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BUILDING INDUSTRY ASSOCIATION

THE VOICE OF THE CONSTRUCTION INDUSTRY

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**Testimony to the House Committee on Consumer Protection and Commerce  
Monday, February 10, 2014****2:45 p.m.****Capitol Room 325****SUBJECT: H.B. 1961 H.D. 1, Relating to Workers' Compensation**

Dear Chair McKelvey, Vice-Chair Kawakami, and members of the Committee:

My name is Gladys Marrone, Government Relations Director for the Building Industry Association of Hawaii (BIA-Hawaii). BIA-Hawaii is the voice of the construction industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit, professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders.

**BIA-Hawaii is strongly opposed to H.B. 1961 H.D. 1.**

H.B. 1961H.D. 1 would require that the independent medical examination (IME) and permanent impairment rating examination for workers' compensation claims be performed by physicians mutually agreed upon for employers and employees, or appointed by the Director of the Department of Labor and Industrial Relations. It would also amend the workers compensation laws of the State of Hawaii to allow the benefits of an injured employee to be suspended for any refusal to submit to an examination not just unreasonable refusals.

The current statutes have numerous safeguards in place to allow injured employees full disclosure of an employer/insurance carrier's IME report, the right to seek their own medical opinion if they disagree, and an appeal process if the parties cannot agree. A majority of IME's are conducted today under the current statutes without incident or dispute. Permanent impairment rating examinations are currently performed by mutual agreement between parties, without any need for mandate by legislation.

Both changes to the system may be at the expense of finding the best available care for injured claimants in a timely manner. Simply finding qualified physicians to conduct these reviews is time consuming and results in delays due to a shortage of such professionals. Pushing the selection of IME physician on to the DLIR will create more delays if claimants choose to gamble that they will receive a more favorable review by the government-appointed physician.

The ability for an employer to select an IME ensures there is a check and balance system for overall medical care for the injured worker because injured workers select their own treating physician. Without it, the system would be one-sided and costs for any employer, whether private or government, could quickly escalate, resulting in an inequitable, unaffordable, and unsustainable program.

If the intent of this bill is to build trust and reduce confrontation in the workers' compensation system, it will fail at both objectives. Instead, this bill will compel claimants to rely more heavily on plaintiffs' attorneys to navigate increasingly complex procedures.

We appreciate the opportunity to share with your our opposition.



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Monday, February 10, 2014

**LATE**

Committee on Consumer Protection & Commerce

RE: House Bill 1961, HD1: Relating to Workers' Compensation

Dear Chair McKelvey, Vice Chair Kawakami, and members of the Committee:

We appreciate the opportunity to testify on HB 1961, HD1, and respectfully submit the following written testimony in opposition to the bill. Times Supermarket is based on Oahu and operates 26 stores with locations in Maui, Kauai and Oahu.

HB 1961, HD1 requires independent medical examinations and permanent impairment rating examinations for workers' compensation claims to be performed by physicians mutually agreed upon by employers and employees. This measure also allows for an out-of-state physician under certain conditions and repeals on June 30, 2018.

HB 1961, HD1 has the potential to seriously harm businesses and consumers alike. Thus, we ask that you hold this bill for further discussion.

Thank you for the opportunity to testify.

Respectfully,

Bob Gutierrez  
Director of Government Affairs  
Times Supermarket

**LATE**

DEPARTMENT OF HUMAN RESOURCES  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



CAROLEE C. KUBO  
DIRECTOR  
NOEL T. ONO  
ASSISTANT DIRECTOR

February 10, 2014

The Honorable Angus L.K. McKelvey, Chair  
and Members of the Committee  
on Consumer Protection and Commerce  
House of Representatives  
State Capitol, Room 406  
415 South Beretania St.  
Honolulu, Hawaii 96813

Dear Chair McKelvey and Members of the Committee:

**SUBJECT: House Bill 1961, HD1, Relating to Workers' Compensation**

The City and County of Honolulu **opposes** House Bill No. 1961, HD1, which would require independent medical examinations and permanent impairment rating examinations to be performed by physicians mutually agreed upon by employers and employees; and allow for the use of out-of-state physicians under certain conditions. Although the vast majority of workers' compensation claims proceed without controversy or disagreement, there are claims where this cannot be avoided.

The Hawaii Workers' Compensation Law permits a claimant to secure medical treatment from any physician practicing in the State of Hawaii. Occasionally, questions arise concerning diagnosis, treatment, or disability status. While employers have no say in an employee's choice of physician, they currently have the right to obtain an independent opinion from a physician or specialist regarding the progress of a claim. HB 1961, HD1 greatly limits an employer's ability to obtain such independent examinations by mandating that only physicians agreed upon by claimants be used for employer requested medical examinations, or, if both parties cannot reach a consensus, mutually creating a list of five physicians before alternately striking names to arrive at a final physician. This alternative process will most certainly delay the final disposition of the claim with respect to compensability or future medical treatment.

Honorable Angus L.K. McKelvey, Chair  
and Members of the Committee  
on Consumer Protection and Commerce  
February 10, 2014  
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Most employers and insurance carriers have no problem using mutually agreed upon physicians for permanent impairment ratings, but to require mutual agreement for an employer to conduct an independent medical evaluation takes away from the very independence and purpose of the evaluation. The concept of an independent medical examination is incongruous with the words upon mutual agreement as proposed in this bill.

The Hawaii Workers' Compensation Law weighs heavily in favor of the claimant. Under the presumption clause, any claim filed is deemed compensable unless the employer presents substantial evidence to the contrary. During the hearing process at the Disability Compensation Division (DCD) and the Labor and Industrial Relations Appeals Board (LAB), issues of doubt are often resolved in favor of the claimant. The employer currently has the right to select an independent medical examiner to review a claimant's medical progress. To change this as proposed is unfair and inequitable to employers. The DCD and LAB already provide the necessary checks and balances to ensure that employees are treated fairly, including limiting ordered medical examinations to one per case, while allowing employers to exercise their rights to review the progress of claims using independent medical examiners.

Finally, the bill allows only the attending physician to make the finding of medical stability. In most instances, this is self-serving and will undoubtedly prolong treatment, delay an employee's return to work and dramatically increase the cost of a claim.

Based on the foregoing, we respectfully urge your committee to file House Bill No. 1961, HB1.

Sincerely,



Carolee C. Kubo  
Director

**LATE**



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
AFSCME Local 152, AFL-CIO

**RANDY PERREIRA**, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

**The Twenty-Seventh Legislature, State of Hawaii  
House of Representatives  
Committee on Consumer Protection & Commerce**

**Testimony by  
Hawaii Government Employees Association  
February 10, 2014**

**H.B. 1961, H.D. 1 – RELATING TO  
WORKERS' COMPENSATION**

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 1961, which requires independent medical examinations and permanent impairment rating examinations for workers' compensation claims to be performed by mutually agreed upon physicians. We believe that employees who are injured on the job deserve to be evaluated by an impartial physician selected with their input and agreement. As drafted, the bill provides a reasonable alternative to selection of an impartial physician in the event no mutual agreement is reached.

Thank you for the opportunity to testify in support of H.B. 1961, H.D. 1.

Respectfully submitted,

**Randy Perreira  
Executive Director**

**LATE**



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

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February 10, 2014

To: The Honorable Angus L.K. McKelvey, Chair,  
The Honorable Derek S.K. Kawakami, Vice Chair, and  
Members of the House Committee on Consumer Protection & Commerce

Date: Monday, February 10, 2014  
Time: 2:45 p.m.  
Place: Conference Room 325, State Capitol

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

**Re: H.B. No. 1961 HD1 Relating to Workers' Compensation**

**I. OVERVIEW OF PROPOSED LEGISLATION**

HB1961 HD1 proposes to repeal Section 386-79, Hawaii Revised Statutes (HRS), relating to medical examinations by employer's physician, and to replace it with new language that proposes:

- Independent Medical Examinations (IMEs) and permanent impairment rating examinations be performed by physicians selected and mutually agreed upon by the employer and employee;
- If no agreement as to physician can be reached, the parties shall jointly prepare a list of 5 physicians and by elimination, choose one physician to perform the IME;
- The selected physician shall be currently licensed pursuant to chapter 453 or 442 and shall conduct the examination within 45 calendar days or as soon as practicably possible after the selection;
- The employer shall pay for the IME;
- The use of an out-of-state physician is allowed under certain circumstances and;

- Require notice to the employee that provides employee's rights, obligations, and process of the examination under the new section.
- The measure shall be repealed on June 30, 2018 and Section 386-79, HRS, shall be reenacted in the form in which it read on the day before the effective date of this measure.

The Department supports the intent of this measure that will bring a greater assurance of impartiality in the IME and permanent impairment rating processes and, importantly, has the potential to reduce the number of Workers' Compensation medical disputes. DLIR notes that as currently drafted the process might be challenging for pro se clients, as they may not have access to or lists of doctors that perform IMEs. Moreover, the department believes further deliberation on the design and process of the selection process needs to occur, but does not have any suggestion at this time.

The intent of this measure is to reduce the adversarial nature of the increasingly contentious workers' compensation system and reduce the bias of either party's physician through a mutual selection of a physician to perform the IME. Currently, often both the employee and the employer chose doctors, which are highly partisan to their side, which serves to exacerbate the adversarial nature of the workers' compensation system.

The workers' compensation system was designed to be more informal and outside the normal legal process, but unfortunately it has grown more like the formal, adversarial legal process. The proposal is an attempt to return the workers' compensation to be more like its original design.

## II. CURRENT LAW

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

## III. COMMENTS ON THE HOUSE BILL

1. Reduction in number of disputes. Decisions on issues of compensability and permanent disability rely primarily on the doctors' reports that are submitted by the parties. In contested cases, the parties' primary concern is to have doctors' reports that support their position and they would therefore seek IME doctors who will likely support their positions.

Employers or Insurance Companies, however, have an economic advantage

over claimants, so creating a mechanism that would limit this dynamic of “shopping for medical experts” could possibly reduce the number of disputes, especially for cases related to the issues of compensability and permanent disability.

Reducing the number of disputes will assist the Disability Compensation Division that is currently backlogged in scheduling cases for hearings where disputes between the parties occur. Cases involving compensability could take about 6 months to schedule a hearing from the time the request is made, while cases with less compelling issues such as permanent disability could take 4 to 5 months for a hearing to be scheduled.

2. Fair and Impartial. Where there are disagreements about medical stability, the Department believes the mechanism set forth in the measure will provide a fairer and more impartial method of dispute resolution as well as reduce the number of disputes.
3. Out-of-State claimants. The measure also provides for IMEs, where medical treatment is disputed, for claimants living out-of-state. The measure allows for physicians who reside outside the State of Hawaii and who are licensed in another state as a physician equivalent to a license under chapter 453 or 442 to perform IMEs and rating examinations for out-of-state claimants. Currently, the employer is responsible for locating these out-of-state physicians and for scheduling the examinations in the state where the claimants currently reside. The employer will continue to be responsible for arranging and paying for travel arrangements for claimants who must return to Hawaii for an IME.
4. Medical records to IME physician. The Department recommends the measure stipulate that the employer shall send the claimant's medical records to the IME physician as is the current practice.
5. The Department recommends that the words “relevant medical” specialty be added in Section 1, subsection (c), Pg. 3, Line 17, to read: “...a physician equivalent to a license under chapter 453 or 442, may be selected if there is no State of Hawaii-licensed physician available in a relevant medical specialty to conduct the examination.
6. The Department also points out that this proposal only allows physicians currently licensed pursuant to chapters 453 (medicine) and 442 (chiropractics) to perform IMEs. It does not apply to dentists (chapter 448) and psychologists (chapter 465), who are also considered “physicians” under the workers’ compensation law.



7. The Department believes the new subsection (g) addresses the concern about "pro se" employees identified during the Labor Committee deliberation of the proposal.