



**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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LATE

March 26, 2008

To: The Honorable Rosalyn H. Baker, Chair
and Members of the Senate Committee on Ways and Means

Date: March 27, 2008
Time: 9:00 a.m.
Place: Conference Room 211 State Capitol

From: Darwin L.D. Ching, Director
Department of Labor and Industrial Relations

**Testimony in OPPOSITION
to
H.B. 2388 SD1– Relating to Workers’ Compensation**

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

House Bill 2388 SD1 proposes to amend Section 386-21, Hawaii Revised Statutes (“HRS”), by allowing uninterrupted medical care be provided to injured workers in the event of any dispute between the injured employee and the employer regarding treatment, until the Director determines if medical services shall be discontinued and specifies the date after which medical services are denied.

The employer or its insurer may recover from the claimant’s personal health care provider qualified pursuant to section 386-27, HRS, or from any other appropriate occupational or non-occupational insurer, all the sums paid for medical services rendered after the date designated by the Director in which medical services are denied.

II. CURRENT LAW

Injured workers are currently allowed 15 treatments during the initial 60 calendar days. No treatment plan is required if the employee does not exceed 15 treatments in the first 60 days. If an injured worker needs more than 15 treatments and/or further treatment beyond the initial 60 days, the attending physician must submit a treatment plan in accordance with the Hawaii Administrative Rules (“HAR”), section 12-15-32 of the Workers’ Compensation Medical Fee Schedule. Under this section, the attending physician must submit a treatment plan to the employer at least 7 calendar days prior to

the start of treatment. Treatment plans cannot exceed 15 treatments or extend beyond 120 calendar days.

If the employer opposes the treatment plan, the employer must properly notify the injured worker of the decision to deny further treatments. The employer is responsible for all treatments up to the employer's notice of denial. The injured worker or attending physician may request a review of the employer's denial of the proposed treatment plan within 14 calendar days.

Consequently, a hearing is held and a decision is issued either denying or approving the treatment plan. The employer is required to pay the provider of service if the treatments are determined to be reasonable and necessary or the fees can be disallowed if unreasonable or unnecessary. Disallowed fees shall not be charged to an injured worker. Either party can appeal the decision to the Labor and Industrial Relations Appeals Board.

Currently, the time required to schedule the hearing, notice the parties, conduct the hearing and render a decision takes 3 to 4 months.

III. HOUSE BILL

The Department of Labor and Industrial Relations ("Department") appreciates the issue that this bill seeks to resolve through ensuring that claimants that are entitled to medical treatment, receive those benefits. However, the Department opposes the bill due to the effect this measure would have on employers in those cases where a claimant was receiving unnecessary medical treatment. Specifically, the Department has the following concerns and comments:

1. This proposal allows employers or their insurers to seek reimbursement for sums that were paid for medical services after the medical cut off date from the prepaid health care contractors or from other appropriate occupational or non-occupational insurers. However, if the treatment is for unreasonable and unnecessary care, the prepaid health care contractors will not pay for the unreasonable or unnecessary treatment.

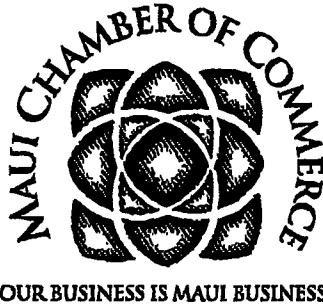
In addition, the reimbursement from the prepaid health care contractors may not be the same as allowed under workers' compensation and would also be reduced by the employee's co-payment share. While most health care providers do provide only reasonable and necessary care, we believe that this bill will provide incentives for some health care providers to provide and be reimbursed for unnecessary health care since this bill appears to require the insurance carrier to

pay for treatments until the director renders a decision. Unreimbursed costs paid by the insurance carriers will result in higher workers' compensation costs, resulting in a corresponding increase in employer insurance premiums.

2. The bill requires that the Department make a decision within thirty days of filing of a dispute. This proposal does not indicate whether a hearing must be held to address the dispute or if a decision can be rendered without a hearing based on records in file. If a hearing is required, thirty days is insufficient time to schedule a hearing, provide notice to the parties, hold the hearing, and render a decision. The minimum time required would be 2 to 3 months and this would result in delaying the scheduling of hearings for other issues such as compensability, termination of temporary total disability and permanent disability determinations.
3. The number of hearings will likely increase dramatically under this proposal. The Department will require more hearings and support personnel to conduct more hearings to address treatment plans and continued medical care issues. The Department estimates that it will require an additional 6 hearings officers (2 for Honolulu and 1 each for neighbor island offices) and 5 clerk typists statewide to timely service the additional hearings and decisions resulting from the passage of this measure.

The Department estimates this cost to be approximately \$460,652 initially and \$426,552 in salaries annually thereafter.

4. This proposal will increase the cost of doing business in Hawaii at a time when it may not be prudent to do so. The Department estimates that this proposal would add \$34 million in payouts from employer premiums and \$5 million increase for self insured employers.
5. This proposal is identical to two prior measures vetoed by the Governor in 2006 and 2007. Those same objections that the Governor had for vetoing those bills still exist in this proposal. Given this prior history, the Department recommends that the committee hold this bill and instead allow the Department to form a task force and to make recommendations on possible solutions to the 2009 legislature to address the concerns of this bill.



March 26, 2008

Senator Roz Baker, Chair
Senator Shan Tsutsui, Vice-Chair &
Members of the Senate Committee
on Ways and Means

Testimony for Thursday, March 27, 2008 at 9:45am
Conference Room 211, State Capitol
Submitted Via Fax: 1-800-586-6659

LATE

RE: HOUSE BILL NO. 2388 HD1 SD1 RELATING TO WORKERS' COMPENSATION

Dear Chair Baker, Vice Chair Tsutsui, and Members of the Committee:

I am writing today on behalf of the Maui Chamber of Commerce, an organization comprised of over 940 members, 88% of which are small businesses with 25 or fewer employees. We work on behalf of members and the entire business community to improve the state's economic climate, support the business sector, and to foster positive action on issues of common concern.

We are submitting testimony in opposition of House Bill No. 2388 HD1 SD1, relating to Workers' Compensation, due to the negative, unintended outcomes it may have on business.

Protecting workers and providing necessary care is essential, however, this measure requires the employer to continue medical services to an injured employee despite disputes over whether treatment should be continued, until the Director of Labor and Industrial Relations decides whether treatment should be continued.

We believe this bill may cause unreasonable and unnecessary treatment for non-related work injuries; prolong time off the job, even if the employee is deemed able to return to his or her work; and could impede an injured worker's recovery. Workers' Compensation benefits are important and should be utilized as intended, not in such a way that they can be activated simply because they exist.

Because of the bill's mandate to require continued medical treatment, this measure may hurt employers, including small businesses, which operate on limited resources and smaller staffs. Colleagues of the absent employee will unfairly shoulder additional responsibilities, which could have a rippled effect, such as a stressful work environment, lower morale among the employees, and lost productivity. As a result, this measure may hinder rather than promote progress.

While HB 2388 HD1 SD1, is well-intended, it will have unintended consequences and possibly lead to a rise in workers' compensation insurance costs and the overall cost of doing business. With a slowing economy, this is not the time to further increase costs for businesses already grappling with rising with gas prices, soaring shipping costs, higher health insurance costs, and much more.

Therefore, we ask that you recognize the impact on business and hold this bill.

Sincerely,

Pamela Tumpap /EF.
Pamela Tumpap
President

testimony

From: Chuck [cgraygray@hotmail.com]
Sent: Wednesday, March 26, 2008 4:48 PM
To: testimony
Cc: Sen. J. Kalani English; Rep. Mele Carroll
Subject: HOUSE BILL NO. 2388 HD1 SD1 RELATING TO WORKERS' COMPENSATION

LATE

I am a tax paying citizen of Hawaii and object to the requirement in this bill for employers to continue paying for medical treatment for employees in spite of disputes over the correctness of the treatment.

Businesses already have a very difficult time staying in business in Hawaii.

I urge you to reject this bill and spend your time developing tort reform so that we can make Hawaii and welcoming place for medical practitioners. I understand that Texas has capped medical malpractice suits and is reaping the rewards of a growth in medical service. Hawaii is losing its medical service.

Chuck Gray
HC 1 Box 115
Hana, HI 96713

testimony

From: Thomas Somermeier [Thomas@kilakila.com]
Sent: Thursday, March 27, 2008 6:47 AM
To: testimony
Subject: Bills

LATE

HB2388 SD1 - Workers' Compensation: Uninterrupted Medical Treatment

Testimony to the Senate Committee on Ways and Means

**Thursday, March 27, 2008; 9:45 a.m.
Conference Room 211**

HOUSE BILL NO. 2388 HD1 SD1 RELATING TO WORKERS' COMPENSATION

Chair Baker, Vice Chair Tsutsui and Members of the Committee:

Aloha, my name is Thomas J. Somermeier and I am the Director of Risk Management with Kilakila Employer Services, a company that employs over 800 employees. I oppose House Bill No. 2388 HD1 SD1, relating to Workers' Compensation.

This measure requires the employer to continue medical services to an injured employee, despite disputes over whether treatment should be continued, until the director of labor and industrial relations decides whether treatment should be continued.

While an employee suffering from work-related injuries needs proper and necessary treatment, this bill may cause unreasonable and unnecessary treatment for non-related work injuries. Thus, passage of this measure could prolong time off the job, even if the employee is deemed able to return to his or her work, and hurt my business. Eventually, it could also impede an injured worker's recovery. Please use these benefits as intended and not in such a way where the benefits are activated simply because they exist.

With prolonged absences, the resources of my operation are severely tapped, other employees are overly and unfairly burdened with shouldering the workload of absent peers, and productivity is lost.

Therefore, please recognize the negative impact of this bill on business and oppose HB 2388 HD1 SD1 as it will have unintended consequences, possibly lead to a rise in workers' compensation insurance costs, and increase the cost of doing business.

Thank you for the opportunity to testify.

Thomas J. Somermeier
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3/27/2008

SB 2829, SD2, HD1 - Repeal of Tax Credits/Exemptions

Testimony to the House Committee on Finance

**Thursday, March 27, 2008; 4:00 p.m.
Conference Room 308
(Agenda #3)**

RE: SENATE BILL NO. 2829 SD2 HD1 RELATING TO TAXATION

Chair Oshiro, Vice Chair Lee, and Members of the Committee:

Aloha, my name is Thomas J. Somermeier and I am the Director of Risk Management for Kilakila Employer Services, a company that employs 800 employees. I am writing today in opposition of SB 2829, SD2, HD1 relating to Taxation.

The measure requires the Department of Taxation and Department of Human Services to evaluate certain tax credits and tax exemptions and report to the Legislature. The bill also provides for the automatic repeal of the tax credits and exemptions. Finally, the measure provides for excessive amounts filed for tax refunds and credits.

While I understand that the legislature is concerned about tax credits and exemptions, I am concerned about the automatic repeal of the tax credits and exemptions. This may have a serious impact on business and the overall economy and comes at a time when the cost of doing business is going up and we are experiencing economic slowing. Many tax credits and exemptions help stimulate economic activity for start-up industries, or provide relief to existing industries, which in turn, pass down the savings to consumers.

Therefore, I ask that this bill be held until further study is conducted and the impacts to business are well understood before an automatic repeal is implemented.

Thank you for the opportunity to testify.

Sincerely,

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3/27/2008

TESTIMONY BEFORE THE SENATE COMMITTEE ON
WAYS AND MEANS

Thursday, March 27, 2008
9:45 a.m.

HB 2388, HD1, SD1
RELATING TO WORKERS' COMPENSATION

By Marleen Silva
Director, Workers' Compensation
Hawaiian Electric Company, Inc.

Chair Baker, Vice Chair Tsutsui and Members of the Committee:

Hawaiian Electric Co. Inc., its subsidiaries, Maui Electric Company, LTD., and Hawaii Electric Light Company, Inc. **respectfully oppose H.B. 2388, HD1, SD1.** Our companies represent over 2,000 employees.

This bill requires employers to continue paying for medical treatment despite disputes over whether treatment should be continued until the Director of Labor and Industrial Relations (DLIR) can decide on the matter.

We can appreciate the intent of the bill and recognize the importance of insuring that injured employees receive prompt medical care when suffering from work related injuries. However, we feel that this bill changes the intent of the workers' compensation system by requiring employers to pay for treatment despite disputes over whether or not treatment should be continued. The passage of this bill will leave employers footing the bill then expending resources to try and collect reimbursement for treatment that may be unrelated to a work injury. Treatment unrelated to a compensable work injury should be billed to the employee's private medical insurance carrier.

Passage of this bill will significantly increase workers' compensation costs, and may impose unintended negative consequences for employers, employees, and our State's economy. We believe the existing workers' compensation statutes, administrative rules and regulations have adequate safeguards to insure that an employee receives appropriate medical care for as long as the nature of the work injury requires.

For these reasons, we respectfully oppose H.B. 2388, HD1, SD1.

Thank you for the opportunity to testify.