

Honolulu, Hawaii

April 25, 2008

RE: H.B. No. 2386
S.D. 2
C.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

Sir and Madam:

Your Committee on Conference on the disagreeing vote of the House of Representatives to the amendments proposed by the Senate in H.B. No. 2386, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO WORKERS' COMPENSATION,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this bill is to ensure efficiency and fairness in the workers' compensation claims and dispute processes for temporary total disability (TTD) by:

- (1) Requiring an employer to pay TTD benefits without waiting for a decision from the Director of Labor and Industrial Relations (Director) regardless of whether the employer controverts the right to those benefits;
- (2) Specifying the continuation of TTD benefits until the employee's treating physician determines that the employee is able to resume work and a bona fide offer of suitable



work within the employee's medical restrictions has been made;

- (3) Requiring the Director, after conducting a review of the case file and position papers submitted by the parties, to issue a decision as to whether TTD benefits should have been discontinued, and if so, designate a date after which TTD benefits should have been discontinued;
- (4) Allowing an employer to make a written request to the Director for the issuance of a credit for the amount of TTD benefits paid by the employer after the date which the Director determined TTD benefits should have been discontinued;
- (5) Requiring an employer or insurer to pay for attorney's fees and costs to the employee if the employer or insurer is found to be noncompliant with the TTD law;
- (6) Entitling an injured employee to receive a weekly benefit amount equal to 70 percent of the injured employee's average weekly wage, or a maximum weekly income benefit based upon the state average weekly wage applicable, under certain conditions; and
- (7) Establishing a working group to address the concerns of this measure and report its recommendations to the Legislature prior to the 2009 Regular Session.

While the workers' compensation law was established as a "no-fault" law where an injured worker received the medical treatment necessary to allow the worker to return to work in exchange for an injured worker giving up the right to sue the employer, the process has become very adversarial. This has resulted in claims and counterclaims being filed and appealed regarding a worker's injury and often results in delaying the provision of TTD benefits. This delay ultimately causes delays in the receipt of treatment by the injured employee, thus hindering the recovery of an injured worker. Allowing a worker to continue to receive TTD benefits until the Director renders a decision in the matter while affording the employer the opportunity to obtain a credit for the amount of overpayment in TTD benefits appears to be a fair balance that addresses this problem.

After further consideration, your Committee on Conference has amended this measure by:



- (1) Specifying that a minimum weekly benefit restriction applies to the weekly benefit received where a work injury causes TTD;
- (2) Stipulating that if the employee's average weekly wages were less than the maximum weekly benefit rate, the injured employee would be compensated at a rate of one hundred percent of the employee's average weekly wage;
- (3) Clarifying that these benefits are intended for employees claiming TTD and not permanent disability;
- (4) Clarifying that these benefits are to be paid by an employer where a work injury causes TTD and payment of compensation due does not begin within thirty days of the date of injury;
- (5) Specifying that the working group address and make recommendations to resolve any concerns raised by this Act, rather than in this Act, since no concerns were raised in the Act itself;
- (6) Adding language to clarify that those getting TTD benefits after the effective date of this Act also qualify for these benefits;
- (7) Clarifying the effective date so that the task force becomes effective upon approval while the provisions amending the disability law only become effective if the task force fails to reach a consensus in resolving this matter.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of H.B. No. 2386, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2386, S.D. 2, C.D. 1.

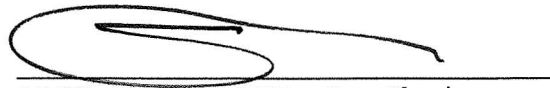


Respectfully submitted on behalf
of the managers:

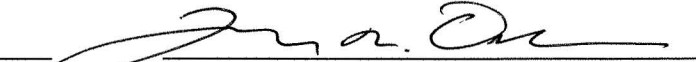
ON THE PART OF THE SENATE

ON THE PART OF THE HOUSE


BRIAN T. TANIGUCHI, Chair


ALEX M. SONSON, Co-Chair


SHAN S. TSUTSUI, Co-Chair


MARCUS R. OSHIRO, Co-Chair



