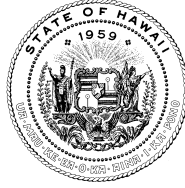


DAVID Y. IGE  
GOVERNOR

SHAN S. TSUTSUI  
LIEUTENANT GOVERNOR



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DEPUTY DIRECTOR

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

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February 16, 2016

To: The Honorable Angus L.K. McKelvey, Chair,  
The Honorable Justin H. Woodson, Vice Chair, and  
Members of the House Committee on Consumer Protection & Commerce

Date: Wednesday, February 17, 2016  
Time: 2:00 p.m.  
Place: Conference Room 325, State Capitol

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

**Re: H.B. No. 2363 Relating to Labor**

**I. OVERVIEW OF PROPOSED LEGISLATION**

HB 2363 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 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 proposes to increase 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 proposes to increase the minimum penalty for noncompliance with the TDI law from \$25.00 to \$500.00 and increase 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.



## HAWAII RESTAURANT ASSOCIATION

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Date: February 14, 2016

To: Chair McKelvey, Vice Chair Woodson, and Members of the Committee on Consumer Protection & Commerce

From: Victor Lim, Legislative Chair, Hawaii Restaurant Association

Subj: HB 2363 Relating to Labor

The Hawaii Restaurant Association Supports HB 2363 that excludes employers that have ownership in their businesses to be exempt from TDI coverage and other labor requirements.

HRA has been servicing the restaurant industry here in Hawaii for 69 years representing over 3,300 restaurants making up mostly of small businesses. We are in most cases the first employer for people entering the work force and at the same time provides tremendous opportunities for individual growth. 9 in 10 restaurants managers start at entry level, and 8 in 10 restaurant owners also start at entry level.

Thank you for giving us the opportunity to testify on this.



# Hawai'i Construction Alliance

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February 15, 2016

The Honorable Angus L.K. McKelvey, Chair  
The Honorable Justin H. Woodson, Vice Chair  
and members  
House Committee on Consumer Protection and Commerce  
Hawai'i State Legislature  
Honolulu, Hawai'i 96813

## **RE: Strong Support for HB2363, Relating to Labor**

Dear Chair McKelvey, Vice Chair Woodson, 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, 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.

Therefore, we strongly urge your committee to pass HB2363, relating to labor.

Mahalo,

A handwritten signature in black ink, reading "Tyler Dos Santos-Tam". The signature is fluid and cursive, with the first name "Tyler" being the most prominent.

Tyler Dos Santos-Tam  
Executive Director  
Hawai‘i Construction Alliance  
[execdir@hawaiiiconstructionalliance.org](mailto:execdir@hawaiiiconstructionalliance.org)

The Twenty-Eighth Legislature  
Regular Session of 2016

HOUSE OF REPRESENTATIVES  
Committee on Consumer Protection & Commerce  
Rep. Angus L.K. McKelvey, Chair  
Rep. Justin H. Woodson, Vice Chair  
State Capitol, Conference Room 325  
Wednesday, February 17, 2016; 2:00 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 2363  
RELATING TO LABOR**

The ILWU Local 142 **supports** H.B. 2363, which excludes employers from providing TDI coverage for themselves if they perform services for their own corporation, limited liability company, limited liability partnership, partnership or sole proprietorship. Also allows the Director to receive electronic reports of injuries and other required workers' compensation reports and increases 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 deduction of premium payments from employee wages.

Increasing penalties for employers' failure to provide timely payments, reports, workers' compensation coverage and the like is appropriate given the fact that these penalties have remained the same for almost 30 years, despite increases in Hawaii's cost of living. Without adequate penalties, employers have acted with impunity while workers have suffered.

Allowing reports to be filed electronically just makes sense in our increasingly technological world. It is amazing that this was not allowed sooner.

Our only concern about H.B. 2363 is the specific exclusion of employers from temporary disability insurance coverage as a blanket exclusion rather than allowing individual employers to opt in or opt out as they choose.

The ILWU supports H.B. 2363 with the concern noted. Thank you for allowing us to share our views and concerns.



# DENNIS W. S. CHANG

*Attorney at Law, A Limited Liability Law Corporation*

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

To: The Honorable Angus L.K. McKelvey, Chair,  
The Honorable Justin H. Woodson, Vice Chair, and  
Members of the Committee On Consumer Protection & Commerce

From: Dennis W. S. Chang, Attorney-at-law

Date: Tuesday, February 17, 2016

Time: 2:00 p.m.

Place: Conference Room 325  
State Capitol

## **Re: S.B. No. 2363 Relating to Labor**

### I. Introduction.

As a labor attorney practicing for nearly four decades with a heavy emphasis in the processing of workers' compensation claims (WC), I wholeheartedly support HB No. 2363. The passage of the bill will indisputably enhance better entitlement programs for ill or injured workers by increasing the monetary penalties for the noncompliance with the WC and Temporary Disability Insurance (TDI) statutes. Employers or insurance carriers have made a calculated decision that ignoring the vital requirements for the statutes, the WC Law in particular, is cheaper as a way of doing business while workers have needlessly suffered by falling into economic ruin.

Allowance for electronic transmission should have been allowed long ago. It is truly amazing that we can finally have a statute that is currently consistent with technological developments used by most people in the business world.

### II. Discussion.

Increasing the amount of the penalties has been long overdue. Hopefully, the increase in the monetary penalties, in addition to other penalties prescribed under other parts of the statutes, will force employers or insurance carriers to fulfill their statutory duties. Workers have gone months and months without any wage loss replacement benefits, and their lives and loved ones have been destroyed. Yet, under "Section one (1)" the current monetary fine is merely \$2,500.00. Increasing the amount to \$5,000.00 is a step in the right direction, but I submit that amending the amount to \$10,000.00 will serve as a better deterrent for the blatant failure to pay temporary total disability benefits (TTD).

Other monetary fines for the failure to file medical reports, the failure to provide workers with copies of requested medical records, to be a delinquent employer, and to unlawfully deduct premium payments from the wages of workers are all appropriate. Record keeping of all injuries is a critical component of the WC process. That alone, if stringently enforced, would reduce a substantial amount of litigation where employers or insurance carriers maintain that there was never a work accident on the job when workers claim injuries after the original date of accident. Again, I would submit that the amount should be amended to \$10,000.00, which would serve as a better deterrent to maintain and report all work accidents.

*DILLINGHAM TRANSPORTATION BUILDING*

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

I also submit that electronic filing should be extended to the treatment plan process in the WC Law with the following language as a suggestion:

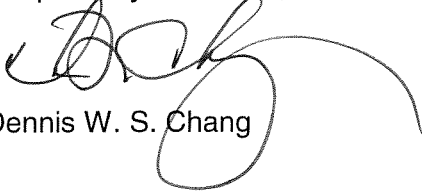
**Notwithstanding any provision contained in Chapter 386, treatment plans shall be permitted to be filed by electronic transmission.**

I ask that the foregoing language be included because employers and insurance carriers are inconsistently allowing treatment plans to be submitted by electronic transmission, facsimile, or by mail only. Medical providers are lured into believing that the submission of treatment plans by electronic transmission and facsimile are acceptable. Yet, when employers or insurance carriers disagree with a proposed medical treatment they will rely on the submission by electronic transmission or facsimile as a violation under the statute. This is certainly unfair to medical providers, who are misled into believing that electronic transmissions and facsimile are allowed, and to their chagrin for certain medical treatment, they are deemed in violation because it was not mailed as required by the statute. This must be addressed because the Department of Labor is now recognizing that we are in the new and ever changing technological world. There must be a more expedient process because one of the core benefits of the WC Law is providing prompt and reasonable medical care to enable a rapid recovery to return injured workers to work.

As for the TDI Law there is no reason why small employers should be disallowed from participating in any TDI program. They too are workers.

The foregoing discussion makes my position clear. I submit a few minor changes for a better bill. Fines should be increased even more and wholesale electronic transmission and facsimile should be allowed. The bottom line is I fully support the passage of HB No. 2363 with amendments .

Respectfully submitted,



Dennis W. S. Chang