

STAND. COM. REP. NO. 1251

Honolulu, Hawaii

March 16, 2007

RE: S.B. No. 1060
S.D. 1
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Sir:

Your Committee on Labor & Public Employment, to which was referred S.B. No. 1060, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO WORKERS' COMPENSATION LAW,"

begs leave to report as follows:

The purpose of this bill is to protect the welfare of injured workers by allowing injured workers to receive compensation and medical services designed to mitigate injuries and rehabilitate the injured worker. Among other things, this bill:

- (1) Limits an employer's ability to terminate disability benefits;
- (2) Authorizes the recovery of attorney's fees and costs incurred by the injured employee in the enforcement of workers' compensation laws;
- (3) Specifies procedures for medical examinations conducted by an employer's physician;
- (4) Requires the reporting of the denial of workers' compensation claims and other relevant information; and
- (5) Further restricts the rulemaking authority of the Director of Labor and Industrial Relations.

SB1060 HD1 HSCR LAB HMS 2007-3060



ILWU Local 142, Hawaii Teamsters and Allied Workers, Local 996, UNITE HERE! Local 5, Hawaii State AFL-CIO, Hawaii State Teachers Association, Hawaii Government Employees Association, American Physical Therapy Association-Hawaii Chapter, Hawaii Rehabilitation Counseling Association, Occupational Therapy Association of Hawaii, Sestak Rehabilitation Services, Case Management Works, Inc., and numerous individuals testified in support of this bill. The Hawaii State Chiropractic Association, ProActive Chiropractic, LLC, and several chiropractors testified in support of the intent of this measure. The Department of Labor and Industrial Relations, Department of Human Resources Development, Department of Human Resources of the City & County of Honolulu, Department of Human Resources of the County of Hawaii, Hawaii Employers' Mutual Insurance Company, Hawaii Insurers Council, Academy of Independent Medical Examiners Hawaii, Property Casualty Insurers Association of America, The Chamber of Commerce of Hawaii, Hawaii Island Chamber of Commerce, Kauai Chamber of Commerce, Hawaiian Dredging and Construction Company, Healy Tibbits Builders, Inc., H L & L, LLC, Kaikor Construction Company, Inc., Ralph S. Inouye Company, Ltd., Royal Contracting Company, Ltd., S & M Sakamoto, Inc., T. Iida Contracting, Ltd., General Contractors Association of Hawaii, Hawaii Medical Association, Terrace Pacific Insurance, Ltd., Society for Human Resource Management, Little Hawaii Car Rental Company, Markstein Leasing, LLC, Retail Merchants of Hawaii, and several individuals testified in opposition to this measure. The Department of the Attorney General opposed this bill in part. Work*Star Occupational Health Systems submitted comments.

The workers' compensation law was established as a "no-fault" law to provide an injured worker the medical treatment necessary to allow the worker to return to work. In return, the injured worker gave up the right to sue the employer. This system appeared to be a "win-win" situation for both the employer and employee--the employee got necessary treatment while the employer would, in time, be able to employ a productive worker. However, over the years, this process has become more adversarial in nature to the detriment of both employers and employees.

Your Committee finds that the workers' compensation issue is a complex one in which the needs of employers and employees must be balanced. Your Committee also understands the numerous concerns raised by several testifiers regarding this measure. Accordingly, your Committee has amended this measure by deleting its contents and replacing it with language contained in H.B. No. 763, H.D. 2, that among other things:



- (1) Allows for alternative dispute resolution for workers' compensation claims,
- (2) Establishes criteria for the use of optional evidence-based guidelines for treatment and for the denial and dispute processes;
- (3) Exempts individuals holding ownership of at least 50 percent in an employing unit, including corporations, partnerships, limited liability partnerships, and sole proprietorships from workers' compensation requirements if the individual chooses to be excluded, provided that the exclusion shall be irrevocable for five years;
- (4) Exempts service performed by a partner for the partnership, a partner of a limited liability partnership, and sole proprietor for the sole proprietorship from workers' compensation requirements;
- (5) Prevents essential medical services from being discontinued in the event of a dispute, until the Director of Labor (Director) renders a decision on whether medical treatment should be continued;
- (6) Allows for the recovery of costs from a claimant's personal health care provider or other appropriate occupational or non-occupational insurer by an employer or employer's insurer in the event unwarranted medical treatment was provided;
- (7) Allows injured workers to be referred for vocational rehabilitation where the employee has achieved maximum medical improvement and the employer has made no offer of permanent suitable work;
- (8) Allows for requests for hearings by employees and employers;
- (9) Provides for reimbursement of medical treatment expenses which should have been denied;
- (10) Limits the rulemaking powers of the Director;
- (11) Establishes requirements and standards for independent medical examiners to perform independent medical exams;



1251

- (12) Clarifies authorization for claims for attorney's services; and
- (13) Requires the submission of annual reports by workers' compensation insurers to the Director of the Department of Commerce and Consumer Affairs and the Insurance Commissioner.

Your Committee has also amended this bill by:

- (1) Changing its effective date to July 1, 2059, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Labor & Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1060, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1060, S.D. 1, H.D. 1, and be referred to the Committee on Consumer Protection & Commerce.

Respectfully submitted on
behalf of the members of the
Committee on Labor & Public
Employment,



ALEX M. SONSON, Chair



