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March 30, 2016

To: The Honorable Jill N. Tokuda, Chair,
The Honorable Donovan M. Dela Cruz, Vice Chair, and
Members of the Senate Committee on Ways & Means

Date: Wednesday, March 30, 2016
Time: 9:15 a.m.
Place: Conference Room 211, State Capitol

From: Linda Chu Takayama, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 2363 H.D. 1 S.D. 1 Relating to Labor

I. OVERVIEW OF PROPOSED LEGISLATION

HB 2363 HD1SD1 proposes to amend sections 386-31, 386-95, 386-96, 386-123, and 386-129, Hawaii Revised Statutes (HRS), of the workers' compensation (WC) law by increasing the penalties for noncompliance with the WC law, and for late or non-filing of required reports. The proposal also allows electronic filing of employer's and physician's reports.

HB 2363 HD1SD1 also proposes to amend sections 392-5 and 392-47, HRS, of the temporary disability insurance (TDI) law by adding additional exclusions and increasing the penalties for noncompliance with the TDI law.

Thank you for hearing this Administration proposal. The department strongly supports this measure and notes that the current WC penalties were last amended twenty-eight (28) years ago in 1988, while the TDI penalties have not changed since they were first established forty-seven (47) years ago in 1969.

II. CURRENT LAW

Section 386-31(b), HRS, provides requirements for payment of WC temporary total disability (TTD) benefits and penalties for noncompliance when an injured

employee is temporarily unable to work due to their work injury.

Section 386-95, HRS, provides employer's requirements for filing reports for the work injury.

Section 386-96, HRS, provides requirements for physicians, surgeons, and hospitals to file their reports for treatment of the industrial injury and penalties for noncompliance.

Section 386-123, HRS, provides penalties for noncompliance in securing coverage for employees with the WC law.

Section 386-129, HRS, provides penalties against employers for deducting any of the WC premium cost from the wages of an employee.

Section 392-5, HRS, identifies services excluded under the TDI law.

Section 392-47, HRS, provides penalties for noncompliance with the TDI law.

III. COMMENTS ON THE HOUSE BILL

The department strongly supports this proposal for the following reasons.

The proposed amendments to the TDI law in section 392-5, HRS, will exclude certain employers from providing TDI coverage for themselves if they perform services in certain types of entities (i.e. their own corporation, limited liability company (LLC), limited liability partnership (LLP), partnership, or sole proprietorship). These exclusions mirror the ones in the WC law and will facilitate the enforcement of the TDI compliance statutes.

The proposed amendments to the WC law in sections 386-95 and 386-96, HRS, will allow employers and physicians to file reports electronically, and will expedite the transmission and receipt of important claims and medical information. Faster receipt of reports and documents will facilitate the resolution of disputed WC cases and provide medical and indemnity benefits more quickly to the injured employee.

The proposed increase in WC and TDI penalties will provide a stronger incentive for employers and stakeholders in the WC and TDI industry to comply with their respective laws. The current WC penalties were last amended twenty-eight (28) years ago in 1988, while the TDI penalties have not changed since they were first established forty-seven (47) years ago in 1969.

The department supports the increase to the following workers' compensation penalties:

- Section 386-31(b), HRS, (Failure of the employer to comply with WC TTD

payments section) will increase from not more than \$2,500.00 to not more than \$5,000.00.

- Section 386-96(b)(2), HRS, (Failure of the physician to file a timely final report) will increase from \$250.00 to \$500.00.
- Section 386-96(d), HRS, (Failure of the employer to furnish medical reports) will increase from \$1,000.00 to \$5,000.00.
- Section 386-123, HRS, (Failure of the employer to secure WC coverage) will increase from a minimum penalty of not less than \$250.00 to not less than \$500.00. Also, instead of charging \$10.00 per employee per day, the department recommends an increase to \$100.00 per employee per day for each day of non-coverage.
- Section 386-129, HRS, (Employer charging the employee for WC premium costs) the maximum cap will increase from \$2,500.00 to \$5,000.00.

The department supports the increase to the minimum penalty for noncompliance with the TDI law from \$25.00 to \$500.00 and the increase to the penalty from \$1.00 per employee per day to \$100.00 per employee per day for each day of non-coverage.

The department believes the increase in penalties will facilitate compliance with the TDI and WC laws.



**Testimony to the Senate Committee on Ways & Means
Wednesday, March 30, 2016 at 9:15 A.M.
Conference Room 211, State Capitol**

RE: HOUSE BILL 2363 HD1 SD1 RELATING TO LABOR

Chair Tokuda, Vice Chair Dela Cruz, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports the intent but has some concerns for** HB 2363 HD1 SD1, which excludes employers under certain circumstances from providing Temporary Disability Insurance (TDI) coverage for themselves if they perform services for their own corporation, limited liability company (LLC), limited liability partnership (LLP), partnership, or sole proprietorship. Allows the Director of Labor and Industrial Relations to receive electronic reports of injuries and other workers' compensation required reports. Increases the penalties for not having TDI coverage, for failure to make correct or timely benefit payments, for terminating such benefits, for failure to file medical reports, for employer's failure to provide copies of requested medical reports, for not having Workers' Compensation coverage, and for the deduction of premium payment from employee wages.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 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 members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber supports the main part of the bill providing this exemption. At the same time, while the penalties have remained unchanged for a long length of time, the Chamber expresses concerns on the penalty increases for an employer's failure to file or provide copies of medical reports. These proposed increases from a fine of \$1,000 to \$5,000 might be too excessive for such a violation. We asked that these fine increases be kept at present levels.

Thank you for the opportunity to testify.

Hawai'i Construction Alliance

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March 28, 2016

The Honorable Jill N. Tokuda, Chair
The Honorable Donovan M. Dela Cruz, Vice Chair
and members
Committee on Ways and Means
Hawai'i State Senate
Honolulu, Hawai'i 96813

RE: Strong Support for HB2363 HD1 SD1, Relating to Labor, and request for amended effective date

Dear Chair Tokuda, Vice Chair Dela Cruz, and members:

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; the Laborers' International Union of North America, Local 368; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the basic crafts of Hawai'i's construction industry.

We **strongly support HB2363 HD1 SD1, relating to labor**, insofar as the bill proposes to increase penalties for:

- Failure to make correct or timely temporary total disability benefit payments or for terminating such benefits (Section 1);
- A physician's failure to file medical reports or for an employer's failure to provide copies of requested medical reports (Section 3);
- Not having TDI coverage (Section 4);
- Deducting premium payments from employee wages (Section 5); and
- Not having Workers' Compensation coverage (Section 7).

We also strongly support the bill insofar as it would allow for electronic reporting of injuries and other workers' compensation reports (Sections 2 and 3), as we believe this will facilitate more timely and accurate reporting by physicians and employers regarding workers' compensation claims.

We do not offer comments at this time pertaining to Section 6 of the bill, which would redefine the term "employment" in HRS §392-3.

It is far too common for employers in Hawai'i — particularly in the construction industry — to not provide their employees with temporary disability insurance and workers' compensation coverage. Often, this is due to employers fraudulently misclassifying workers as "independent contractors," or willfully neglecting to provide such coverage in an attempt to cut costs and retain profits. This sort of behavior is unacceptable and actively harms Hawai'i workers and families. The extent of this problem was made clear to the general public through a "regulatory action" undertaken by DLIR at a high-profile construction site late last year.

We firmly believe that the existing fine structure is outdated and is not an effective deterrent in today's market. The fines for not providing temporary disability insurance coverage were last updated forty-five years ago (Act 109, 1971), and the fines for not providing workers' compensation coverage was last updated twenty-eight years ago (Act 37, 1988). If the fine structure is not modified, unscrupulous behavior on the part of employers will continue to proliferate, not only in the construction industry, but throughout other sectors of the economy as well.

We note that the current draft has an effective date of July 1, 2112. **We respectfully request that your committee consider correcting this date so that the bill takes effect upon approval or on July 1, 2016.**

In closing, we strongly support HB2363 HD1 SD1, and urge your committee to approve of the bill with a clean effective date.

Mahalo,

A handwritten signature in black ink that reads "Tyler Dos Santos-Tam". The signature is written in a cursive, flowing style.

Tyler Dos Santos-Tam
Executive Director
Hawai'i Construction Alliance
execdir@hawaiiiconstructionalliance.org