

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

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January 28, 2011

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

Date: Friday, January 28, 2011
Time: 9:00 a.m.
Place: Conference Room 309, State Capitol

From: Dwight Y. Takamine, Interim Director
Department of Labor and Industrial Relations

Testimony in OPPOSITION

To

H.B. No. 386 Relating to Workers' Compensation Fraud

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 386 proposes to transfer the jurisdiction over workers' compensation fraud from the Department of Labor and Industrial Relations ("DLIR") to the insurance fraud investigations unit of the Insurance Division of the Department of Commerce and Consumer Affairs ("DCCA").

II. CURRENT LAW

Workers' compensation fraud is addressed in section 386-98, HRS. Under section 386-98, workers' compensation fraud may be pursued by bringing criminal action (section 386-98(d)), or administrative action (section 386-98(e)). Currently, workers' compensation administrative fraud cases are reported and investigated by the employer's insurance carrier. Injured workers may also file fraud complaints against their employers, insurance carriers, and occasionally, providers of service. Upon a filing of a complaint, an administrative hearing is held to receive evidence and to determine whether fraud has been committed and the appropriate penalties. The assessed penalties are currently payable to the workers' compensation Special Compensation Fund.

The Department of Labor and Industrial Relations (“DLIR”), which administers Hawaii’s workers’ compensation laws, does not have a dedicated unit to initiate and conduct fraud investigations and aggressively pursue criminal prosecutions. Fraud involving criminal actions are referred to the Honolulu Police Department for appropriate criminal prosecution.

III. HOUSE BILL

Although the DLIR supports the overall intent of HB 386 to enable the DCCA’s Fraud Investigations Unit to investigate all insurance fraud violations, including workers’ compensation fraud, the DLIR **opposes** this bill for the following reasons.

1. Fraud committed by employers, employees, carriers, providers and other parties involved in our workers’ compensation system raise the costs of workers’ compensation. However, according to the workers’ compensation statistics from 1/1/06 through 12/31/10, only 26 cases out of 7,441 workers’ compensation cases with administrative decisions rendered, involved fraud. Out of these 26 cases in the four-year period, only 14 were determined to have committed fraud. This is less than one percent of the cases adjudicated at hearings.
2. The DLIR in the past has supported proposals to expand the Insurance Commissioner’s powers to investigate and prosecute anyone who commits workers’ compensation fraud, including employees who commit fraud. However, there are discrepancies in the workers’ compensation statute in section 386-98, HRS, and the insurance statutes in section 431:2, relating to fraud, which are not addressed in this legislation. DLIR would like to point out that there is a discrepancy relating to penalties for insurance fraud for criminal offenses in section 431:2-403(b)(2) and (3) and section 386-98(d)(1) and (2). DCCA’s Class C felony and misdemeanor offenses specify \$300 as the threshold to separate Class C and misdemeanor offenses. However, section 386-98(d) of the Workers’ Compensation Law specifies \$2,000 as the threshold to separate Class C and misdemeanor offenses. DCCA also provides a Class B felony with a \$20,000 threshold.
3. Because of Privacy Laws, it may be difficult to obtain and share information between the two State agencies. If DCCA handles all fraud investigations, we need to ensure that DCCA will have access to confidential information from the DLIR’s workers’ compensation records in order to investigate workers’ compensation fraud allegations.
4. Employers have complained that the investigation and prosecution of fraud is too

costly. Once insurers have uncovered fraud, they often settle the matter with the employee and sever future payments. In addition to stopping fraudulently received workers' compensation benefits, prosecuting offenders deters those who might consider abusing workers' compensation privileges and committing fraud. The insurance laws do not state that those who commit workers' compensation fraud will have their benefits terminated or suspended.

5. Sections 6 and 7 of this proposal indicate that all officers, employees, all equipment, machines, files, supplies, papers, etc. involved in the fraud investigations in DLIR are to be transferred to DCCA. This is an unreasonable request since fraud complaints involve less than one percent of all workers' compensation activities. Currently, the insurance company who files the fraud complaint against the injured worker, and the injured worker who files the fraud complaint against their employer, insurer, or medical provider has the burden of proof to prove that fraud was committed. The DLIR holds an administrative hearing to hear the fraud allegations and the rebuttals and makes an administrative decision based on the evidence presented whether fraud was committed. If either party does not agree with the decision, they may file an appeal to the Labor and Industrial Relations Appeals Board. There is no specific hearings officer assigned to schedule the hearings or to hear fraud complaints. Workers' compensation case files and office equipment are used by the entire office staff and will not be transferred to DCCA.

Due to the negligible amount of cases involving alleged fraud and the negligible amount of time spent on adjudicating fraud cases at the DLIR, it is unreasonable and impracticable to transfer all duties, personnel, and equipment involved in prosecuting fraud to the DCCA. For these reasons and the above-mentioned reasons, the Department strongly **opposes** H.B. 386.



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

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KEALI'I S. LOPEZ
INTERIM DIRECTOR

EVERETT KANESHIGE
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON LABOR
AND PUBLIC EMPLOYMENT

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Friday, January 28, 2011
9:00 a.m.

**TESTIMONY ON HOUSE BILL NO. 386 - RELATING TO WORKERS'
COMPENSATION FRAUD**

WRITTEN TESTIMONY ONLY

TO THE HONORABLE KARL RHOADS AND MEMBERS OF THE COMMITTEE:

My name is Gordon I. Ito, State Insurance Commissioner ("Commissioner"), testifying on behalf of the Department of Commerce and Consumer Affairs ("Department").

The Department takes no position on this bill and defers to the Department of Labor & Industrial Relations.

Presently, the Insurance Fraud Investigations Branch investigates and prosecutes insurance fraud in all lines, except workers' compensation. If workers' compensation is included in the scope of its authority, additional funding would be needed for investigators, personnel, and equipment for this specific area of fraud.

We thank this Committee for the opportunity to present testimony on this matter.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

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The Twenty-Sixth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Labor & Public Employment

Testimony by
Hawaii Government Employees Association

January 28, 2011

H.B. 386 – RELATING TO WORKERS’
COMPENSATION FRAUD

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO opposes H.B. 386, which proposes to transfer jurisdiction over workers' compensation fraud from the Department of Labor and Industrial Relations (DLIR) to the Insurance Division of the Department of Commerce and Consumer Affairs (DCCA). Sections 6 and 7 of the bill transfer all officers, employees, equipment, machines, files, supplies, papers, etc., involved in the fraud investigations in DLIR to DCCA.

Our primary objection to the bill is that, according to DLIR statistics from 2006 – 2010, less than 1% of cases adjudicated at hearing were determined to involve fraud.

Another concern about the transfer is that Privacy Laws make it difficult to obtain and share information between the two State agencies. If DCCA handles all fraud investigations, we need to ensure that DCCA will have access to confidential information from the DLIR's workers' compensation records in order to investigate workers' compensation fraud allegations.

In addition, workers' compensation case files and office equipment are used by the entire office staff and should not be transferred to DCCA.

Thank you for the opportunity to testify in opposition to H.B. 386.

Sincerely,

Nora A. Nomura
Deputy Executive Director



Randy Perreira
President

HAWAII STATE AFL-CIO

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The Twenty-Sixth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Labor and Public employment

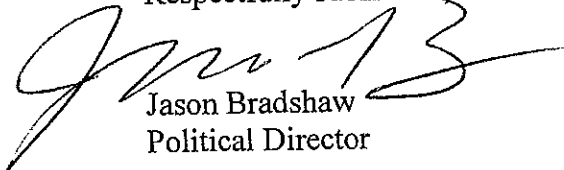
Testimony by
Hawaii State AFL-CIO
January 28, 2011

H.B. 386 – RELATING TO WORKERS' COMPENSATION FRAUD

The Hawaii State AFL-CIO **opposes** the purpose and intent of H.B. 386 which transfers jurisdiction over workers' compensation fraud from the department of labor and industrial relations to the insurance fraud investigations unit of the insurance division of the department of commerce and consumer affairs.

Thank you for the opportunity to testify.

Respectfully submitted,



Jason Bradshaw
Political Director



**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: **HB 386 – Workers’ Compensation Fraud**
PCI Position: Support

Date: Friday, January 28, 2011
9:00 a.m.; Conference Room 309

Aloha Chairman Rhoads and Committee Members:

The Property Casualty Insurers Association of American (PCI) supports HB 386 because it would further the effectiveness and efficiency of the investigation and prosecution of workers compensation insurance fraud.

The insurance fraud investigations branch of the insurance division has a special expertise in insurance fraud issues and professional staff with experience in the investigation and prosecution of insurance fraud. PCI believes that the insurance fraud investigations branch’s expertise and experience should be applied to workers compensation. HB 386’s expansion of the division’s responsibility to include workers compensation will benefit Hawaii’s workers compensation system.

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

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

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

Testimony Related to HB 386

DATE: Friday, January 28, 2011
TIME: 9:00 a.m. - 12:00 p.m.
PLACE: Conference Room 309
State Capitol
415 South Beretania Street

Dear Honorable Representatives Rhoads and Yamashita:

I am a labor attorney in good standing, and I have practiced for over 33 years with a special emphasis in the field of workers' compensation claims. I strongly oppose HB No. 386 which attempts to transfer jurisdiction from the Director of Labor and Industrial Relations to the Insurance Commissioner on matters relating to potential fraud. The workers' compensation law is a highly specialized and complicated legislation and having an agency other than the Director of Labor address matters of potential fraud relating to workers' compensation claims is wholly unreasonable and inevitable disaster. Unless one is fully versed in nuances and complexities of workers' compensation claims, it is highly unlikely that he/she would be able to fully appreciate what constitutes fraud under the workers' compensation statute.

More importantly, HB No. 386 attempts to diminish the capacity of the already overworked staff of the Department of Labor and Industrial Relations by having positions transferred to the Department of Commerce and Consumer Affairs, especially in today's dire economy. As an attorney practicing in the field of workers' compensation, I can assure you that the Department of Labor and Industrial Relations can ill-afford to have any positions transferred to another agency. Cases are already backlogged and will not be heard in a timely manner consistent with the underlying humanitarian purpose of the workers' compensation statute.

The essence of the workers' compensation statute itself evinces a clear legislative determination that the Director of Labor and Industrial Relations should be in charge of all administrative matters related to workers' compensation law. Moreover, there is no justification articulated in the proposed bill that warrants having potential complaints for fraud heard by the Director of Commerce and Consumer Affairs other than a sinister attempt at forum shopping for more favorable decision makers. There is no legitimate reason to have complaints for potential fraud transferred to another agency.

For all of the foregoing reasons, I respectfully submit that the Committee on Labor & Public Employment summarily reject the passage of this bill out of committee. Thank you for allowing me to provide my testimony.

Very truly yours,


Dennis W. S. Chang

DWSC:ty

c: Dwight Takamine/DLIR, Director
Walter Kawamura/DCD, Administrator

DILLINGHAM TRANSPORTATION BUILDING

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Friday, Testimony in Opposition to
HB 386
RELATING TO WORKERS COMEPENSATION FRAUD

By
Al Lardizabal, Director of Government Relations
Hawaii Laborers' Union

Friday, January 28, 2011
Room 309, 9:00 a.m.
State Capitol

To the
COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Representative Karl Rhoads, Chair; Representative Kyle T. Yamashita, Vice Chair and
Members of the Committee:

On behalf of Mr. Peter Ganaban, Business Manager, the officers and members of the
Hawaii Laborers' Union, we respectfully oppose the transfer of the functions, authority
and resources under HRS 386-98, (Fraud violations and penalties), from the Department
of Labor and Industrial Relations to the Department of Commerce and Consumer Affairs.

We believe that it is premature to make any major restructuring of certain operations of
the DLIR and the DCCA through legislation at this time, until the new administration has
had ample opportunity to assess the operations of the departments especially while
critical budget reviews are being conducted. We believe that the departments should be
provided with the initial opportunity to propose any reorganization and strategic planning
in accordance with their proposed budgets and subsequent disposition by the Legislature.

Thank you for the opportunity to submit this testimony.

The Twenty-Sixth Legislature
Regular Session of 2011

LATE

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

State Capitol, Conference Room 309
Friday, January 28, 2011; 9:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 386
RELATING TO WORKERS' COMPENSATION FRAUD**

The ILWU Local 142 opposes H.B. 386, which transfers jurisdiction over workers' compensation fraud from the Department of Labor and Industrial Relations to the Insurance Fraud Investigations Unit of the Insurance Division of the Department of Commerce and Consumer Affairs.

We oppose fraud of any kind, whether perpetrated by insurance carriers, health care providers, employers, and even workers. Workers' compensation fraud drives up cost and diminishes the ability of the workers' compensation system to provide needed care and support to workers who are injured on the job.

That said, however, we do not see any logical rationale to move workers' compensation fraud to the Insurance Division. Such a move could drive up the cost of workers' compensation premiums as, we understand, all insurance carriers regulated by the Department of Commerce and Consumer Affairs are assessed fees for the cost of programs, including investigation of fraud.

From January 2006 through December 2010, only 26 cases involving fraud were brought before the Department of Labor out of more than 7,000 cases adjudicated. There is no need for a drastic change in how workers' compensation fraud is handled. This experience confirms the findings of the Closed Claims Study which showed that fraud was not a cost driver for workers' compensation.

Workers who are injured on the job have justifiable claims for compensation, yet many have not received the medical care or financial compensation commensurate with the losses they have suffered. Some have not only lost income from their current jobs, they will also lose considerable future income due to their inability to return to gainful employment. Malingerers are few and far between within the workers' compensation system. Fraud among insurance carriers, health care providers, and employers is very rarely brought up, perhaps because of the lack of sophistication and resources of the injured workers themselves.

The ILWU respectfully requests that H.B. 386 be held. Thank you for the opportunity to share our views.

Hawaii Injured Workers Alliance

LATE

715 South King Street Suite #410
Honolulu, Hawaii 96813

January 27, 2011

The Twenty-Sixth Legislature
Regular Session of 2011
Committee on Labor and Public Employment
9:00 a.m. – 12:00 p.m.
Conference Room #309
State Capitol
415 South Beretania Street

H.B. 386 relating to Worker's Compensation Fraud.

Transferring the jurisdiction of worker's compensation fraud from the department of labor and industrial relations to the insurance fraud unit of the insurance division of the department of commerce and consumer affairs.

The Hawaii Injured Workers Alliance strongly opposes this measure.

We believe the best people for the job are doing the job.

George Waialeale
Executive Director
Hawaii Injured Workers Alliance