



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

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March 31, 2008

To: The Honorable Rosalyn Baker, Chair  
and Members of the Senate Committee on Ways and Means

Date: April 1, 2008

Time: 10:15 a.m.

Place: Conference Room 211, State Capitol

From: Darwin L.D. Ching, Director  
Department of Labor and Industrial Relations

**Testimony in Opposition  
to  
H.B. 2386, S.D. 1 – Relating to Workers’ Compensation**

**I. OVERVIEW OF CURRENT PROPOSED LEGISLATION**

House Bill 2386, S.D. 1, proposes to amend section 386-31(b), Hawaii Revised Statutes (“HRS”), relating to temporary total disability (“TTD”) by requiring the employer to pay initial TTD benefits even if the employer believes the employee’s claim is not work related.

This proposal also allows termination of TTD benefits upon order of the Director, or if the employee’s treating physician determines that the employee is able to resume work and the employer has made a bona fide offer of suitable work within the employee’s medical restrictions. The employer may request a credit for the amount of TTD benefits paid after the date in which the Director determines that benefits should have been terminated.

This proposal also adds a new subsection (c) to section 386-31, HRS, to allow employees to receive a weekly benefit equal to seventy per cent (70%) of the employee’s average weekly wages if the injury causes permanent or temporary disability and payment of compensation was not begun within thirty days of or within the same year as the day of injury, whichever is later.

## II. CURRENT LAW

Currently, section 386-31(b), HRS, mandates the employer to pay temporary total disability benefits promptly as they accrue without waiting for a decision from the Director, unless the employer controverts the claim. The employer must make payment no later than the tenth day after they have been notified of the occurrence of total disability. The employer may be penalized for late payment of benefits.

Section 386-31(b), HRS, also specifies that only by order of the director or if the employee can resume work, can an employee's TTD benefits be terminated. If the employer is of the opinion that TTD benefits should be terminated because the employee is able to return to work, the employer must notify the employee and the director of their intent to terminate benefits, at least two weeks prior to the date when the last payment was made. The employer's notice must also inform the employee the reason for the termination and that the employee may request the director hold a hearing to address the termination of benefits if they do not agree.

## III. HOUSE BILL

The Department of Labor and Industrial Relations ("Department") appreciates the issue that this bill seeks to resolve through ensuring that claimants that are entitled to TTD benefits are not economically harmed during their inability to work. However, the Department opposes the bill due to the effect this measure would have on employers in those cases where a claimant would continue receiving benefits when they are not entitled to them. Specifically, the Department has the following concerns and comments:

1. This bill would result in payment of TTD benefits to employees for claims determined not to be work related.

It would be almost entirely impossible for employers to collect TTD payments that were found to be disallowed. While this bill does allow for the director to provide a "credit" to the employer, it would only apply to those claims in which a permanent partial disability ("PPD") benefit was to be awarded. In those cases where there is no PPD award, or the PPD award is smaller than the amount of TTD benefits that the claimant was not entitled to, then the employer would be required to absorb that loss.

2. Currently, this section of law does not allow for an employer to request a hearing before the director to terminate TTD benefits. Section 386-31, HRS, allows **only employees** to file a request for hearing to determine if TTD benefits should have

been terminated. This language, as currently written, would mean that employers would not have an avenue to terminate benefits, as they would need the claimant to file the request for hearing to terminate the benefits they are receiving.

3. The employer is already mandated to make the first payment of benefits no later than on the tenth day after the employer has been notified of the total disability, and further benefits should be paid weekly unless the employer controverts the claim for benefits. Pursuant to section 386-92, HRS, failure to pay benefits in a timely manner or if TTD benefits are terminated in violation of section 386-31, HRS, a twenty percent (20%) penalty may be added to the unpaid benefits due.

The new subsection (c) of this bill would allow injured workers to receive higher weekly benefits (70% vs. 66 and 2/3%) or maximum weekly benefit rates for temporary total disability benefits if the initial payment of benefits are not made within thirty days of or within the same year as the date of injury, whichever is later. This proposal does not specify which rate (70% or maximum) will be applicable but it may allow the injured worker to receive compensation at a weekly benefit rate that may exceed the injured worker's actual weekly salary. This would provide injured workers with a tremendous incentive not to return to work, increasing TTD costs and workers' compensation insurance premiums.

In addition, subsection 386-31(c)(2), HRS, states that the increase in weekly benefit amounts may be applicable if payment of compensation is not begun within thirty days OR within the same year as the date of injury, whichever is later. If an injury is in January, the employer may not be required to make their initial TTD payment until December of the same year.

4. This proposal will increase the cost of doing business in Hawaii at a time when it may not be prudent to do so. The Department estimates that this proposal would add \$21 million in payouts from employer premiums and \$3 million increase for self insured employers.
5. All parties would like to have TTD issues resolved expeditiously. This bill requires a full and fair hearing be held in order to terminate TTD benefits. The number of hearings will likely increase dramatically under this proposal. The minimum time required to review the file, schedule the hearing, notify the parties of the hearings date, conduct the hearing, and administer the decision would be 4 to 6 months. The Department will require more hearings and support personnel to conduct more hearings to address the TTD issues. The Department estimates that it will require an additional 6 hearings officers (2 for Honolulu and 1 each for

each of the neighbor island offices) and 5 clerk typists statewide to timely service the additional hearings and decisions resulting from the passage of this measure.

The Department estimates this cost to be approximately \$460,652 initially and \$426,552 in salaries annually thereafter.

6. Instead of holding the administrative hearing, the Department **recommends that language be inserted to allow the Department to render these decisions based upon position papers and information in the case file without a hearing.** Under this scenario, when the TTD payment is controverted, the Department can require the parties to submit position papers within 14 days and a decision can be issued **without a hearing** within 30 days. Additional hearings officers and clerical staff as indicated in paragraph 5 above would still be required in order to expedite review of the position papers and case information, write and issue the decisions.
7. This proposal is identical to two prior measures vetoed by the Governor in 2006 and 2007. Those same objections that the Governor had for vetoing those bills still exist in this proposal. Given this prior history, the Department recommends that the committee hold this bill and instead allow the Department to form a task force and to make recommendations on possible solutions to the 2009 legislature to address the concerns of this bill.

LINDA LINGLE  
GOVERNOR



MARIE C. LADERTA  
DIRECTOR

CINDY S. INOUE  
DEPUTY DIRECTOR

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

March 28, 2008

COMMENTS TO THE  
SENATE COMMITTEE ON WAYS AND MEANS  
For Decision Making on Tuesday, April 1, 2008  
10:15 a.m., Conference Room 211

BY

MARIE C. LADERTA, DIRECTOR

**House Bill No. 2386, S.D. 1**  
**Relating to Workers' Compensation**

TO CHAIR ROSALYN H. BAKER AND MEMBERS OF THE COMMITTEE:

The purpose of H.B. No. 2386, S.D. 1, is to amend Section 386-31(b), Hawaii Revised Statutes: (1) requiring an employer to pay temporary total disability benefits promptly regardless of whether the employer controverts the right to those benefits; (2) specifying that benefits shall continue until the employee's treating physician determines that the employee is able to resume work and that the employer has made a bona fide offer of suitable work within the employee's medical restrictions; (3) following a hearing, a decision will be issued indicating whether temporary total disability benefits should have been discontinued and, if so, a date shall be designated after which temporary total disability benefits should have been discontinued; (4) allowing an employer to make a written request to the director for a credit for the amount of temporary total disability benefits paid after the date that the director had determined should have been the last date of payment; allowing for attorney's fees and costs to the employee for enforcement of this section; (5) entitling an injured employee to receive a weekly benefit equal to 70% of the injured employee's average weekly wages subject to certain provisions. **The Department of Human Resources Development is strongly opposed to this bill.**

Requiring an employer to pay benefits when the right to those benefits is being denied would cause irreparable harm in cases where it was determined that a claim was not compensable. Furthermore, this amendment is unnecessary as there is already a mechanism in place for an injured worker to present rebuttal evidence that his or her claim is, indeed, compensable.

Further evidence of irreparable harm is the fact that only the employee can request a hearing. There would be no way for a self insured employer or an insurance carrier to even present an argument for the termination of temporary total disability benefits. Even if a hearing was held and the director determined the date that benefits should be terminated, it isn't clear how the credit, allowed by the director, would be applied. It would be a fairly simple process if the employee was awarded permanent partial disability benefits. However, if those benefits were inadequate to cover the credit or if no permanent partial disability benefits were awarded, then the employer would, once again, suffer irreparable harm.

The amendment allowing for the assessment of attorney's fees and costs for the enforcement of the section is totally unnecessary as Section 386-93, Hawaii Revised Statutes, already provides for such an assessment if it is determined that proceedings under Chapter 386, Hawaii Revised Statutes, are brought, prosecuted, or defended without reasonable grounds.

Lastly, the amendment provides for the payment of 70% of an injured employee's average wage applicable on the date compensation was first received if the injury causes permanent or temporary disability and if compensation was not paid within thirty days of or within the same year as the date of injury, whichever is later. Employees have up to two years from manifestation of an injury to file a claim for benefits. Also, it isn't uncommon for an employee to delay the reporting of an injury. This penalizes an employer for something over which they have no control.

Respectfully submitted,

A handwritten signature in black ink, reading "Marie C. Laderta". The signature is written in a cursive, flowing style.

MARIE C. LADERTA



***The Chamber of  
Commerce of Hawaii***  
*Since 1850*

**Testimony to the Senate Committee on Ways and Means  
Tuesday, April 1, 2008; 10:15 a.m.  
Conference Room 211**

**RE: HOUSE BILL NO. 2386 SD1 RELATING TO WORKERS' COMPENSATION**

Chair Baker, Vice Chair Tsutsui and Members of the Committee:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). The Chamber does not support House Bill No. 2386 SD1, relating to Workers' Compensation.

The Chamber is the largest business organization in Hawaii, representing over 1100 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 measure requires an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. The bill also specifies that the employee's ability to return to work is to be decided by the employee's treating physician.

Employers care about their employees. Many seek ways to go beyond what is required of them by providing exceptional benefits, incentives, as well as creating a positive work environment. Additionally, businesses realize that with the low unemployment rate, they need to enforce programs and policies that will retain employees all while managing the high costs of doing business. One of the costs is workers' compensation.

In a recent Chamber survey, members were asked to identify their top priority issues relating to business. The cost of doing business was ranked as number one and workforce development as number three. Workers' compensation, however, fell to the middle. This is greatly attributed to the manageable premiums of workers' compensation. Employers are proactively finding ways to minimize work-related injuries as well as to accelerate improvement of workers who suffer from these injuries. We do not dismiss that a handful of questionable cases may exist, however, overall, we believe employers do the right thing for their employees. This measure, however, will undermine the efforts made by employers and ultimately hurt the viability of their business, which in turn will hurt employees.

Therefore, The Chamber has concerns with the language that limits the termination of benefits only if the employee's own treating physician authorizes the return to work. While this is the case in limited situations, it is the employer's physician that often determines if the employee is capable of returning to work. An employee's own doctor will probably not authorize the return to work in any capacity if the employee prefers

to stay out on disability leave regardless if the condition is qualified or not. It's important that these benefits be utilized as intended and not in such a way that benefits are activated simply because they exist.

Another concern is the employer's requirement to pay uninterrupted TTD benefits regardless if the employer disputes the right to benefits. This mandate may serve as a disincentive for an employee to return to work especially as the measure increases the weekly benefit amount to 70% of the injured employee's average weekly wages and does not penalize the employee for refusing to return to work.

This will hurt employers especially small businesses, which operate on limited resources and smaller staffs. Colleagues of the absent employee will unfairly shoulder additional responsibilities, which could have a domino effect, such as a stressful work environment, lower morale, and lost productivity. As a result, the negative consequences of this measure may hinder than promote progress.

Next, the measure does not allow the employer to file a request for hearing with the Department of Labor to terminate TTD benefits if they believe the employee is able to return to work. Instead, it only allows the employee to file a hearing. Thus, we believe this is not a fair and balanced approach.

Finally, there is no actual loss of care. An employee who wants to continue treatment after an employer terminates TTD coverage based on the evaluation that the employee can return to work and was offered work but turned it down, can then use the prepaid health care plan that every employer provides to continue care. If it is eventually determined that workers' compensation should have provided the care, the group health insurer can seek reimbursement/subrogation from the workers' compensation carrier.

In summary, HB 2386, while well-intended, will have unintended consequences and possibly lead to a rise in workers' compensation insurance costs and the overall cost of doing business. Thus, The Chamber respectfully requests this measure be held. Thank you for the opportunity to testify.



# **HICA** Hawaii Island Contractors' Association

494 C Kalanikoa Street \* Hilo, HI 96720 \* Phone 935-1316 \* Fax 934-7779 \* hica1@hawaiiantel.net

April 1, 2008  
Committee on Ways and Means  
10:15 a.m.  
Conference Room 211

## **Testimony on HB 2386, SD1 "Relating to Workers Compensation"**

Chair Baker and Members of the Committee on Ways and Means:

The Hawaii Island Contractors Association is an organization of contractors and associate members based on the Big Island of Hawaii. The associate members include equipment and materials suppliers, accountants, insurance carriers, financial institutions, and utility companies. We have been an active organization since 1961, and we currently have 138 member companies and 160 individual members. HICA takes a leadership role in promoting the interests of the construction industry on the Big Island.

## **HICA is strongly opposed to HB 2386, SD1 "Relating to Workers Compensation".**

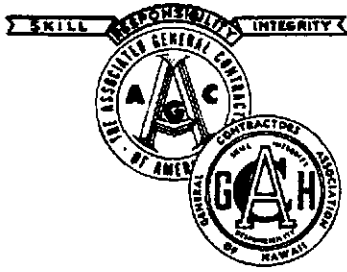
The bill would require an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. The bill also specifies that the employee's ability to return to work is to be decided by the employee's treating physician.

The provisions of HB 2386, SD1 would erode employers' rights and their ability to control their costs. If passed, this bill would increase the cost of workers compensation by providing another incentive for workers not to return to work because they could determine (with their treating physician) when they choose to return to work. To force employers to continue TTD benefits for a period of time to be determined essentially by the employee is unreasonable.

For the record, the Hawaii Island Contractors Association is strongly opposed to this bill.

Thank you for the opportunity to share our views with you.

Byron Fujimoto  
HICA Legislative Committee



## GENERAL CONTRACTORS ASSOCIATION OF HAWAII

1065 AHUA STREET • HONOLULU, HAWAII 96819-4493 • PHONE 808-833-1661 • FAX 808-839-4167

E-MAIL ADDRESS: [gca@gcahawaii.org](mailto:gca@gcahawaii.org) • WEBSITE: [www.gcahawaii.org](http://www.gcahawaii.org)

March 28, 2008

TO: THE HONORABLE SENATOR ROSALYN H. BAKER, CHAIR AND  
MEMBERS OF THE COMMITTEE ON WAYS AND MEANS

SUBJECT: H.B. 2386, SD1 RELATING TO WORKERS COMPENSATION

### NOTICE OF DECISION MAKING

DATE: Tuesday, April 1, 2008  
TIME: 10:15 a.m. (or immediately following  
completion of the 10:00 a.m. agenda)  
PLACE: Conference Room 211

Dear Chair Baker and Members of the Committee:

The General Contractors Association (GCA), an organization comprised of over five hundred and forty (540) general contractors, subcontractors, and construction related firms, **strongly opposes** the passage of H.B.2386, SD1 Relating to Workers Compensation.

The bill would require an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. The bill also specifies that the employee's ability to return to work is to be decided by the employee's treating physician.

The provisions of HB 2386, SD1 erode employers' rights and their ability to control their costs. If passed, this bill would increase the cost of workers compensation by providing another incentive for workers not to return to work because they could determine (with their treating physician) when they choose to return to work. To force employers to continue TTD benefits for a period of time to be determined essentially by the employee is unreasonable.

For these reasons, the GCA **strongly opposes** this bill.

Thank you for considering our concerns on the above bill.



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1003 Bishop Street  
Honolulu, Hawaii 96813  
Telephone (808) 525-5877  
Facsimile (808) 525-5879

**Alison Powers**  
Executive Director

## **TESTIMONY OF ALISON POWERS**

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### **SENATE COMMITTEE ON WAYS AND MEANS**

Senator Rosalyn H. Baker, Chair  
Senator Shan S. Tsutsui, Vice Chair

Tuesday, April 1, 2008  
10:15 a.m.

### **HB 2386, SD1**

Chair Baker, Vice Tsutsui, and members of the committee, my name is Alison Powers, Executive Director of Hawaii Insurers Council. 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 60% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** HB 2386, SD1. This bill will increase costs and encourage abuse by mandating temporary total disability (TTD) benefits to continue until the Director holds a hearing and issues a decision. The overarching theme of a successful system is striking an appropriate balance. Between benefits and cost, we believe the changes proposed in HB 2386, SD1 will burden the system with unnecessary costs imposed by those intent on abusing it. If the decision is against the employee, the workers' compensation insurer will unlikely recoup these costs and rates will increase accordingly. The only way the employer/insurer would be able to recoup costs if overpaid, would be to take it out of the employee's future settlement, if there is one. The employer/insurer should not have to request a credit in writing. Credit should be consistent with existing language (see HRS 386-52). There is also no time certain in which the Director must make a decision, which exacerbates unnecessary cost if the employee's benefits should have ceased. Even if there is a time certain for the Director to make a decision, provisions need to be included for benefits to automatically cease if

the time limit is exceeded. This provision will encourage injured workers to stay off work longer than necessary since the injured worker will not be held accountable for any financial reimbursement. If abuse occurs and there is no permanent impairment, the employer is unable to recoup the cost.

The amendment on page 3, lines 4 through 8 require TTD payments even if an employer denied liability for a claim. If the claim is ultimately found uncompensable, the employer will have paid TTD with no recourse for recovery. Page 3, lines 14 through 21 will also allow an injured worker to refuse to return to work and get paid TTD benefits, even if the treating physician releases the injured worker to return to work and the employer has made a bona fide offer of suitable work.

The requirement for employers or insurance carriers to pay for the injured worker's attorney fees and costs for enforcement of this section also creates an unfair burden on the employer. Why should the employer pay for the injured worker's attorney fees if the Director renders a decision that TTD should have been discontinued?

Finally, the bill increases the wage reimbursement rate to 70% if a work injury causes permanent or temporary disability and payment of compensation was not begun within 30 days or within the same year as the date of injury, whichever is later. This provision unfairly increases the benefit for a certain class of injured workers and within that class, only if payments do not meet certain requirements. For example, if an injury occurs on December 31 and payment is made within 30 days but in the next year, the indemnity rate is 70% and not the 66 2/3% of the employee's average weekly wages. This provision will also encourage injured workers to delay the reporting of work related injuries in order to obtain a higher compensation rate.

We respectfully request that HB 2386, SD1 be held.

Thank you for the opportunity to submit testimony.



Senator Rosalyn Baker, Chair  
Senator Shan Tsutsui, Vice Chair  
Committee on Ways & Means  
State Capitol, Honolulu, Hawaii 96813

HEARING      Tuesday, April 1, 2008  
                    10:15 am  
                    Conference Room 211

**RE:    HB2386, SD1, Relating to Workers' Compensation**

Chair Baker, Vice Chair Tsutsui, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing about 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. The retail industry is the one of the largest single employer in the state, employing 20% of the labor force.

**RMH opposes HB2386, SD1**, which requires an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits.

We do not dispute that an injured worker should receive quality and appropriate medical care as long as required. However, to compel an employer to continue TTD benefits essentially until the employee decides to return to work is unreasonable. This measure is an affront, both to an employer's rights and to his ability to control business costs.

The members of the Retail Merchants of Hawaii respectfully request that you hold HB2386. SD1. Thank you for your consideration and for the opportunity to comment on this measure.

President

# **BIA-HAWAII**

**BUILDING INDUSTRY ASSOCIATION**

April 1, 2008

Committee on Ways and Means

10:15 a.m.

Conference Room 211

## **Testimony on HB 2386, SD1 "Relating to Workers Compensation"**

Chair Baker and Members of the Committee on Ways and Means:

I am Karen Nakamura, Chief Executive Officer and Executive Vice President of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

### **BIA-Hawaii is strongly opposed to HB 2386, SD1 "Relating to Workers Compensation".**

The bill would require an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. The bill also specifies that the employee's ability to return to work is to be decided by the employee's treating physician.

The provisions of HB 2386, SD1 would erode employers' rights and their ability to control their costs. If passed, this bill would increase the cost of workers compensation by providing another incentive for workers not to return to work because they could determine (with their treating physician) when they choose to return to work. To force employers to continue TTD benefits for a period of time to be determined essentially by the employee is unreasonable.

For these reasons, BIA-Hawaii strongly opposes this bill.

Thank you for the opportunity to share our views with you.

*Karen Y. Nakamura*



## **Before the Senate Committee on Ways and Means**

DATE: April 01, 2008

TIME: 10:15 a.m.

PLACE: Conference Room 211

### **Re: HB 2386, SD1 Relating to Workers' Compensation Testimony of Melissa Pavlicek for NFIB Hawaii**

Thank you for the opportunity to testify. On behalf of the thousands of business owners who make up the membership of the National Federation of Independent Businesses in Hawaii, we ask that you defer **HB 2386, SD1**. NFIB opposes this measure in its current form.

The National Federation of Independent Business is the largest advocacy organization representing small and independent businesses in Washington, D.C., and all 50 state capitals. In Hawaii, NFIB represents more than 1,000 members. NFIB's purpose is to impact public policy at the state and federal level and be a key business resource for small and independent business in America. NFIB also provides timely information designed to help small businesses succeed.

We oppose measures that may tend to increase workers' compensation costs and have unintended negative consequences on employers, employees and the economy. Thank you for the opportunity to testify.



FAX: 586-6719

Testimony to the Senate Committee on Ways and Means  
Tuesday, April 1, 2008; 10:15 a.m.  
Conference Room 211

**RE: HOUSE BILL NO. 2386 SD1 RELATING TO WORKERS' COMPENSATION**

Chair Baker, Vice Chair Tsutsui and Members of the Committee:

My name is Randall Francisco, President of The Kauai Chamber of Commerce. The Chamber works on behalf of our 450 business members and Kauai's business community. The Kauai Chamber comprises of approximately 87% of small businesses with less than 50 employees. The Chamber works on behalf of our 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 does not support House Bill No. 2386 SD1, relating to Workers' Compensation.**

This measure requires an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. The bill also specifies that the employee's ability to return to work is to be decided by the employee's treating physician.

The Chamber has concerns with the language that limits the termination of benefits only if the employee's own treating physician authorizes the return to work. While this is the case in limited situations, it is the employer's physician that often determines if the employee is capable of returning to work. An employee's own doctor will probably not authorize the return to work in any capacity if the employee elects to stay out on disability leave. It's important that these benefits be utilized as intended and not in such a way that benefits are activated simply because they exist.

Another concern is the employer's requirement to pay uninterrupted TTD benefits regardless if the employer disputes the right to benefits. This mandate may serve as a disincentive for an employee to return to work especially as the measure increases the weekly benefit amount to 70% of the injured employee's average weekly wages and does not penalize the employee for refusing to return to work.

This will hurt employers especially small businesses, which operate on limited resources and smaller staffs. Colleagues of the absent employee will unfairly shoulder additional responsibilities, which could have a domino effect, such as a stressful work environment, lower morale, and lost productivity. As a result, the negative consequences of this measure may hinder than promote progress.

Next, the measure does not allow the employer to file a request for hearing with the Department of Labor to terminate TTD benefits if they believe the employee is able to return to work. Instead, it only allows the employee to file a hearing. Thus, we believe this is not a fair and balanced approach.

Finally, there is no actual loss of care. An employee who wants to continue treatment after an employer terminates TTD coverage based on the evaluation that the employee can return to work and was offered work but turned it down, can then use the prepaid health care plan that every employer provides to continue care. If it is eventually determined that workers' compensation should have provided the care, the group health insurer can seek reimbursement/subrogation from the workers' compensation carrier.

In summary, HB 2386, while well-intended, will have unintended consequences and possibly lead to a rise in workers' compensation insurance costs and the overall cost of doing business. Thus, the Chamber respectfully requests this measure be held.

Thank you for the opportunity to testify.

Sincerely yours,

Randall Francisco  
President



GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM:

GARY M. SLOVIN, ESQ.  
CHRISTOPHER G. PABLO, ESQ.  
ANNE T. HORIUCHI, ESQ.  
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March 28, 2008

TO: Senator Rosalyn Baker  
Chair, Committee on Ways & Means  
Hawaii State Capitol, Room 210  
[testimony@capitol.hawaii.gov](mailto:testimony@capitol.hawaii.gov)

FROM: Anne T. Horiuchi  
H.B. 2386, SD1 Relating to Workers' Compensation  
Hearing Date: Tuesday, April 1, 2008 at 10:15 a.m.

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Dear Chair Baker and Members of the Committee on Ways & Means:

I am Anne Horiuchi, submitting comments on behalf of the American Insurance Association (AIA). AIA represents approximately 350 major insurance companies that provide all lines of property and casualty insurance and write more than \$123 billion annually in premiums. AIA members supply 23 percent of the property/casualty insurance sold in Hawaii. The association is headquartered in Washington, D.C., and has representatives in every state.

H.B. 2386, SD1 requires an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. The measure also specifies that the employee's ability to return to work is to be decided by the employee's treating physician.

Where a claim is controverted, employers and their insurers should not be required to pay benefits that they do not believe are owed. AIA opposes H.B. 2386, SD1 and respectfully requests that it be held.

Thank you very much for this opportunity to submit testimony.

TESTIMONY BEFORE THE SENATE COMMITTEE ON

WAYS AND MEANS

Tuesday, April 1, 2008

10:15 a.m.

HB 2386, SD1

RELATING TO WORKERS' COMPENSATION

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

Chair Baker, Vice Chair Tsutsui and Members of the Committee:

Hawaiian Electric Co. Inc., its subsidiaries, Maui Electric Company, LTD., and Hawaii Electric Light Company, Inc. **respectfully oppose H.B. 2386, SD1.** Our companies represent over 2,000 employees.

This bill proposes to amend *Section 386-31(b)*, Hawaii Revised Statutes (HRS), requiring the employer to pay temporary total disability ("TTD") benefits, regardless of whether the employer believes they have a reasonable basis for denying a claim, or discontinuing these benefits. It allows the termination of TTD benefits upon order of the Director, or if/when the employee's treating physician determines the employee can return to work and the employer has made a bona fide offer of suitable work within the employee's medical restrictions.

We cannot support a measure that requires an employer to pay for lost wages (TTD) during the period when the right to those benefits is in dispute, and until the Director of Labor is able to hold a hearing and issue a decision on the matter. We believe this would have a negative consequence on employers by providing an incentive for employees to not return to work and stay out longer than necessary, since the determination of when to return to work is made by the employee and their treating physician. Furthermore, suitable work within the employee's medical restrictions may not be available.

Under the current statutes, only employees can request a hearing to determine if TTD benefits should have been terminated. There are no provisions to afford employers the same opportunity. We encourage the committee to consider amending this bill to give employers the same right to a hearing with DLIR. Additionally, scheduling a hearing before the DLIR to resolve these disputes and render prompt decisions will be a challenge, given the DLIR's current workload and full calendar. Decisions on disputed cases may take 90 days before being rendered, leaving employers to continue paying for loss wages throughout this period that may be unrelated to a compensable work injury.

This bill hurts employers, especially in cases where it is determined that a claim was not compensable. There are no measures in this bill to assist employers with the collection of overpaid TTD benefits from injured employees. While the bill offers employers the option of requesting a credit for the amount of TTD benefits paid from a future settlement, this may not be realized if it is later determined that the employee has no permanent impairment, and therefore not entitled to a settlement.

Finally, this bill adds a new subsection (c) to *Section 386-31 HRS*, increasing the weekly benefits to 70% (vs. 66 2/3%) or the maximum weekly TTD benefit rate. The bill is unclear as to when and which rate is applicable. It may allow an employee to receive TTD benefits at a rate that exceeds their actual weekly salary. This can significantly increase TTD costs for employers by providing another incentive for employees to misuse the intent of these benefits..

If implemented, this bill would substantially increase both direct and indirect costs of workers' compensation claims, hurting businesses across the state, and ultimately, consumers. For these reasons, we respectfully oppose H.B. 2386, SD1.

Thank you for the opportunity to testify.

## testimony

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**From:** Rebecca C. Stolar [rstolar@starbulletin.com]  
**Sent:** Friday, March 28, 2008 6:19 PM  
**To:** testimony  
**Subject:** Please OPPOSE HB 2386 relating to Workers' Compensation (4/1 WAM Hearing at 10:15 a.m.)

Chair Baker:

My name is Rebecca C. Stolar and I am with Honolulu Star-Bulletin/MidWeek. I respectfully request that you do not pass HB 2386 relating to Workers' Compensation.

Sincerely,

Rebecca C. Stolar  
500 Ala Moana Blvd, Bldg 7 #500  
Honolulu, HI 96813

## testimony

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**From:** Cindy Saiki [csaiki@gracepacificcorp.com]  
**Sent:** Friday, March 28, 2008 3:41 PM  
**To:** testimony  
**Subject:** Please OPPOSE HB 2386 relating to Workers' Compensation (4/1 WAM Hearing at 10:15 a.m.)

Chair Baker:

My name is Cindy Saiki and I am with Grace Pacific Corporation. I respectfully request that you do not pass HB 2386 relating to Workers' Compensation.

This measure requires the employer to continue temporary total disability benefits regardless of whether the employer controverts the right to benefits.

Although I understand the intent of the bill, I believe this bill may serve as a disincentive to return to work, which will be counterproductive to its actual purpose.

This measure, if passed, may increase my workers' compensation premiums, and the overall cost of doing business [add further explanation].

If you have any questions, please do not hesitate to contact me at 674-5227. Thank you for the opportunity to submit written testimony.

Sincerely, Cindy Saiki

Cindy Saiki  
PO Box 78  
Honolulu, HI 96810

## testimony

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**From:** Thomas Reed, IV [Reed@oicinc.com]  
**Sent:** Monday, March 31, 2008 5:06 PM  
**To:** testimony  
**Subject:** Please OPPOSE HB 2386 relating to Workers' Compensation (4/1 WAM Hearing at 10:15 a.m.)

Chair Baker:

My name is Thomas B. Reed IV, and I am with Oceanic Imaging Consultants. As a small, Hi-Tech Hawaiian company, OIC is, as are many others, struggling with the weakening economy. Any further costs of doing business are not helpful. I respectfully request that you do not pass HB 2386 relating to Workers' Compensation.

This measure requires the employer to continue temporary total disability benefits regardless of whether the employer controverts the right to benefits.

Although I understand the intent of the bill, I believe this bill may serve as a disincentive to return to work, which will be counterproductive to its actual purpose.

This measure, if passed, may increase my workers' compensation premiums, and the overall cost of doing business [add further explanation].

If you have any questions, please do not hesitate to contact me at [contact information]. Thank you for the opportunity to submit written testimony.

Sincerely,

Thomas Reed, IV  
1144 10th Ave Ste 200  
Honolulu, HI 96816



# Hawaii State Chiropractic Association

P.O. Box 22668 Honolulu, HI 96823-2668

ph: (808) 926-8883 fx: (808) 926-8884

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March 30, 2008

## THE SENATE COMMITTEE ON WAYS AND MEANS

For Hearing on  
Date: Tuesday, April 1, 2008  
Time: 10:15 am  
Place: Conference Room 211

Dear Chair Baker, Vice Chair Tsutsui, and members of the committee:

My name is Gary Saito. I am the President and Executive Director of the Hawaii State Chiropractic Association. Our organization **supports the intent of HB 2386 SD1.**

Time and time again, injured workers are denied their workers' compensation benefits because of denials of TTD benefits by the employer and insurance carrier. Insurance carriers often do not give a valid medical reason for denying benefits, nor do they have a valid medical reason to question the worker's claim of injury.

What happens when injured workers are denied benefits?

1. Weeks and months go by without reasonable and appropriate medical care and TTD benefits.
2. Without TTD benefits because of employer denials, workers face unreasonable financial hardship and sacrifice. They are unable to meet mortgage payments, food bills, family expenses, etc.
3. Even though they request a DCD hearing to determine compensability, they do not get hearings scheduled in a timely manner (usually 6 months to a year). Even though the DCD professes that hearings are scheduled within 80 days, I have yet to see it happen.
4. Many legitimately injured employees suffer financial ruin because of a lack of caring by the employer/carrier and a lack of responsiveness to their dilemma from the DCD. Most employees do not have 6-8 months worth of savings to fall back on. Without TTD relief, their financial hardship begins the day they are injured.

For years, carriers have denied benefits "pending investigation". They do not have to say:

1. what is being investigated
2. how the investigation is being conducted
3. when it will be concluded
4. or what the basis of the investigation is.

The system right now fails miserably to protect the injured worker's right to reasonable and appropriate TTD benefits. Denials and delays often have nothing to do with the employee's injury. It has everything to do with denying benefits as a way to limit expenses and liability and to boost profits.

Every employer in the state should insist that their premium dollars go toward the treatment of their injured workers. Unfortunately, many employers subscribe to and encourage the existing pattern of denying their employees their rights under current workers' compensation law.

We ask for legislators to uphold the statutes by requiring the proper treatment of injured workers. This bill is one attempt to protect and preserve injured workers' rights to benefits.

**We urge your support of HB 2386 SD 1.** Thank you for your consideration of our position on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gary Saito', with a large, stylized loop at the beginning.

Gary Saito, DC



**Testimony by:**  
**Derrick Ishihara, PT**

**HB 2386sd1, Relating to Workers'**  
**Compensation**  
**Senate WAM, Tuesday, April 1, 2008**  
**Room 211, 10:00 am**



**Position: Support**

Dear Senator Baker and Members of the Senate WAM Committee:

I am Derrick Ishihara, P.T., a small business owner/physical therapist and member of HAPTA's Legislative Committee. The Hawaii Chapter – American Physical Therapy Association (HAPTA) is comprised of 300 member physical therapists and physical therapist assistants employed in hospitals and health care facilities, the Department of Education school system, and private practice. We are part of the spectrum of care for Hawaii, and provide rehabilitative services for infants and children, youth, adults and the elderly. Rehabilitative services are a vital part of restoring optimum functioning from neuromusculoskeletal injuries and impairments.

HAPTA supports this proposal to prevent insurers from arbitrarily terminating TTD benefits to injured workers.

Anecdotal evidence from attorneys and claimants presented at previous legislative hearings suggest that insurers have terminated benefits to deserving claimants without good cause. Further, it is reported that inquiries from the claimants and the claimants' attorneys to the insurers have been ignored.

This has resulted in extreme financial hardship for injured workers. In some cases, injured workers are forced to return to their jobs prematurely, creating a hazardous situation not only for the injured worker, but also potentially for that employee's co-workers.

Passing this measure would cause insurers to be more selective when evaluating disputed cases for termination of benefits. Currently, as reported, when cases are awaiting administrative hearing, the insurer many times will not pay TTD benefits. In other words, the current system works to the benefit of the insurer and the larger the backlog of cases at the DOL and the longer time to obtain hearing dates, the more favorable it is for the insurer. Requiring payment of benefits while cases await the Directors decision will effectively remove this incentive for insurers.

I may be reached at 593-2610 if there are any questions. Thank you for the opportunity to present testimony.

THE SENATE  
THE TWENTY-FOURTH LEGISLATURE  
REGULAR SESSION OF 2008

COMMITTEE ON WAYS AND MEANS

Sen. Roslyn H. Baker, Chair  
Sen. Shan S. Tsutsui, Vice Chair

Date: Tuesday April 1, 2008  
Time: 10:15 am.  
Place: Conference Room 211 State Capitol

TESTIMONY FRED GALDONES/ILWU LOCAL 142

RE: HB 2386, S.D. 1, RELATING TO WORKERS' COMPENSATION

Thank you for the opportunity to present testimony regarding HB 2386, S.D. 1.

This bill seeks to guarantee the payment of temporary total disability to injured workers even if an employer controverts the employee's industrial accident claim. It permits the cessation of such benefits only if the director of the Department of Labor issues an order terminating these benefits, or the employee's treating physician determines he is able to resume work and the employer makes a bonafide offer of suitable work consistent with the employee's medical restriction

When it is determined that benefits should in fact have been discontinued, an employer who has overpaid temporary total disability may request a credit against future benefit payments. Where employers fail to comply with HB 2386, SD 1 they may be fined not more than \$2500 plus the attorneys' fees and costs of the employee's attorney.

Finally, an injured employee is awarded benefits equal to 70% of the employee's average weekly wage up to the maximum weekly benefit rate in the year of injury if the employee suffers temporary or permanent disability and payment was not commenced "within thirty days of or within the same year as the date of injury, whichever is later."

The idea of making payment of benefits to employees irrespective of whether an employee controverts a claim has the positive effect of encouraging prompt medical treatment and swift adjudication of the industrial accident claim. It also prevents the financial privation and hardship occasioned by disability and the myriad of social problems that may surround the disabled employee and her family.

If payment of temporary total disability is deemed unacceptable where a claim is denied, the bill might be amended to require the payment of temporary disability insurance, sick leave, or some other form of income replacement by the employer so that the employee would at least receive a steady source of financial aid during the employee's incapacitation. As is now the

case, if workers' compensation is eventually approved and paid, TDI or sick leave can easily be repaid by the workers' compensation insurance carrier.

The idea that employers should pay the injured worker 70% of average weekly wage rather than 66-2/3% if payment is not made promptly is a valuable innovation. However, as presently proposed, HB 2386, SD 1 requires that payment of compensation must begin "within thirty days of *or within the same year as the date of injury, whichever is later.*" (italics supplied) In some instances, if compensation is not paid until later within the same year that the injury occurs, this might be excuse extreme and unreasonable delay. If a person were injured on New Year's Day, for example, the 70% of average weekly wage penalty would not take effect, as long as compensation was paid within the next 364 days, or by December 31 of the year in which the injury occurred. Delay of this magnitude would be markedly inconsistent with the goal of prompt payment of assuring injured workers a constant source of income replacement. Section 386-31(b) HRS requires that temporary total disability benefits be paid "promptly as they accrue" and within ten days of the employer's notice of total disability. Because of this anomaly in HB 2386, SD 1, the words "or within the same year as the date of injury, whichever is later" should be deleted, so the higher 70% of average weekly wage rate is payable if the employer does not pay temporary total disability within 30 days after the industrial accident.

HB 2386, S.D.1 is now currently effective on July 1, 2050. There is, however, no reason to delay the vital improvements enacted by this bill, and the effective date should be changed to July 1, 2008.

We support the concept of prompt payment of benefits without interruption and speedy adjudication of claims embodied in HB 2386, S.D.1 and support its passage with the modifications we have suggested.