



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

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January 28, 2008

To: The Honorable Alex Sonson, Chair
and Members of the House Committee on Labor and Public Employment

Date: January 29, 2008

Time: 8:30 a.m.

Place: Conference Room 309, State Capitol

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

**Testimony in Opposition
to
H.B. 2545 – Relating to Workers’ Compensation**

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

House Bill 2545 proposes to require that independent medical examinations (“IME”) be subject to the following:

1. The IME physician be selected by mutual agreement between the employer and employee; and
2. If no agreement can be reached, then to have the Department of Labor and Industrial Relations (“Department”) provide a list of three physicians for the employer and employee to choose from. If no consensus is reached, the Department chooses the IME physician.

II. CURRENT LAW

Currently, section 386-79, HRS, specifies that the employee, when ordered by the director shall submit to the examination by a qualified physician designated and paid by the employer. If an employee refuses to attend the examination or obstructs in any way the examination, their rights to benefits will be suspended for the period during which the refusal or obstruction continues.

III. HOUSE BILL

The Department understands the intent of this bill is to provide an assurance of impartiality in the IME process. However, the Department opposes this bill for the following reasons:

1. The IME process is an important part of the employers' discovery process to ensure proper treatment and that the costs they incur are justified. Requiring that the IME be chosen by mutual agreement deprives the employer of that right to discovery.

The IME physician is not rendering actual medical treatment; an employee's treating physician renders the medical treatment. The role of an IME physician is to evaluate the injury and or treatment.

2. There are already safeguards in place for IMEs. Hawaii's workers' compensation **law requires full disclosure** of the IME report to the injured employee. The rationale for disclosure is to allow the employee the ability to determine whether the evaluation was accurate, or whether the evaluator was in any way misinformed.

Open-disclosure also means that a poorly written report based on erroneous data and insignificant evidence can be refuted by the injured employee or their personal physician.

3. This bill seems to suggest that the IME report is the final say regarding the injured employee. It is not. The Department makes a determination based upon the evidence paced in front of the hearings officers by the employee and employer.
4. The employer and insurance carrier pays for 100% of the cost of the I.M.E. and should be afforded the choice of the I.M.E.
5. Proponents of this legislation believe that this change may decrease the adversarial nature that arises during disputes and eliminate the impression of bias in the IME. However, the Department is not convinced that this would decrease the adversarial nature of the IME process as claimants and employers are likely to disagree or challenge an IME report that does not support their position. In those instances the employer or employee would file for requests to the Department to order another IME or medical expert to support their position.

6. The Department also has concerns regarding the fiscal impact of this bill as it would require additional staffing and funding for the Department to develop and maintain a list of currently available physicians.

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, January 29, 2008

Time: 8:30 a.m.

Place: Conference Room 309, State Capitol

TESTIMONY FRED GALDONES/ILWU LOCAL 142

RE: HB 2545, RELATING TO WORKERS' COMPENSATION

Thank you for the opportunity to present testimony regarding HB 2545. We support this useful and constructive measure.

The delivery of compensation to injured employees in workers compensation is largely dependent upon medical certification of the causation of injury and confirmation of a claimant's disability. Fair, competent, and timely medical evidence is crucial to the efficient and just operation of this system. However, all too frequently in recent years the efficiency and integrity of this system have been compromised by the use of physicians whose livelihoods become overly dependent on insurance carrier referral of patients for so-called "independent medical examinations." When the value of such referrals often runs to hundreds of thousands of dollars per year for an individual physician, it is the rare evaluator who is not influenced to at least some degree by the source of this huge volume of business and economic security.

HB 2545 seeks to restore and insure the neutrality and objectivity to the system of evaluation by having the examining physicians utilized under Section 386-79 HRS selected by mutual agreement between the employer and employee. When agreement is not achieved, the bill stipulates that the director of the department of labor will then furnish the parties a list of three physicians within seven calendar days of a request. Any party may request such a list. The employer and employee shall then each remove one physician, until the remaining physician shall serve as the evaluator.

By following the simple procedure in HB 2545, undue financial influence should be eliminated from the rendering of the expert physician reports and the desired objectivity will be promoted and encouraged. This less adversarial approach to evaluation will also enhance the credibility of the opinions rendered and should also reduce the number of disputed claims that must proceed to litigation.

HB 2545 is a moderate and sensible innovation to our existing workers' compensation statute that will help achieve greater equity, efficiency, and economy on behalf of all stakeholders in the current system. We therefore urge its swift adoption.

GOODSILL ANDERSON QUINN & STIFEL

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January 28, 2008

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

FROM: Anne T. Horiuchi, Esq.
H.B. 2545 Relating to Workers' Compensation
Hearing Date: Tuesday, January 29, 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. 2545 provides that an independent physician be selected to conduct medical examinations in cases where major and elective surgery, or either, is contemplated, or in cases where an employee or employer are dissatisfied with the medical progress.

AIA is in the process of reviewing the various workers' compensation measures before the Legislature. AIA generally supports the provisions of H.B. 2545.

Thank you very much for this opportunity to submit testimony.

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

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

Testimony Related to HB 2545
Tuesday, January 29, 2008
8:30 A.M.
Conference Room 309

Chair Sonson, Vice Chair Nakasone, and Committee Members:

I am Ernest H. Fukeda, Jr., Chief Operating Officer of Hawaii Employers' Mutual Insurance Company, Inc. (HEMIC). Thank you for the opportunity of offering testimony regarding HB 2545. Hawaii currently has a very workable Workers' Compensation system that provides avenues of fairness to both the employees and the employers. This bill introduces another step and layer into the system that can and will create another time consuming feature which, in turn, generates an expense element.

Alternatively and keeping in the spirit of this bill, workers' compensation carriers can provide a list of three (3) Independent Medical Examiners (IME) for the other party to select.



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
January 29, 2008

H.B. 2545 – RELATING TO WORKERS' COMPENSATION

The Hawaii State AFL-CIO strongly supports the purpose and intent of H.B. 2545. This bill will help to improve the workers' compensation system by having the examining physician utilized under Section 386-79, HRS selected by mutual agreement between the employer and the employee. If the employer and employee do not agree, the bill stipulates that the director of the Department of Labor will furnish the parties a list of three physicians within seven days of making such a request. The employer and the employee must then remove one name until there is one physician who will serve as the evaluator.

If enacted, H.B. 2545 will promote greater objectivity and fairness within the existing workers' compensation system. Thank you for the opportunity to testify in support of H.B. 2545.

Respectfully submitted,

Randy Perreira
President

LATE TESTIMONY



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President

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Executive Director

January 29, 2008

To: Rep. Alex M. Sonson, Chair
Rep. Bob Nakasone, Vice Chair
Committee on Labor & Public Employment

From: Cynthia J. Goto, M.D., President
Linda Rasmussen, M.D., Legislative Co-Chair
Philip Hellreich, M.D., Legislative Co-Chair
Paula Arcena, Executive Director
Dick Botti, Government Affairs Liaison

Re: HB2545, HB2752, HB2929 Relating to Workers' Compensation

HMA opposes passage of this bill in its present form, because if removes the balance that is currently in place between the employee's right to chose a treating physician(s) and the employer's ability to seek expert second opinion. HMA agrees that the hearings process should be streamlined.

Thank you for the opportunity to testify on this matter.

PLEASE DELIVER

To rm 329 for:
Committee on Labor &
Public Employment

Tuesday
1/29/08
8:30 am

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January 29, 2008

LATE TESTIMONY

Tuesday, January 29, 2008
8:30 a.m. - House LAB, Room 309
Fax: 586-6501

To: The Honorable Alex Sonson, Chair Fax: 586-6521
And Members of the Committee on Labor and Public Employment

Re: HB 2544, HB 2929, HB 2545, HB 2752

Dear Chair Sonson and Committee Members:

I am Audrey Hidano of Hidano Construction, Inc. testifying in OPPOSITION of HB 2544, HB 2929, HB 2545 and HB 2752 which is attempting to amend Section 386-79, Medical Examination by Employer's Physician.

I believe the current system is working and this legislation is unnecessary because most IME's occur by mutual agreement absent any statute. New proposals requiring selection of an IME physician will increase costs and delay the delivery of medical treatments in some cases.

Thank you for this opportunity to testify in OPPOSITION of these bills.



Audrey Hidano