

My name is Dayton M. Nakanelua and I am the 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 strongly **supports** HB303 requiring acute care hospitals to use lift teams and lifting equipment and devices for lifting and transferring of patients for whom not using lift teams and lifting equipment and devices would pose the risk of injury to the health care workers and/or patients.

Federal OSHA has voluntary guidelines in the National Institute for Occupational Safety and Health (NIOSH) in *the Applications Manual for the Revised NIOSH Lifting Equation*. Employee exposure to hazards related to heavy lifting and back injuries may be addressed under Section 5(a)(1) of the OSH Act, referred to as the General Duty Clause: “Each employer— shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees...”

Thank you for the opportunity to submit this testimony.



**HB-303**

Submitted on: 2/11/2019 8:58:56 AM

Testimony for HLT on 2/12/2019 9:00:00 AM

<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	Yes

Comments:

Dear Chair Mizuno, Vice Chair Kobayashi, and the Members of the Committee on Health;

Hawaii Nurses Association is in strong support of HB303. Healthcare Workers have a high incidence of Musculoskeletal injuries. Some of these workers become permanently disabled. Patients can become injured during lifts or transfers.

There are tools available for safe lifting and transfers, but sadly they are not widely used. Instead, Staff is used to perform these tasks.

Having a trained designated team for lifting, utilizing equipment designed for this purpose, and training staff in the use of the equipment; will help to reduce injuries to Healthcare Workers.

Please vote in favor of HB303

Thank you, Joan Kutzer, RN, Hawaii Nurses Association

Tuesday, February 12, 2019 at 9:00 AM  
Conference Room 329

**House Committee on Health**

To: Representative John Mizuno, Chair  
Representative Bertrand Kobayashi, Vice Chair

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

Re: **Comments on HB 303  
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 which requires general acute care hospitals to use lift teams and lifting equipment and devices for the lifting and transferring of patients where the use of teams and devices is necessary for the safety of both patients and health care workers.

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 policy contemplated by this measure not prevent us from continuing our endeavors to ensure the safety of our patients and staff.

Thank you for the opportunity to testify.

**HB-303**

Submitted on: 2/7/2019 5:13:02 PM

Testimony for HLT on 2/12/2019 9:00:00 AM

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

Comments:

**HB-303**

Submitted on: 2/7/2019 5:20:34 PM

Testimony for HLT on 2/12/2019 9:00:00 AM

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

Comments:

**HB-303**

Submitted on: 2/8/2019 5:01:19 PM

Testimony for HLT on 2/12/2019 9:00:00 AM

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

Comments:

**HB-303**

Submitted on: 2/9/2019 6:20:17 AM

Testimony for HLT on 2/12/2019 9:00:00 AM

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

Comments:

**HB-303**

Submitted on: 2/9/2019 1:07:50 AM

Testimony for HLT on 2/12/2019 9:00:00 AM

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

Comments:



**HB-303**

Submitted on: 2/9/2019 9:06:35 AM

Testimony for HLT on 2/12/2019 9:00:00 AM

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

Comments:

I am a registered nurse, working in Labor and Delivery where we turn heavy patients regularly to not only for better patients' outcomes but also to save lives (unborn babies). Over my career I have seen many nurses get hurt, due to not having the extra support of other staff or other equipment to adequately and timely turn out patients. That fact is so unfortunate as these people who are hurt are unable to care for patients and do the things they were trained to do and want to do.

**HB-303**

Submitted on: 2/10/2019 1:28:05 AM

Testimony for HLT on 2/12/2019 9:00:00 AM

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

Comments:

Lift teams and safety equipment are necessary in each health care organization. They help reduce injuries when repositioning or moving the patients as needed.

**HB-303**

Submitted on: 2/10/2019 11:20:13 AM

Testimony for HLT on 2/12/2019 9:00:00 AM

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

Comments:

It will save a lot of work related injuries! We really need this!

**HB-303**

Submitted on: 2/10/2019 1:42:13 PM

Testimony for HLT on 2/12/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Katherine E Delaney	Individual	Support	No

Comments:

**HB-303**

Submitted on: 2/10/2019 4:15:43 PM

Testimony for HLT on 2/12/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
L.Schier	Individual	Support	No

Comments:

Extremely important. Lift teams and use of lift equipment (24/7) make take additional time

for the employee, however *quality* and *safety* take time. THANK YOU fro supporting this Bill.

-Registered Nurse in acute care setting over 35 yrs. - Working with a less than optimal spine.

**HB-303**

Submitted on: 2/10/2019 8:49:37 PM

Testimony for HLT on 2/12/2019 9:00:00 AM

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

Comments:

**HB-303**

Submitted on: 2/9/2019 7:50:42 AM

Testimony for HLT on 2/12/2019 9:00:00 AM

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

Comments:

**LATE**

**HB-303**

Submitted on: 2/11/2019 4:11:49 PM  
Testimony for HLT on 2/12/2019 9:00:00 AM

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

Comments:



**LATE**

**HB-303**

Submitted on: 2/11/2019 8:41:37 PM  
Testimony for HLT on 2/12/2019 9:00:00 AM

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

Comments:

As a registered nurse I have seen many injuries, some career ending. This is an important bill to prevent such injuries.