

STAND. COM. REP. NO. 428

Honolulu, Hawaii

FEB 20 2009

RE: S.B. No. 63
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Madam:

Your Committee on Labor, to which was referred S.B. No. 63
entitled:

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

begs leave to report as follows:

The purpose of this measure is to amend the temporary total
disabilities law to, among other things:

- (1) Require an employer to pay and continue to pay temporary total disability benefits to an injured worker, regardless of whether the employer controverts the worker's right to the benefits, until certain conditions are met and until ordered by the Director of Labor and Industrial Relations or until the employee's treating physician determines that the employee is able to resume work;
- (2) Allow employers to request credits against future benefits payments for payments already made when the Director issues a decision that benefits should have been discontinued after a certain date;
- (3) Include attorney's fees and costs to the employee for the enforcement of the temporary total disabilities provisions of section 386-31, Hawaii Revised Statutes;
- (4) Allow an injured employee to receive benefits equal to seventy per cent of the employee's average weekly wage



up to the maximum weekly benefit rate in the year of injury if payment of benefits do not begin with thirty days of the date of injury; and

- (5) Require the Director of Labor and Industrial Relations to convene a working group to submit recommendations and proposed legislation to the Legislature addressing concerns raised by this measure.

Testimony in support of this measure was submitted by three organizations. Testimony in opposition to this measure was submitted by two state agencies, one county agency, and eight organizations. Written testimony presented to the Committee may be reviewed on the Legislature's website.

Your Committee finds that injured workers are unjustly burdened when they are injured at work and their employers terminate temporary total disability benefits without good cause, forcing workers to return to work prematurely or suffer physically and financially.

Your Committee further finds that the current system allowing insurers to stop payments while cases are pending creates an additionally unfavorable situation for injured workers when a backlog of cases increases at the Department of Labor and Industrial Relations. If insurers and employers are required to pay benefits even while cases are pending, they may be less motivated to maximize the number of cases they dispute.

Your Committee notes that employers have experienced an approximately sixty per cent net decrease in workers' compensation insurance premiums since 2005. Accordingly, your Committee believes that employees should also gain benefits and protections to minimize the physical and financial hardship incurred by an injured employee and the employee's family.

Your Committee acknowledges the concern over employers and insurers paying temporary total disability benefits beyond what is later deemed necessary. Your Committee notes that this measure allows employers to receive credits for any benefits paid but later found to be unnecessarily paid. Furthermore, in most workers' compensation cases, an injury that prevents an employee from returning to work is serious enough that the employee will also sustain some permanent partial disability, for which payments the employer or insurer would also be responsible. In those



cases, any payments by the employer or insurer later deemed to be unnecessary temporary total disability payments would be applied as advanced permanent partial disability payments to the employee.

Your Committee is concerned with the timing of the working group's submission of recommendations to the Legislature and its impact on the effective date of the other provisions of this measure. Your Committee believes that the effective date should be clarified as the Legislature further debates this matter.

Your Committee has amended this measure by making technical, nonsubstantive changes for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 63, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 63, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Labor,

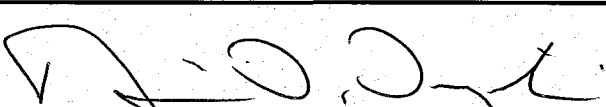


DWIGHT Y. TAKAMINE, Chair



The Senate
 Twenty-Fifth Legislature
 State of Hawaii

Record of Votes
Committee on Labor
LBR

Bill / Resolution No.:* SB 03	Committee Referral: LBR, WAM	Date: 2/10/09		
<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
TAKAMINE, Dwight Y. (C)	✓			
TANIGUCHI, Brian T. (VC)	✓			
BUNDA, Robert	✓			
HEE, Clayton	✓			
SLOM, Sam			✓	
TOTAL	4	0	1	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