

**Testimony to the Senate Committee on Judiciary and Labor
Tuesday, February 14, 2012; 9:30 a.m.
Conference Room 016**

RE: SENATE BILL NO. 2487 RELATING TO WORKPLACE PRACTICES

Chair Hee, Vice Chair Shimabukuro 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 opposition to Senate Bill 2487, relating to Workplace Practices.

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. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

This measure makes abusive conduct against an employee in the workplace a violation of occupational safety and health law and creates a private cause of action against coworkers and employers. Although the Chamber understands the intent of the bill, the Chamber believes that employers already place an emphasis on what they can do for their employees to create a positive work environment. Many employers are constantly seeking ways to provide benefits and security to retain employees, including the prevention and intolerance of an abusive work environment.

The language in the bill poses some concerns. For example, "Subjection of an employee by the employee's employer to an abusive work environment" is too broad and indefinite a concept to realistically or fairly impose on businesses. As a result, this bill interferes with a business' ability to operate.

If this bill passes, employers will be exposed to liability for conduct it did not know of or could not reasonably prevent. The description of what is abusive conduct that is actionable is so broad and fact dependent that any claim may require a jury trial to resolve. The expansive definition focuses on what a "reasonable person" would find abusive and that opens the door to uncontrolled litigation and cost. We also object to the language that states: "A single act normally may constitute abusive conduct if the act is especially severe and egregious; provided that the severity, nature, and frequency of any conduct objected to shall be considered in determining whether acts constitute abusive conduct." Finally, the line between someone who is a qualified victim of workplace bullying and a disgruntled employee can be difficult to differentiate.

Existing federal and state laws already provide remedies to employees who have been harmed in the workplace, such as workers' compensation laws and discriminatory employment practices under § 378, Hawaii Revised Statutes.

In light of the above, the Chamber respectfully requests that the measure be held. Thank you for the opportunity to testify.