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February 4, 2008

TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
For Hearing on Tuesday, February 5, 2008
8:30 a.m., Conference Room 309

BY

MARIE C. LADERTA, DIRECTOR

House Bill No. 2386
Relating to Workers' Compensation

TO CHAIR ALEX M. SONSON AND MEMBERS OF THE COMMITTEE:

The purpose of H.B. No. 2386 is to amend Section 386-31(b), Hawaii Revised Statutes: (1) requiring an employer to pay temporary total disability benefits promptly regardless of whether the employer controverts the right to those benefits; (2) specifying that benefits shall continue until the employee's treating physician determines that the employee is able to resume work and that the employer has made a bona fide offer of suitable work within the employee's medical restrictions; (3) following a hearing, a decision will be issued indicating whether temporary total disability benefits should have been discontinued and, if so, a date shall be designated after which temporary total disability benefits should have been discontinued; (4) allowing an employer to make a written request to the director for a credit for the amount of temporary total disability benefits paid after the date that the director had determined should have been the last date of payment; allowing for attorney's fees and costs to the employee for enforcement of this section; (5) entitling an injured employee to receive a weekly benefit equal to 70% of the injured employee's average weekly wages subject to certain provisions.

The Department of Human Resources Development is strongly opposed to this bill.

Requiring an employer to pay benefits when the right to those benefits is being denied would cause irreparable harm in cases where it was determined that a claim was not compensable. Furthermore, this amendment is unnecessary as there is already a mechanism in place for an injured worker to present rebuttal evidence that his or her claim is, indeed, compensable.

Further evidence of irreparable harm is the fact that only the employee can request a hearing. There would be no way for a self insured employer or an insurance carrier to even present an argument for the termination of temporary total disability benefits. Even if a hearing was held and the director determined the date that benefits should be terminated, it isn't clear how the credit, allowed by the director, would be applied. It would be a fairly simple process if the employee was awarded permanent partial disability benefits. However, if those benefits were inadequate to cover the credit or if no permanent partial disability benefits were awarded, then the employer would, once again, suffer irreparable harm.

The amendment allowing for the assessment of attorney's fees and costs for the enforcement of the section is totally unnecessary as Section 386-93, Hawaii Revised Statutes, already provides for such an assessment if it is determined that proceedings under Chapter 386, Hawaii Revised Statutes, are brought, prosecuted, or defended without reasonable grounds.

Lastly, the amendment provides for the payment of 70% of an injured employee's average wage applicable on the date compensation was first received if the injury causes permanent or temporary disability and if compensation was not paid within thirty days of or within the same year as the date of injury, whichever is later. Employees have up to two years from manifestation of an injury to file a claim for benefits. Also, it isn't uncommon for an employee to delay the reporting of an injury. This penalizes an employer for something over which they have no control.

Respectfully submitted,



MARIE C. LADERTA



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Alison Powers
Executive Director

TESTIMONY OF ALISON POWERS

HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
Representative Alex M. Sonson, Chair
Representative Bob Nakasone, Vice Chair

Tuesday, February 5, 2008
8:30 a.m.

HB 2386

Chair Sonson, Vice Chair Nakasone, and members of the committee, my name is Alison Powers, Executive Director of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 60% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** H.B. 2386. This bill will increase costs and encourage abuse by mandating temporary total disability (TTD) benefits to continue until the Director issues a decision. If the decision is against the employee, the workers' compensation insurer may be unable to recoup these costs and rates will increase accordingly. The only way the employer/insurer would be able to recoup costs if overpaid, would be to take it out of the employee's future settlement. The employer/insurer should not have to request a credit in writing. Credit should be consistent with existing language (see HRS 386-52). There is no time certain in which the director must make a decision, which exacerbates unnecessary cost if the employee's benefits should have ceased. Even if there is a time certain for the director to make a decision, provisions need to be included for benefits to automatically cease if the time limit is exceeded.

The requirement for employers or insurance carriers to pay for the injured worker's attorney fees and costs for enforcement of this section also creates an unfair burden on the employer. Why should the employer pay for the injured worker's attorney fees if the Director renders a decision that TTD should have been discontinued?

Finally, the bill increases the wage reimbursement rate to 70% if a work injury causes permanent or temporary disability and payment of compensation was not begun within 30 days or within the same year as the date of injury, whichever is later.

This provision unfairly increases the benefit for a certain class of injured workers and within that class, only if payments do not meet certain requirements. For example, if an injury occurs on December 31 and payment is made within 30 days but in the next year, the indemnity rate is 70% and not the 66 2/3% of the employee's average weekly wages.

We respectfully request that H.B. 2386 be held.

Thank you for the opportunity to testify.

HOUSE OF REPRESENTATIVES
THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Alex M. Sonson, Chair
Rep. Bob Nakasone, Vice Chair

Date: Tuesday, February 5, 2008

Time: 8:30 a.m.

Place: Conference Room 309, State Capitol

TESTIMONY FRED GALDONES/ILWU LOCAL 142

RE: HB 2386, RELATING TO WORKERS' COMPENSATION

Thank you for the opportunity to present testimony regarding HB 2386.

This bill seeks to guarantee the payment of temporary total disability to injured workers even if an employer controverts the employee's industrial accident claim. It permits the cessation of such benefits only if the director of the Department of Labor issues an order terminating these benefits, or the employee's treating physician determines he is able to resume work and the employer makes a bonafide offer of suitable work consistent with the employee's medical restriction

When it is determined that benefits should in fact have been discontinued, an employer who has overpaid temporary total disability may request a credit against future benefit payments. Where employers fail to comply with HB 2386, they may be fined not more than \$2500 plus the attorneys' fees and costs of the employee's attorney.

Finally, an injured employee is awarded benefits equal to 70% of the employee's average weekly wage up to the maximum weekly benefit rate in the year of injury if the employee suffers temporary or permanent disability and payment was not commenced "within thirty days of or within the same year as the date of injury, whichever is later."

The idea of making payment of benefits to employees irrespective of whether an employer controverts a claim may seem fanciful and utopian to some, but it has the positive effect of encouraging prompt medical treatment and swift adjudication of the industrial accident claim. It also prevents the financial privation and hardship occasioned by disability and the myriad of social problems that may surround the disabled employee and her family.

If payment of temporary total disability is deemed unacceptable where a claim is denied, the bill might be amended to require the payment of temporary disability insurance, sick leave, or some other form of income replacement by the employer so that the employee would at least receive a steady source of financial aid during the employee's incapacitation. As is now the

case, if workers' compensation is eventually approved and paid, TDI or sick leave can easily be repaid by the workers' compensation insurance carrier.

The idea that employers who delay payment of benefits should be penalized by compensating the injured worker at a higher 70% of average weekly wage rather than 66-2/3% is a valuable innovation. However, as presently proposed, HB 2386 requires that payment of compensation must begin "within thirty days of *or within the same year as the date of injury, whichever is later.*" (italics supplied) In some instances, if compensation is not paid until later within the same year that the injury occurs, this might be result in a extreme delay. If a person were injured on New Year's Day, for example, the 70% of average weekly wage penalty would not take effect, as long as compensation was paid within the next 364 days, or by December 31 of the year in which the injury occurred. Delay of this magnitude would be markedly inconsistent with the goal of prompt payment of assuring injured workers a constant source of income replacement. The words "or within the same year as the date of injury, whichever is later" should therefore be deleted, so the sanction for delaying payment is simply effective 30 days after the industrial accident.

We support the concept of prompt payment of benefits without interruption and speedy adjudication of claims embodied in HB 2386. If the bill encounters opposition in its current form, it should be revised to propose other alternative means of accomplishing its essential objectives.



**Property Casualty Insurers
Association of America**

Shaping the Future of American Insurance

1415 L Street, Suite 670, Sacramento, CA 95814-3972

To: The Honorable Alex M. Sonson, Chair
House Committee on Labor and Public Employment

From: Samuel Sorich, Vice President

RE: **HB 2386 – Relating to Workers’ Compensation**
PCI Position: Oppose

Date: Tuesday, February 5, 2008
8:30 a.m.; Conference Room 309

The Property Casualty Insurers Association of America (PCI) is an association of property/casualty insurers. There are more than 100 PCI member companies doing business in Hawaii. PCI members are responsible for approximately 45 percent of the property/casualty insurance premiums written in Hawaii.

PCI is opposed to HB 2386 because the bill would increase workers compensation administrative expenses, delay decisions on the payment of temporary total disability benefits and unfairly impose additional workers compensation costs on Hawaii employers.

The practical effect of HB 2386 would be that most temporary total cases will go to administrative hearings before temporary total benefits are terminated. This would result in significant administrative costs for the Department of Industrial Relations and Labor. The extended administrative process will delay decisions on temporary total cases. During this process, employers will be forced to pay benefits that may not be justified.

HB 2386 is costly, unnecessary and unfair. PCI requests that the Committee vote No on the bill.



Before the House Labor Committee

DATE: February 5, 2008

TIME: 8:30 a.m.

PLACE: Conference Room 309

Re: HB 2386 Relating to Workers' Compensation Testimony of Melissa Pavlicek for NFIB Hawaii

Thank you for the opportunity to testify. On behalf of the thousands of business owners who make up the membership of the National Federation of Independent Businesses in Hawaii, we ask that you defer HB 2386. NFIB opposes this measure in its current form.

The National Federation of Independent Business is the largest advocacy organization representing small and independent businesses in Washington, D.C., and all 50 state capitals. In Hawaii, NFIB represents more than 1,000 members. NFIB's purpose is to impact public policy at the state and federal level and be a key business resource for small and independent business in America. NFIB also provides timely information designed to help small businesses succeed.

We oppose measures that may tend to increase workers' compensation costs and have unintended negative consequences on employers, employees and the economy. Thank you for the opportunity to testify.



Randy Perreira
President

HAWAII STATE AFL-CIO

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The Twenty-Fourth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii State AFL-CIO
February 5, 2008

H.B. 2386– RELATING TO WORKERS’ COMPENSATION

The Hawaii State AFL-CIO strongly supports the purpose and intent of H.B. 2386. We agree that corrective action is warranted to stop the disruption of temporary total disability benefits in workers' compensation-related cases by employers. This disruption is counterproductive and becomes a serious impediment to the cost-effective treatment and recovery of injured workers. Unfortunately, this problem is symptomatic of efforts to erode the rights of injured workers through so-called “reform.” Real reform of the workers’ compensation system is needed to help injured workers recover, not to impede their recovery.

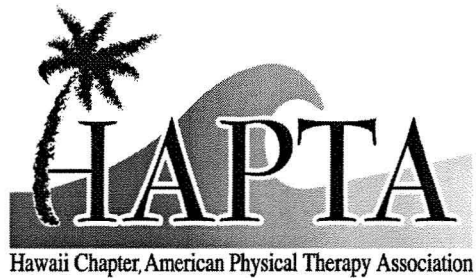
The Hawaii State AFL-CIO believes that an employer should not be able to stop temporary total disability benefits until the Director of Labor and Industrial Relations decides to terminate them. Thank you for the opportunity to testify in support of H.B. 2386.

Respectfully submitted,

Randy Perreira
President

**Testimony by:
Derrick Ishihara, PT**

**HB 2386, Relating to Workers'
Compensation
House LAB, Tuesday, Feb. 5, 2008
Room 309, 8:30 am**



Position: Support

Dear Rep. Sonson and Members of the House LAB Committee:

I am Derrick Ishihara, P.T., a small business owner/physical therapist and member of HAPTA's Legislative Committee. The Hawaii Chapter – American Physical Therapy Association (HAPTA) is comprised of 300 member physical therapists and physical therapist assistants employed in hospitals and health care facilities, the Department of Education school system, and private practice. We are part of the spectrum of care for Hawaii, and provide rehabilitative services for infants and children, youth, adults and the elderly. Rehabilitative services are a vital part of restoring optimum functioning from neuromusculoskeletal injuries and impairments.

HAPTA supports this proposal to prevent insurers from arbitrarily terminating TTD benefits to injured workers.

Anecdotal evidence from attorneys and claimants presented at previous legislative hearings suggest that insurers have terminated benefits to deserving claimants without good cause. Further, it is reported that inquiries from the claimants and the claimants' attorneys to the insurers have been ignored.

This has resulted in extreme financial hardship for injured workers. In some cases, injured workers are forced to return to their jobs prematurely, creating a hazardous situation not only for the injured worker, but also potentially for that employee's co-workers.

Passing this measure would cause insurers to be more selective when evaluating disputed cases for termination of benefits. Currently, as reported, when cases are awaiting administrative hearing, the insurer many times will not pay TTD benefits. In other words, the current system works to the benefit of the insurer and the larger the backlog of cases at the DOL and the longer time to obtain hearing dates, the more favorable it is for the insurer. Requiring payment of benefits while cases await the Directors decision will effectively remove this incentive for insurers.

I may be reached at 593-2610 if there are any questions. Thank you for the opportunity to present testimony.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

February 5, 2008

Committee on Labor & Public Employment

8:30 a.m.

Conference Room 309

Testimony on HB 2386 “Relating to Workers Compensation”

Chair Sonson and Members of the Committee on Labor & Public Employment:

I am Karen Nakamura, Chief Executive Officer and Executive Vice President of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii is strongly opposed to HB 2386 “Relating to Workers Compensation”.

The bill would require an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. The bill also specifies that the employee’s ability to return to work is to be decided by the employee’s treating physician.

The provisions of HB 2386 would erode employers’ rights and their ability to control their costs. If passed, this bill would increase the cost of workers compensation by providing another incentive for workers not to return to work because they could determine (with their treating physician) when they choose to return to work. To force employers to continue TTD benefits for a period of time to be determined essentially by the employee is unreasonable.

For these reasons, BIA-Hawaii strongly opposes this bill.

Thank you for the opportunity to share our views with you.

Karen I. Nakamura

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM:

GARY M. SLOVIN, ESQ.
CHRISTOPHER G. PABLO, ESQ.
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February 4, 2008

TO: Representative Alex Sonson
Chair, Committee on Labor & Public Employment
Hawaii State Capitol, Room 323
LABtestimony@Capitol.hawaii.gov

FROM: Anne T. Horiuchi, Esq.
H.B. 2386 Relating to Workers' Compensation
Hearing Date: Tuesday, February 5, 2008 at 8:30 a.m.

Dear Chair Sonson and Members of the Committee on Labor & Public Employment:

I am Anne Horiuchi, testifying on behalf of the American Insurance Association (AIA). AIA represents approximately 350 major insurance companies that provide all lines of property and casualty insurance and write more than \$123 billion annually in premiums. AIA members supply 23 percent of the property/casualty insurance sold in Hawaii. The association is headquartered in Washington, D.C., and has representatives in every state.

H.B. 2386 requires an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. The measure also specifies that the employee's ability to return to work is to be decided by the employee's treating physician.

Where a claim is controverted, employers and their insurers should not be required to pay benefits that they do not believe are owed. AIA opposes H.B. 2386 and respectfully requests that it be held.

Thank you very much for this opportunity to submit testimony.