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The Twenty-Eighth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii State AFL-CIO
January 29, 2016

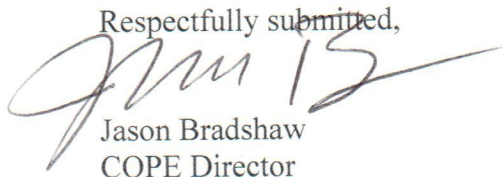
H.B. 1269 – RELATING TO PUBLIC
SAFETY

The Hawaii State AFL-CIO opposes H.B. 1269 which allows an employer to seek a temporary restraining order and injunction against further harassment of an employee or invitee who may be harassed in connection with a worksite.

The Hawaii State AFL-CIO has concerns that employees who legally exercise their rights to organize or seek evidence that an employer may be violating certain labor laws could be issued a Temporary Restraining Order (TRO). In addition, employees may not be the only ones issued TRO's – union organizers, worksite investigators among others could potentially be issued a TRO for simply doing their job. We feel the bill as drafted does not go far enough to ensure employees including the other workers mentioned above are adequately protected and therefore respectfully request H.B. 1269 be held or deferred indefinitely.

Thank you for the opportunity to testify.

Respectfully submitted,



Jason Bradshaw
COPE Director



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Labor and Public Employment

Representative Mark M. Nakashima, Chair
Representative Jarrett Keohokalole, Vice Chair

Friday, January 29, 2016 10:00 a.m.
State Capitol, Conference Room 309

WRITTEN TESTIMONY ONLY

By
The Honorable Barbara P. Richardson
Deputy Chief Judge
District Court of the First Circuit

Bill No. and Title: House Bill No. 1269, Relating to Public Safety.

Purpose: The purpose of this Act is to allow employers to obtain temporary restraining orders and injunctions to protect against harassment of employees or invitees at worksites.

Judiciary's Position:

The Judiciary takes no position on the intent of House Bill No. 1269, but notes that the current language of the Bill may (1) impose unintended costs and complications for employers; and (2) create uncertainty in the application of the law.

Unintended Costs and Complications

The State of Hawai‘i is the largest employer in the State. Is it intended that the State of Hawai‘i be able to file a petition on behalf of a state employee, including against another state employee?

Under current law, a corporation can only appear in court through an attorney. O‘ahu Plumbing & Sheet Metal v. Kona Constr., 60 Haw. 372, 374 (1979). If an employer is incorporated, then the filing of a petition and court appearances by the corporation-employer on behalf of an employee would have to

be through an attorney. The award of reasonable attorneys' fees to a prevailing party is discretionary, so even if the employer prevails in the proceeding, the employer may not recover all of its costs.

The necessity of counsel for a corporate employer petitioning on behalf of an employee may create a conflict of interest for the attorney. While the attorney would be hired by the employer to represent the employer, it is the employee who is threatened by acts of harassment. The interests of the employer may not always coincide with those of the employee.

Existing law would permit the employee-victim to file a petition for a temporary restraining order and an injunction against harassment without hiring an attorney. Many temporary restraining order cases proceed through resolution without the involvement of an attorney. Even if the petitioner hires an attorney, there is no question under present practice that the attorney's duty of loyalty is to the petitioner.

This Bill raises other issues, and the Judiciary questions how a petitioner-employer could prove its case if the employee who is the target of the alleged harassment is unwilling to participate in the proceedings.

Uncertainty in the Application of the Law

It is uncertain what the process for intervention by an employee organization would be. The Bill states "that an employee organization that represents employees of the employer shall be allowed to intervene in a proceeding under this section." In a case in which one employee is harassed by another employee, it is unclear if an employee organization would be allowed to intervene on behalf of a respondent-employee or both parties. There is no provision for notice to an employee organization for either petitioner-employee or respondent-employee. The court is required to allow the intervention, but the Bill does not provide guidance on how to resolve a conflict between the right to intervene and a right to a hearing within 15 days. In light of the absence of any service requirement on the employee organization, there is a possibility that the employee organization does not receive notice of the temporary restraining order at the same time as the respondent. A contested hearing could go beyond the 90 day limit of the temporary restraining order.

The requirement that a judge receive evidence of the employer's position with respect to a respondent-employee's continued employment is also problematic. The Bill provides: "If the defendant is a current employee of the petitioner, the judge **shall** receive evidence concerning the employer's decision to retain, terminate, or otherwise discipline the defendant." (Emphasis added.) This evidentiary mandate may create difficulties where, as is frequently the case, pending employee disciplinary matters are confidential. Hearings in district court are open to the public, and thus confidential employment decisions may become public, in violation of other state statutes or confidentiality agreements.

Finally, the Judiciary respectfully requests that the term "defendant" be replaced with "respondent." Because a person seeking an injunction is denominated a "petitioner," the enjoined party is referred to as a "respondent." There is no "defendant" in this type of civil proceeding.

Thank you for the opportunity to present testimony on this measure.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 28, 2016 12:32 PM
To: LABtestimony
Cc: rswindell@bridgedeck.org
Subject: *Submitted testimony for HB1269 on Jan 29, 2016 10:00AM*

Follow Up Flag: Follow up
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HB1269

Submitted on: 1/28/2016

Testimony for LAB on Jan 29, 2016 10:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Randy Swindell	IOMM&P	Oppose	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Chamber of Commerce HAWAII
The Voice of Business

**Testimony to the House Committee on Labor & Public Employment
Friday, January 29, 2016 at 10:00 A.M.
Conference Room 309, State Capitol**

RE: HOUSE BILL 1269 RELATING TO PUBLIC SAFETY

Chair Nakashima, Vice Chair Keohokalole, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** HB 1269, which allows an employer to seek a temporary restraining order and injunction against further harassment of an employee or invitee who may be harassed in connection with a worksite.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 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.

We support the effort and ability of the employer to maintain safe working environments for their employees. Incidents of harassment at an employee's workplace create a safety issue but may also increase the risk of incidents with other employees and individuals. Passage of this bill will allow employers to prevent further harassment of employees and maintain a safe workplace for employees and their customers.

Thank you for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 26, 2016 2:51 PM
To: LABtestimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for HB1269 on Jan 29, 2016 10:00AM*

Follow Up Flag: Follow up
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HB1269

Submitted on: 1/26/2016

Testimony for LAB on Jan 29, 2016 10:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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Testimony to the House Committee on Labor & Public Employment
Friday, January 29, 2016, 10:00AM
State Capitol - Conference Room 309

RE: HOUSE BILL NO. 1269 Relating to Public Safety

Aloha Chair Nakashima, Vice Chair Keohokalole, and members of the committee:

I am John Knorek, the Legislative Committee chair for the Society for Human Resource Management – Hawaii Chapter (“SHRM Hawaii”). SHRM Hawaii represents more than 800 human resource professionals in the State of Hawaii.

We are writing to respectfully SUPPORT HB 1269, relating to public safety, which allows an employer to seek a temporary restraining order and injunction against further harassment of an employee or invitee who may be harassed in connection with a worksite. Employers, and by extension their HR professionals, are tasked with ensuring a safe and secure workplace. This measure will provide an additional tool to effectively do so.

Human resource professionals are keenly attuned to the needs of employers and employees. We are the frontline professionals responsible for businesses’ most valuable asset: human capital. We truly have our employers’ and employees’ interests at heart. We respectfully support this measure and hope to be an ongoing part of the dialogue concerning it.

Thank you for the opportunity to testify.



SHRM Hawaii, P. O. Box 3175, Honolulu, Hawaii (808) 447-1840