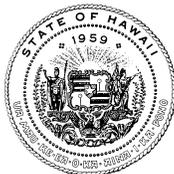


TESTIMONY

SB 63



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.hawaii.gov/labor
Phone: (808) 586-8842 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

February 9, 2009

To: The Honorable Dwight Takamine, Chair
and Members of the Senate Committee on Labor

Date: February 10, 2009

Time: 2:45 p.m.

Place: Conference Room 224, State Capitol

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

Testimony in OPPOSITION
to
S.B. 63 – Relating to Workers' Compensation

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

Senate Bill 63 proposes to amend section 386-31(b), 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 requires that the order shall only be issued upon receipt of a request from the employee upon notice from employer of intent to terminate TTD. The director shall review the case file and direct the employee and the employer to submit position papers within fourteen days. The director shall issue a decision, without a hearing, within thirty days after this fourteen-day period. The order shall indicate whether TTD benefits should have been discontinued and, if so, a date shall be designated after which TTD benefits should have been discontinued.

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, subject to the limitations on weekly benefit rates, or one hundred percent (100%) of the employee's average weekly wages if the average weekly wages are less than the maximum weekly benefit rate, if payment of compensation was not begun within thirty days of the date of injury.

Section 2 of the proposal requires the director to convene a working group within thirty days of the effective date of this section. The director shall serve as the chairperson of the working group. The working group shall address and make recommendations to resolve the concerns raised by this Act. The working group shall submit their findings and recommendations, including proposed legislation, to the Legislature no later than twenty days prior to the convening of the regular session of the 2010 Legislature.

This Act shall take effect upon approval, provided that sections 1, 3, and 4 shall take effect on July 1, 2010, if the working group established in section 2 states in its report to the Legislature that it has not reached a consensus in resolving the concerns of the Act.

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. SENATE BILL

The Department understands the intent that this bill seeks to resolve through ensuring that claimants, who are entitled to TTD benefits, are not economically harmed during their inability to work. A similar bill, House Bill 2386, S.D. 2, C.D. 1, was passed by the

2008 Legislature and vetoed by the Governor. The Department recommended veto of the bill and continues to oppose this bill, S.B. 63, in its present form for the following reasons:

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 disallowed TTD payments from employees. While this bill does allow for the director to provide a "credit" to the employer, the credit would only apply to claims determined to be work-related or cases in which permanent partial disability (PPD) benefits are awarded. In those cases where there is no PPD award, or if the PPD award is smaller than the amount of overpaid TTD benefits, the employer would probably have to absorb that loss.

2. Currently, this section of law does not appear to allow an employer to request a hearing before the director to terminate TTD benefits. Section 386-31, HRS, specifically 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 may not have an avenue to terminate benefits, as they would need the claimant to file the request for hearing to terminate the benefits.
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. 66-2/3%), subject to the limitations on weekly benefit rates prescribed in subsection (a), for TTD benefits if the initial payment of benefits are **not made within thirty days of the date of injury**. The current law allows a claim for workers' compensation benefits to be filed within two to five years of the date of injury. **Does that mean that all claims filed after thirty days after the date of injury will automatically receive the higher benefit rate? In addition, the bill allows the employee to receive one hundred percent (100%) of their average weekly wages if their average weekly wages are less than the maximum weekly benefit rate prescribed in subsection (a).** The Department believes it should read "**one hundred percent of the minimum weekly benefit rate**", rather than the maximum. Otherwise, those employees

whose average weekly wages are less than the maximum weekly benefit rate will receive their full pay while on TTD benefits. This would provide injured workers with a tremendous incentive not to return to work since they may receive their full pay while NOT working. This is not the intent of the workers' compensation law and this bill as written will tremendously increase the costs of workers' compensation claims and premiums.

4. This bill will increase the cost of doing business in Hawaii at a time when it may not be prudent to do so.
5. All parties would like to have TTD issues resolved expeditiously. This proposal includes the Department's previous recommendation to allow the director to render a decision based upon position papers and information in the case file without a hearing. Additional hearings officers and clerical staff would be required in order to expedite review of the position papers and case information, write and issue the decisions. However, these decisions could still be appealed to the Labor Appeals Board and possibly be remanded back to the DCD to hold a hearing and determine the issue of termination of TTD.

For the above reasons, the Department opposes the amendments in S.B. 63.



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

February 9, 2009

TESTIMONY TO THE
SENATE COMMITTEE ON LABOR
For Hearing on Tuesday, February 10, 2009
2:45 p.m., Conference Room 224

BY

MARIE C. LADERTA, DIRECTOR

Senate Bill No. 63
Relating to Workers' Compensation

TO CHAIR DWIGHT Y. TAKAMINE AND MEMBERS OF THE COMMITTEE:

The purpose of S.B. No. 63, 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 ordered by the director or if 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) an order shall only be issued after the director has reviewed the case file and position papers submitted by the employee and the employer, a decision will be issued, without a hearing, 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; and (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.

As drafted, it isn't clear how the credit, if 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, on a weekly basis, where a work injury causes temporary total disability if compensation is not paid within thirty days of the date of the injury. Section 386-82, Hawaii Revised Statutes, provides that a written claim must be made within two years after the date at which the effects of the injury for which the employee is entitled to compensation have become manifest and within five years after the date of the accident or occurrence which caused the injury. As written, this would penalize an employer for something over which they have no control.

Respectfully submitted,



MARIE C. LADERTA

Division of Industrial Safety and Workers' Compensation

Department of Human Resources

City and County of Honolulu

650 South King Street, 6th Floor

Honolulu, Hawaii 96813

Phone: 768-8560 Fax: 550-6221

Testimony to the Twenty-fifth Legislature 2009

Testifier's name/position title and organization: Ken Y. Nakamatsu, Director
Department of Human Resources
City & County of Honolulu

The Committee the comments are directed to: Committee on Labor
The Senate

The date and time of hearing: February 10, 2009
2:45 P.M.

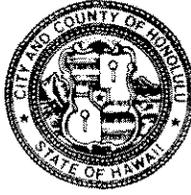
Measure number: SB 63

The number of committee requested copies: 1

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 10TH FLOOR
HONOLULU, HAWAII 96813

MUFI HANNEMANN
MAYOR



KENNETH Y. NAKAMATSU
DIRECTOR

February 10, 2009

The Honorable Dwight Y. Takamine, Chair
and Members of the Committee on Labor
The Senate
Hawaii State Capitol
Honolulu, Hawaii 96813

Dear Chair Takamine and Members:

RE: SENATE BILL NO. 63 RELATING TO WORKERS' COMPENSATION

The City and County of Honolulu strongly opposes Senate Bill No. 63, amending Section 386-31 of the Hawaii Workers' Compensation Law. This bill makes unnecessary changes to the current law that will increase the cost of workers' compensation in the State of Hawaii. The proposed changes require an employer to continue to pay an injured employee's temporary total disability benefits regardless of whether the employer has controverted the right to such benefits and even when the employer determines that the employee is able to resume work. The bill also requires payment of attorney's fees and costs that are not in the current law. This encourages more attorney involvement in the system and will result in increased costs. Finally, the bill proposes to penalize the employer for not beginning temporary total disability benefits within 30 days of the date of injury by increasing the weekly benefit from 66-2/3 percent to 70 percent. The proposed changes to Section 386-31 are unnecessary, adversarial and do not ensure the legislative intent of improving the efficiency and fairness of the workers' compensation system.

The 1995 Legislature enacted major reforms to the Hawaii Workers' Compensation Law resulting in hundreds of millions of dollars being saved over the last 12 years. The magnitude of the savings can be assessed using data from the State's Department of Labor and Industrial Relations Workers' Compensation Data Book, published annually (see Attachment I). In short, statewide workers' compensation costs 3 years prior to the reform averaged \$331 million annually. Workers' compensation costs for the 12 years immediately following the reform averaged \$253 million annually; a \$78 million annual savings. Put in the proper perspective, over the last 12 years the State of Hawaii has saved \$936 million in workers' compensation costs as a result of the changes made by the 1995 Legislature.

Now in 2009, the Twenty-fifth Legislature is proposing changes to the Hawaii Workers' Compensation Law that will inevitably increase the cost of workers' compensation in the State. In times of economic turmoil requiring fiscal austerity and innovative solutions, it is most disturbing to see bills introduced by this Legislature that further add to the already critical financial crises in the State.

The Honorable Dwight Y. Takamine
February 10, 2009
Page 2

We respectfully urge your committee to file Senate Bill No. 63, because the proposed changes to Section 386-31 will make the system more adversarial, less efficient and more expensive. The Hawaii Workers' Compensation Law already weighs heavily in favor of the claimant and the changes proposed in Senate Bill No. 63 further erode an employer's ability to efficiently and effectively manage claims.

Sincerely,


for KEN Y. NAKAMATSU
Director of Human Resources

Attachment

STATEWIDE WORKERS' COMPENSATION COSTS BY TYPE OF PAYMENT

Type of Payment	2000	2001	2002	2003	2004	2005	2006	2007	Type
TTD	55,312,588	62,586,914	65,056,903	67,654,807	63,706,668	59,067,148	54,967,864	56,919,048	TTD
TPD	2,651,756	3,043,394	2,900,452	3,241,339	3,184,548	3,109,906	2,625,563	2,705,692	TPD
PTD	15,507,928	15,118,576	18,395,265	17,626,114	18,093,822	15,955,797	18,599,904	16,765,532	PTD
PPD	57,260,955	57,875,459	65,159,217	68,803,178	69,515,306	66,399,667	64,195,980	63,054,843	PPD
Death	1,962,684	2,735,802	2,360,809	2,325,041	2,148,014	2,010,782	2,182,528	3,052,391	Death
Disfigurement	1,309,482	1,357,202	1,562,803	1,625,475	1,524,271	1,314,094	1,480,269	1,263,750	Disf
Voc Rehab	5,629,397	5,802,764	6,325,020	6,432,282	6,114,837	5,063,253	4,868,366	4,561,823	VR
Medical	91,184,757	103,303,676	105,926,606	106,912,209	106,766,183	97,638,645	93,394,364	98,513,146	Med
Attendant Services	539,633	217,365	140,180	301,787	236,375	219,851	370,655	457,629	AS
Total	231,359,180	252,041,152	267,827,255	274,922,232	271,290,024	250,779,143	242,685,493	247,293,854	Total

Workers' Compensation Reform began July 1, 1995. Major changes were Medical Fee Schedule (Medicare plus 10%), treatment limits, second injury limits on PPD and part-time workers.

Type of Payment	1992	1993	1994	1995	1996	1997	1998	1999	Type
TTD	75,124,541	83,443,021	80,281,234	70,875,583	61,054,623	57,366,809	53,356,078	51,550,709	TTD
TPD	2,335,548	2,769,212	3,072,057	2,774,293	2,829,674	2,825,736	2,878,552	2,743,336	TPD
PTD	13,600,845	11,232,499	19,763,997	15,497,510	17,618,587	16,716,542	15,714,253	15,830,200	PTD
PPD	69,506,346	76,270,234	81,865,987	95,125,484	93,619,941	72,453,667	64,909,092	57,124,045	PPD
Death	2,765,124	2,392,562	2,632,183	2,789,579	2,814,023	2,899,119	2,238,102	2,395,396	Death
Disfigurement	1,763,162	1,869,215	1,681,428	1,759,164	1,942,172	1,808,428	1,384,551	1,341,929	Disf
Voc Rehab	6,639,072	7,866,683	7,892,705	7,871,615	6,574,004	6,179,012	5,534,403	5,359,001	VR
Medical	115,960,185	137,740,829	145,500,111	129,125,665	101,664,903	94,424,669	87,019,208	85,513,448	Med
Attendant Services	307,956	178,355	390,071	303,969	376,739	241,389	190,286	198,250	AS
Total	288,002,779	323,762,610	343,079,773	326,122,862	288,494,666	254,915,371	233,224,525	222,056,314	Total

Source: Workers' Compensation Data Book, State of Hawaii, Department of Industrial Relations, Research and Statistics Office (1992 – 2007)

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009

COMMITTEE ON LABOR
Sen. Dwight Y. Takamine, Chair
Sen. Brian T. Taniguchi, Vice Chair

Date: Tuesday, February 10, 2009
Time: 2:45 p.m.
Place: Conference Room 224, State Capitol

TESTIMONY FRED GALDONES/ILWU LOCAL 142

RE: SB 63, RELATING TO WORKERS' COMPENSATION

Thank you for the opportunity to present testimony regarding SB 63.

This bill seeks to assure the payment of temporary total disability to injured workers are not improperly terminated and that due process is afforded prior to the elimination of such benefits. It permits the cessation of such benefits only if the director of the Department of Labor issues an order terminating these benefits, the employee's treating physician determines he is able to resume work, or the employer makes a bonafide offer of suitable work consistent with the employee's medical restriction. An order of the director will also only be issued after their has been a review of the case file and each party is given the opportunity to present written argument,

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, 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 total disability and payment was not commenced within thirty days of the date of injury.

The idea of making payment of benefits to employees where they are not made within thirty days of the date of injury 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.

We support the concept of prompt payment of benefits without interruption and speedy adjudication of claims embodied in SB 63 and support its passage.



Randy Perreira
President

HAWAII STATE AFL-CIO

320 Ward Avenue, Suite 209 • Honolulu, Hawaii 96814

Telephone: (808) 597-1441
Fax: (808) 593-2149

The Twenty-Fifth Legislature, State of Hawaii
Hawaii State Senate
Committee on Labor

Testimony by
Hawaii State AFL-CIO
February 10, 2009

S.B. 63 – RELATING TO WORKERS' COMPENSATION

The Hawaii State AFL-CIO strongly supports S.B. 63 which requires an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. Furthermore, S.B. 63 specifies that the employee's ability to return to work is to be decided by the employee's treating physician.

We agree that corrective action is warranted to stop the disruption of temporary total disability benefits in workers' compensation-related cases by employers. This disruption is counterproductive and becomes a serious impediment to the cost-effective treatment and recovery of injured workers. Unfortunately, this problem is symptomatic of efforts to erode the rights of injured workers through so-called "reform." Real reform of the workers' compensation system is needed to help injured workers recover, not to impede their recovery.

The Hawaii State AFL-CIO believes that an employer should not be able to stop temporary total disability benefits until the Director of Labor and Industrial Relations or treating physician decides to terminate them.

Thank you for the opportunity to testify in support of S.B. 63.

Respectfully submitted,

Randy Perreira
President

**Testimony by:
Derrick Ishihara, PT**

**SB 63, Relating to Workers'
Compensation
Sen LBR, Tuesday, Feb. 10, 2009
Room 224, 2:45 pm**



Position: Support

Chair Takamine and Members of the Senate LBR 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 and Department of Health systems, and private practice. Our members represent Hawaii at the national American Physical Therapy Association and are delegates for Pediatrics, Women's Health, Parkinson's Disease and other issue sections. 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 function 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 DLIR 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.

Please call me at 593-2610 if you have any questions. Thank you for the opportunity to present testimony.

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM:
GARY M. SLOVIN
CHRISTOPHER G. PABLO
ANNE T. HORIUCHI
MIHOKO E. ITO

ALII PLACE, SUITE 1800 • 1099 ALAKEA STREET
HONOLULU, HAWAII 96813

MAIL ADDRESS: P.O. BOX 3196
HONOLULU, HAWAII 96801

TELEPHONE (808) 547-5600 • FAX (808) 547-5880
info@goodsill.com • www.goodsill.com

INTERNET:
gslovin@goodsill.com
cpablo@goodsill.com
ahoriuchi@goodsill.com
meito@goodsill.com

MEMORANDUM

TO: Senator Dwight Takamine
Chair, Senate Committee on Labor
Via e-mail: LBRTestimony@Capitol.hawaii.gov

FROM: Anne Horiuchi

DATE: February 9, 2009

RE: **S.B. 63 Relating to Workers' Compensation**
Hearing: Tuesday, February 10, 2009 at 2:45 p.m., Room 224

Dear Chair Takamine and Members of the Committee on Labor:

I am Anne Horiuchi, testifying 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. All AIA news releases are available at www.aiadc.org.

S.B. 63 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. S.B. 63 convenes a working group to address and make recommendations to resolve any concerns relating to the substance of this measure. S.B. 63's provisions relating to the working group will be effective upon approval, while the balance of S.B. 63 will take effect on July 1, 2010 if the working group fails to reach a consensus.

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 S.B. 63 and respectfully requests that it be held.

Thank you very much for the opportunity to submit testimony on this measure.



February 10, 2009

Senator Dwight Takamine, Chair
Senate Committee on Labor
State Capitol, Room 224
Honolulu, Hawaii 96813

RE: SB 63 "Relating to Workers Compensation" (Continued TTD)

Chair Takamine and Members of the Senate Labor Committee:

I am Karen Nakamura, Executive Vice President & Chief Executive Officer 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.

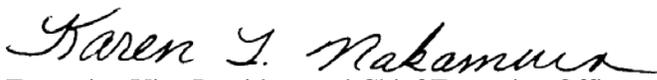
BIA-Hawaii is strongly opposed to SB 63 "Relating to Workers Compensation".

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 SB63 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.


Executive Vice President and Chief Executive Officer
BIA-Hawaii



HIIA

Hawaii Independent Insurance Agents Association

February 9, 2009

To: Senator Dwight Takamine, Chair
Senator Brian T. Taniguchi, Vice- Chair
Committee on Labor

From: Sonia M. Leong, Executive Director
Hawaii Independent Insurance Agents Association

Re: SB63 – Relating to Workers Compensation
Hearing: Tuesday, February 10, 2009 2:45 pm Conference Room 224

The Hawaii Independent Insurance Agents Association (HIIA) **opposes** SB63 which will require employers to pay temporary total disability (TTD) benefits without waiting for a decision from the Director, regardless of whether this right is controverted by the employer. TTD benefits can only be terminated by 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.

Other Points of Concern:

- The employer will not be able to recoup overpayments if there is no further indemnity benefits payable.
- There is concern over the penalties and assessment of attorney's fess and cost.
- There is concern over the increase to 70% of the average weekly wage, or maximum benefit.

HIIA is a non profit trade association of independent insurance producers dedicated to assisting the insurance buying public with their insurance needs. Many of our clients are business owners who will be directly affected if this bill is passed. As you are all aware, workers compensation is a very complex issue with so many interrelated factors that one change could tip the delicate balance. The economy is extremely fragile and this will put a real burden on many of the businesses many of whom are forced to close their doors.

Thank you for this opportunity to submit testimony.



Pauahi Tower, Suite 2010
1003 Bishop Street
Honolulu, Hawaii 96813
Telephone (808) 525-5877
Facsimile (808) 525-5879

Alison Powers
Executive Director

TESTIMONY OF ALISON POWERS

SENATE COMMITTEE ON LABOR
Senator Dwight Y. Takamine, Chair
Senator Brian T. Taniguchi, Vice Chair

Tuesday, February 10, 2009
2:45 p.m.

SB 63

Chair Takamine, Vice Chair Taniguchi, 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** S.B. 63, which mandates temporary total disability (TTD) benefits to continue until the Director issues a decision.

Workers' compensation costs loss cost filings have reflected decreases of 54% in recent years. Our members believe this bill will deteriorate these savings and substantially increase workers' compensation costs, which will translate into a higher cost of doing business, limiting business' ability to compete, adversely affect employees by limiting job availability, pay, and benefits and ultimately find its way into the costs of goods and services in Hawaii.

The current system allows employers to deny a claim pending completion of an investigation. The employer should be allowed to investigate a claim to determine whether the alleged injury is work related. This investigation includes obtaining the employee's medical records and an Independent Medical Examination. Under this bill,

if the employee does not provide authorization for medical providers to release their medical records, the investigation could be delayed for months while TTD is being paid. It is unfair for the employer to pay benefits when the employee is uncooperative. The bill encourages abuse by allowing the employee to stymie the employer's ability to investigate the claim while the employee receives TTD benefits, perhaps without merit.

Currently, when the injured worker is released to modified duty and the employer is able to accommodate the physical restrictions, the employee is paid Temporary *Partial* Disability benefits if the employee's average weekly wage is less than what was received prior to the industrial injury (subject to the minimum and maximum). In many situations, an injured worker is released to modified duty and receives the same weekly wage as what was paid prior to the injury. It is unreasonable to require the employer to continue TTD payments until the Director is able to review the case and issue a decision. The bill encourages malingering, promotes an adversarial environment for transitioning an employee back into the workforce, and creates an undue financial burden on the employer. The provision in the bill requires position papers to be filed 14 days after the employee requests a review by the Director. The Director then has 30 days in which to render a decision which is a total of 44 days just for the process. The process itself and whatever TTD was paid without justification are unnecessary costs that are built into this new law.

The bill provides no recoupment mechanism in which to receive a credit for TTD paid without justification. If the Director determines that the claim is not work related or if there is no permanent total or permanent partial settlement, there is nothing from which to recoup against and the employer will have lost any TTD paid without merit.

S.B. 63 also provides a new sanction for employers/insurers who do not comply with this section of the law to include attorneys fees and costs. In addition to any existing fines for noncompliance that the Director may impose on insurers, this provision again, adds to the cost of coverage.

Another provision in the bill provides for an increase in the weekly benefit amount to seventy percent of the injured employee's average weekly wage, subject to the limitations prescribed in subsection (a), if TTD and payment of compensation due under this chapter does not begin within thirty days of the date of injury. This will promote late reporting by employees in order to obtain a higher weekly benefit rate and unfairly penalizes the employer. Late reporting may also delay appropriate care and consequently exacerbate an injury and prolong healing.

Finally, S.B. 63 calls for a working group chaired by the Director and comprised of members of his choosing to come up with a compromise to language in the current bill or it will become effective July 1, 2010. There are many different interests in the workers' compensation system and it will only take one to stall a compromise, thereby forcing the existing language in the bill to be enacted. This provision does not take into account that the current process may be the best achievable system that attempts to provide no-fault benefits while keeping in place some cost containment measures.

There will be an increase in indemnity costs if this bill is enacted because there is an automatic additional 44 days of TTD just to comply with the process and then if TTD was paid without merit, those costs are added in on top. These costs will be passed on to businesses and consumers in the form of rate increases. The National Council on Compensation Insurance (NCCI), in their analysis dated February 29, 2008 of the same bill from last session (HB 2386), states in part,

"NCCI estimates that Hawaii's overall workers compensation system costs could be impacted by three specific portions of House Bill (HB) 2386 as follows:

- TTD benefits commence immediately +0.0% to +3.3%
- Ability to terminate benefits +0.0% to +0.7%
- Higher disability for some workers +0.1%

Under the scenarios we have considered, the combined overall impact of just these three portions of HB 2386 could range from **an increase of +0.1%(\$1 million) to 4.1%(\$22 million)**. Any potential cost impacts due to other provisions contained in HB 2386 would be realized through future loss experience and reflected in subsequent loss cost filings. This estimate does not contemplate any change in the timing of claims reporting.” (emphasis added)

For these reasons, we respectfully request that S.B. 63 be held.

Thank you for the opportunity to testify.



**Testimony to the Senate Committee on Labor
Tuesday, February 10, 2009; 2:45 p.m.
Conference Room 224**

RE: SENATE BILL 63 RELATING TO WORKERS' COMPENSATION

Chair Takamine, Vice Chair Taniguchi 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 SB 63, relating to Workers' Compensation.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 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 its members, which employ more than 200,000 individuals, 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. Finally, the bill convenes a working group.

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 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.

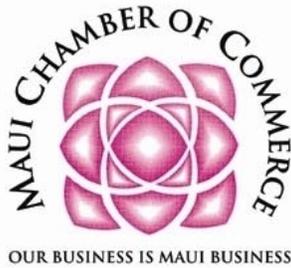
This will hurt employers especially small businesses, which operate on limited resources and smaller staffs. Colleagues of the absent employee will unfairly shoulder additional responsibilities, which could have a domino effect, such as a stressful work environment, lower morale, and lost productivity. 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, SB 63, 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. Hawaii should be cultivating the soil to help our local establishments thrive, so that jobs can be saved and created. This bill will drive businesses toward a direction that we cannot afford.

Thus, The Chamber respectfully requests this measure be held. Thank you for the opportunity to testify.



Testimony to the Senate Committee on Labor
Tuesday, February 10, 2009 at 2:45 p.m.
Conference Room 224

RE: SENATE BILL 63 RELATING TO WORKERS' COMPENSATION

Chair Takamine, Vice Chair Taniguchi and Members of the Committee:

The Maui Chamber of Commerce, a business organization with who mission it is to advance and promote a healthy economic environment for business, advocating for responsive government and quality education, while preserving Maui's unique community characteristics, strongly opposes this bill and asks that you do the same.

We are a membership driven organization comprised of over 900 members, 88% of which are small businesses with fewer than 25 employees, representing nearly 21,000 employees. We oppose this bill which 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. Finally, the bill convenes a working group.

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 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.

While a handful of questionable cases may exist, overall 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 Maui Chamber of Commerce 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.

Additionally, 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.

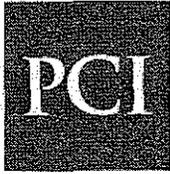
In summary, SB 63, while well-intended, will have unintended consequences and possibly lead to a rise in workers' compensation insurance costs and the overall cost of doing business. Hawaii should be cultivating the soil to help our local establishments thrive, so that jobs can be saved and created. This bill will drive businesses toward a direction that we cannot afford.

Therefore, we respectfully request that this measure be held.

Sincerely,

Pamela Tumpap

President



**Property Casualty Insurers
Association of America**

Shaping the Future of American Insurance

1415 L Street, Suite 670, Sacramento, CA 95814-3972

To: The Honorable Dwight Y. Takamine, Chair
Senate Labor Committee

From: Samuel Sorich, Vice President

RE: **SB 63 – Relating to Workers’ Compensation**
PCI Position: Oppose

Date: Tuesday, February 10, 2009
2:45 p.m. Conference Room 224

The Property Casualty Insurers Association of America (PCI) is opposed to SB 63 because the bill would unfairly impose additional workers compensation costs on Hawaii employers.

SB 63 would require an employer to pay temporary total disability benefits even though the employer contests the employee’s right to these benefits. The practical effect of the bill would be that temporary disability payments would have to be paid until there is a termination order after an administrative review.

The injustice of this proposed scheme is exacerbated by the fact that under SB 63, the employer has no express right to request a review; the bill provides that the review is to be conducted “upon receipt of the request from the employee.”

While this administrative process grinds on, the employer would be required to continue to make benefit payments. SB 63 offers no real relief when the director decides that the employee was not entitled to temporary disability benefits. The bill offers a “credit” against future benefit payments. But this is an empty offer if the employee has no temporary or permanent disability.

SB 63 is costly and unfair, PCI requests that the Committee vote No on the bill.



Senator Dwight Takamine, Chair
Senator Brian Taniguchi, Vice Chair
Committee on Labor
State Capitol, Honolulu, Hawaii 96813

HEARING Tuesday, February 10, 2009
 2:45 pm
 Conference Room 224

RE: SB63, Relating to Workers' Compensation

Chair Takamine, Vice Chair Taniguchi, 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.

RMH opposes SB63, which requires an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. While the provision convening a working group had merit and could provide opportunity for open dialogue, the automatic enactment of these changes to §386-31, Hawaii Revised Statutes, is problematic.

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. In this current economy, employers are struggling to maintain their workforce and avoid layoffs. It is incumbent upon us to not heap further expense on our businesses.

The members of the Retail Merchants of Hawaii respectfully request that you hold SB63. Thank you for your consideration and for the opportunity to comment on this measure.

President