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GOVERNOR

JOSH GREEN  
LIEUTENANT GOVERNOR



SCOTT T. MURAKAMI  
DIRECTOR

LEONARD HOSHIJO  
DEPUTY DIRECTOR

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

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February 27, 2019

To: The Honorable Sylvia Luke, Chair  
The Honorable Ty J.K. Cullen, Vice Chair, and  
Members of the House Finance Committee

Date: Wednesday, February 27, 2019

Time: 11:00 a.m.

Place: Conference Room 308, State Capitol

From: Scott T. Murakami, Director  
Department of Labor and Industrial Relations (DLIR)

**Re: H.B. No. 389 HD1 RELATING TO WORKERS' COMPENSATION**

**I. OVERVIEW OF PROPOSED LEGISLATION**

HB389HD1 proposes to amend section 386-79, Hawaii Revised Statutes (HRS), to include that a person performing the independent medical examination (IME) or permanent impairment rating examination pursuant to this section shall examine the employee within an unspecified period of time upon notice of selection. The employee shall be provided with a copy of the report.

This measure eliminates the sunset date of June 30, 2019 set in Act 172 (SLH, 2017) making permanent the allowance for a chaperone during the examination and for the approval of the physician or surgeon to record the medical examination.

DLIR opposes the measure to establish time frames for the IME process due to the possible unintended consequences, including due process concerns. However, DLIR supports making permanent the provisions of Act 172.

**II. CURRENT LAW**

§386-79 "Medical examination by employer's physician." specifies that the employee, when ordered by the director, shall submit to the examination by a qualified physician or surgeon designated and paid for by the employer. If an employee refuses to attend the examination, or obstructs in any way the examination, the employee's rights to

benefits are suspended for the period during which the refusal or obstruction continues.

§386-21(b), HRS, provides that “the director may authorize the selection of a specialist practicing outside the State where no comparable medical attendance within the State is available.”

§386-96 “Reports of physicians, surgeons, and hospitals.” specifies that within fifteen days after being requested by the employee or employee’s representative, the employer shall furnish to the employee or the employee’s representative copies of all medical reports relating to the injury at the expense of the employer.

### **III. COMMENTS ON THE HOUSE BILL**

DLIR supports the attendance of chaperones in an IME but opposes establishing time frames for examinations as it could lead to further delays in the claims process and unintentional consequences. DLIR believes that §386-79 Medical examination by employer’s physician currently does not have an established time frame as there are numerous reasons for IMEs, and the circumstances of each individual case varies widely. DLIR believes the measure will result in a “one size fits all” requirement that will be unworkable in many instances.

DLIR notes the following considerations:

- The undetermined time frames maybe unreasonable and problematic. To schedule and complete the examination and to write and transmit the report includes an evaluation on the complexity of the injury and associated body parts, the age of the injury/case, and other factors. Therefore, the allotted time to schedule and complete the examination and to complete the IME report should not be a “one size fits all”. DLIR notes that some exams are performed by out-of-state physicians and surgeons which the State nor the employer has control over scheduling or business practices.
- DLIR is concerned that mandating a time period for a doctor to complete the report may have unintended consequences. The doctor may not be able to fully evaluate the medical stability of the claimant and/or inadequately address body parts affected.
- There exists a limited pool of IME physicians servicing workers' compensation patients. Our data indicates approximately 33 physicians, (15 internal medicine or occupational medicine doctors, 18 specialists in a limited field). Currently, it takes a minimum of eight weeks to get an appointment for an examination. If the case involves a specialist or is on the Neighbor Islands, it often up to six months to get an appointment for an examination. A longer wait period is typical for cases involving a specialist in a limited field. For example, there is only one cardiologist performing IMEs in State of Hawaii.
- This measure may further reduce the number of physicians or surgeons willing

to perform IMEs and the cost of the examination would increase if the physician or surgeon is required to hire additional staff to meet any time frame suggested.

- §386-85 “Presumptions” provides a strong presumption of compensability for work injury claims. The employer has the right of discovery to fully investigate the work injury. To do so, the employer will rely on the IME report (paid by the employer) to provide evidence to overcome the presumption. With the limited pool of IME physicians the employers find it difficult to conduct timely discovery.

Due to the imposition of time frames this measure may set forth for the IME process, DLIR has serious reservations that the measure will result in further appeals from due process concerns which will prolong the case processing and rightful benefits awarded to claimants.

DAVID Y. IGE  
GOVERNOR



RYKER WADA  
DIRECTOR

JASON MINAMI  
DEPUTY DIRECTOR

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

February 26, 2019

**TESTIMONY TO THE  
HOUSE FINANCE COMMITTEE**

For Hearing on Wednesday, February 27, 2019  
11:00 a.m., Conference Room 308

BY

RYKER WADA  
DIRECTOR

**House Bill No. 389, H.D. 1**  
**RELATING TO WORKERS' COMPENSATION**

TO CHAIRPERSON LUKE, VICE CHAIR CULLEN, AND MEMBERS OF THE  
COMMITTEE:

Thank you for the opportunity to provide **comments** on H.B. 389, House Draft 1.

H.B. 389, House Draft 1, proposes to amend HRS, §386-79(a), to require persons performing and independent medical exam or permanent impairment rating exam for a workers' compensation work injury examine the employee within an unspecified period of time upon receipt of notice; requires that the employee be provided with a copy of the exam within an unspecified period of time; and permanently codifies the changes made in Act 172, SLH 2017, by repealing its sunset date of June 30, 2019.

Pursuant to HRS, §26-5, the Department of Human Resources Development, is responsible for the planning and administration of the State's self-insured and centralized workers' compensation program for all employees of the Executive branch and agencies, the public charter schools, the Hawaii Public Housing Authority, and the Legislature.

While we recognize and acknowledge the bill's intent to facilitate further dialogue and discussion on how to expedite medical exams under workers' compensation law, we believe that any arbitrary identified time limit (i.e. number of days) will not, in and of itself, resolve the issues and concerns over perceived delays, equity, transparency, bias, impropriety, etc.

First and foremost, neither the employer nor the claimant has any control, authority, or can anticipate the availability and willingness of any qualified physician to perform medical examinations under workers' compensation under any statutorily imposed deadline. Secondly, to establish a statutorily imposed deadline on a physician

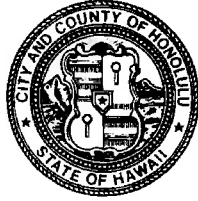
to render a report on the medical examination without due consideration over the nature, type, and complexity of each individual exam (i.e. IME/PPD exams) will certainly harm both the Claimant and the employer due to its unintended "chilling effect" as fewer qualified physicians in an already dearth pool will probably be more hesitant and less willing to conduct these types of medical exams. Finally, there are other "types" of medical examinations conducted under the statute such as an Independent Psychological Evaluations (IPE) in which qualified physicians performing the medical examination normally demand that their report not be provided directly to the Claimant, but to the Claimant's attending physician and the Claimant's representative, if applicable. While the proposed legislation seems to only apply to IME/PPD medical exams, our concern is that it could evolve to a larger discussion to subject this requirement to all medical examinations under the statute.

Thank you for the opportunity to testify.

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 27, 2019

The Honorable Sylvia Luke, Chair  
The Honorable Ty J.K. Cullen, Vice Chair  
and Members of the Committee  
on Finance  
The House of Representatives  
State Capitol, Room 308  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Luke, Vice Chair Cullen, and Members of the Committee:

**SUBJECT: House Bill No. 389, H.D. 1  
Relating to Workers' Compensation**


H.B. 389, H.D. 1, requires persons performing an independent medical exam or permanent impairment rating exam for a workers' compensation work injury examine the employee within an unspecified period of time upon receipt of notice; and requires that the employee be provided a copy of the exam.

The City and County of Honolulu, Department of Human Resources, offers the following comment on the bill.

While all parties to a claim would like to have a medical examination conducted and the report finished as expeditiously as possible, it is impractical and unrealistic to statutorily impose an arbitrary number of days for this process to be completed. In actual practice, it normally takes several months from the time an appointment is made until the examination is completed due to the limited number of physicians available to conduct these examinations and the number of injured workers statewide who need to be examined. Also, it takes additional time for the physician to issue a report because of the voluminous records, examination findings, and opinions that need to be reviewed, evaluated, and incorporated into the report. This is because workers' compensation cases that require an IME/PPD medical examination are often the most complex and convoluted claims.

Thank you for the opportunity to testify.

Sincerely,

  
Carolee C. Kubo  
Director

The Thirtieth Legislature  
Regular Session of 2019

THE HOUSE

Committee on Finance

Representative Sylvia Luke, Chair

Representative Ty J.K. Cullen, Vice Chair

State Capitol, Conference Room 308

Wednesday, February 27, 2019; 11:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 389, H.D.1  
RELATING TO WORKERS' COMPENSATION**

The ILWU Local 142 **supports** H.B. 389, H.D.1, which requires persons performing an independent medical exam or permanent impairment rating exam for a workers' compensation work injury examine the employee within an unspecified period of time upon receipt of notice and requires that the employee be provided a copy of the exam.

Workers unfortunately from time to time get injured on the job and most want to be able to get diagnosed and treated as soon as possible to allow them to return to work and get covered for the injuries sustained on the job. This bill simply ensures the process is done within a reasonable timeframe.

The ILWU Local 142 urges the passage of H.B. 389, H.D.1. Thank you for the opportunity to offer testimony on this measure.

## TESTIMONY OF ALISON UEOKA

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COMMITTEE ON FINANCE  
Representative Sylvia Luke, Chair  
Representative Ty J. K. Cullen, Vice Chair

Wednesday, February 27, 2019  
11:00 a.m.

### **HB 389, HD1**

Chair Luke, Vice Chair Cullen, and members of the Committee on Finance, my name is Alison Ueoka, President of Hawaii Insurers Council. The 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. This bill seeks to place an undetermined time period in which to complete an ordered IME, and when the IME report must be received and broadens the section to include permanent impairment rating evaluations. It is unclear what problem with ordered IMEs this bill seeks to remedy; however, the proposed changes to Section 386-79, Hawaii Revised Statutes create several additional problems for injured workers, employers and IME physicians.

The process outlined in this bill are unworkable because in the case of an ordered IME, the exam date and physician must already be chosen. Then the Director must approve the order for which there is no deadline. Therefore, even if there were a large pool of IME physicians, this process would not likely improve any timeframes.

IME physicians today are in short supply. The DLIR estimates a total of about 30 IME physicians in all specialties. Many times, IMEs require the review of voluminous medical



records which may take some time to review. Limiting the amount of time in which to produce the report will only shrink the pool of available IME physicians. This harms both employer and employee by delaying settlement of the claim. Due to the harmful unintended consequences of this bill, we ask that it be held.

Thank you for the opportunity to testify.

**TESTIMONY BEFORE THE  
HOUSE COMMITTEE ON FINANCE**

**H.B. 389, HD1**

**Relating to Workers' Compensation**

Wednesday, February 27, 2019  
11:00 a.m., Agenda Item #12  
State Capitol, Conference Room 308

Marleen Silva  
Manager, Workers' Compensation  
Hawaiian Electric Company, Inc.

Chair Luke, Vice Chair Cullen, and Members of the Committee,

My name is Marleen Silva and I am testifying on behalf of Hawaiian Electric Company Inc. and its subsidiary utilities Maui Electric Company, Limited and Hawai'i Electric Light Company, Inc. (collectively "the Hawaiian Electric Companies") in **strong opposition** to H.B. 389, HD1 Relating to Workers' Compensation.

This proposed bill requires that independent medical examinations (IME's) and permanent impairment rating examinations for workers' compensation claims be performed by physicians within an "unspecified number" of calendar days of the person's receipt of the notice of the selection or appointment. A copy of the report must be reported within an "unspecified number" of calendar days after the date of the examination. If the deadlines are not met, the report is deemed "invalid" and not permitted to be relied upon.

While we appreciate the intent to expedite the process, we feel the deadline proposed for the physician / examiner to perform the IME or PPD examination and complete their report for distribution, is unrealistic and unfair to them. Injured employees must first provide a list of their records before subpoenas can be executed.

Subpoenaed records may not be delivered all at once and the volumes of records may vary in size and complexity. All records will need to be reviewed prior to the examination. The examination itself may also vary in length based on the extent and complexity of the injuries. In addition, there are also a limited number of qualified physicians willing and available to conduct these types of exams, so employers and carriers are all competing for the appointment dates available.

We think it is only fair to give the independent physician / examiner a reasonable length of time to provide a thorough and accurate review of the facts before presenting their report and findings to all parties. The bill is also silent regarding what would be done if there is no qualified physician available to perform the examination.

Accordingly, the Hawaiian Electric Companies opposes H.B. 389, HD1. Thank you for this opportunity to submit testimony.



**To: Rep. Sylvia Luke, Chair  
Rep. Ty J.K. Cullen, Vice Chair  
Members of the Committee on Finance**

**Date: Wednesday, February 27, 2019**

**Time: 11:00 a.m.**

**Place: Conference Room 308  
State Capitol  
415 South Beretania Street**

**Support for House Bill 389 HD1**

**As Chair of the Legislative Committee and Past President of Work Injury Medical Association of Hawaii representing the providers treating injured workers in our state, we strongly support HB 389 HD1.**

The key provisions of this bill provide for the following:

- (a) Requires a workers' compensation impartial exam to be conducted within \_\_\_\_\_ calendar days of the person's receipt of the notice of the selection or appointment; and
- (b) Requires that the employee be provided a copy of the report of the independent examination no later than \_\_\_\_\_ calendar days after the date of the examination.

Justification:

- Employer's physicians do not have any duty of care to the injured worker and often unreasonably delay the impartial examination.
- For many workers with severe injuries, the workers' compensation system is the only thing that stands between them and a downward spiral of unemployment, debt and even homelessness. The use of "employer medical examinations" results in delays that often have devastating consequences to injured workers.
- The problem with employers' examinations lies with certain physicians and insurance carriers who are willing to use improper opinions to unfairly deny benefits to injured workers. In addition, in many instances, these improper opinions/reports are not provided to the employee. The inherent disparity of the financial resources of insurance carriers versus an injured worker,

who is frequently without income, makes the playing field inherently uneven in favor of the carrier.

- This bill attempts to bring greater fairness to the IME process by eliminating unnecessary delays and by bringing a greater transparency to unfair reports shrouded in secrecy.
- I would encourage you to read, if you haven't already, the Civil Beat series "Waiting In Pain" at <http://www.civilbeat.org/projects/waiting-in-pain/> and the related more recent article at <https://www.civilbeat.org/2018/12/delays-denials-wasted-tax-dollars-does-troubled-treatment-of-injured-workers/>.

Sincerely,

Scott J Miscovich MD

Chair of Legislative Committee and Past President

Work Injury Medical Association of Hawaii



To: The Honorable Sylvia Luke, Chair  
The Honorable Ty J.K. Cullen, Vice Chair  
House Committee on Finance

From: Mark Sektnan, Vice President

Re: **HB 389 HD1 – Relating to Workers’ Compensation**  
**APCIA Position: OPPOSE**

Date: Wednesday, February 27, 2019  
11:00 a.m., Conference Room 308; Agenda #1

Aloha Chair Luke, Vice Chair Cullen and Members of the Committee:

The American Property Casualty Insurance Association (APCIA) is **opposed** to **HB 389 HD1** which is intended to impose unreasonable timeframes on independent medical examination (IME) process. Representing nearly 60 percent of the U.S. property casualty insurance market, the American Property Casualty Insurance Association (APCIA) promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe.

The independent medical examination process is designed to ensure that injured workers receive appropriate medical care. This bill seeks to place restrictions on ordered IME’s including when the IME must take place, when the IME report must be received and broadens the section to include permanent impairment rating evaluations. It is unclear what problem with ordered IMEs this bill seeks to remedy; however, the proposed changes to Section 386-79, Hawaii Revised Statutes create several additional problems for injured workers, employers and IME physicians.

Although the current draft of the bill leaves blanks in the timeframes, many of these provisions are unworkable because of marketplace conditions outside the control of the employer and employee. Most IMEs cannot be scheduled within a specified number of days. Some reasons are of the IME physician’s availability in their specialty, overall dearth of IME physicians, claimant schedule, and transportation issues. Furthermore, the bill does not appear to comprehend the process involved when an ordered IME is pursued. An ordered IME is scheduled when an injured worker fails to show up for normally scheduled IME. When an ordered IME is granted, a date, time, and IME physician has already been scheduled. The requirements in the bill would make it

unworkable for the employer to try and anticipate when the appointment would be set and try and time it to somehow comply with the receipt from the IME physician's office.

Finally, if a permanent impairment rating examination also falls under these stringent time constraints, a similar result will follow. This will harm both employer and employee by delaying settlement of the claim.

For these reasons, APCIA asks the committee to hold this bill in committee.



# Chamber of Commerce HAWAII

*The Voice of Business*

**Testimony to the House Committee on Finance  
Wednesday, February 27, 2019 at 11:00 A.M.  
Conference Room 308, State Capitol**

**LATE**

**RE: HB 389 HD1 RELATING TO WORKERS' COMPENSATION**

Chair Luke, Vice Chair Cullen and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **opposes** HB 389 HD1, which requires persons performing an independent medical exam or permanent impairment rating exam for a worker's compensation work injury examine the employee within an unspecified period upon receipt of notice. Additionally, this bill also requires that the employee be provided a copy of the exam.

The Chamber is Hawaii's leading statewide business advocacy organization, representing 2,000+ 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.

This bill seeks to place restrictions on ordered IMEs including when the IME must take place, when the IME report must be received and broadens the section to include permanent impairment rating evaluations. It is unclear what problem with ordered IMEs this bill seeks to remedy; however, the proposed changes to Section 386-79, Hawaii Revised Statutes create several additional problems for injured workers, employers and IME physicians.

Many of these provisions are unworkable because of marketplace conditions outside the control of the employer and employee. Depending on the what the unspecified period is defined to be in this bill, we realize that it could cause issues with scheduling an IME. Some reasons for this are because of the IME physician's availability in their specialty, overall dearth of IME physicians, claimant schedule, and transportation issues. Furthermore, the bill does not appear to comprehend the process involved when an ordered IME is pursued. An ordered IME is scheduled when an injured worker fails to show up for normally scheduled IME. When an ordered IME is granted, a date, time, and IME physician has already been scheduled. The requirements in the bill would make it unworkable for the employer to try and anticipate when the appointment would be set.

Finally, if a permanent impairment rating examination also falls under these stringent time constraints, a similar result will follow. This potentially harms both employer and





Chamber *of* Commerce HAWAII  
*The Voice of Business*

employee by delaying settlement of the claim. Due to the harmful unintended consequences of this bill, we ask that it be held.

Thank you for the opportunity to testify.