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DEPUTY DIRECTOR

STATE OF HAWAII  
KA MOKU'ĀINA O HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
KA 'OIHANA PONO LIMAHANA

April 19, 2023

To: The Honorable Sharon Y. Moriwaki, Chair,  
The Honorable Chris Lee, Vice Chair, and  
Members of the Senate Committee on Labor and Technology

Date: Wednesday, April 19, 2023

Time: 3:00 p.m.

Place: Conference Room 225, State Capitol, and via Videoconference

From: Jade T. Butay, Director  
Department of Labor and Industrial Relations (DLIR)

**Re: H.C.R. NO. 58 REQUESTING THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS TO COMPLETE A COMPARATIVE STUDY OF ITS POLICIES ON YOUTH EMPLOYMENT AND FEDERAL REQUIREMENTS FOR YOUTH EMPLOYMENT UNDER THE FAIR LABOR STANDARDS ACT.**

**I. OVERVIEW OF PROPOSED LEGISLATION**

The **DLIR offers comments** on this measure that requests the department to perform a comparative study on child labor laws (the genesis of this resolution is [SB2711](#) from the 2022 Session). State and federal law act in concert to protect child laborers—the U.S. Department of Labor (USDOL) relies on the work permit registration data collected by the DLIR, and often seeks assistance and information from the DLIR for their federal child labor investigations.

Chapter 12-25, Hawaii Administrative Rules (HAR) permits apprentices, trainees, student-learners, or enrollees to work in hazardous occupations under certain conditions.

The DLIR suggests another agency be tasked with such a study as the Wage Standards Division currently has 19 (16 filled) authorized positions to administer six laws and does not have the capacity to take on additional responsibilities at this time, and is likely to be involved in paid sick leave and wage and hour research efforts pursuant to other resolutions and bills currently moving through the legislative process.

**II. CURRENT LAW**

Both Federal and State laws govern the employment of young workers and when both are applicable, the law with the stricter standard must be obeyed in accordance with the Fair Labor Standards Act (FLSA).

The FLSA youth employment provisions do not:

- Require minors to obtain "working papers" or "work permits,"
- Restrict the number of hours or times of day that workers 16 years of age and older may be employed,
- Regulate or require such things as breaks, meal periods, or fringe benefits, or
- Regulate such issues as discrimination, harassment, verbal or physical abuse, or morality.

Chapter 390, HRS, includes:

- Requiring employers to hold on file a valid certificate of employment,
- Prohibitions on employment in adult entertainment and hazardous occupations,
- 16 & 17-year-old minors may work during periods when the minor is not legally required to attend school or when the minor is excused by school authorities from attending school,
- 14 & 15-year-old minors, under the same school conditions as above, may work:
  - No more than five hours continuously without an interval of at least thirty consecutive minutes for a rest or lunch period,
  - Between 7:00 a.m. and 7:00 p.m. of any day; provided that during any authorized school break, the minor may be employed between 6:00 a.m. and 9:00 p.m.,
  - No more than six consecutive days,
  - No more than eighteen hours in a calendar week during which the minor is legally required to attend school, and no more than forty hours in a calendar week during which the minor is not legally required to attend school or when the minor is excused by school authorities from attending school, and
  - No more than three hours on any school day nor more than eight hours on a non-school day.
- Minors 13 and under may work in coffee harvesting and in theatrical employment when the work is performed during periods when the minor is not legally required to attend school or when the minor is excused by school authorities from attending school and the employer holds on file a valid certificate of employment.

Title 12, Chapter 25, Subchapter 4 (Hawaii Administrative Rules) Hazardous Occupations includes:

- §12-25-43 (Occupations in operation of power-driven woodworking machines);
- §12-25-46 (Occupations involved in the operation of power-driven metal forming, punching, and shearing machines);

- §12-25-47 (Occupations in or about slaughtering and meat packing establishments and rendering plants);
- §12-25-49 (Occupations involved in the operation of certain power-driven paper products machines);
- §12-25-51 (Occupations involved in the operation of circular saws, band saws, and guillotine shears);
- §12-25-53 (Occupations involved in roofing operations); and
- §12-25-54 (Occupations involved in excavation operations).

These provisions contain exemptions from employment in hazardous occupations for any apprentice, trainee, student-learner, or enrollee if:

- 1) The apprentice or trainee is a party to an apprenticeship or trainee agreement registered with the DLIR within thirty days after execution of the agreement and the work of the apprentice or trainee in the occupation declared hazardous is incidental to the training; or
- 2) The student-learner is enrolled in a course of study and training in a cooperative vocational training program under a bona fide vocational training program authorized and approved by the department of education; provided that:
  - a. The employment is intermittent and for short periods of time, and under the direct and close supervision of a qualified and experienced person; and
  - b. Safety instructions are given by the school and correlated by the employer with on-the-job training; or
- 3) The enrollee is enrolled in a work training program approved and conducted by or under the auspices of a government agency.

### **III. COMMENTS ON THE HOUSE CONCURRENT RESOLUTION**

When Chapter 390, HRS, and the related HAR, were enacted, they were based on the Child Labor regulations contained in the FLSA. The regulations, including hazardous occupations, in both the State and federal laws mirror each other. Both Chapter 390 and the FLSA provide exemptions to the hazardous occupation provisions when a minor is employed as an apprentice, student-learner, or an enrollee in a work training program, under the conditions specified in the respective provisions of the regulations.

One difference between Chapter 390 and the FLSA is the State's requirement for a certificate of employment (§390-2(c)) and certificate of age (§390-2(b)), also known as work permits, for minors to work. While the FLSA does not require work permits for minors, the U.S. Department of Labor (USDOL) relies on the work permit registration data collected by the DLIR, and often seeks assistance and information from the DLIR for their federal child labor investigations.

The statutory requirement to obtain a work permit does not obstruct a minor's access to employment opportunities and is in place to protect the health, safety,

and well-being of the minor. Applying for a work permit is a fairly simple process and there is no fee to obtain the certificate. If the requirement is removed from the statute, all minors and their employers would not be required to register with the DLIR and obtain a work permit. Minors employed at any age could be subject to exploitation and may not be protected since the DLIR would not know where these minors are employed, what type of work they are performing, and working conditions they are employed under. Removing the requirement for age and employment (also requires parental permission) certificates could facilitate exploitation, increase violations, and increase youth injuries in the workplace.



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David Miyashiro  
Executive Director

April 19, 2023

Committee on Labor and Technology  
Senator Sharon Y. Moriwaki, Chair  
Senator Chris Lee, Vice Chair

Aloha Chair Moriwaki, Vice Chair Lee, and Members of the Committee,

**HawaiiKidsCAN strongly supports HCR58**, which requests the Department of Labor and Industrial Relations (DLIR) to complete a comparative study of its policies on youth employment and federal requirements for youth employment under the Fair Labor Standards Act.

After further discussions with key stakeholders, we also suggest amendments to the resolution to ensure it has the intended impact. We have provided an example of the amended resolution at the end of this testimony.

Founded in 2017, HawaiiKidsCAN is a local nonprofit organization committed to ensuring that Hawaii has an excellent and equitable education system that reflects the true voices of our communities and, in turn, has a transformational impact on our children and our state. We strongly believe that all students should have access to excellent educational opportunities, regardless of family income levels and circumstances.

Hawaii's youth are facing an affordability crisis if they want to remain in the state for years to come. While there are many elements needed to address this issue, a must-have is making sure our youth are equipped with the skills and connections they need to pursue their dream careers. Work-based learning opportunities, such as internships in skilled fields including healthcare, IT, and air travel, give students the chance to learn on-the-job and gain experience that will make them stand out high-paying for job opportunities in the future. On the other side, employers across Hawaii will have the opportunity to recruit and grow their own workforce by providing mentorship and training for their next generation of workers. This is a win-win for Hawaii's people and long-term future.

Accordingly, it is critical that youth are exposed to high-quality, high-paying careers while they still have access to free public education at the secondary level, and as they are gaining experience at the postsecondary level. Making sure our youth have a strong springboard prior to graduation and applying for full-time employment is more important than ever, as the current unemployment rates for youth (ages 16-24) across the country are higher than the national average of 3.4%. Currently, 7.3% of all 16-24 year-olds are unemployed. The younger half of that group, the 16-19 year-olds, are unemployed at a rate of 9.1%, while the older half still experiences higher-than-average unemployment at 6.6%. In Hawaii, the numbers are even more concerning, with 10.2% of all youth experiencing unemployment, which is one of the worst rates for this group in the country<sup>1</sup>.

As education has evolved to meet these local and global challenges, student experiences now involve much more than just traditional academics. Students are now getting opportunities to have real-world experiences as members of high-stakes teams. For example, many local non-profit organizations have begun to hire high school media teams to shoot professional events, and high school academy culinary arts programs to cater them. These are unique situations that can seem to sit in the gray area of school and the workforce.

Importantly, HCR58 does not actually make any policy changes, as the intent of this resolution is for a comparative study. We believe that the DLIR should have the resources it needs to successfully complete this research. We are certain that graduate students at the University of Hawaii or partners such as Hawaii P-20 or Chamber of Commerce Hawaii could lend capacity and support. HCR58 is important in that it does recognize that the lines are blurring in education and that our state must be more forward thinking and proactive. The resolution finally helps to bring some clarity and coherence to student-employer partnerships that will illuminate how to best support career readiness experiences between students, schools, and employers.

When reviewing current practices around youth employment around the country (<https://www.dol.gov/agencies/whd/state/age-certificates>), it's clear that there is a hodgepodge of various ways states approach this issue. States have flexibility over whether an Employment certificate and/or Age certification is required, and whether the state labor department or school collects this information. As even a cursory review of state practices show, there is no one way for all states to approach these requirements. Some states require only the Employment certificate or Age certification, and some require neither. Are conditions necessarily safer or more dangerous in some states versus others? Is there data to back up any assumptions made?

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<sup>1</sup> <https://www.mathematica.org/dataviz/youth-unemployment-tracker>

Given that it has been decades since Hawaii reviewed its policies relating how youth positively engage with work, it's clear this study is needed now to best determine how to move forward. This information will help show whether any updates to policy should be considered based on the needs of students and employers. We believe that HCR58 will enable policymakers, schools, and employers to act from a place of possibility and carefully consider how to best protect our kids now and protect them in the future by making sure they are prepared.

Mahalo for your consideration,

David Miyashiro  
Founding Executive Director  
HawaiiKidsCAN

HOUSE OF REPRESENTATIVES  
THIRTY-SECOND LEGISLATURE, 2023  
STATE OF HAWAII

H.C.R. NO. 58

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# HOUSE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS TO  
COMPLETE A COMPARATIVE STUDY OF ITS POLICIES ON YOUTH EMPLOYMENT  
AND FEDERAL REQUIREMENTS FOR YOUTH EMPLOYMENT UNDER THE FAIR  
LABOR STANDARDS ACT **AND EXAMINE POLICIES THAT WILL BROADEN WORK-  
BASED LEARNING OPPORTUNITIES FOR STUDENTS.**

WHEREAS, the Department of Labor and Industrial Relations  
maintains responsibility for the regulation and maintenance of

employment for minors under the age of eighteen pursuant to chapter 390, Hawaii Revised Statutes; and

WHEREAS, only fifty-one percent of Hawaii's public school graduates from the class of 2021 went on to post-secondary education in the first fall after graduation, leaving nearly half of Hawaii's youth in need of post-secondary plans; and

WHEREAS, high school graduates with no post-secondary plans traditionally struggle to enjoy the same economic gains, quality of life, and general levels of success as high school graduates who enroll in and complete post-secondary education or certified post-secondary apprenticeship programs within four years of graduation from a secondary education institution; and

WHEREAS, only a small subset of Hawaii's youth have access to fulfilling, hands-on work-based learning opportunities with compensation; and

WHEREAS, positive work-based learning experiences have been shown to improve college-going rates and educational outcomes, particularly for at-risk and disadvantaged youth who are statistically less likely to make formal plans for careers or education after completing their secondary education; and

**WHEREAS, resources exist across the state for students to participate in public and private work-based learning opportunities; and**

WHEREAS, there is a need for the Department of Labor and Industrial Relations to implement systems which make work-based learning more accessible to Hawaii's youth; and

WHEREAS, the State has the responsibility to ensure that all of its policies and procedures are ready and waiting to meet the needs of a high-leverage, statewide work-based learning program for Hawaii's youth; and

WHEREAS, the State must continue to protect the safety and well-being of its youth in any workplace; and

WHEREAS, the United States Department of Labor does not require states to issue employment certificates or age certifications for minors engaging in work; and



WHEREAS, thirty states do not require the issuance of an employment certificate and age certification for a minor engaging in work; and

WHEREAS, unlike those other states, Hawaii currently requires an employment certificate and age certification for a minor engaging in work; and

WHEREAS, revisiting and studying Hawaii's current requirements, which have not been meaningfully updated since 2003, are important to set a foundation for collective action, public- and private-sector partnerships, and other means of promoting work-based learning opportunities and labor standards that protect youth, provide students with an ample choice of industries in which to gain experience, and ensure streamlined processes that enable more employers to offer experiences to students; now, therefore,

BE IT RESOLVED by the House of Representatives of the Thirty-second Legislature of the State of Hawaii, Regular Session of 2023, the Senate concurring, that the Department of Labor and Industrial Relations is requested to complete a comparative study of its policies on youth employment and federal requirements for youth employment under the Fair Labor Standards Act; and

BE IT FURTHER RESOLVED that in conducting its comparative study, the Department of Labor and Industrial Relations is requested to report on:

(1) How states with less certification requirements, including Arizona, Kentucky, and Oregon, are able to ensure access to and oversight of work-based learning for minors; **and**

(2) Whether current state youth employment permitting requirements create any barriers to expanded work-based learning opportunities for youth; and

(3) The anticipated actions needed by the State to transition its youth employment policies so that they do not impose requirements that exceed the federal minimum for youth employment under the Fair Labor Standards Act; and

**(4) What practices and policies would enable the State to streamline access to work-based learning opportunities that provide students with advantages in the Hawaii job market; and**

BE IT FURTHER RESOLVED that the Department of Labor and Industrial Relations is requested to submit its findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2024; and

**BE IT FURTHER RESOLVED that the Department of Labor and Industrial Relations is encouraged to work with partners such as Hawaii P-20 or Chamber of Commerce Hawaii for additional research capacity and support, if needed; and**

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Governor; Director of Labor and Industrial Relations; Director of Business, Economic Development, and Tourism; **Workforce Development Council**; Superintendent of Education; and President of the University of Hawaii.

OFFERED BY: \_\_\_\_\_



April 19, 2023

Committee on Labor and Technology  
Senator Sharon Y. Moriwaki, Chair  
Senator Chris Lee, Vice Chair

Aloha Chair Moriwaki, Vice Chair Lee, and Members of the Committee,

As diverse members of our local community, the Hawaii Work-Based Learning Policy Hui **strongly supports HCR58**.

While we represent many perspectives and roles, we are united in believing that Hawaii's students deserve to be equipped with the skills and connections they need to get hired for local jobs that enable them to live, work, and contribute to this special place. While work-based learning can be an incredibly powerful learning opportunity for young people of all backgrounds, we believe our state could be doing more to help students access these programs.

HCR58 is an important resolution in that it studies how to streamline processes from the employer side to get more students engaged in work-based learning. Currently, many local employers are wary of offering programs to students due to limited capacity to navigate the various permitting requirements and remaining in compliance. We hope

this study helps to provide much-needed clarity around best practices and current policy.

For this reason, we kindly request you **PASS HCR58**. Mahalo for the opportunity to testify.

(Please see names below.)

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**HCR-58**

Submitted on: 4/17/2023 6:50:53 PM

Testimony for LBT on 4/19/2023 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Zhizi Xiong	Testifying for CARES	Support	In Person

Comments:

CARES testifies in strong support.



# Chamber of Commerce HAWAII

*The Voice of Business*

**Testimony to the Senate Committee on Labor and Technology  
Wednesday, April 19, 2023, at 3:00 P.M.  
Conference Room 225 & Videoconference**

**RE: HCR 58**

Aloha Chair Moriwaki, Vice Chair Lee, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports HCR 58, which** is requesting the Department of Labor and Industrial Relations to complete a comparative study of its policies on youth employment and federal requirements for youth employment under the fair labor standards act.

As an organization dedicated to promoting the growth and success of businesses in Hawaii, education and workforce development has been a main priority in helping advance our economy. We have a dedicated team that focuses on partnering the employers with the Department of Education and Department of Labor on pairing students with work-based-learning and internship opportunities.

The feedback we receive from almost all employers who are trying to offer internships or apprenticeships is the number of burdensome regulations and red tape in the way of giving students access to high quality work-based-learning opportunities.

We recognize the complexities of navigating federal regulations related to youth employment and the potential impact that these regulations may have on our local businesses. Therefore, we believe that a comparative study of state and federal policies on youth employment would provide valuable insight into the potential challenges and opportunities facing our businesses, as well as the ways in which our state can better support the work-based-learning opportunities for our students while also aligning and complying with federal requirements. When the state goes above and beyond the federal requirements, it adds additional burden and red tape that slows down students having these opportunities.

We appreciate the efforts of the Department of Labor and Industrial Relations in addressing these issues, and we are confident that this study will provide important information and recommendations for improving policies related to youth employment in Hawaii.

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.