

STAND. COM. REP. NO. 232-08

Honolulu, Hawaii
Feb 8, 2008

RE: H.B. No. 2929
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

Sir:

Your Committee on Labor & Public Employment, to which was referred H.B. No. 2929 entitled:

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

begs leave to report as follows:

The purpose of this bill is to bring impartiality to the independent medical examination (IME) process in the workers' compensation system by:

- (1) Requiring that mutually agreed upon physicians be used to conduct IMEs; and
- (2) Establishing a process for the appointment of a physician to conduct an IME if the parties cannot mutually agree on a physician to conduct the IME.

The Hawaii Chapter-American Physical Therapy Association, Vocational Management Consultants, The American Insurance Institute, and two concerned individuals testified in support of this bill. The Hawaii State Chiropractic Association and ILWU Local 142 supported the intent of this measure. The Hawaii Medical Association and Hawaii Employers' Mutual Insurance Company commented on this bill.

The workers' compensation law was established as a "no-fault" law to provide an injured worker medical treatment necessary to allow the worker to return to work. In return, the injured worker

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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.

Unfortunately, these disputes often carry over into the medical examination process. IMEs, which were intended to provide a fair and impartial assessment of the medical care being given to a patient and the future medical needs of that patient, are often points of contention with both employers and employees making accusations regarding the fairness of the IME. This measure is an attempt to bring balance to the system by providing that mutually agreed upon physicians be used for conducting IMEs and establishing a process for appointing a physician should the parties not be able to agree upon a physician.

However, your Committee understands that workers' compensation is a complex issue and that concerns regarding the fairness and equity of the system proposed in this bill remain. Accordingly, your Committee has attempted to address these concerns and has amended this measure by:

- (1) Clarifying that this measure applies to IMEs and permanent impairment rating examinations by physicians;
- (2) Requiring that a claim be filed by the injured employee prior to the employer being allowed to appoint a mutually agreed upon physician paid by the employer rather than allowing the employer to appoint a mutually agreed upon physician during a period of disability where the employer is dissatisfied with the progress of the case or where major or elective surgery, or both, is contemplated;
- (3) Stipulating the appointed physician be a qualified physician;
- (4) Allowing the appointed physician to conduct either an IME or permanent impairment rating examination of the injured employee;



- (5) Removing the provision allowing the report made by the appointed physician to constitute substantial evidence and allowing the employer to forward this report to the Director of Labor and Industrial Relations (Director);
- (6) Amending the procedures for the appointment of a physician by the Director if a mutually agreed upon physician is not appointed by the employer by:
 - (A) Requiring the Director to keep and maintain a list of qualified physicians including their respective qualifications;
 - (B) Requiring that the request for the appointment of a physician by the Director be in writing;
 - (C) Removing the requirement that the Director designate three physicians who agree to be subject to peer review and to abide by fair, impartial, and ethical examination and reporting standards in examining an injured employee for the appropriate injury and instead allow the Director to appoint a physician licensed in a relevant medical specialty and licensed to practice in Hawaii;
 - (D) Removing the procedures that required an employer to select a physician from a list provided by the Director within a certain timeframe and schedule examinations for injured employees based upon the availability of the physician in the order on which they appeared on the list supplied by the Director;
 - (E) Deleting the provisions allowing for further examination by an employer's physician with an employee's physician present during the examination; and
 - (F) Requiring the physician appointed by the Director to be willing to undertake the examination within seven days of the Director's receipt of the request for the appointment of a physician;
- (7) Requiring an examination of an employee to occur within 30 days, whether the physician is mutually selected or appointed by the Director;



- (8) Stipulating that IMEs and permanent impairment rating examinations shall not be combined into a single medical examination unless the injured employee consents in writing prior to scheduling the examination;
- (9) Stipulating that the Director, appellate board, or court shall not order more than one employer requested IME and one permanent impairment rating per case unless good and valid reasons exist with regard to the medical progress of the employee's treatment;
- (10) Establishing requirements that physicians must meet to be selected to conduct IMEs or permanent impairment rating examinations;
- (11) Allowing an employer to appoint a physician, paid for by the employer but selected by mutual agreement of the parties, to conduct a permanent impairment rating examination of the injured employee when the injured employee has been determined to have attained medical stability by their attending physician;
- (12) Defining "medical stability";
- (13) Changing the effective date to July 1, 2059, to encourage further discussion.

Other technical, nonsubstantive amendments were made 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 H.B. No. 2929, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2929, 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



State of Hawaii
House of Representatives
The Twenty-fourth Legislature

232-08

Record of Votes of the Committee on Labor & Public Employment

Bill/Resolution No.: HB 2929	Committee Referral: LAB, CPC, FIN	Date: 02/05/08		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
LAB Members	Ayes	Ayes (WR)	Nays	Excused
1. SONSON, Alex M. (C)	x			
2. NAKASONE, Bob (VC)				x
3. EVANS, Cindy	x			
4. HAR, Sharon E.	x			
5. LEE, Marilyn B.	x			
6. LUKE, Sylvia	x			
7. McKELVEY, Angus L.K.	x			
8. NISHIMOTO, Scott Y.	x			
9. SOUKI, Joseph M.	x			
10. TAKAMINE, Dwight Y.	x			
11. TAKUMI, Roy M.	x			
12. MEYER, Colleen Rose		x		
13. PINE, Kymberly Marcos		x		
TOTAL (13)	10	2	0	1
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ committee acronym(s) _____ did not support recommendation.				
Vice Chair's or designee's signature: _____				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office				