

Honolulu, Hawaii

APR 04 2008

RE: H.B. No. 2386

S.D. 2

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

Madam:

Your Committee on Ways and Means, to which was referred H.B. No. 2386, S.D. 1, entitled:

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

begs leave to report as follows:

The purpose of this measure is to discourage employers from routinely denying temporary disability benefits to injured employees by:

- (1) Prohibiting an employer from denying payments of temporary total disability even if the employer controverts the employee's right to receive those benefits;
- (2) Specifying that the payment of these benefits shall only be terminated upon:
 - (A) An order of the director; or
 - (B) The determination by employee's treating physician that the employee is able to resume work and the employer has made a bona fide offer of suitable work within the employee's medical restrictions;
- (3) Specifying that the director's order to terminate temporary total disability benefits must be based on a full and fair hearing;



- (4) Authorizing the director to determine, following a hearing, the date after which temporary total disability benefits should have been discontinued and to issue an overpayment credit to the employer for benefits paid after that date;
- (5) Requiring an employer to pay attorney's fees and costs to the employee for failure to comply with requirements relating to total disability benefits; and
- (6) Raising the weekly benefits for permanent or temporary total disability benefits from sixty-six and two-thirds to either seventy per cent of the employee's average weekly wages or maximum amount of the state average weekly wage, if payment of those benefits were not begun within thirty days of or within the same year as the date of injury.

Testimony in support of this measure was submitted by Hawaii State Chiropractic Association, the Hawaii Chapter of the American Physical Therapy Association, and ILWU Local 142. Testimony in opposition was submitted by the Department of Labor and Industrial Relations, the Department of Human Resources Development, Chamber of Commerce of Hawaii, Hawaiian Island Contractors' Association, General Contractors Association of Hawaii, Hawaii Insurers Council, Retail Merchants of Hawaii, Building Industry Association-Hawaii, NFIB Hawaii, Kauai Chamber of Commerce, American Insurance Association, Hawaiian Electric Co. Inc., Honolulu Star-Bulletin/Midweek, Grace Pacific Corporation, and Oceanic Imaging Consultants.

This measure is necessary to provide employers and their carriers with adequate disincentives from engaging in the practice of routinely denying benefits "pending investigation." The denial of benefits without valid reasons imposes undue financial hardships upon injured employees. In some cases, the routine denial of benefits has forced injured employees to return to work prematurely.

Your Committee has amended this measure by:

- (1) Replacing the holding of an administrative hearing with a review of the case file and position papers submitted by the parties as the basis for the director's order to terminate temporary total disability benefits;



- (2) Establishing a working group to address the concerns of this measure and report its recommendations to the Legislature prior to the 2009 Regular Session;
- (3) Retaining the effective date of July 1, 2050, to facilitate further discussion, while adding a provision to specify an effective date of July 1, 2009, if the working group fails to reach a consensus; and
- (4) Specifying an effective date of "upon approval" for the establishment of the working group.

As affirmed by the record of votes of the members of your Committee on Ways and Means that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2386, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2386, S.D. 2.


Respectfully submitted on
behalf of the members of the
Committee on Ways and Means,


ROSALYN H. BAKER, Chair



The Senate
 Twenty-Fourth Legislature
 State of Hawaii

Record of Votes
Committee on Ways and Means
WAM

Bill / Resolution No.:* <i>HB2386, SD1</i>	Committee Referral: <i>JDL, WAM</i>	Date: <i>4/1/08</i>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	/			
TSUTSUI, Shan S. (VC)	/			
CHUN OAKLAND, Suzanne	/			
ENGLISH, J. Kalani	/			
FUKUNAGA, Carol	/			
HOOSER, Gary L.	/			
INOUYE, Lorraine R.	/			
KIM, Donna Mercado	/			
MENOR, Ron	/			
TOKUDA, Jill N.	/			
HEMMINGS, Fred			/	
WHALEN, Paul			/	
TOTAL	10	0	2	0
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes