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March 2, 2009

To: The Honorable Marcus R. Oshiro, Chair
and Members of the House Committee on Finance

Date: Tuesday, March 3, 2009
Time: 12:00 p.m.
Place: Conference Room 308, State Capitol

From: Darwin L.D. Ching, Director
Department of Labor and Industrial Relations

Testimony in SUPPORT
of
H.B. 602 – Relating to Workers' Compensation

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

House Bill 602 proposes to amend the definition of "employment" within Section 386-1, Hawaii Revised Statutes ("HRS"). This bill will allow small business owners to forgo the purchase of workers' compensation coverage, if they meet one of the four proposed exclusions:

1. Services performed by a member of a limited liability company, if the member is an individual and has a distributional interest as defined in chapter 428, HRS, of at least fifty percent in the company;
2. Services performed by a partner of a partnership as defined in chapter 425, HRS;
3. Services performed by a partner of a limited liability partnership, if the partner is an individual with transferable interest as defined in section 425-127, HRS, of at least fifty percent;
4. Services performed by a sole proprietor.

HB 602 also ensures that no employee will be required to become a member or partner as a condition of employment.

II. CURRENT LAW

Currently, members of a limited liability company, partners in a partnership and partners in a limited liability partnership, who provide services to the company, are considered employees and are required to obtain workers' compensation coverage for themselves.

However, section 386-1, HRS, specifies if an individual owns at least 50% of a corporation, they are excluded from workers' compensation coverage.

III. HOUSE BILL

The Department of Labor and Industrial Relations would like to suggest the following language:

- (10) Service performed by a partner of a partnership for the partnership, as defined in section 425-101, if the partner is an individual; provided that no employer shall require an employee to become a partner as a condition of employment;
- (11) Service performed by a partner of a limited liability partnership for the limited liability partnership, if the partner is an individual and has a transferable interest, as defined in section 425-127 in the partnership of at least fifty per cent; provided that no employer shall require an employee to form a limited liability partnership as a condition of employment;
- (12) Service performed by a member of a limited liability company, if the member is an individual and has a distributional interest as defined in section 428-501 in the limited liability company of at least fifty per cent; provided that no employer shall require an employee to form a limited liability company as a condition of employment; and

(13) Service performed by a sole proprietor for the sole proprietorship.

The Department of Labor and Industrial Relations also strongly supports HB 602 for the following reasons:

1. Hawaii's current workers' compensation law currently provides similar exclusions for corporation stockholders.
2. Limited Liability Company ("LLC"), Partners of a Partnership, and Limited Liability Partnership ("LLP") are a new type of business organization, owners and/or partners of a small business – regardless of the type of business entity – should be allowed to be exempt from purchasing workers' compensation coverage for themselves.
3. Employers/business entities would still be required to obtain workers' compensation coverage for their employees.
4. It is uncommon for an employer to sue himself, or file for workers' compensation.
5. The intent of workers' compensation is to protect employees from medical costs and lost wages, it should not necessarily be mandated upon employers or partners who do not wish to be covered.
6. This bill will clarify the existing practice that sole proprietors are excluded from obtaining workers' compensation insurance for themselves.
7. Hawaii small businesses, organized as an LLC, Partner of a Partnership, and LLP will see immediate cost savings on workers' compensation insurance premium costs.

THE HOUSE OF REPRESENTATIVES
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Marcus R. Oshiro
Rep. Marilyn B. Lee, Vice Chair

Date: Tuesday, March 3, 2009
Time: 12:00 p.m.
Place: Conference Room 308, State Capitol

TESTIMONY OF ILWU LOCAL 142

RE: HB 602, RELATING TO WORKERS' COMPENSATION

Thank you for the opportunity to present testimony regarding HB 602.
We oppose this bill.

H.B. 602 proposes to amend Hawaii's worker's compensation statute by removing four categories of individuals from the definition of "employment". These categories are: 1) services performed by a member of a limited liability company if the individual has a distributional interest of 50% or more in the limited liability company; 2) services performed by a partner for a partnership; 3) services performed by a partner of a limited liability partnership who possesses a 50% transferable interest; and 4) services performed by a sole proprietor for the sole proprietorship. In short, all four of these categories of individuals will be made exempt from workers' compensation coverage.

We believe this bill is short-sighted because by creating gaps in what was intended to be virtually universal coverage afforded by Chapter 386 HRS it will cause an even greater proliferation of exceptions from coverage making an already questionable market even less attractive to insurers. In recent decades, the legislature has already allowed innumerable exclusions from coverage, exempting domestics, real estate agents, corporate officers who are 25% stock holders; and 50% business owners from coverage. However, allowing further exclusions erodes the population of insured employees necessary to sustain reasonably affordable workers' compensation coverage, and in that fashion works to the detriment of other employers and all employees, while allowing a privileged few to opt out of this fundamental and necessary program of social insurance. If unchecked, granting more and more exceptions will reduce this population to the point where insurers will be compelled to increase premiums to maintain their operations and to provide coverage to an ever-diminishing number of employees.

Ultimately, H.B. 602 is a symptom of the burgeoning economic inequality that afflicts this country and threatens to undermine the fundamental social safety net Hawaii has established for all of its workers. While it is common to hear criticism of the

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rising cost of workers' compensation insurance and to cast blame for such costs upon the injured worker, in reality, the exclusionary practices of those seeking to avoid their common obligation to protect their fellow workers through a comprehensive scheme of insurance coverage are at fault in contributing to unnecessary costs. We therefore urge that H.B. 602 be defeated.

**Testimony to the House Committee on Labor & Public Employment
Tuesday, March 3, 2009; 12:00 p.m.
Conference Room 308
Agenda #3**

RE: HOUSE BILL 602 RELATING TO WORKERS' COMPENSATION

Chair Oshiro, Vice Chair Lee and members of the committee:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). I am here to state The Chamber's strong support to House Bill No. 602, relating to Workers' Compensation.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. 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.

This measure excludes services performed by an individual who is a member of a LLC or a partner of a LLP who has a distributional interest in the company or partnership of at least 50%, a partner of a partnership, and a sole proprietor from the definition of "employment" under the workers' compensation law..

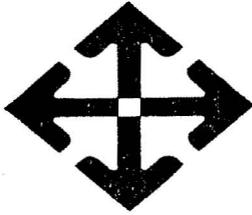
Workers' compensation provides medical insurance and wage loss for work related injuries for employees while protecting employers from civil liability resulting from such injuries. The Chamber believes that this measure is consistent with the intent of protecting employees while helping employers reduce overhead costs by enabling businesses to save on workers' compensation premiums.

The Chamber supports this measure for the following reasons:

- Owners who do not work at the business would more than likely not suffer a work-related injury; therefore they do not benefit from workers' compensation.
- Owners would not gain any benefit from suing his or her own company for any injury, even for one that was suffered and was related to the business.
- Owners who work at the business would also have little incentive to file a workers' compensation claim. Essentially, owners would have nothing to gain from suing themselves because such action would result in increased premium costs, and potentially affect the viability of their business.

Accordingly, it makes sense for owners to opt out of the mandatory workers' compensation coverage. Mandatory coverage imposes additional costs on businesses, especially on sole proprietors; therefore, the proposed exclusion will alleviate some of the high costs of doing business. At least 41 states have some statutory provision that make workers' compensation coverage elective for sole proprietors and at least 31 states have some statutory provision that makes workers' compensation coverage elective for LLC members.

For these reasons, the Chamber urges your Committee to pass this measure. Thank you very much for the opportunity to testify.



The Hawaii Business League

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March 3, 2009

Testimony To: House Committee on Finance
Representative Marcus R. Oshiro

Presented By: Tim Lyons
Executive Vice President

Subject: H.B. 602 - RELATING TO WORKERS' COMPENSATION

Chair Oshiro and Members of the Committee:

I am Tim Lyons, President of the Hawaii Business League, a small business service organization.
We support this bill.

A few years ago the legislature provided for owner's of corporations who own 50% or more of their company to exempt out of worker's compensation. This was based on the fact that owners may have other income or they may be able to get some type of alternate disability insurance plan at a cheaper rate than they could for worker's compensation insurance coverage. Then, the concept of Limited Liability Corporation was born and there was some confusion as to whether these owners of 50% or more should be exempt since the LLC law refers to them as "members". Under corporate law the president of a corporation is considered an employee even though he may own 100% of the corporation. Based on fairness and in an effort for our

laws to stay up to date with current legal practices (the utilization of LLP's and LLC's) we support this bill.

Thank you for this opportunity to testify.



Integrated Economic Solutions, LLC
Harbor Tower, Suite 2303
700 Richards Street
Honolulu, 96813

Testimony of Thomas J. Smyth, CEcD
Before the
House Committee on Finance
Tuesday, March, 2009, 12:00 pm Room 308
on
HB602 Relating to Workers' Compensation

Chair Oshiro, Vice Chair Lee, and Members of the Committee:

I strongly support HB 602 that excludes those with 50% interest in a Limited Liability Company or Limited Liability Partnership, individual partners and sole proprietors, from mandatory workers' compensation insurance coverage.

I recently retired from the Department of Business, Economic Development & Tourism but my testimony today as the Principal (and only employee) of an LLC is based on over 20 years in direct support of small businesses, especially in the area of regulatory relief.

I do appreciate the strong support for this bill from DLIR and the business organizations that represent many similar LLC's. Arguments about "coverage gaps" or costs to the government are really not a factor in this measure. Worker's Compensation is insurance purchased by an employer from a private insurance company or through self-insurance. There is no added cost to the state if some persons are not covered. The opposite could be argued: that continuing to require this coverage adds to the Disability Compensation Division work load and costs.

It took us two years to get legislation passed in 1993 to exclude 50% corporate owners. Eventually, support was obtained from all concerned, including those representing organized labor, when the provision that an employer would not make an employee form a corporation to avoid insurance coverage was added. That same language is in each of the exclusion provisions in HB 602.

When LLC's were authorized in 1996, DBEDT did a quick survey with DCCA and DLIR to determine what changes were needed to the HRS to provide for this new and different form of business structure. Over several years, a variety of changes were made to ensure that those forming an LLC would not be penalized or otherwise left out of statutory requirements or benefits.

It was initially felt that the corporate exclusions in Chapter 386 would apply to LLC's but a closer look led DLIR to conclude that a separate provision was needed since "ownership" and "stockholder" were terms in the Chapter that were not applicable to an LLC.

We drafted an administration bill just excluding LLC's several years ago after DBEDT and the Small Business Regulatory Review Board received many complaints from companies switching from corporate to LLC structure who were told that even 100% owners would need WC coverage. Those advocating for total employee coverage initially opposed the bill, but eventually even those objections were reconciled. However that bill and others like it that broadened the exclusion as in HB 602, have not passed.

This is a simple matter of fairness and equity. Majority owners in these types of business structures should be able to voluntarily opt out of coverage and provide their own insurance as they can for corporations. The important "social compact" that for so long has tied immediate employer insurance for medical costs and lost wages to the restriction on suits against the employer for the cause of the injury, is not appropriate for majority owners who certainly are not going to sue themselves.

I urge you to pass this bill. With this committee's strong support this time it may make it through to enactment.

Thank you for the opportunity to provide testimony.



Representative Marcus Oshiro, Chair
Representative Marilyn Lee, Vice Chair
Committee on Finance

HEARING Tuesday, March 03, 2009
 12:00 pm
 Conference Room 308
 State Capitol, Honolulu, Hawaii 96813

RE: HB602 Relating to Workers' Compensation

Chair Oshiro, Vice Chair Lee, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. The retail industry is the one of the largest single employer in the state, employing 20% of the labor force.

RMH supports HB609, which excludes services performed by an individual who is a member of a limited liability company or a partner of a limited liability partnership who has a distributional interest in the company or partnership of at least 50%, a partner of a partnership, and a sole proprietor from the definition of "employment" under the workers' compensation law.

A business owner who is not actively involved in the day-to-day activities of the business most likely would not suffer a work-related injury and therefore would not benefit from workers' compensation insurance. Even if the owner does work at the business, there would be little or no gain to file a worker's compensation claim, which would result in increased premium costs borne by the business. In the case of a sole proprietorship, an injury would likely result in the termination of the business operations.

Admittedly, worker's compensation insurance imposes additional costs on the business. This exclusion would provide additional and much needed financial resources to the small business person.

The members of the Retail Merchants of Hawaii respectfully request that you pass HB609. Thank you for your consideration and for the opportunity to comment on this measure.

Carol Pregill, President

RETAIL MERCHANTS OF HAWAII
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The Voice of Small Business®

Before the House Committee on Finance

DATE: March 3, 2009

TIME: 12:00 p.m.

PLACE: Conference Room 308

Re: HB 602 Relating to Workers' Compensation Testimony of Melissa Pavlicek for NFIB Hawaii

Thank you for the opportunity to testify in support of HB 602. NFIB supports this measure.

NFIB has long supported making the workers compensation law with respect to limited liability company owners equitable as compared to the owners of corporations and recommends that this measure for approval. This measure has the potential to save small business owners in Hawaii a sizeable amount each year that was unfairly and unnecessarily charged to them. We recognize and appreciate the efforts of legislators to address small business concerns.

The National Federation of Independent Business is the largest advocacy organization representing small and independent businesses in Washington, D.C., and all 50 state capitals. In Hawaii, NFIB represents more than 1,000 members. NFIB's purpose is to impact public policy at the state and federal level and be a key business resource for small and independent business in America. NFIB also provides timely information designed to help small businesses succeed.



HIIA

Hawaii Independent Insurance Agents Association

March 3, 2009

To: Representative Marcus Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair
Committee on Finance

From: Sonia M. Leong, Executive Director
Hawaii Independent Insurance Agents Association

Re: HB 602 HSCR596, Relating to Workers Compensation -- Employment
Exclusion
Hearing: Tuesday, March 3, 2009, 12:00 noon Conference Room 308

The Hawaii Independent Insurance Agents supports HB 602, HSCR596 which excludes services performed by an individual who is a member of a limited liability company or a partner of a limited liability partnership who has a distributional interest in the company or partnership of at least 50%, a partner of a partnership, and a sole proprietor from the definition of "employment" under the workers compensation law. We are a non profit trade association of independent insurance producers dedicated to assisting the insurance buying public with their insurance needs..

We support the intent of HB602 which was to clarify Section 386-1's definition of employment. Historically the statute allowed majority owners (at least 50%) of corporations and sole proprietors to be excluded from workers' compensation coverage. This same section did not specify how majority owners of limited liability companies and limited liability partnerships should be handled.

Because this exclusion has not been clearly stated in the past, the Department of Labor & Industrial Relations (DLIR) took the conservative route and advised insurers that they must include these individuals for coverage and therefore charge premium for the coverage. Although this step was taken to address the different practices used by the various insurers, the DLIR took a stance that was contrary to the real intent of this section.

There will be no negative ramifications from the passage of HB 602. The positive outcome of HB 602 will include a comprehensive definition of employment and the change will provide guidance to the DLIR, insurance companies and agencies. The bill is to take effect upon signing.

Thank you for opportunity to provide testimony.