



STATE OF HAWAII

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

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HONOLULU, HAWAII 96813
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March 16, 2009

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

Date: Tuesday, March 17, 2009
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

S.B. 63, S.D. 2 – Relating to Workers' Compensation

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

Senate Bill 63, S.D. 2, proposes to amend section 386-31(b), HRS, relating to temporary total disability (“TTD”) by requiring the employer to pay initial TTD benefits even if the employer believes the employee’s claim is not work related.

This proposal also allows termination of TTD benefits upon order of the Director, or if the employee’s treating physician determines 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. The employer may request a credit for the amount of TTD benefits paid after the date in which the director determines that benefits should have been terminated.

This proposal requires that the order shall only be issued upon receipt of a request from the employee upon notice from employer of intent to terminate TTD. The director shall review the case file and direct the employee and the employer to submit position papers within fourteen days. The director shall issue a decision, without a hearing, within thirty days after this fourteen-day period. The order shall indicate whether TTD benefits should have been discontinued and, if so, a date shall be designated after which TTD benefits should have been discontinued.

This proposal also adds a new subsection (c) to section 386-31, HRS, to allow employees

to receive a weekly benefit equal to seventy per cent (70%) of the employee's average weekly wages, subject to the limitations on weekly benefit rates, or one hundred percent (100%) of the employee's average weekly wages if the average weekly wages are less than the maximum weekly benefit rate, if payment of compensation was not begun within thirty days of the date of injury.

Section 2 of the proposal requires the director to convene a working group within thirty days of the effective date of this section. The director shall serve as the chairperson of the working group. The working group shall address and make recommendations to resolve the concerns raised by this Act. The working group shall submit their findings and recommendations, including proposed legislation, to the Legislature no later than twenty days prior to the convening of the regular session of the 2010 Legislature.

This Act shall take effect on July 1, 2090, provided that sections 1, 3, and 4 shall take effect on July 1, 2100, if the working group established in section 2 states in its report to the Legislature that it has not reached a consensus in resolving the concerns of the Act.

II. CURRENT LAW

Currently, section 386-31(b), HRS, mandates the employer to pay temporary total disability benefits promptly as they accrue without waiting for a decision from the director, unless the employer controverts the claim. The employer must make payment no later than the tenth day after they have been notified of the occurrence of total disability. The employer may be penalized for late payment of benefits.

Section 386-31(b), HRS, also specifies that only by order of the director or if the employee can resume work, can an employee's TTD benefits be terminated. If the employer is of the opinion that TTD benefits should be terminated because the employee is able to return to work, the employer must notify the employee and the director of their intent to terminate benefits, at least two weeks prior to the date when the last payment was made. The employer's notice must also inform the employee the reason for the termination and that the employee may request the director hold a hearing to address the termination of benefits if they do not agree.

III. SENATE BILL

The Department understands the intent that this bill seeks to resolve through ensuring that claimants, who are entitled to TTD benefits, are not economically harmed during their inability to work. A similar bill, House Bill 2386, S.D. 2, C.D. 1, was passed by the 2008 Legislature and vetoed by the Governor. The Department recommended veto of the bill and continues to oppose this bill, S.B. 63, S.D. 2, in its present form for the following

reasons:

1. This bill would result in payment of TTD benefits to employees for claims determined not to be work-related.

It would be almost entirely impossible for employers to collect disallowed TTD payments from employees. While this bill does allow for the director to provide a "credit" to the employer, the credit would only apply to claims determined to be work-related or cases in which permanent partial disability (PPD) benefits are awarded. In those cases where there is no PPD award, or if the PPD award is smaller than the amount of overpaid TTD benefits, the employer would probably have to absorb that loss.

2. Currently, this section of law does not appear to allow an employer to request a hearing before the director to terminate TTD benefits. Section 386-31, HRS, specifically allows **only employees** to file a request for hearing to determine if TTD benefits should have been terminated. This language, as currently written, would mean that employers may not have an avenue to terminate benefits, as they would need the claimant to file the request for hearing to terminate the benefits.
3. The employer is already mandated to make the first payment of benefits no later than on the tenth day after the employer has been notified of the total disability, and further benefits should be paid weekly unless the employer controverts the claim for benefits. Pursuant to section 386-92, HRS, failure to pay benefits in a timely manner, or if TTD benefits are terminated in violation of section 386-31, HRS, a twenty percent (20%) penalty may be added to the unpaid benefits due.

The new subsection (c) of this bill would allow injured workers to receive higher weekly benefits (70% vs. 66-2/3%), subject to the limitations on weekly benefit rates prescribed in subsection (a), for TTD benefits if the initial payment of benefits are **not made within thirty days of the date of injury**. The current law allows a claim for workers' compensation benefits to be filed within two to five years of the date of injury. **Claims filed after thirty days after the date of injury will automatically receive the higher benefit rate. In addition, the bill allows the employee to receive one hundred percent (100%) of their average weekly wages if their average weekly wages are less than the maximum weekly benefit rate prescribed in subsection (a).** The Department believes it should read "**one hundred percent of the minimum weekly benefit rate**", rather than the maximum. Otherwise, those employees whose average weekly wages are less than the maximum weekly benefit rate will receive their full pay while on TTD benefits. This would provide injured workers with a tremendous incentive

not to return to work since they may receive their full pay while NOT working.

4. All parties would like to have TTD issues resolved expeditiously. While this proposal allows the director to render a decision based upon position papers and information in the case file without a hearing, additional hearings officers and clerical staff would be required in order to expedite review of the position papers and case information, write and issue the decisions. The Department estimates that it will require an additional six (6) hearings officers (2 for Honolulu and 1 each for the neighbor island offices) and 5 clerk typists statewide to timely service the additional hearings review and decision process resulting from the passage of this measure. The Department estimates this cost to be approximately \$495,440 initially and \$461,340 in salaries annually thereafter. However, these decisions could still be appealed to the Labor Appeals Board and possibly be remanded back to the DCD to hold a hearing and determine the issue of termination of TTD.
5. NCCI did an analysis of S.B. 63 and its costs and other implications. The NCCI analysis is based on three provisions of the bill which will increase costs.
 - 1) If TTD benefits do not commence immediately, costs may increase up to 0.4%.
 - 2) If employer is unable to terminate TTD benefits, costs may increase up to 0.1%.
 - 3) If the initial payment is not made within thirty days of the date of the injury, costs may increase up to 0.2%.
6. According to the NCCI, the combined overall impact of these three portions of S.B. 63 could result in an increase of up to 0.7% (\$3 million). During these difficult economic times, these increases will result in higher unemployment and business closures. This bill will increase the cost of doing business in Hawaii at a time when it may not be prudent to do so.

For the above reasons, the Department opposes the amendments in S.B. 63, S.D. 2.

LINDA LINGLE
GOVERNOR OF HAWAII



MARIE C. LADERTA
DIRECTOR
CINDY S. INOUE
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

March 13, 2009

TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
For Hearing on Tuesday, March 17, 2009
8:30 a.m., Conference Room 309

BY

MARIE C. LADERTA, DIRECTOR

**Senate Bill No. 63, S.D. 2
Relating to Workers' Compensation**

TO CHAIR KARL RHOADS AND MEMBERS OF THE COMMITTEE:

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

The purpose of S.B. No. 63, S.D. 2, 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 ordered by the director or if 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) an order shall only be issued after the director has reviewed the case file and position papers submitted by the employee and the employer, a decision will be issued, without a hearing, 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; and (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.

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 as the bill fails to address how an employer/insurance carrier would recover those benefits which were paid erroneously. 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.

As drafted, it isn't clear how the credit, if 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.

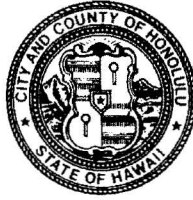
The amendment allowing for the assessment of attorney's fees and costs for the enforcement of the section is clearly punitive as Section 386-93, Hawaii Revised Statutes, already provides for such an assessment if it is determined that proceedings under Chapter 386, Hawaii Revised Statutes, are brought,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

Lastly, the amendment provides for the payment of 70% of an injured employee's average wage, on a weekly basis, where a work injury causes temporary total disability if compensation is not paid within thirty days of the date of the injury. Section 386-82, Hawaii Revised Statutes, provides that a written claim must be made within two years after the date at which the effects of the injury for which the employee is entitled to compensation have become manifest and within five years after the date of the accident or occurrence which caused the injury. As written, this would penalize an employer for something over which they have no control.

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 10TH FLOOR
HONOLULU, HAWAII 96813

MUFI HANNEMANN
MAYOR



KENNETH Y. NAKAMATSU
DIRECTOR

March 17, 2009

The Honorable Karl Rhoads, Chair
and Members of the Committee on Labor & Public Employment
State House of Representatives
Hawaii State Capitol
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

RE: SENATE BILL NO. 63 SD 2 RELATING TO WORKERS' COMPENSATION

The City and County of Honolulu strongly opposes Senate Bill No. 63, SD 2, amending Section 386-31 of the Hawaii Workers' Compensation Law. This bill makes unnecessary changes to the current law that will increase the cost of workers' compensation in the State of Hawaii. The proposed changes require an employer to continue to pay an injured employee's temporary total disability benefits regardless of whether the employer has controverted the right to such benefits and even when the employer determines that the employee is able to resume work. The bill also requires payment of attorney's fees and costs that are not in the current law. This encourages more attorney involvement in the system and will result in increased costs. Finally, the bill proposes to penalize the employer for not beginning temporary total disability benefits within 30 days of the date of injury by increasing the weekly benefit from 66-2/3 percent to 70 percent. The proposed changes to Section 386-31 are unnecessary, adversarial and do not ensure the legislative intent of improving the efficiency and fairness of the workers' compensation system.

The City and County of Honolulu also opposes the establishment of a working group to address and resolve concerns raised by this bill. We believe consensus within such working groups is rarely achieved based on our participation in such groups during the 1995 workers' compensation reform effort.

The 1995 Legislature enacted major reforms to the Hawaii Workers' Compensation Law resulting in hundreds of millions of dollars being saved over the last 12 years. The magnitude of the savings can be assessed using data from the State's Department of Labor and Industrial Relations Workers' Compensation Data Book, published annually (see Attachment I). In short, statewide workers' compensation costs 3 years prior to the reform averaged \$331 million annually. Workers' compensation costs for the 12 years immediately following the reform averaged \$253 million annually; **a \$78 million annual savings**. Put in the proper perspective, over the last 12 years the State of Hawaii has saved \$936 million in workers' compensation costs as a result of the 1995 Legislative changes.

The Honorable Karl Rhoads, Chair
March 17, 2009
Page 2

The Twenty-fifth Legislature's proposed changes to the Hawaii Workers' Compensation Law will inevitably increase the cost of workers' compensation in the State of Hawaii back to former high levels. In times of economic turmoil requiring fiscal austerity and innovative solutions, we do not believe this change is in the best interest of the people of our State and that it will further add to the already critical financial crises.

We respectfully urge your committee to file Senate Bill No. 63, SD 1, because the proposed changes to Section 386-31 will make the system more adversarial, less efficient and much more expensive. The Hawaii Workers' Compensation Law already weighs heavily in favor of the claimant and the proposed changes further erode an employer's ability to efficiently and effectively manage claims.

Sincerely,

KEN Y. NAKAMATSU
Director of Human Resources

Attachment

William P. Kenoi
Mayor



Michael R. Ben, SPHR
Director of Human Resources

Ronald K. Takahashi
Deputy Director of Human Resources

County of Hawai'i Department of Human Resources

Aupuni Center * 101 Pauahi Street, Suite 2 * Hilo, Hawai'i 96720 * (808) 961-8361 * Fax (808) 961-8617
TTY (808) 961-8619 * e-mail: cohdc@co.hawaii.hi.us * Jobs Information: Job Hotline (808) 961-8618 e-mail: jobs@co.hawaii.hi

March 17, 2009

The Honorable Karl Rhoads, Chair
And Members of the House Committee on Labor & Public Employment
State Capitol
Honolulu, Hawai'i 96813

Dear Chairman Rhoads and Members of the Committee:

Re: SB 63 SD 2 Relating to Workers' Compensation

I am Michael R. Ben, the Director of Human Resources of the County of Hawai'i. I am testifying in opposition to SB 63 SD 2.

SB 63 SD 2 proposes to amend § 386-31(b), HRS by:

- (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 ordered by the director or if 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) requiring that an order shall only be issued after the director has reviewed the case file and position papers submitted by the employee and the employer, issuing a decision without a hearing, indicating whether temporary total disability benefits should have been discontinued and, if so, designating a date 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; and,

Hawai'i County is an Equal Opportunity Provider and Employer.

The Honorable Karl Rhodes, Chair
And the Members of the House Committee on Labor & Public Employment
March 17, 2009
Page 2 of 2

- (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.

Requiring an employer to pay benefits when the right to those benefits is being denied would cause harm to the employer in cases where it has been determined that a claim was not compensable. The Bill fails to address how an employer or insurance carrier would recover those benefits which were paid erroneously. There already is in place a mechanism for an injured worker to present rebuttal evidence that his or her claim is, indeed, compensable. This amendment regarding this matter is not necessary.

As drafted, the bill isn't clear how the credit for the amount of temporary total disability benefits, if 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, the employer is again harmed.

Allowing for the assessment of attorney's fees and costs for the enforcement of the section is clearly punitive as §386-93, HRS, 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 justification.

Last, the bill provides for payment of 70% of an injured employee's average wage, on a weekly basis, when a work injury causes temporary total disability and compensation is not paid within thirty days of the date of the injury. §386-82, HRS, provides that a written claim must be made within two years after the date from which the effects of the injury have become manifested and within five years after the date of the accident or occurrence which caused the injury. This penalizes an employer who has no control over the filing of a claim.

For the reasons outlined above, we strongly oppose this bill.

Sincerely,



Michael R. Ben, SPHR
Director of Human Resources



**Testimony to the House Committee on Labor & Public Employment
Tuesday, March 17, 2009; 8:30 a.m.
Conference Room 309**

RE: SENATE BILL 63 SD2 RELATING TO WORKERS' COMPENSATION

Chair Rhoads, Vice Chair Yamashita and members of the committee:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). The Chamber is strongly opposed to SB 63 SD2, relating to Workers' Compensation.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

This measure requires 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. Finally, the bill convenes a working group.

Employers care about their employees. Many seek ways to go beyond what is required of them by providing exceptional benefits, incentives, as well as creating a positive work environment. Additionally, businesses realize that they need to enforce programs and policies that will retain employees all while managing the high costs of doing business. One of the costs is workers' compensation.

In a recent Chamber survey, members were asked to identify their top priority issues relating to business. The cost of doing business was ranked as number one and workforce development as number three. Workers' compensation, however, fell to the middle. This is greatly attributed to the manageable premiums of workers' compensation. Employers are proactively finding ways to minimize work-related injuries as well as to accelerate improvement of workers who suffer from these injuries. We do not dismiss that a handful of questionable cases may exist, however, overall, we believe employers do the right thing for their employees. This measure, however, will undermine the efforts made by employers and ultimately hurt the viability of their business, which in turn will hurt employees.

Therefore, The Chamber has concerns with the language that limits the termination of benefits only if the employee's own treating physician authorizes the return to work. While this is the case in limited situations, it is the employer's physician that often determines if the employee is capable of returning to work. An employee's own doctor will probably not authorize the return to work in any capacity if the employee prefers to stay out on disability leave regardless if the condition is qualified or not. It's important that these benefits be utilized as intended and not in such a way that benefits are activated simply because they exist.

Another concern is the employer's requirement to pay uninterrupted TTD benefits regardless if the employer disputes the right to benefits. This mandate may serve as a disincentive for an employee to return to work especially as the measure increases the weekly benefit amount to 70% of the injured employee's average weekly wages and does not penalize the employee for refusing to return to work.

This will hurt employers especially small businesses, which operate on limited resources and smaller staffs. Colleagues of the absent employee will unfairly shoulder additional responsibilities, which could have a domino effect, such as a stressful work environment, lower morale, and lost productivity. As a result, the negative consequences of this measure may hinder than promote progress.

Next, the measure does not allow the employer to file a request for hearing with the Department of Labor to terminate TTD benefits if they believe the employee is able to return to work. Instead, it only allows the employee to file a hearing. Thus, we believe this is not a fair and balanced approach.

Additionally, there is no recourse for the employer even in cases where the claimant abuses these new rights. The employer can receive a credit if the director deems that treatment should have stopped. However, the credit is only applicable towards permanent partial disability cases, not TTD.

Furthermore, we do not support the working group provision because of the automatic effective date of the Act. If the working group cannot come to an agreement by a certain date, the Act goes into effect. This will serve as a disincentive for those who strongly support the language. This is not a fair and balanced approach.

In summary, SB 63 SD2, while well-intended, will have unintended consequences and possibly lead to a rise in workers' compensation insurance costs and the overall cost of doing business. Hawaii should be cultivating the soil to help our local establishments thrive, so that jobs can be saved and created. This bill will drive businesses toward a direction that we cannot afford.

Thus, The Chamber respectfully requests this measure be held. Thank you for the opportunity to testify.

HOUSE OF REPRESENTATIVES
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Karl Rhoads, Chair
Rep. Kyle T. Yamashita, Vice Chair

Date: Tuesday, March 17, 2009
Time: 8:30 a.m.
Place: Conference Room 309, State Capitol

TESTIMONY ILWU LOCAL 142

RE: SB 63, SD 2, RELATING TO WORKERS' COMPENSATION

Thank you for the opportunity to present testimony regarding SB 63, SD 2.

This bill seeks to assure the payment of temporary total disability to injured workers are not improperly denied and terminated and that due process is afforded prior to the elimination of such benefits. It permits the cessation of such benefits only if the director of the Department of Labor issues an order terminating these benefits, the employee's treating physician determines he is able to resume work, or the employer makes a bonafide offer of suitable work consistent with the employee's medical restriction. An order of the director will also only be issued after there has been a review of the case file and each party is given the opportunity to present written argument,

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. Thus, the contention by some that this bill will adversely affect small or large business is exaggerated. As noted in prior testimony before the Senate Committee on Ways and Means, there has been a 54% decrease in recent years in workers' compensation costs, so employers should not continue to complain that costs are excessive, when in fact they have already achieved the relief they have sought.

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 total disability and compensation is due but payment was not commenced within thirty days of the date of injury.

The idea of making payment of benefits to employees where they are not made within thirty days of the date of injury 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.

We support the concept of prompt payment of benefits without interruption and speedy adjudication of claims embodied in SB 63, SD 2 and support its passage.



Tuesday, March 17, 2009, 8:30 AM, CR 309

To: COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Rep. Karl Rhoads, Chair
Rep. Kyle T. Yamashita, Vice Chair

From: Hawaii Medical Association
Gary A. Okamoto, MD, President
Philip Hellreich, MD, Legislative Co-Chair
Ronald Kienitz, DO, Workers' Comp Chair
April Donahue, Executive Director
Richard C. Botti, Government Affairs
Lauren Zirbel, Government Affairs

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April Donahue
Executive Director

RE: SB 63 RELATING TO WORKERS' COMPENSATION

Requires an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. Specifies that the employee's ability to return to work is to be decided by the employee's treating physician. Convenes a working group. Effective on 7/1/2090 for the convening of the working group; 7/1/2100 if there is no consensus among the working group. (SD2)

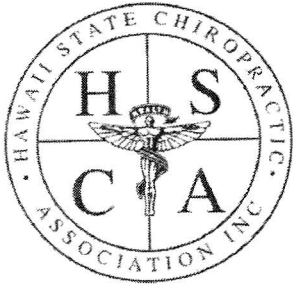
While Hawaii Medical Association supports the intent of this bill to ensure that injured workers receive timely and ongoing medical care, amendments are needed. To ensure that there is no interruption of vital medical care when there is a question about whether or not the patient's condition is work related, the treating physician should be reimbursed by the employee's health plan until a final determination is made. If the patient's injury or illness is subsequently judged to be work related, the health plan should then be reimbursed by the WC insurance carrier.

We feel that it is unfair to deny the patient needed treatment, and that it is unreasonable to expect the physician not to be reimbursed for the services rendered.

When an injured worker comes to a medical facility for care, the doctor is not going to turn down the injured worker, since their goal is to treat the injured. This measure must create some protection for the professional.

Thank you for the opportunity to provide this testimony.

Hawaii Medical Association
1360 S Beretania St
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(808) 528-2376 fax
www.hmaonline.net



Hawaii State Chiropractic Association

P.O. Box 22668 Honolulu, HI 96823-2668

ph: (808) 926-8883 fx: (808) 926-8884

February 27, 2009

HOUSE OF REPRESENTATIVES
Committee on Labor & Public Employment
Chair Rep. Karl Rhoads
Vice Chair Rep. Kyle Yamashita

For Hearing on
Date: Tuesday, March 17, 2009
Time: 8:30 am
Place: Conference Room 309

Dear Chair Rhoads, Vice Chair Yamashita, and members of the committee:

My name is Gary Saito. I am the President and Executive Director of the Hawaii State Chiropractic Association. Our organization **strong supports the intent of SB 63 SD2.**

Time and time again, injured workers are denied their workers' compensation benefits because of denials of TTD benefits by the employer and insurance carrier. Insurance carriers often do not give a valid medical reason for denying benefits, nor do they have a valid medical reason to question the worker's claim of injury.

What happens when injured workers are denied benefits?

1. Weeks and months go by without reasonable and appropriate medical care and TTD benefits.
2. Without TTD benefits because of employer denials, workers face unreasonable financial hardship and sacrifice. They are unable to meet mortgage payments, food bills, family expenses, etc.

3. Even though they request a DCD hearing to determine compensability, they do not get hearings scheduled in a timely manner (usually 6 months to a year). Even though the DCD professes that hearings are scheduled within 80 days, I have yet to see it happen.
4. Many legitimately injured employees suffer financial ruin because of a lack of caring by the employer/carrier and a lack of responsiveness to their dilemma from the DCD. Most employees do not have 6-8 months worth of savings to fall back on. Without TTD relief, their financial hardship begins the day they are injured.

For years, carriers have denied benefits "pending investigation". They do not have to say:

1. what is being investigated
2. how the investigation is being conducted
3. when it will be concluded
4. or what the basis of the investigation is.

The system right now fails miserably to protect the injured worker's right to reasonable and appropriate TTD benefits. Denials and delays often have nothing to do with the employee's injury. It has everything to do with denying benefits as a way to limit expenses and liability and to boost profits.

Every employer in the state should insist that their premium dollars go toward the treatment of their injured workers. Unfortunately, many employers subscribe to and encourage the existing pattern of denying their employees their rights under current workers' compensation law.

We ask for legislators to uphold the statutes by requiring the proper treatment of injured workers. This bill is one attempt to protect and preserve injured workers' rights to benefits.

We urge your support of SB 63 SD2. Thank you for your consideration of our position on this issue.

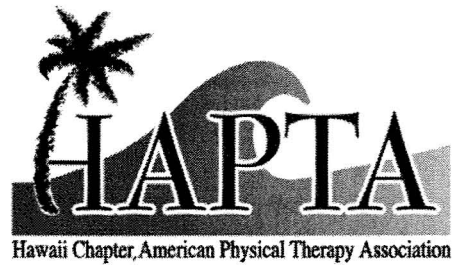
Sincerely,

A handwritten signature in black ink, appearing to read "Gary Saito". The signature is fluid and cursive, with a large loop at the beginning and a long tail.

Gary Saito, DC
President and Exec Director, HSCA

**Testimony by:
Derrick Ishihara, PT**

**SB 63sd2, Relating to Workers'
Compensation
Hse LAB, Tuesday, March 17, 2009
Room 309, 8:30 am**



Position: Support

Chair Rhoads and Members of the Hse 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 and Department of Health systems, and private practice. Our members represent Hawaii at the national American Physical Therapy Association and are delegates for Pediatrics, Women's Health, Parkinson's Disease and other issue sections. 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 function 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 DLIR 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.

Please call me at 593-2610 if you have any questions. Thank you for the opportunity to present testimony.



Pauahi Tower, Suite 2010
1003 Bishop Street
Honolulu, Hawaii 96813
Telephone (808) 525-5877
Facsimile (808) 525-5879

Alison Powers
Executive Director

TESTIMONY OF ALISON POWERS

HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
Representative Karl Rhoads, Chair
Representative Kyle T. Yamashita, Vice Chair

Tuesday, March 17, 2009
8:30 a.m.

SB 63, SD2

Chair Rhoads, Vice Chair Yamashita, 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** S.B. 63, SD2, which mandates temporary total disability (TTD) benefits to continue until the Director issues a decision.

Workers' compensation costs loss cost filings have reflected decreases of 54% in recent years. Our members believe this bill will deteriorate these savings and substantially increase workers' compensation costs, which will translate into a higher cost of doing business, limiting business' ability to compete, adversely affect employees by limiting job availability, pay, and benefits and ultimately find its way into the costs of goods and services in Hawaii.

The current system allows employers to deny a claim pending completion of an investigation. The employer should be allowed to investigate a claim to determine whether the alleged injury is work related. This investigation includes obtaining the

employee's medical records and an Independent Medical Examination. Under this bill, if the employee does not provide authorization for medical providers to release their medical records, the investigation could be delayed for months while TTD is being paid. It is unfair for the employer to pay benefits when the employee is uncooperative. The bill encourages abuse by allowing the employee to stymie the employer's ability to investigate the claim while the employee receives TTD benefits, perhaps without merit.

Currently, when the injured worker is released to modified duty and the employer is able to accommodate the physical restrictions, the employee is paid Temporary *Partial* Disability benefits if the employee's average weekly wage is less than what was received prior to the industrial injury (subject to the minimum and maximum). In many situations, an injured worker is released to modified duty and receives the same weekly wage as what was paid prior to the injury. It is unreasonable to require the employer to continue TTD payments until the Director is able to review the case and issue a decision. The bill encourages malingering, promotes an adversarial environment for transitioning an employee back into the workforce, and creates an undue financial burden on the employer. The provision in the bill requires position papers to be filed 14 days after the employee requests a review by the Director. The Director then has 30 days in which to render a decision which is a total of 44 days just for the process. The process itself and whatever TTD was paid without justification are unnecessary costs that are built into this new law.

S.B. 63, SD2 also provides a new sanction for employers/insurers who do not comply with this section of the law to include attorneys fees and costs. In addition to any existing fines for noncompliance that the Director may impose on insurers, this provision again, adds to the cost of coverage.

Another provision in the bill provides for an increase in the weekly benefit amount to seventy percent of the injured employee's average weekly wage, subject to the limitations prescribed in subsection (a), if TTD and payment of compensation due under

this chapter does not begin within thirty days of the date of injury. This will promote late reporting by employees in order to obtain a higher weekly benefit rate and unfairly penalizes the employer. Late reporting may also delay appropriate care and consequently exacerbate an injury and prolong healing.

Finally, S.B. 63, SD2 calls for a working group chaired by the Director and comprised of members of his choosing to come up with a compromise to language in the current bill or it will take effect. There are many different interests in the workers' compensation system and it will only take one to stall a compromise, thereby forcing the existing language in the bill to be enacted. This provision does not take into account that the current process may be the best achievable system that attempts to provide no-fault benefits while keeping in place some cost containment measures.

There will be an increase in indemnity costs if this bill is enacted because there is an automatic additional 44 days of TTD just to comply with the process and these costs are added in on top. These costs will be passed on to businesses and consumers in the form of rate increases. The National Council on Compensation Insurance (NCCI), in their analysis dated February 3, 2009, stated that while that it is unable to estimate the impact of the increase from such increased claim activity, ***the costs would be expected to be material.*** Provisions in the bill that can be priced are estimated to increase costs up to \$3 million.

For these reasons, we respectfully request that S.B. 63, SD2 be held.

Thank you for the opportunity to testify.



Representative Karl Rhoads, Chair
Representative Kyle Yamashita, Vice Chair
Committee on Labor & Public Employment

HEARING Tuesday, March 17, 2009
 8:30 am
 Conference Room 309
 State Capitol, Honolulu, Hawaii 96813

RE: SB63, SD2, Relating to Workers' Compensation

Chair Rhoads, Vice Chair Yamashita, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii.

RMH opposes SB63, SD2, which requires an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. While the provision convening a working group had merit and could provide opportunity for open dialogue, the automatic enactment of these changes to §386-31, Hawaii Revised Statutes, is problematic.

We do not dispute that an injured worker should receive quality and appropriate medical care as long as required. However, to compel an employer to continue TTD benefits essentially until the employee decides to return to work is unreasonable. This measure is an affront, both to an employer's rights and to his ability to control business costs. In this current economy, employers are struggling to maintain their workforce and avoid layoffs. It is incumbent upon us to not heap further expense on our businesses.

The members of the Retail Merchants of Hawaii respectfully request that you hold SB63, SD2. Thank you for your consideration and for the opportunity to comment on this measure.

Carol Pregill, President

RETAIL MERCHANTS OF HAWAII
1240 Ala Moana Boulevard, Suite 215
Honolulu, HI 96814
ph: 808-592-4200 / fax: 808-592-4202

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM:
GARY M. SLOVIN
CHRISTOPHER G. PABLO
ANNE T. HORIUCHI
MIHOKO E. ITO

ALII PLACE, SUITE 1800 • 1099 ALAKEA STREET
HONOLULU, HAWAII 96813

MAIL ADDRESS: P.O. BOX 3196
HONOLULU, HAWAII 96801

TELEPHONE (808) 547-5600 • FAX (808) 547-5880
info@goodsill.com • www.goodsill.com

INTERNET:
gslovin@goodsill.com
cpablo@goodsill.com
ahoriuchi@goodsill.com
meito@goodsill.com

MEMORANDUM

TO: Representative Karl Rhoads
Chair, House Committee on Labor & Public Employment
Via e-mail: LABtestimony@Capitol.hawaii.gov

FROM: Anne Horiuchi

DATE: March 16, 2009

RE: **S.B. 63, SD2 – Relating to Workers' Compensation**
Hearing: Tuesday, March 17, 2009 at 8:30 a.m., Room 309

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

I am Anne Horiuchi, writing 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. All AIA news releases are available at www.aiadc.org.

S.B. 63, SD2 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. S.B. 63, SD2 convenes a working group to address and make recommendations to resolve any concerns relating to the substance of this measure. If the working group fails to reach a consensus in resolving the concerns raised by the substance of the measure, then the remaining provisions of S.B. 63, SD2 will take effect.

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 S.B. 63, SD2 and respectfully requests that it be held.

Thank you very much for the opportunity to submit testimony on this measure.



March 17, 2009

Representative Karl Rhoads, Chair
COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
State Capitol, Room 309
415 South Beretania Street
Honolulu, Hawaii 96813

Representative Rhoads:

Subject: Senate Bill No. 63, SD 2 Relating to Workers' Compensation

My name is Shane Peters, President of the Hawaii Developers' Council (HDC). We represent over 200 members and associates in development-related industries. The mission of Hawaii Developers' Council (HDC) is to educate developers and the public regarding land, construction and development issues through public forums, seminars and publications.

It is also the goal of HDC to promote high ethics and community responsibility in real estate development and related trades and professions.

The HDC is opposed to S.B. No. 63, SD 2 which will require an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. The bill specifies that the employee's ability to return to work is to be decided by the employee's treating physician. It also convenes a working group to look at the situation and sets an effective date that will automatically trigger the new law if there is no consensus among the working group.

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

Not only will this bill increase the cost of doing business in Hawaii for all employers but it does not specifically identify or provide any documented evidence that the status quo is working. As we understand the existing process, if the employee prevails in appealing a denial of benefits then they will receive all back payments due.

We strongly recommend that based on these concerns the bill be held in committee.

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

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

March 17, 2009

Honorable Karl Rhoads, Chair
Committee on Labor & Public Employment
State Capitol, Room 309
Honolulu, Hawaii 96813

RE: SB 63, SD2 "Relating to Workers Compensation" (Continued TTD)

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

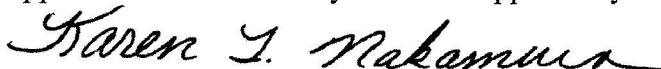
I am Karen Nakamura, Executive Vice President & Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing 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 SB 63, SD2 "Relating to Workers Compensation".

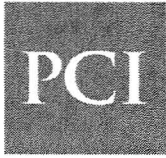
The bill would require an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. The bill also specifies that the employee's ability to return to work is to be decided by the employee's treating physician. Further, SB63, SD2 prevents the termination of TTD benefits without an order of the Director of DLIR except under certain circumstances.

The provisions of SB63, SD2 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.

The additional provision of creating a working group to make recommendations regarding TTD benefits to the Legislature is redundant since the nature of this bill already reflects what one group wants. The only thing this provision does is to delay for one year the implementation of the Act, should it pass. For these reasons, BIA-Hawaii strongly opposes this bill. Thank you for the opportunity to share our views with you.



Executive Vice President and Chief Executive Officer
BIA-Hawaii



**Property Casualty Insurers
Association of America**

Shaping the Future of American Insurance
1415 L Street, Suite 670, Sacramento, CA 95814-3972

To: The Honorable Karl Rhoads, Chair
House Labor & Public Employment Committee

From: Samuel Sorich, Vice President

Re: **SB 63 SD2 – Relating to Workers Compensation**
PCI Position: Oppose

Date: Tuesday, March 17, 2009
8:30 a.m.; Conference Room 309

Aloha Chairman Rhoads and Committee Members:

The Property Casualty Insurers Association of America (PCI) is opposed to SB 63 SD2 because the bill would unfairly impose additional workers compensation costs on Hawaii employers.

SB 63 SD2 would require an employer to pay temporary total disability benefits even though the employer contests the employee's right to these benefits. The practical effect of the bill would be that temporary disability payments would have to be paid until there is a termination order after an administrative review.

The injustice of this proposed scheme is exacerbated by the fact that under SB 63 SD2, the employer has no express right to request a review; the bill provides that the review is to be conducted "upon receipt of the request from the employee."

While this administrative process grinds on, the employer would be required to continue to make benefit payments. SB 63 SD2 offers no real relief when the director decides that the employee was not entitled to temporary disability benefits. The bill offers a "credit" against future benefit payments. But this is an empty offer if the employee has not temporary or permanent disability.

SB 63 SD2 is costly and unfair; PCI requests that the Committee vote No on the bill.



Before the House Committee on Labor & Public Employment

DATE: March 17, 2009

TIME: 8:30 a.m.

PLACE: Conference Room 309

Re: SB 63 SD2 Relating to Workers' Compensation Testimony of Melissa Pavlicek for NFIB Hawaii

Thank you for the opportunity to testify. On behalf of the business owners who make up the membership of the National Federation of Independent Businesses in Hawaii, we ask that you reject SB 63 SD2. 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 are concerned about the possible unintended consequences of mandating employers to continue temporary total disability benefits regardless of whether the employer controverts the right to benefits, especially during such challenging economic times. We believe that such legislation will add costs to business which ultimately hurts employees and the economy as a whole.



Chair, Representative Karl Rhoads
Vice-chair, Representative Kyle Yamashita
Committee: Labor & Public Employment
Society for Human Resource Management (SHRM) Hawaii
Testimony date: Tuesday, March 17, 2009

Opposition to SB63 SD2 Relating to Workers' Compensation

SHRM Hawaii is the local chapter of a National professional organization of Human Resource professionals. Our 1,200+ Hawaii membership includes those from small and large companies, local, mainland or internationally owned - tasked with meeting the needs of employees and employers in a balanced manner, and ensuring compliance with laws affecting the workplace. We (HR Professionals) are the people that implement the legislation you pass, on a day-to-day front line level.

SHRM Hawaii strongly opposes Senate Bill 63 SD2, which would require an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. We are concerned about the additional administrative burden this will put on our members.

SHRM Hawaii respectfully urges the committee to kill Senate Bill 63 SD2.

Thank you for the opportunity to testify. SHRM Hawaii offers the assistance of the Legislative Committee in discussing this matter further.

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

March 16, 2009

TO: THE HONORABLE REPRESENTATIVE KARL RHOADS, CHAIR AND
MEMBERS OF THE COMMITTEE ON ECONOMIC REVITALIZATION,
BUSINESS, & MILITARY AFFAIRS

SUBJECT: S.B. 63, SD2, RELATING TO WORKERS' COMPENSATION

NOTICE OF HEARING

DATE: Tuesday, March 17, 2009
TIME: 8:30 A.M.
PLACE: Conference Room 309

Dear Chair Rhoads and Members of the Committee:

The General Contractors Association (GCA), an organization comprised of over five hundred and sixty (560) general contractors, subcontractors, and construction related firms, is **strongly opposed** to the passage of S.B. 63, SD2, Relating To Workers' Compensation.

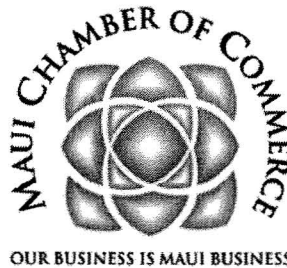
We believe that it is unfair to require employers to continue TTD payments when they do not believe these payments should be continued. Also, the GCA objects to the provision that gives the employee's physician the right to determine when the employee is able to return to work. The IME procedure provides the employer with an unbiased medical determination of medical stability, and is a more appropriate determinate of if and when the employee should return to work.

The amended version also establishes a working group to address the concerns and resolve any of the concerns raised by the Act which we feel is unworkable.

The GCA is **strongly opposed** to the passage of S.B. 1125, SD2 and recommends that this bill not be passed.

Thank you for the opportunity to provide our views on this issue.

LATE



**Testimony to the House Committee on Labor & Public Employment
Tuesday, March 17, 2009 at 8:30a.m.
Conference Room 309**

RE: SENATE BILL 63 SD2 RELATING TO WORKERS' COMPENSATION

Chair Rhoads, Vice Chair Yamashita and Members of the Committee:

The Maui Chamber of Commerce, a business organization whose mission it is to advance and promote a healthy economic environment for business, advocating for responsive government and quality education, while preserving Maui's unique community characteristics, strongly opposes this bill and asks that you do the same.

We are a membership driven organization comprised of over 900 members, 88% of which are small businesses with fewer than 25 employees, representing nearly 21,000 employees. We oppose this bill which requires 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. Finally, the bill convenes a working group.

Employers care about their employees. Many seek ways to go beyond what is required of them by providing exceptional benefits, incentives, as well as creating a positive work environment. Additionally, businesses realize that they need to enforce programs and policies that will retain employees all while managing the high costs of doing business. One of those costs is workers' compensation.

While a handful of questionable cases may exist, overall employers do the right thing for their employees. This measure, however, will undermine the efforts made by employers and ultimately hurt the viability of their business, which in turn will hurt employees.

Therefore, the Maui Chamber of Commerce has concerns with the language that limits the termination of benefits only if the employee's own treating physician authorizes the return to work. While this is the case in limited situations, it is the employer's physician that often determines if the employee is capable of returning to work. An employee's own doctor will probably not authorize the return to work in any capacity if the employee prefers to stay out on disability leave regardless if the condition is qualified or not. It's important that these benefits be utilized as intended and not in such a way that benefits are activated simply because they exist.

Another concern is the employer's requirement to pay uninterrupted TTD benefits regardless if the employer disputes the right to benefits. This mandate may serve as a disincentive for an employee to return to work especially as the measure increases the weekly benefit amount to 70% of the injured employee's average weekly wages and does not penalize the employee for refusing to return to work.

This will hurt employers, especially small businesses, which operate on limited resources and smaller staffs. If utilized, the increase in weekly benefit will increase costs and colleagues of the absent employee will unfairly shoulder additional responsibilities, which could have a domino effect, such as a stressful work environment, lower morale, and lost productivity. As a result, the negative consequences of this measure may hinder rather than promote progress.

Additionally, the measure does not allow the employer to file a request for hearing with the Department of Labor to terminate TTD benefits if they believe the employee is able to return to work. Instead, it only allows the employee to file a hearing. We view this as an unfair and unbalanced approach.

Further, there is no recourse for the employer, even in cases where the claimant abuses these new rights. The employer can receive a credit if the director deems that treatment should have been stopped. However, the credit is only applicable towards permanent partial disability cases, not TTD.

Finally, we do not support the working group provision due to the automatic effective date as spelled out in the bill.

We foresee that SB 63, SD2 will have unintended consequences, lead to a rise in workers' compensation insurance costs and the overall cost of doing business. Hawaii should be focusing on legislation that helps local establishments thrive, so that jobs can be saved and created. This bill will further drive businesses toward a direction that we cannot afford.

Therefore, we respectfully request that this measure be held. Thank you.

Sincerely,

Pamela Tumpap
President

LATE

Testimony to the House Labor & Public Employment Committee
March 17, 2009

Re: SB 63

I am Rick Tsujimura testifying on behalf of Hawaiian Airlines. Hawaiian Airlines is opposed to SB 63 relating to Workers' Compensation.

This measure would require the continued payment of workers' compensation benefits under TTD even though an employer controverts the right to such benefits. In granting the employee's physician the right to solely determine the employee's ability to return to work, the rights of the employer are severely and unnecessarily eliminated. If an employer controverts the employee's physician's findings and an independent medical evaluation determines the employee can work the employer should not be required to continue to pay TTD benefits.

If this bill is enacted it will increase the costs for employers who are facing tremendous financial pressures, and could lead to limitations on hiring. We strongly urge the committee to consider the adverse impacts such a measure will have on employers in Hawaii, especially given the current economic situation.

For these reasons we respectfully request that this measure be held.

yamashita1- Kathy

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 16, 2009 2:31 PM
To: LABtestimony
Cc: bergand001@hawaii.rr.com
Subject: Testimony for SB63 on 3/17/2009 8:30:00 AM

Testimony for LAB 3/17/2009 8:30:00 AM SB63

Conference room: 309
Testifier position: oppose
Testifier will be present: No
Submitted by: Danielle Bergan
Organization: Individual
Address: 120 Hui F Rd I-5 Lahaina Hi
Phone: 808-269-3637
E-mail: bergand001@hawaii.rr.com
Submitted on: 3/16/2009

Comments:
Karl Rhodes, Chair
Kyle Yamishita- Vice Chair

Once again it seems government is crafting a bill such as SB63 which will do more harm than good. This bill as is makes it additionally harder on a business owner. It is very union oriented in nature. What I found as being forced to join a labor union years ago while working at a major West Maui hotel was many irresponsible employees take advantage of the system, faking injuries and only hurting the people who really need the money when seriously injured. Government is promoting laziness, lying and fraud by crafting this bill. Please vote against it.

Sincerely,

Danielle Bergan
citizen

yamashita2 - Kristen

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 16, 2009 3:42 PM
To: LABtestimony
Cc: debbie.cabebe@meoinc.org
Subject: Testimony for SB63 on 3/17/2009 8:30:00 AM

Testimony for LAB 3/17/2009 8:30:00 AM SB63

Conference room: 309
Testifier position: oppose
Testifier will be present: No
Submitted by: Debbie Cabebe
Organization: Maui Economic Opportunity, Inc
Address: PO Box 2122 Kahului, HI 96733
Phone: 808-249-2980
E-mail: debbie.cabebe@meoinc.org
Submitted on: 3/16/2009

Comments:

yamashita2 - Kristen

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 16, 2009 2:44 PM
To: LABtestimony
Cc: ccasco@timeshareresaleshawaii.com
Subject: Testimony for SB63 on 3/17/2009 8:30:00 AM

Testimony for LAB 3/17/2009 8:30:00 AM SB63

Conference room: 309

Testifier position: oppose

Testifier will be present: No

Submitted by: Charles Casco

Organization: Bay Realty, Inc.

Address: 713 A Front St. Lahaina, HI 96761

Phone:

E-mail: ccasco@timeshareresaleshawaii.com Submitted on: 3/16/2009

Comments:

yamashita2 - Kristen

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 16, 2009 3:18 PM
To: LABtestimony
Cc: mikeh@ibnshawaii.com
Subject: Testimony for SB63 on 3/17/2009 8:30:00 AM

Testimony for LAB 3/17/2009 8:30:00 AM SB63

Conference room: 309
Testifier position: oppose
Testifier will be present: No
Submitted by: Michael A. Hunter
Organization: Integrated Broadband Network Solutions
Address: 68 Polale Street Kihei, HI
Phone: 808-269-7782
E-mail: mikeh@ibnshawaii.com
Submitted on: 3/16/2009

Comments:

Integrated Broadband Network Solutions supports the employees legitimate needs for workers compensation but we oppose this bill as it:

- Requires the employer to pay initial total temporary disability benefits even if the employer believes the employee's claim not to be work related.
- Allows employees to receive a weekly benefit equal to 70% of the employee's average weekly wages.
- Convenes a working group to address and make recommendations to resolve differences. However, if working group does not come to a consensus, the bill automatically takes effect on July 1, 2010.
- Limits the termination of benefits only if the employee's own treating physician or director authorizes the return to work. Current law allows only the director to terminate the benefits.

Further:

- An employee's own doctor will probably not authorize the return to work in any capacity if the employee prefers to stay out on disability leave regardless if the condition is qualified or not.
- If the Director of Labor determines that the claim is not work related or there is no permanent partial disability, the employers will be stuck with the costs with no recoupment.
- Passage of this bill will increase workers' compensation rates. Thereby increasing the fees we must pay to compensate for the differences and will with other like policies cause the inevitable cascade of price and tax increases.

Everyone deserves the right to fair and equitable compensation for injuries legitimately sustained in the performance of duties. However, the laws which govern these rights should protect both parties equally. This bill is heavily weighted and does not protect the employers' rights while increasing the potential financial burdens and will affect their ability to employ more people. In today's economy, you should look to aid the employers' ability to create jobs while protecting the employees from unfair practices. Vote this bill out and write one that protects us all, with a little common sense.

yamashita2 - Kristen

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 16, 2009 3:20 PM
To: LABtestimony
Cc: mikesails777@yahoo.com
Subject: Testimony for SB63 on 3/17/2009 8:30:00 AM

Testimony for LAB 3/17/2009 8:30:00 AM SB63

Conference room: 309
Testifier position: oppose
Testifier will be present: No
Submitted by: Kevin Kern
Organization: Individual
Address: 1899 Laniupoko Place Wailuku, HI
Phone: 808-269-0141
E-mail: mikesails777@yahoo.com
Submitted on: 3/16/2009

Comments:

yamashita1- Kathy

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 16, 2009 2:28 PM
To: LABtestimony
Cc: doug@levinhu.com
Subject: Testimony for SB63 on 3/17/2009 8:30:00 AM

Testimony for LAB 3/17/2009 8:30:00 AM SB63

Conference room: 309
Testifier position: oppose
Testifier will be present: No
Submitted by: Douglas Levin
Organization: Levin & Hu, LLP
Address:
Phone:
E-mail: doug@levinhu.com
Submitted on: 3/16/2009

Comments:

Respectfully oppose. It's important to balance the needs of business and the injured when establishing standards for temporary disability, but this leans far far too much towards the injured without the possibility of recovery by the employer.

Please work to draft a bill that makes sense balancing these disparate needs. There must be a process other than the employees own Dr. for establishing whether an injury is real or not. This bill will quickly leave employers in this state at the mercy of unscrupulous teams of doctors, lawyers, and employees.

Thank you.

Doug Levin

yamashita1- Kathy

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 16, 2009 4:19 PM
To: LABtestimony
Cc: jmc@maui.net
Subject: Testimony for SB63 on 3/17/2009 8:30:00 AM

Testimony for LAB 3/17/2009 8:30:00 AM SB63

Conference room: 309
Testifier position: oppose
Testifier will be present: No
Submitted by: Judy McCorkle
Organization: Individual
Address: 745 Alae Rd. Kula, HI
Phone: 808 876 1439
E-mail: jmc@maui.net
Submitted on: 3/16/2009

Comments:

This bill again will substantially hurt small business. This is not a time to continue to add demands to our already overtaxed small business owners.

yamashita2 - Kristen

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 16, 2009 2:45 PM
To: LABtestimony
Cc: mike@mauiymca.org
Subject: Testimony for SB63 on 3/17/2009 8:30:00 AM

Testimony for LAB 3/17/2009 8:30:00 AM SB63

Conference room: 309
Testifier position: oppose
Testifier will be present: No
Submitted by: Mike Morris
Organization: Maui Family YMCA
Address: 250 Kanaloa Ave. Kahului, HI
Phone: 808-242-9007
E-mail: mike@mauiymca.org
Submitted on: 3/16/2009

Comments:

This bill requires the employer to pay initial total temporary disability benefits even if the employer believes the employee's claim is not work related. It also allows employees to receive a weekly benefit equal to 70% of the employee's average weekly wages. Something I know our business could not afford.

Decisions like this could have a negative impact on small businesses and our economy. This is not the way to stimulate the economy, if businesses have to lay off employees to pay the Workers Comp bills, it's counter productive.

Furthermore, this bill also opens the door for increase fraud in workers comp claims, putting even a great burden on small businesses.

yamashita1- Kathy

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 16, 2009 2:19 PM
To: LABtestimony
Cc: dwase@yahoo.com
Subject: Testimony for SB63 on 3/17/2009 8:30:00 AM

Follow Up Flag: Follow up
Flag Status: Completed

Testimony for LAB 3/17/2009 8:30:00 AM SB63

Conference room: 309
Testifier position: oppose
Testifier will be present: No
Submitted by: Della Nakamoto
Organization: Individual
Address: 880 Mahealani St Kihei, HI
Phone: 808-891-8275
E-mail: dwase@yahoo.com
Submitted on: 3/16/2009

Comments:

yamashita1- Kathy

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 16, 2009 2:23 PM
To: LABtestimony
Cc: howards2301@hawaiiantel.net
Subject: Testimony for SB63 on 3/17/2009 8:30:00 AM

Follow Up Flag: Follow up
Flag Status: Completed

Testimony for LAB 3/17/2009 8:30:00 AM SB63

Conference room: 309
Testifier position: oppose
Testifier will be present: No
Submitted by: Howard Takishia
Organization: Individual
Address: 2301 Omaopio Road Kula, Hi
Phone: 808-878-4180
E-mail: howards2301@hawaiiantel.net
Submitted on: 3/16/2009

Comments:

Please do not support any regulations that will increase my Workmen's Compensation rates. This year we paid thousands and thousands of dollars to WC, with only 3 claims in 31 years.

The margins for your Maui farmers grow smaller and smaller. Please help us all stay competitive with Mainland and foreign markets.

Mahalo,
Howard

yamashita1- Kathy

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 16, 2009 2:39 PM
To: LABtestimony
Cc: bstsurf@gmail.com
Subject: Testimony for SB63 on 3/17/2009 8:30:00 AM

Testimony for LAB 3/17/2009 8:30:00 AM SB63

Conference room: 309
Testifier position: oppose
Testifier will be present: No
Submitted by: Brian Thomas
Organization: Individual
Address: Makawao, HI
Phone:
E-mail: bstsurf@gmail.com
Submitted on: 3/16/2009

Comments:

Please realize that by further driving up the costs to small business people, you reduce their ability to hire and retain employees. If this bill passes, even more businesses will close and more employees will be laid off and our competitive position with other vacation/tourist locations will be further diminished.

yamashita1- Kathy

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 16, 2009 2:33 PM
To: LABtestimony
Cc: bob@oahuhotjobs.com
Subject: Testimony for SB63 on 3/17/2009 8:30:00 AM

Testimony for LAB 3/17/2009 8:30:00 AM SB63

Conference room: 309
Testifier position: oppose
Testifier will be present: No
Submitted by: bob yeager
Organization:
Address:
Phone:
E-mail: bob@oahuhotjobs.com
Submitted on: 3/16/2009

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 16, 2009 6:32 PM
To: LABtestimony
Cc: ron@prettyrocks.com
Subject: Testimony for SB63 on 3/17/2009 8:30:00 AM

Testimony for LAB 3/17/2009 8:30:00 AM SB63

Conference room: 309
Testifier position: oppose
Testifier will be present: No
Submitted by: Ronald Davis
Organization: Individual
Address:
Phone:
E-mail: ron@prettyrocks.com
Submitted on: 3/16/2009

Comments:

Please vote against this bill. Small business is having a hard enough time surviving in our islands without this additional burden.

yamashita2 - Kristen

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 16, 2009 10:30 PM
To: LABtestimony
Cc: MHoening@PuroClean.com
Subject: Testimony for SB63 on 3/17/2009 8:30:00 AM

Testimony for LAB 3/17/2009 8:30:00 AM SB63

Conference room: 309
Testifier position: oppose
Testifier will be present: No
Submitted by: Mark Hoenig
Organization: Individual
Address: 138 Kapela Pl Kahului, HI
Phone: 808-268-6701
E-mail: MHoening@PuroClean.com
Submitted on: 3/16/2009

Comments:

I watched President Obama on TV earlier this evening as he sang the praises of small business. He outlined the plans the federal government will be putting into place in order to support and promote small business, which the President feels is vital to the country's economic turnaround.

As a small business owner, I'm wondering why my Hawaii Legislature seems to be working so hard to pass bills that will create MORE challenges and hardships for the small businesses of Hawaii. Many small businesses are trying to just hang on to make it through these tough economic times, which we know will eventually end. We are only in our 2nd year in business and we're trying to get established and grow our business, which includes hiring more employees (I'm interviewing for one new position at present).

Hawaii's small businesses are responsible for a disproportionate share of jobs in this state, and are the backbone of the economy here on Maui. If supported, small businesses will lead the way out of our current economic situation.

I STRONGLY urge you to oppose the Worker's Comp bill being proposed. Give small businesses a chance to contribute to the economic turnaround, and follow the example of the leaders in Washington who are working to make it easier, not harder, for small businesses to prosper.

Thank you for your consideration.

Mark Hoenig
Owner
PuroClean Emergency Restoration Services Maui, HI

yamashita1- Kathy

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 16, 2009 5:46 PM
To: LABtestimony
Cc: harlan@zenvilla.net
Subject: Testimony for SB63 on 3/17/2009 8:30:00 AM

LATE

Testimony for LAB 3/17/2009 8:30:00 AM SB63

Conference room: 309
Testifier position: oppose
Testifier will be present: No
Submitted by: Harlan Hughes
Organization: Individual
Address: 406 Lower Kimo Drive Kula, HI 96790
Phone: 808-878-6356
E-mail: harlan@zenvilla.net
Submitted on: 3/16/2009

Comments:

This bill is pure hubris in that it gives unions a tool with which to intimidate workers. In a free society, as we are supposed to be, one should be able to have a secret ballot in this situation as we do when voting for our legislators. Do you, as legislators, agree you should be elected by secret ballot? If yes, hopefully, then shouldn't this also apply to the working class and whether or not they wish to vote union. Your vote on this issue will tell whether you support the individual voters right to privacy over the union's push for control. We, the voters, didn't vote the union into the legislation. We voted you in. Please do the right thing for the workers and let them keep their vote secret, not a name on someones list.

yamashita2 - Kristen

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 16, 2009 11:02 PM
To: LABtestimony
Cc: Lifestylemaui@aol.com
Subject: Testimony for SB63 on 3/17/2009 8:30:00 AM

Testimony for LAB 3/17/2009 8:30:00 AM SB63

Conference room: 309
Testifier position: oppose
Testifier will be present: No
Submitted by: Steven Tatik
Organization:
Address: 703 Lower Main Street Wailuku, HI
Phone: 808-242-1863
E-mail: Lifestylemaui@aol.com
Submitted on: 3/16/2009

Comments:

Concerned Citizens

Same Written Testimony in Opposition to: SB 63

(See attached for a sample of the written testimony. All testimony will be available online.)

Updated 3/17/09 6:30am

	First Name	Last Name	Title/Position	Company	Notes
1	Elise	Yen			
2	Michael	Miyahira			
3	Darrel	Tajima		Meadow Gold Dairies, Hawaii	
4	K.	Okamura			
5	Mike	Navares	General Manager, Hawaii	United Airlines	
6	Shari	McClellan			
7	Melvin	Kam			
8	Cynthia	Rankin			
9	Vaughn	Vasconcellos	President & CEO	Akimeka, LLC	
10	Ben	Dorado			
11	Maylynn	Wong		Halekulani Hotels & Resorts	
12	John	Jaskula			
13	April	Cheng			
14	Robert	Welch			
15	Jerry	Jamesson		Aston Shores at Waikoloa	
16	L.	Wong			
17	Ka'eo	Gouveia		Mokulua Contracting, LLC	
18	Paul	Kosasa			
19	Cindy	Fujioka		Doubletree Alana Hotel-Waikiki	
20	Karl	Yoneshige	President & CEO	Hawaii USA Federal Credit Union	
21	Christine	Hebenstreit			[LATE]
22	Virginia	Holmes		New Penny Cleaning Svc. LLC	[LATE]
23	Lorri	Redlew		Pacific Transfer LLC	[LATE]
24	Larry	Bush			[LATE]
25	Brian	Arkle			[LATE]
26	Benjamin	Ventura			[LATE]
27	Robert	Spencer		R.M. Towill Corporation	[LATE]
28	Marlene	Nations			[LATE]
29	L.	Kohara			[LATE]
30	Patrick	Bustamante	President	Pacific LightNet	[LATE]
31	Christine	Olah			[LATE]
32	Chris	Robbins			[LATE]
33	Kawika	Kane			[LATE]
34	Mary	Daws			[LATE]
35	Alison	Misajon			[LATE]
36	Brad	Park		Pilot Freight Services	[LATE]
37	Noelle	Condon		Consumer Service Analysis, Inc.	[LATE]

yamashita2 - Kristen

From: elise@horecacg.com
Sent: Monday, March 16, 2009 9:38 AM
To: LABtestimony
Subject: Take Action Now

Follow Up Flag: Follow up
Flag Status: Completed

Elise Yen
2345 Ala Wai Blvd., #2217
Honolulu, HI 96815-5019

TESTIMONY TO THE HOUSE LABOR & PUBLIC EMPLOYMENT COMMITTEE TUESDAY, MARCH 17, 2009 8:30 A.M.
IN ROOM 309

RE: SB 63 RELATING TO WORKERS' COMPENSATION

Chair Rhoads, Vice Chair Yamashita and members of the committee:

I respectfully request that you hold SB 63 relating to Workers' Compensation.

This measure requires the employer to continue temporary total disability benefits regardless of whether the employer controverts the right to benefits.

Although I understand the intent of the bill, I believe this bill may serve as a disincentive to return to work, which will be counterproductive to its actual purpose. Furthermore, if the Director of Labor determines that the claim is not work related, or there is overpaid TTD benefits, or there is no permanent partial disability, the employers will be stuck with the costs with no recoupment.

This measure, if passed, may increase my workers' compensation premiums and the overall cost of doing business, a time when my business and the community cannot afford to undertake.

If you have any questions, please do not hesitate to contact me. Thank you for the opportunity to submit written testimony.