

SB859, SD1

RELATING TO WORKERS
COMPENSATION

LAB, FIN

SB859 SD1



Submit Testimony

Measure Title: RELATING TO WORKERS' COMPENSATION.
Report Title: Workers' Compensation; Medical Examination; Chaperone; Recording Devices
Description: Allows an employee to have a chaperone present and use a recording device, with the examiner's approval, during the medical examination relating to a work injury under workers' compensation. Takes effect 1/7/2059. (SD1)
Companion: [HB978](#)
Package: None
Current Referral: LAB, FIN
Introducer(s): KEITH-AGARAN, K. RHOADS

Sort by Date		Status Text
1/25/2017	S	Introduced.
1/25/2017	S	Passed First Reading.
1/25/2017	S	Referred to CPH, JDL.
1/25/2017	S	Re-Referred to JDL.
2/17/2017	S	The committee(s) on JDL has scheduled a public hearing on 02-24-17 9:00AM in conference room 016.
2/24/2017	S	The committee(s) on JDL recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in JDL were as follows: 3 Aye(s): Senator(s) Keith-Agaran, K. Rhoads; Aye(s) with reservations: Senator(s) L. Thielen ; 0 No(es): none; and 2 Excused: Senator(s) Gabbard, Kim.
3/2/2017	S	Reported from JDL (Stand. Com. Rep. No. 596) with recommendation of passage on Second Reading, as amended (SD 1) and placement on the calendar for Third Reading.
3/2/2017	S	Report adopted; Passed Second Reading, as amended (SD 1).
3/2/2017	S	48 Hrs. Notice 03-07-17.
3/7/2017	S	Passed Third Reading, as amended (SD 1). Ayes, 25; Aye(s) with reservations: Senator(s) L. Thielen. Noes, 0 (none). Excused, 0 (none). Transmitted to House.
3/7/2017	H	Received from Senate (Sen. Com. No. 279) in amended form (SD 1).
3/9/2017	H	Pass First Reading
3/9/2017	H	Referred to LAB, FIN, referral sheet 27
3/10/2017	H	Bill scheduled to be heard by LAB on Tuesday, 03-14-17 9:00AM in House conference room 309.

A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 386-79, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "**§386-79 Medical examination by employer's physician.** (a)
4 After an injury and during the period of disability, the
5 employee, whenever ordered by the director of labor and
6 industrial relations, shall submit to examination, at reasonable
7 times and places, by a duly qualified physician or surgeon
8 designated and paid by the employer. The employee shall have
9 the right to have a physician ~~[or]~~, surgeon, or chaperone
10 designated and paid by the employee present at the examination,
11 which right, however, shall not be construed to deny to the
12 employer's physician the right to visit the injured employee at
13 all reasonable times and under all reasonable conditions during
14 total disability. The employee shall also have the right to
15 record such examination by a recording device designated and
16 paid for by the employee; provided that the examining physician
17 or surgeon approves of the recording.



1 If an employee refuses to submit to, or in any way
2 obstructs such examination, the employee's right to claim
3 compensation for the work injury shall be suspended until the
4 refusal or obstruction ceases and no compensation shall be
5 payable for the period during which the refusal or obstruction
6 continues.

7 (b) In cases where the employer is dissatisfied with the
8 progress of the case or where major and elective surgery, or
9 either, is contemplated, the employer may appoint a physician or
10 surgeon of the employer's choice who shall examine the injured
11 employee and make a report to the employer. If the employer
12 remains dissatisfied, this report may be forwarded to the
13 director.

14 Employer requested examinations under this section shall
15 not exceed more than one per case unless good and valid reasons
16 exist with regard to the medical progress of the employee's
17 treatment. The cost of conducting the ordered medical
18 examination shall be limited to the complex consultation charges
19 governed by the medical fee schedule established pursuant to
20 section 386-21(c)."



1 SECTION 2. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 3. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect on January 7, 2059.

7



Report Title:

Workers' Compensation; Medical Examination; Chaperone; Recording Devices

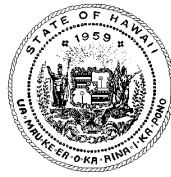
Description:

Allows an employee to have a chaperone present and use a recording device, with the examiner's approval, during the medical examination relating to a work injury under workers' compensation. Takes effect 1/7/2059. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



DAVID Y. IGE
GOVERNOR



JAMES K. NISHIMOTO
DIRECTOR

RYKER WADA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

March 13, 2017

**TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT**

For Hearing on Tuesday, March 14, 2017
9:00 a.m., Conference Room 309

BY

JAMES K. NISHIMOTO
DIRECTOR

**Senate Bill No. 859, S.D. 1
Relating to Workers' Compensation**

(WRITTEN TESTIMONY ONLY)

TO CHAIRPERSON JOHANSON, VICE CHAIR HOLT, AND MEMBERS OF THE
COMMITTEE:

Thank you for the opportunity to provide **comments** on S.B. 859, S.D. 1.

The purpose of S.B. 859, S.D. 1, is to allow an employee to have a chaperone present and use a recording device, with the examiner's approval, during the medical examination relating to a work injury under workers' compensation.

The Department of Human Resources Development ("DHRD") has a fiduciary duty to administer the State's self-insured workers' compensation program and its expenditure of public funds.

First, many, many bills and much testimony has been submitted to this committee in sessions past to change the current law pertaining to independent medical examinations ("IMEs") due to its alleged failings. The matter has also been debated at length in the Workers' Compensation Working Group convened by House Concurrent Resolution 168 (2015) for the purpose of streamlining the WC process including the

employer-requested medical examination, under chapter 386. From the employer's perspective, the IME remains one of the few ways it can defend against a claim that did not arise out of the course and scope of employment or against medical treatment that is not related to the work injury. This is particularly true in light of the statutory presumption in Section 386-78, HRS, that a claim is for a covered work injury, and recent Hawaii Supreme Court decisions such as Pulawa v. Oahu Construction Co., Ltd., and Seabright Insurance Company, SCWC-11-0001019 (Hawai'i November 4, 2015) which liberalized the standard for medical treatment from "reasonable and necessary" to "reasonably needed" and allows claimants to "receive[] the opportunity for the greatest possible medical rehabilitation."

Second, in lieu of making any substantive changes to the IME provision at this time, we respectfully request consideration be given to deferring this measure pending completion of the working group report and the workers' compensation closed claims study mandated by Act 188 (SLH 2016), wherein the legislature found that "a closed claims study is warranted to objectively review whether specific statutory changes are necessary" to the workers' compensation law. Upon delivery of the respective reports to the legislature, the empirical findings and specific recommendations of the working group and closed claims study can inform any legislative initiatives on workers' compensation, including IMEs.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA
DIRECTOR

LEONARD HOSHIJO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.labor.hawaii.gov
Phone: (808) 586-8844 / Fax: (808) 586-9099
Email: dllr.director@hawaii.gov

March 14, 2017

To: The Honorable Aaron Ling Johanson, Chair,
The Honorable Daniel Holt, Vice Chair, and
Members of the House Committee on Labor & Public Employment

Date: Tuesday, March 14, 2017
Time: 9:00 a.m.
Place: Conference Room 309, State Capitol

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

Re: S.B. No. 859 SD1 Relating to Workers' Compensation

I. OVERVIEW OF PROPOSED LEGISLATION

This proposal amends section 386-79, Hawaii Revised Statutes (HRS), which relates to examinations ordered by the DLIR Director, by proposing that the employee has the right to have a chaperone designated and paid by the employee present at the examination. The employee, with consent of the employer's physician or surgeon, shall have the right to record the examination with a recording device paid for by the employee.

DLIR supports the intent of the measure to allow for the attendance of chaperones in an Independent Medical Examination (IME), which has the potential to increase the overall fairness of the IME process. However, we offer comments regarding the recording of the IME.

II. CURRENT LAW

Section 386-79, HRS, allows the employee to have a physician or surgeon designated and paid by the employee present during the examination. It does not identify that a chaperone may be present and does not specify the employee's right to record the examination.

III. COMMENTS ON THE SENATE BILL

DLIR supports the intent of the measure to allow for the attendance of chaperones in an Independent Medical Examination (IME), which has the potential to increase the overall fairness of the IME process. However, we offer comments regarding the recording of the IME.

There may be some hesitation on the part of a physician or surgeon conducting the examination to have a “chaperone” present and/or to have the entire examination recorded. With the exception of an interpreter or for other specific reasons, some physicians may already have a policy of restricting the examination to solely the injured employee. This measure may reduce the number of physicians or surgeons willing to do these types of examination.

The proposal should identify what specific recording devices shall be allowed and specify that if copies of the recorded examination are requested by the employer, director, or physician or surgeon who performed the IME, who will be responsible for the costs of the recording, along with a specified timeframe to produce the copies.

The Department is also concerned with the potential altering of the recording and with ensuring that the recordings are subject to privacy laws.

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU
650 SOUTH KING STREET, 10TH FLOOR • HONOLULU, HAWAII 96813
TELEPHONE: (808) 768-8500 • FAX: (808) 768-5563 • INTERNET: www.honolulu.gov/hr

KIRK CALDWELL
MAYOR



CAROLEE C. KUBO
DIRECTOR

NOEL T. ONO
ASSISTANT DIRECTOR

March 14, 2017

The Honorable Aaron Ling Johanson, Chair
The Honorable Daniel Holt, Vice Chair
and Members of the Committee
on Labor & Public Employment
The House of Representatives
State Capitol, Room 309
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Johanson, Vice Chair Holt, and Members of the Committee:

**SUBJECT: Senate Bill No. 859, SD1
Relating to Workers' Compensation**

S.B. 859, SD1 seeks to amend Hawaii Revised Statutes ("HRS") Section 386-79 to allow a chaperone to be present during an ordered medical examination and provide the employee with the right to record the examination, provided the examining physician approves of the recording. The City and County of Honolulu offers the following comments regarding the measure.

An independent medical examination conducted by a physician of the employer's choice is the primary tool that is available to the employer to help overcome the statutory presumption that a claim is for a covered work injury, to show that ongoing medical treatment may be unreasonable or unnecessary, and to determine whether a requested medical treatment is reasonable and related to the work injury. Amending HRS Section 386-79 in the manner suggested by S.B. 859, SD1 could serve to reduce the number of physicians and surgeons willing to perform an independent medical examination, thereby limiting the employer's fundamental right to evaluate whether the employer is liable for the claim and/or proffered medical treatment.

In light of the above, the City and County of Honolulu asks that the committee consider deferring S.B. 859, SD1 pending completion of the workers' compensation closed claims study mandated by Act 188 (SLH 2016). The legislature would then be able to review the study's empirical findings and specific recommendations to objectively determine whether specific statutory changes, such as those set forth in the measure, are necessary to the workers' compensation law.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Carolee C. Kubo".

Carolee C. Kubo
Director



HAWAII MEDICAL ASSOCIATION

1360 S. Beretania Street, Suite 200, Honolulu, Hawaii 96814
Phone (808) 536-7702 Fax (808) 528-2376
www.hawaiimedicalassociation.org

FROM:
HAWAII MEDICAL ASSOCIATION
Dr. Christopher Flanders, Executive Director
Lauren Zirbel, Community and Government Relations

To: COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Chair Rep. Aaron Ling Johanson and
Vice Chari Rep. Daniel Holt

Re: SB 859 SD1 – IME Chaperone and /or Recording device allowed – STRONG SUPPORT

DATE: Tuesday, March 14, 2017
TIME: 9:00 AM
PLACE: Conference Room 309

Please accept my testimony in STRONG SUPPORT of SB 859.

Currently injured workers' are not allowed to have a chaperone or a recording device with them during an IME examine. Although this exam can be detrimental for the patient, the examiner has no responsibility or liability if their exam is not accurate. This exam determines if the patient receives continued treatment or not or approves a treatment plan or not. By having a witness or recording, both the patient and the examiner are protected by what was actually said in the examination. This senate draft (SD) of the bill got watered down, by saying IF THE EXAMINER GIVES PERMISSION. This needs to be removed, as the reason for the bill is to have a law in place that forces the examiner to allow a recording or chaperone. Currently examiners do not allow recordings or witness, so why would they now, if the bill doesn't make them?

HMA OFFICERS

President – Bernard Robinson, MD President-Elect – William Wong, Jr., MD Secretary – Thomas Kosasa, MD
Immediate Past President – Scott McCaffrey, MD Treasurer – Michael Champion, MD
Executive Director – Christopher Flanders, DO

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 13, 2017 5:37 AM
To: LABtestimony
Cc: moore4640@hawaiiantel.net
Subject: *Submitted testimony for SB859 on Mar 14, 2017 09:00AM*

SB859

Submitted on: 3/13/2017

Testimony for LAB on Mar 14, 2017 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Douglas Moore	Hawaii Injured Workers Association	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

The Twenty-Ninth Legislature
Regular Session of 2017

THE HOUSE OF REPRESENTATIVES
Committee on Labor and Public Employment
Representative Aaron Ling Johanson, Chair
Representative Daniel Holt, Vice Chair
State Capitol, Conference Room 309
Tuesday, March 13, 2017; 9:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 859 SD 1
RELATING TO WORKERS COMPENSATION**

The ILWU Local 142 supports S.B. 859 SD 1, which allows an employee to have a chaperone present and to use a recording device during the medical examination, with the approval of the examining doctor, under the workers' compensation system.

This measure provides greater fairness and more integrity to the independent medical examination process. Providing the opportunity for the injured worker to be accompanied by a "chaperone" while being examined by a physician or surgeon designated and paid for by the employer, allows the worker to feel more comfortable, in what would otherwise be an unfamiliar and in many instances an intimidating experience.

Although current law allows the injured worker the right to have a physician or surgeon of his or her designation be present at the independent medical examination, that physician or surgeon would have to be paid by the injured worker. In most instances an injured worker would not have the financial means to be able to pay for that kind of medical representation.

S.B. 859 SD 1 also provides the injured worker the opportunity to record the independent medical examination, with a recording device provided by the worker, if the examining doctor does not object. This would result in a better balance, as the doctor would not be forced to allow the recordation, but the possibility of providing consent is available. This would be a further option that currently is not a part of section 386-79 HRS, and if the doctor does consent it would make the entire experience even less intimidating for the injured worker.

The ILWU urges passage of S.B. 859 SD 1. Thank you for the opportunity to share our view on this measure.

TESTIMONY OF LINDA O'REILLY

HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Representative Aaron Ling Johanson, Chair
Representative Daniel Holt, Vice Chair

Tuesday, March 14, 2017
9:00 a.m., Room 309

SB 859, SD1

Chair Johanson, Vice Chair Holt, and members of the Committee on Labor and Public Employment, my name is Linda O'Reilly, Assistant Vice President at First Insurance Company of Hawaii and representing Hawaii Insurers Council today. 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 forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** this bill. The bill allows a chaperone to accompany an employee in an exam and allows recordation of the exam with the examiner's approval.

We believe this bill will further restrict the small pool of physicians willing to perform IMEs in the state. Having a chaperone in the exam room will change the tone of the interaction between IME physician and patient to one that may be of an unnatural flow, self-conscious, and stilted. If the pool of IME physicians is reduced, it will not serve the injured worker. The delays to obtain and IME will be longer, mutual agreement of IME physicians may be hampered, and cases will remain open longer with no resolution pending an IME. This could prevent medical treatment, prolong a settlement, or delay an impairment rating, all of which are harmful to the injured worker. For the employer, the longer delays add to the medical and indemnity costs which are ultimately passed on to the business and then to the consumer. We ask that this bill be held.

Thank you for the opportunity to testify.

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 14, 2017

TO: HONORABLE AARON LING JOHANSON, CHAIR, HONORABLE DANIEL HOLT, VICE CHAIR AND MEMBERS OF THE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

SUBJECT: **OPPOSITION TO S.B. 859, SD1, RELATING TO WORKERS' COMPENSATION.** Allows an employee to have a chaperone present and use a recording device, with the examiner's approval, during the medical examination relating to a work injury under workers' compensation. Takes effect 1/7/2059. (SD1)

COMMITTEE HEARING

DATE: March 14, 2017
TIME: 9:00 a.m.
PLACE: Conference Room 309

Dear Chair Johanson, Vice Chair Holt and Committee Members,

The General Contractors Association (GCA) is an organization comprised of over 500 general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

GCA is in opposition to S.B. 859, SD1, Relating to Workers Compensation, which attempts to clarify who may attend independent medical examinations with an employee in a workers compensation related case. GCA is opposed because it may cause for further delay and treatment of the employee and may increase litigious action. The bill proposes to allow an employee to have a chaperone accompany the employee, which is vague and troublesome given that there are no reasons why such may be necessary. Also, the bill would permit the recording of such proceeding, which also raises concerns regarding medical privacy. For these reasons, this measure may have unintended consequences and we respectfully oppose this measure.

Thank you for this opportunity to share our opposition to S.B. 859, SD1 and we respectfully request that you defer this measure.

SB859, SD1

Late Testimony

LATE

LATE

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 13, 2017 3:10 PM
To: LABtestimony
Cc: lhamano@vmchawaii.com
Subject: Submitted testimony for SB859 on Mar 14, 2017 09:00AM

SB859

Submitted on: 3/13/2017

Testimony for LAB on Mar 14, 2017 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
laurie hamano	VMC	Support	No

Comments: We strongly support this measure.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

LATE

LATE

LATE

LABtestimony

From: WIMAH WIMAH <wimah808@gmail.com>
Sent: Monday, March 13, 2017 10:50 PM
To: LABtestimony
Subject: Testimony - SB 859 SD 1 - Support

To: [COMMITTEE ON LABOR & PUBLIC EMPLOYMENT](#)

Chair Rep. Aaron Ling Johanson and

Vice Chari Rep. Daniel Holt

DATE: Tuesday, March 14, 2017

TIME: 9:00 AM

PLACE: Conference Room 309

RE: Strong Support of SB 859 SD1

Dear Chair Johanson, Vice Chair Holt and Members of the Committee,

Work Injury Medical Association of Hawaii stands in strong support of SB 859 SD1.

Thank you,

Work Injury Medical Association of Hawaii

LATE

LATE

IBEW1260

'A'OHE HANA NUI KE ALU 'IA

LATE

March 14, 2017

The Twenty-Ninth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Judiciary and Labor

SB859 - RELATING TO WORKERS COMPENSATION

Chair Johanson, Vice Chair Holt and Members of the Committee

The International Brotherhood of Electrical Workers Local Union 1260, AFL-CIO (IBEW1260), represents more than 3500 members, has advocated for all workers in the State of Hawaii for over 75 years and respectfully offers the following testimony in **SUPPORT** of Senate Bill 859 (SB859).

IBEW1260 members are provided professional representation in all areas of their work lives including any investigatory interviews. However, during a required medical examination by the employer's physician, the same employee is asked to stand alone, unprepared, against a medical professional who could cause loss of benefits and ultimately employment.

Support of SB859 would allow our members, and the rest of Hawaii's workers, when faced with the already stressful situation of a workplace injury, to be well represented by an advocate prepared to represent the employee during a medical investigation by the employer's physician. For this reason, IBEW1260 ask the Committee to support SB859 effectively standing for Hawaii's workers.

Mahalo for the opportunity to testify on this issue,

Respectfully,



Michael M. Brittain
Asst. Business Manager
IBEW1260 / AFL-CIO

LATE

LATE

LATE

LABtestimony

From: Scott McCaffrey <drscottymac@gmail.com>
Sent: Tuesday, March 14, 2017 7:20 AM
To: LABtestimony
Subject: Re SB 859 and SB 857 SD 1--Strong Support: LATE TESTIMONY

Dear Chair and Commity Members :

Please support these bills both of which will protect injured workers from unfair and often abusive "cost control remedies" by insurers/payers. They both will help!

For questions L can be reached thru my office and I invite your call.
Mahalo

Scott McCaffrey MD
Workstar Injury Recovery Center

LATE



Chamber of Commerce Hawaii

The Voice of Business

LATE

LATE

**Testimony to the House Committee on Labor & Public Employment
Tuesday, March 14, 2017 at 9:00 A.M.
Conference Room 309, State Capitol**

RE: SENATE BILL 859 SD1 RELATING TO WORKERS COMPENSATION

Chair Johanson, Vice Chair Holt, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **opposes** SB 859 SD1, which allows an employee to have a chaperone present and use a recording device, with the examiner's approval, during the medical examination relating to a work injury under workers' compensation.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,600+ 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.

We oppose the bill for many reasons which we think will hurt the overall process which will adversely affect employees and employers.

First, we believe this bill will restrict the already small pool of physicians willing to perform IMEs in the state by requiring malpractice insurance, as not all of them carry this insurance. While they give the patient the same level of care as if they were their own patient, the IME physician is not the treating physician and has not had a history of treating the patient over time. If the pool of IME physicians is reduced, it will not serve the injured worker. The delays to obtain an IME will be longer, mutual agreement of IME physicians may be hampered, and cases will remain open longer with no resolution pending an IME.

Second, most providers offer each claimant the option of a chaperone for the interview and/or the physical exam. That chaperone is a member of their staff. No other parties are allowed. To maintain the independence of the proceedings, it is inappropriate to allow family members, attorneys, or any other "interested" parties in the exam. Third-party professional interpreters are the obvious exception, and only when the language barrier has been established in earlier aspects of the case.



Chamber *of* Commerce HAWAII

The Voice of Business

We also do not think recording devices of any kind should be allowed. There is no basis for their use, and there are a multitude of issues surrounding this including HIPPA privacy rights and potential exposure/liability, custody of the recording, alterations, deletions, etc.

We ask that this bill be deferred. Thank you for the opportunity to testify.

LATE

LATE

LATE

TESTIMONY BEFORE THE HOUSE OF REPRESENTATIVES

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Tuesday, March 14, 2017
9:00 A.M.

S.B. 859, SD 1
RELATING TO WORKERS' COMPENSATION; MEDICAL EXAMINATION;
CHAPERONE; RECORDING DEVICES

By Marleen Silva
Director, Workers' Compensation
Hawaiian Electric Company, Inc.

Chair Johanson, Vice Chair Holt, and Members of the Committee:

Hawaiian Electric Co. Inc., its subsidiaries, Maui Electric Company, LTD., and Hawaii Electric Light Company, Inc. **strongly oppose S.B. 859, SD1.** Our companies represent over 2,700 employees throughout the State.

This bill seeks to amend the existing statute to allow the employee to have a chaperone present during an ordered medical examination, and also allows the employee the right to use a recording device during the examination with the physician's approval. The committee noted the intent of this proposal was to ensure that the independent medical examination physician is truly independent and would serve to minimize or even eliminate negative perceptions about the examiner and provide greater assurance that the examination would be conducted fairly.

We believe this proposal is unnecessary. There are protections under the current statute that support the intent of this measure. The use of an independent medical examination is very limited and serves to provide an objective evaluation to determine whether a claim is, in fact, for a covered injury and entitled to such benefits. It may also be used to determine whether continued treatment is beneficial and necessary for the employee's recovery, whether the requested medical treatment is reasonable and related to a covered work injury, and whether medical stability has been reached if reasonable progress is not being made. It allows employees the right to full disclosure of an independent examination and the right to seek their own medical opinion if they disagree with the findings.

This proposal also does not define "chaperone", and having legal counsel, or someone present without certified medical training, could impede open communication with the employee, and create other challenges for the physician performing the exam in the time allotted. In addition, there are no controls to ensure the integrity of the recording is preserved. Most physicians do not allow recording devices in their practice so this proposal may further limit the pool of physicians willing to perform these types of examinations, thereby causing unnecessary delays and additional costs to the system.

For these reasons, we strongly oppose S.B. 859, SD1 and respectfully request this measure be held. Thank you for this opportunity to submit testimony.

LATE

LATE

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 13, 2017 10:54 PM
To: LABtestimony
Cc: cwilson@ahcs.com
Subject: Submitted testimony for SB859 on Mar 14, 2017 09:00AM

SB859

Submitted on: 3/13/2017

Testimony for LAB on Mar 14, 2017 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
cathy wilson	Individual	Support	No

Comments: Please allow injured workers to have a recording device or witness with them during an IME. By not making it a law, what actually happens in an exam, is one persons word over another. This protects the injured worker and the employer. Thank you

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

LATE

LATE

LATE

LABtestimony

From: mankwan wong <mankwanw@msn.com>
Sent: Monday, March 13, 2017 9:55 PM
To: LABtestimony
Subject: SB 859 SD1

To: [COMMITTEE ON LABOR & PUBLIC EMPLOYMENT](#)
Chair Rep. Aaron Ling Johanson and
Vice Chari Rep. Daniel Holt

Re: SB 859 SD1

DATE: Tuesday, March 14, 2017
TIME: 9:00 AM
PLACE: Conference Room 309

Please accept my testimony in STRONG SUPPORT of SB 859 SD1

As a physician who treats work comp patients on a daily basis, I strongly support SB 859 SD1. I have heard from numerous patients that their IME reports did not reflect what they actually said or what was actually found on the physical exam. These reports could be detrimental to further testing and treatment of such patients. further delaying their return to gainful employment. Therefore this bill is very important to ensure that the IME doctor is fair and not overtly biased, by having a chaperon or recorder in place at time of IME.

Thank you.

Sincerely,

Mankwan Wong MD

LATE

LATE

LATE

To: COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Chair Rep. Aaron Ling Johanson and Vice Chair Rep. Daniel Holt

DATE: Tuesday, March 14, 2017

TIME: 9:00 a.m.

PLACE: Conference Room 309

RE: Strong Support of SB 859 SD 1

Please accept my testimony in strong support of: SB 859 SD 1

I am writing in strong support of SB 859 SD 1. I believe that all injured employees should be allowed to have: a chaperone, or a recording device with them during their independent medical examination/IME. Please note the following.

- 1) That IMEs are daunting, and the patient does not always hear all that the physician is telling them about their prognosis.
- 2) That having a chaperone and or hearing device during the IME prevents any misconstrued information from the physician to the patient, and vice versa. It will also prevent any future: "He said she said" scenarios, as the IME will be memorialized via the chaperone and or hearing device.
- 3) That having a chaperone and or hearing device during the IME will also be cost effective, as it will prevent future misdiagnosis due to a misunderstanding during the IME.

Respectfully submitted by:

Helen Ann Lee