



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

830 PUNCHBOWL STREET, ROOM 321  
HONOLULU, HAWAII 96813  
[www.hawaii.gov/labor](http://www.hawaii.gov/labor)  
Phone: (808) 586-8842 / Fax: (808) 586-9099  
Email: [dlir.director@hawaii.gov](mailto:dlir.director@hawaii.gov)

February 28, 2012

To: The Honorable Marcus R. Oshiro, Chair, Marilyn B. Lee, Vice Chair, and  
Members of the House Committee on Finance

Date: Tuesday, February 28, 2012

Time: 4:00 p.m.

Place: Conference Room 308, State Capitol

From: Dwight Y. Takamine, Director  
Department of Labor and Industrial Relations (DLIR)

**Re: H.B. No. 2099 H.D. 1 Relating to Workers' Compensation**

**I. OVERVIEW OF PROPOSED LEGISLATION**

HB2099HD1 clarifies that attorney's fees may be included in costs that may be assessed against a party who brings, prosecutes, or defends a workers' compensation claim without reasonable ground. The department supports this measure, as it will help deter frivolous claims and appeals from being filed. This measure is effective July 1, 2112.

**II. CURRENT LAW**

Section 386-93(a), Hawaii Revised Statutes (HRS), allows for the whole costs of the proceedings to be assessed against the party who has brought, prosecuted, or defended the proceedings without reasonable ground.

**III. COMMENTS ON THE HOUSE BILL**

This bill clarifies that in addition to whole costs, reasonable attorney's fees may also be assessed against parties that bring, prosecute, or defend proceedings without reasonable grounds. The department hopes this proposal will make parties think twice before initiating baseless claims and appeals proceedings. The department supports this measure.

HOUSE OF REPRESENTATIVES  
THE TWENTY-SIXTH LEGISLATURE  
REGULAR SESSION OF 2012

COMMITTEE ON FINANCE

Rep. Marcus R. Oshiro, Chair  
Rep. Marilyn B. Lee, Vice Chair

Hearing: Tuesday, February 28, 2012

Time: 4:00 p.m.

Place Conference Room 308

TESTIMONY OF ILWU LOCAL 142

RE: HB 2099, HD 1, RELATING TO WORKERS COMPENSATION

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

Thank you for the opportunity to present testimony regarding HB 2099, HD 1. ILWU Local 142 supports this useful and constructive bill.

For perhaps three decades or more, Section 386-93(a)HRS has been interpreted to allow the recovery of both attorneys fees and costs when a party has prosecuted or defended a claim without reasonable grounds. This provision has the salutary effect of deterring frivolous claims from being brought or defended. It also is in keeping with the spirit of workers compensation as a swift and informal means of adjudicating claims. In theory, meritorious claims are promptly honored and the injured worker receives timely and effective medical care. Clear-cut claims that are wrongfully denied face the sanction of paying the attorneys fees and costs of the injured worker, while claims that truly have no merit but are unfairly brought against Employers are deterred by the same potential sanctions. Unnecessary litigation is thus minimized and prevented.

However, since the Court of Appeals ruling in Glen J. Kelly v. Metal-Weld Specialties, Inc. (Nos. 27127 and 27208)(September 30, 2008) only costs and no attorneys fees have been payable under Section 386-93(a) HRS. Ironically, a much older Hawaii Supreme Court case, Ilaga v. Yuen and Commercial Casualty Co. 35 Haw. 591 (1940) recognized that attorneys fees could be awarded under a similar territorial law.

HB 2099, H.D. 1 is necessary in light of the Kelly decision to restore the ability for the Department of Labor, the Labor and Industrial Relations Appeals Board, and our courts to award attorneys' fees under Section 386-93(a) HRS and to enforce basic standards in the reasonable prosecution and defense of claims. The Committee on Economic Revitalization and Business has made this measure effective July 1, 2012, but the bill should not be deferred, and should effective January 1, 2013. We therefore urge passage of this needed measure with this earlier effective date.



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

**Alison Powers**  
Executive Director

## TESTIMONY OF ALISON POWERS

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HOUSE COMMITTEE ON FINANCE  
Representative Marcus R. Oshiro, Chair  
Representative Marilyn B. Lee, Vice Chair

Tuesday, February 28, 2012  
4:00 p.m.

### **HB 2099, HD1**

Chair Oshiro, Vice Chair Lee, 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 40% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **submits comments** on HB 2099, HD1. We ask that you delete the word "including" and replace it with the word "and" in the bill because attorney costs do not necessarily include attorney fees.

Thank you for the opportunity to testify.

February 28, 2012

To: The Honorable Marcus R. Oshiro, Chair, Marilyn B. Lee, Vice Chair, and  
Members of the House Committee on Finance

Date: Tuesday, February 28, 2012

Time: 4:00 p.m.

Place: Conference Room 308, State Capitol

From: Laurie H. Hamano M.Ed. CRC and Vocational Management Staff

**Re: In Support of H.B. No. 2099 H.D. 1 Relating to Workers' Compensation**

My name is Laurie H. Hamano and I am President and Owner of Vocational Management Consultants Inc. I am a member of the Chamber of Commerce and a member of the International Association of Rehab Professionals. I have been working in the workers compensation field as a vocational rehabilitation counselor for the past 27 years.

This bill clarifies that in addition to whole costs, reasonable attorney's fees may also be assessed against parties that bring, prosecute, or defend proceedings without reasonable grounds. We believe that this will provide an avenue to reduce unreasonable proceedings and reduce the stress on the injured workers trying to move forward and return back to work.

Thank you for your allowing me to provide this supportive testimony for myself and my staff at VMC.

Laurie H. Hamano, M. Ed. CRC, LMHC  
President/Vocational Rehabilitation Counselor

Lily Miyahira  
Leona Tadaki-Kam  
Adam Yonamine  
Kirsten Yonamine, M.Ed. CRC  
Patti Inoue, M. Ed. CRC  
Jessica Bohne, M.Ed.  
Liane Murai, M.A.  
Beverly Tokumine, M. Ed.CRC

You may contact us at: Vocational Management Consultants, Inc.  
715 S. King Street Suite 410  
Honolulu, Hawaii 96813



# **Workstar**

**91-2135 Fort Weaver Road Suite #170  
Ewa Beach, Hawaii 96706**

**HOUSE COMMITTEE ON FINANCE**

**To: The Honorable Marcus Oshiro and Committee Members**

**From: Scott McCaffrey, MD**

**Re: HB 2099 HD 1**

**Date: February 25, 2012**

**Dear Chair and Committee Members:**

**The measure before you is worthy of your firm support for the following reasons:**

- 1. It is far too easy in today's WC System to deny care as a myopic cost control strategy.**
- 2. Injured workers have little energy and even less resources to fight such behaviors.**
- 3. Frivolous claims fighting, in reality, increases case expense by pushing liability off on other social safety nets--often at the expense of the taxpayer.**
- 4. Hawaii's noble injured workers' attorneys are under paid and dwindling in numbers and we must have a system that provides adequate incentive for those who stick up for the patient.**
- 5. Fewer denials of care mean less hearings and therefore a reduced cost-burden on our Department of Labor Disability Claims Division (DCD).**

**Mahalo for your efforts at improving our troubled Workers Compensation System!**

**Sincerely,**

**Scott McCaffrey, MD**

**Occupational and Emergency Medicine**

# DENNIS W. S. CHANG

ATTORNEY-AT-LAW

WORKER'S RIGHTS - LABOR LAW  
WORKER'S COMPENSATION  
SOCIAL SECURITY DISABILITY  
LABOR UNION REPRESENTATION  
EMPLOYEES RETIREMENT SYSTEM  
BODILY INJURIES

February 27, 2012

SUBMITTED VIA ELECTRONIC MAIL

To: The Honorable Marcus R. Oshiro, Chair, Marilyn B. Lee, Vice Chair, and  
Members of the House Committee on Finance

Date: Tuesday, February 28, 2012  
Time: 4:00 p.m.  
Place: Conference Room 308, State Capitol

From: DENNIS W. S. CHANG  
Labor and Workers' Compensation Attorney

Re: **Testimony in Support of HB 2099, HD1**

Dear Honorable Chair Oshiro and Committee Members:

I have been practicing as a labor attorney with a heavy concentration in workers' compensation cases. For more than three decades, we always had the right to request sanctions as a deterrent to defenseless positions raised by employers and insurance carriers, if we are able to prove this during a hearing. We were required to carry a heavy onerous burden of proof but, if we prevailed, the Director of Labor and Industrial Relations ("Director") was allowed to include the assessment of attorney's fees under the words "whole costs" under HRS §386-93(a). The only other deterrent is to sue insurance carriers for bad faith but, for the most part, this is not feasible in light of the substantial costs and attorney's fees that must be devoted in such a civil lawsuit.

The law has not changed since I began my practice in 1977 until the Intermediate Court of Appeals issued a non-binding opinion in the *Kelly* decision which construed HRS §386-93(a) to mean only costs and not attorney's fees. This disregarded decades of consistent application in allowing the assessment of attorney's fees as well as costs by the Director and the Labor and Industrial Relations Appeals Board ("Board").

In light of the *Kelly* decision, the Board has likewise construed HRS §386-93(a) to limit sanctions to costs. Since then, I can assure you that my practice has been devoted more to unreasonable denials of treatment plans and medical supplies and challenging other abusive practices, most notably denials of legitimate claims of injured workers. Even if we proceed to a hearing and secure sanctions, the Director

DILLINGHAM TRANSPORTATION BUILDING

735 BISHOP STREET ● SUITE 320 ● HONOLULU, HAWAII 96813 ● TELEPHONE: (808) 521-4005

and the Board are now constrained to construe HRS §386-93(a) as allowing only the assessment of costs. This is only a pittance in terms of sanctions since we can only request possibly costs for duplication, postage, and the like, but not any real deterrent like the assessment of attorney's fees. This recent limitation disregarding the allowance of assessment of attorney's fees has caused needless delay and undue litigation since there is really no deterrent to prevent employers and insurance carriers from raising frivolous defenses and creating a backlog in the calendar before the Disability Compensation Division and delays hearings on more worthy, vital and legitimate disputes.

I strongly urge that HB 2099 be passed as written in light of the previous testimony in support of this bill, especially the historical account provided by Stanford Matsui, the continuing endorsement of the Director, and this amended testimony. With the passage of HB 2099, we will have a win-win situation for all involved by avoiding needless litigation and getting to the heart of truly disputed claims in the workers' compensation system. We need to level the playing field and undo the unintentional reversal of the case law.

I thank you very much for embracing HB 2099 to reinstate the time honored practice of allowing sanctions including attorney's fees for unreasonable defenses under HRS §386-93(a).



TESTIMONY IN SUPPORT OF H.B.2099, HD1  
RELATING TO WORKERS' COMPENSATION

HOUSE COMMITTEE ON FINANCE

Tuesday, February 28, 2012, 4:00 p.m.

Mr. Chairman, members of the Committee, I am attorney Wayne Mukaida. I have been in practice since 1978. Since 1989, I have devoted a substantial portion of my legal practice to representing injured workers. I support H.B.2099 HD1, relating to Workers' Compensation and allowing attorney's fees to be assessed against a party who acts in a workers' compensation case without reasonable ground.

The Bill is needed to correct the decision of the Intermediate Court of Appeals ("ICA") in *Kelly v. Metal-Weld Specialties, Inc.*, 118 Haw. 424, 192 P.3d 613 (Haw. App. 2008). The parties in *Kelly* did not argue the attorney's fee issue, and the ICA decided the issue on its own.

The Bill would return the law to the rule which existed prior to *Kelly* and would give back to the Labor Appeals Board and to the Director of the Department of Labor and Industrial Relations the power to regulate proceedings and to provide for a disincentive to unreasonable behavior.

Thank you for considering my testimony.

[s] WAYNE H. MUKAIDA  
Attorney at Law  
888 Mililani Street, PH2  
Honolulu, HI 96813  
Telephone: 531-8899

George M. Waialeale  
910 Kapahulu Avenue #703  
Honolulu, Hawaii 96816  
Email: [geedubbyou@aol.com](mailto:geedubbyou@aol.com)  
Phone: (808) 383-0436

February 28, 2012

**Committee on Finance**

**HB 2099 HD1 Relating to Workers' Compensation**

I am here to testify in support of HB 2099 HD1. With the increase in fee schedule there will be an increase in the amount of physicians that will participate in the area of workers' compensation injury.

In Hawaii we are short over 600 physicians and in the area of workers' compensation that has been exacerbated.

I ask for your passage of this legislation.

George Waialeale

Re: HB2099 HD1

Aloha,

My name is Michelle Higgins-Mahé BSN, RN and I support this measure.

As currently enacted, injured workers when appealing decisions are liable for attorney fees incurred. The result of this practice is that whenever employers or insurance carriers refuse or deny care, injured workers must retain representation or attempt to appeal the decision themselves. This stressful situation aggravates an already injured worker. To have this worker burdened with the prospect of additional legal costs results in many workers being denied care and having no legal recourse due to financial difficulty.

The passing of this bill would enable injured workers to appeal questionable decisions without additional financial burden and deter employers from wrongfully denying appropriate care.

Thank you

Michelle Higgins-Mahé

## FINTestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 28, 2012 8:10 AM  
**To:** FINTestimony  
**Cc:** drbickford@ymail.com  
**Subject:** Testimony for HB2099 on 2/28/2012 4:00:00 PM

Testimony for FIN 2/28/2012 4:00:00 PM HB2099

Conference room: 308  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Paul Bickford, D.C.  
Organization: Bickford Chiropractic  
E-mail: [drbickford@ymail.com](mailto:drbickford@ymail.com)  
Submitted on: 2/28/2012

### Comments:

I feel this bill should be supported, because often times the insurance carrier takes advantage of their power to bring cases to hearing when they know the injured worker does not have enough money to hire an attorney for fair representation.

If an insurance company is the business of insuring injured workers, it seems they have to take some responsibility to help the injured worker. Most injured workers want to get better, but when the insurance company automatically denies payment the injured person gets angry and becomes a victim of the system. The employer also suffers from not having an employee return to work, and it is the employer paying for work comp insurance.

It seems to me that there need to be more laws passed to regulate insurance companies.

My experience with self insured companies is a lot better. It goes without saying the names of the companies that give injured workers the most trouble. If a worker becomes disabled because they did not get treatment in a timely manner, that costs the state money, "not" the insurance giants. Basically the insurance giants have nothing to lose if an injured worker does not get better.

## **FINTestimony**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, February 26, 2012 10:22 PM  
**To:** FINTestimony  
**Cc:** drwillkim@aol.com  
**Subject:** Testimony for HB2099 on 2/28/2012 4:00:00 PM

Testimony for FIN 2/28/2012 4:00:00 PM HB2099

Conference room: 308  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Dr. William Kim  
Organization: Individual  
E-mail: [drwillkim@aol.com](mailto:drwillkim@aol.com)  
Submitted on: 2/26/2012

**Comments:**

My name is Dr. William Kim. I have been a practicing chiropractor in Honolulu for over 20 years. I support HB 2099 HD1. It levels the playing field regarding attorney's fees for the injured worker. It protects the injured worker from insurance companies bringing a case to a hearing on frivolous grounds or for no reason other than to put the claimant through a hearing process. The passage of HB2099 reflects what the worker's compensation system was designed to do that being to protect the rights of the injured worker and the right to fair representation without worsening their finances.

## **FINTestimony**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 27, 2012 5:43 AM  
**To:** FINTestimony  
**Cc:** srickdc@gmail.com  
**Subject:** Testimony for HB2099 on 2/28/2012 4:00:00 PM

Testimony for FIN 2/28/2012 4:00:00 PM HB2099

Conference room: 308  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Stephen Rickard  
Organization: Individual  
E-mail: [srickdc@gmail.com](mailto:srickdc@gmail.com)  
Submitted on: 2/27/2012

**Comments:**

I strongly support this measure to establish equity in the resolution of contested Workers Comp claims. I have seen too many claimants unable to proceed for financial inability to hire counsel.

## **FINTestimony**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 27, 2012 3:18 PM  
**To:** FINTestimony  
**Cc:** moore4640@hawaiiantel.net  
**Subject:** Testimony for HB2099 on 2/28/2012 4:00:00 PM

Testimony for FIN 2/28/2012 4:00:00 PM HB2099

Conference room: 308  
Testifier position: Support  
Testifier will be present: Yes  
Submitted by: Douglas Thomas Moore  
Organization: Individual  
E-mail: [moore4640@hawaiiantel.net](mailto:moore4640@hawaiiantel.net)  
Submitted on: 2/27/2012

Comments:  
Aloha: I support the passage of this bill. mahalo

## **FINTestimony**

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**From:** mailinglist@capitol.hawaii.gov  
**ent:** Sunday, February 26, 2012 5:04 AM  
**o:** FINTestimony  
**Cc:** Cabinatad001@hawaii.rr.com  
**Subject:** Testimony for HB2099 on 2/28/2012 4:00:00 PM

Testimony for FIN 2/28/2012 4:00:00 PM HB2099

Conference room: 308  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Lily Ann Cabinatan  
Organization: Individual  
E-mail: [Cabinatad001@hawaii.rr.com](mailto:Cabinatad001@hawaii.rr.com)  
Submitted on: 2/26/2012

Comments:





# Hawaii State Chiropractic Association

P.O. Box 22668 Honolulu, HI 96823-2668  
 ph: (808) 926-8883 fx: (808) 926-8884  
[www.hawaiiichiro.com](http://www.hawaiiichiro.com)

February 25, 2012

HOUSE OF REPRESENTATIVES  
 THE TWENTY-SIXTH LEGISLATURE  
 REGULAR SESSION OF 2012

COMMITTEE ON FINANCE  
 Rep. Marcus R. Oshiro, Chair  
 Rep. Marilyn B. Lee, Vice Chair

NOTICE OF HEARING

DATE: Tuesday, February 28, 2012  
 TIME: 4:00 P.M.  
 PLACE: Conference Room 308

Chair Oshiro and members of the Finance Committee:

My name is Dr. Gary Saito, DC, and I represent the Hawaii State Chiropractic Association as its President. Our organization fully **SUPPORTS** the intent of **HB 2099 HD1**.

Injured workers often lack the financial resources to hire attorneys to represent them in dispute hearings with insurance carriers who retain attorneys that specialize in work comp cases. This imbalance of resources greatly disadvantages hourly wage earners and favors carriers who can afford the best in the business to represent them.

Even if an injured worker prevails in a hearing today, he is left with the expense of his attorney's fees on top of his debts due to lost wages. On the other hand, there is little to discourage carriers from requesting frivolous hearings. They will either win with the depth of the expertise of their attorneys, or at least incur hardship on the injured worker even if they lose.

The work comp system was set up to give injured workers protective rights in exchange for denying them the opportunity to sue their employers for their injuries and medical expenses. Giving carriers the extraordinary advantage over injured workers by allowing them to request hearings without good cause and then sparing them the financial obligation to pay all hearing costs was surely not the intent of the original law.

We should prevent frivolous requests for hearings by the carriers by requiring them to pay all incurred expenses of the injured worker to defend his case.

We urge the passage of HB 2099 HD1.

Sincerely,

Dr. Gary Saito, President  
 Hawaii State Chiropractic Association