H.B. NO. 3156

A BILL FOR AN ACT

RELATING TO WORKSITE WELLNESS PROGRAMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Although we spend more dollars on healthcare than any other industrialized nation, our citizens are not the healthiest in the world. The United States spent over two trillion dollars in healthcare in 2005 or $6,683 for every man, woman, and child. Employers pay over one-third of these costs. Much of these costs come from the diagnosis and treatment of chronic diseases and conditions such as diabetes, obesity, cardiovascular disease, and asthma. Researchers have estimated that preventable illness makes up approximately seventy per cent of the burden of illness and the associated costs. According to the Centers for Disease Control and Prevention, approximately one hundred twenty-nine million U.S. adults are overweight or obese, which costs this nation anywhere from $69,000,000,000 to $117,000,000,000 per year. In Hawaii, approximately thirty-three per cent of the population is overweight and another twenty per cent is obese.

For many Americans, individual behavior and lifestyle choices influence the development and course of chronic

1 conditions. Unhealthy behaviors, such as a poor diet, lack of
2 physical activity, and tobacco use are risk factors for many
3 chronic conditions and diseases. A high calorie diet and
4 sedentary lifestyle commonly result in excessive weight gain.
5 Overweight and obesity are risk factors for a large number of
6 chronic diseases, most significantly type two diabetes,
7 congestive heart failure, stroke, and hypertension. Encouraging
8 individuals to adopt healthy habits and practices may reduce the
9 burden of chronic disease in communities throughout the United
10 States.

11 Healthcare costs are an issue of significant concern for
12 our State as well as our country. Nationwide healthcare-related
13 expenditures for state employees were $24,000,000,000 in 2001,
14 or two and a half per cent of all state spending, and
15 represented the second highest health expenditure next to
16 Medicaid. Our country spends more dollars on healthcare than
17 any other country in the world. In Hawaii, the state spent an
18 estimated $231 per person in 2003 on medical costs related to
19 obesity, which was the thirty-eighth highest amount in the
20 nation. Over the next thirty years, Hawaii's state and county
21 governments will need to come up with as much as $11,100,000,000

to pay for the retiree healthcare benefits they have promised civil servants.

As the majority of Americans spend most of their waking hours at work, the worksite is an ideal setting to address health, well-being, and the prevention of chronic disease. Worksite wellness refers to the policies and practices that support profitability for the organization and employability for the individual. Recent empirical research validates that health promotion programs at the worksite can improve health, save money, and produce a return on investment. A U.S. Department of Health and Human Services report in 2002 revealed that at worksites with physical activity programs, employers have:

(1) Reduced healthcare costs by twenty to fifty-five per cent;

(2) Reduced short-term sick leave by six to thirty-two per cent;

(3) Increased productivity by two to fifty-two per cent.

An extensive review of published studies looking at the indirect savings from worksite health promotion programs found that for every dollar invested, an organization may save from $1.50 to $13.50 through reduced absenteeism and healthcare costs.

More and more states and companies are building world-class wellness programs. As the costs of health benefits continue to rise, employers have an opportunity to impact the health of employees through changes to the workplace environment and the culture of the worksite.

The department of health has implemented a demonstration pilot program with employees to encourage increasing physical activity and healthy eating. Thirty minutes of moderate physical activity a day for adults can be achieved when people break the thirty minutes into ten minute sessions and will more likely be sustained when done in a supportive team environment. Concerns over liability for injury or damage that may occur during voluntary participation in the worksite physical activity promotions were deterrents to employees and their supervisors. The issues had a dampening effect on organizing employee team physical activity opportunities. Granting immunity from liability to state and county agencies and authorizing workers compensation benefits for injured employees will encourage formation of and participation in government worksite wellness programs.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"**PART . WORKSITE WELLNESS**

§321- Definitions. As used in this part, unless the context otherwise requires:

"Gross negligence" means voluntary and conscious conduct that is an aggravated or magnified failure to use that care which a reasonable person would use to avoid injury to himself, herself, or other people, or damage to property.

"Intentional misconduct" means conduct by a person when it is his or her conscious objective to cause harm to the health or well-being of another person or when he or she is aware that it is practically certain that his or her conduct will be harmful to the health or well-being of another person.

"Wilful and wanton conduct" means "wilful" when the conduct is premeditated, unlawful, without legal justification, or done with an evil intent, with a bad motive or purpose, or with indifference to its natural consequences; and "wanton" when the conduct is reckless, heedless, or characterized by extreme foolhardiness, or callous disregard of, or callous indifference to, the rights or safety of others.

"Worksite wellness program" means an organized program in a state or county worksite that is intended to assist employees in making voluntary behavioral changes that reduce their health and injury risks, improve their health consumer skills, and enhance their individual productivity and well-being.

§321- Participant benefits; immunity. (a) An employee injured during voluntary participation in a state or county worksite wellness program shall be eligible for workers compensation benefits as described in section 386-3.

(b) Absent gross negligence, intentional misconduct, or wilful and wanton misconduct by the State or a county, the State and the counties shall be immune from liability for injury and damage that result from voluntary participation in a state or county worksite wellness program."

SECTION 3. This Act shall take effect upon its approval.

INTRODUCED BY: Calvin K.Y. Say

BY REQUEST

JAN 22 2008

H.B. NO. 3156

Report Title:
Worksite Wellness Programs

Description:
Gives State and counties immunity from liability for injury and damage that occur as a result of voluntary participation in state and county worksite wellness programs.

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JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO WORKSITE WELLNESS PROGRAMS.

PURPOSE: The bill gives the State and counties immunity from liability for injury and damage that occur as a result of voluntary participation in state and county worksite wellness programs except for wilful and wanton misconduct, gross negligence, or intentional misconduct. Employees injured while participating in these programs will be eligible for workers' compensation benefits.

MEANS: Add a new part to chapter 321, Hawaii Revised Statutes.

JUSTIFICATION: Currently, state and county agencies may be liable for injury and damage that occurs through voluntary participation in worksite wellness programs such as departmental lunch walking groups and stairwell promotions to increase physical activity during the work day. While departments and employees may be supportive of physical activity and health promotion activities, the liability issues have had a dampening effect on worksite wellness programs. To prevent employees from participating at their own risk, the bill authorizes workers compensation benefits for employees injured in worksite wellness programs.

Impact on the public: None.

Impact on the department and other agencies: The legislation would provide immunity to state and county agencies that want to provide physical activity and health programming.

GENERAL FUND: None.

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OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: HTH 590.

OTHER AFFECTED AGENCIES: Department of the Attorney General and Department of Human Resources Development.

EFFECTIVE DATE: Upon approval.