

STAND. COM. REP. NO. 644

Honolulu, Hawaii

Feb 16, 2007

RE: H.B. No. 763
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Sir:

Your Committee on Labor & Public Employment, to which was referred H.B. No. 763 entitled:

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

begs leave to report as follows:

The purpose of this bill is to make adjustments to the workers' compensation statute to ensure efficiency and fairness in the claims and dispute processes, including but not limited to:

- (1) Limiting an employer's ability to terminate workers' compensation benefits;
- (2) Authorizing the recovery of attorney's fees and costs by the injured employee;
- (3) Specifying procedures for medical examinations by an employer's physician;
- (4) Establishing fines for violations;
- (5) Requiring the reporting of denials of claims and other relevant information; and
- (6) Restricting the Director of Labor and Industrial Relations (Director) rulemaking authority.



ILWU Local 142, Hawaii State AFL-CIO, Hawaii State Teachers Association, Hawaii Government Employees Association, International Association of Rehabilitation Professionals-Hawaii, American Physical Therapy Association-Hawaii Chapter, Hawaii Rehabilitation Counseling Association, Occupational Therapy Association of Hawaii, Sestak Rehabilitation Services, Work*Star Occupational Health Systems, and numerous chiropractors and individuals testified in support of this measure. The Hawaii State Chiropractic Association and an individual supported the intent of this measure. The Department of Labor and Industrial Relations, Department of Human Resources Development, Department of Human Resources of the City & County of Honolulu, Department of Human Resources of the County of Hawaii, Hawaii Employers' Mutual Insurance Company, Hawaii Insurers Council, Brigham and Associates, Inc., Parthenia Medical Group, Inc., Academy of Independent Medical Examiners Hawaii and numerous individuals testified in opposition to this measure.

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 return, the injured worker gave up the right to sue the employer. This system appeared to be a "win-win" situation for both the employer and employee--the employee got necessary treatment while the employer would, in time, be able to employ a productive worker. However, over the years, this process has become more adversarial in nature to the detriment of both employers and employees.

Your Committee finds that the workers' compensation issue is a complex one in which a balance between the needs of employers and employees must be balanced. Accordingly, your Committee has amended this measure by deleting its contents and replacing it with language that, among other things:

- (1) Exempts individuals holding ownership of at least 50 percent in an employing unit, including corporations, partnerships, limited liability partnerships, and sole proprietorships from workers' compensation requirements if the individual chooses to be excluded, provided that the exclusion shall be irrevocable for five years;
- (2) Exempts a partner of a partnership, a partner of a limited liability partnership, and sole proprietor from workers' compensation requirements;



- (3) Prevents essential medical services from being discontinued in the event of a dispute, until the Director renders a decision on whether medical treatment should be continued;
- (4) Allows for the recovery of costs from a claimant's personal health care provider or other appropriate occupational or non-occupational insurer by an employer or employer's insurer in the event unwarranted medical treatment was provided;
- (5) Allows injured workers to be referred for vocational rehabilitation where the employee has achieved maximum medical improvement and the employer has made no offer of permanent suitable work;
- (6) Establishes criteria for the use of optional evidence-based guidelines for treatment and for the denial and dispute processes;
- (7) Provides for reimbursement of medical treatment expenses which should have been denied;
- (8) Allows for requests for hearings by employees and employers;
- (9) Limits the rulemaking powers of the Director;
- (10) Establishes requirements and standards for independent medical examiners to perform independent medical exams;
- (11) Permits claims for attorney's services;
- (12) Requires the submission of annual reports by workers' compensation insurers to the Director and Insurance Commissioner of the Department of Commerce and Consumer Affairs; and
- (13) Allows for alternative dispute resolution for workers' compensation claims.

This measure was further amended by:

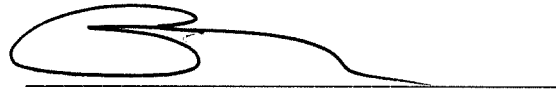
- (1) Inserting an effective date of July 1, 2059, to promote further discussion; and



- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Labor & Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 763, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 763, H.D. 1, and be referred to the Committee on Finance.

Respectfully submitted on
behalf of the members of the
Committee on Labor & Public
Employment,



ALEX M. SONSON, Chair



