
A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION LAW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 386, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:

4 "§386- Alternative dispute resolution. (a) In lieu
5 of a hearing before the director, at anytime after a claim for
6 compensation is made and before the director renders a decision,
7 the parties may agree in writing to have any controversy arising
8 under this chapter be decided by a referee paid for by the
9 parties.

10 (b) Before a referee can conduct a hearing, the parties
11 shall submit the agreed upon referee's name to the director for
12 appointment to serve as a referee. The referee shall be a
13 neutral person. An individual who has a known, direct, and
14 material interest in the outcome of the controversy or a known,
15 existing, and substantial relationship with a party may not
16 serve as a referee, unless that interest is disclosed, and any
17 conflict is waived by the parties.



1 (c) Unless the parties otherwise agree, the costs and fees
2 of the alternative resolution process shall be divided equally
3 between the parties.

4 (d) If the parties agree to have any controversy referred
5 to a referee, the director shall stay all actions or proceedings
6 until the referee issues a recommended decision.

7 (e) This chapter and its rules remain applicable to
8 proceedings before the referee except that requests shall be
9 directed to and recommended decisions shall be made by the
10 referee instead of the director.

11 (f) The referee shall issue and submit the referee's
12 recommended decision to the director no later than five days
13 after the hearing, and shall deliver the recommended decision to
14 all parties personally or by registered or certified mail.

15 (g) The director shall review the referee's recommended
16 decision to determine whether the recommended decision is in
17 compliance with this chapter.

18 If the recommended decision is in compliance with this
19 chapter, the director shall approve the recommended decision
20 within ten days of receiving the recommendation. Upon the
21 director's approval, the recommended decision has the same force
22 and effect as a director's decision rendered under this chapter,



1 and it may be enforced as if it had been rendered in an action
2 before the director. If the recommended decision does not
3 comply this with chapter, the director may modify or vacate the
4 recommended decision within ten days of receiving the
5 recommendation. If the director vacates the recommended
6 decision, the parties may resubmit the controversy to the
7 referee.

8 (h) The parties may appeal the director's decision in
9 accordance with section 386-87.

10 (i) This chapter and Hawaii administrative rules title 12,
11 chapters 10, 14, and 15 shall govern the proceedings before the
12 referee.

13 (j) At anytime after a claim for compensation is made and
14 before the director renders a decision, the parties may agree to
15 resolve any controversy regarding this chapter through mediation
16 by a mediator agreed upon by the parties. Unless otherwise
17 provided in the agreement to mediate, the costs and fees of
18 mediation shall be divided equally between the parties. Upon
19 the successful conclusion of the mediation, the parties shall
20 submit the settlement agreement to the director for approval.
21 If any controversy remains unresolved after the mediation, the
22 parties may request the director to resolve the controversy.



1 §386- **Alternative guidelines on frequency of treatment**
2 and reasonable use of health care and services. (a) This
3 section establishes the use of evidence-based treatment
4 guidelines for medical providers to provide treatment to injured
5 workers as an option to section 386-26 and its applicable Hawaii
6 administrative rules. The use of this alternative guideline
7 from the guidelines issued under section 386-26 shall be
8 optional and in the sole discretion of the medical provider.

9 (b) Frequency and extent of treatment shall be in
10 accordance with the most current edition of the ODG Treatment in
11 Workers' Comp issued by the Work Loss Data Institute, Hawaii
12 State Chiropractic Association Treatment Guidelines, or any
13 other medical guidelines approved by the director. In addition
14 to the most current edition of the ODG Treatment in Workers'
15 Comp, this section references Chapters 1-7 of the practice
16 guides issued by the American College of Occupational and
17 Environmental Medicine, 2nd Edition, and any other medical
18 guidelines approved by the director.

19 (c) The treatment guidelines required by this section are
20 presumed medically necessary and correct, and therefore, the
21 attending physician is not required to provide a treatment plan
22 to the employer and may begin treatment, so long as the



1 diagnosis is correct and medical treatment conforms to
2 subsection (b). However, the attending physician shall inform
3 the employer, on a form prescribed by the department, of a
4 diagnosis of the injury.

5 (d) The presumption in subsection (c) may be rebutted by a
6 preponderance of medical evidence establishing that a variance
7 from the guidelines is reasonably required to cure and relieve
8 the employee from the effects of the injury condition. The
9 attending physician may choose not to use the treatment
10 guidelines by submitting written notification to the employer,
11 and provide treatment as covered by section 386-26.

12 (e) For all injuries not covered by subsection (b), or in
13 cases in which the attending physician believes that additional
14 treatments beyond that provided by subsection (b) are necessary,
15 or that a treatment guideline different than that specified in
16 subsection (b) is necessary, the attending physician shall mail
17 a treatment plan to the employer at least fourteen calendar days
18 prior to the start of treatment. The treatment plan shall
19 detail:

20 (1) Projected commencement and termination dates of
21 treatment;

22 (2) A clear statement as to the impression or diagnosis;



1 (3) Number and frequency of treatments;

2 (4) Modalities and procedures to be used; and

3 (5) An estimated total cost of services.

4 With the exception of emergency medical services, any

5 provider who provides medical treatment without proper

6 authorization shall be denied compensation for the unauthorized

7 services. Unless agreed to by the employee, disallowed fees

8 shall not be charged to the injured employee.

9 (f) The employer may file an objection to the proposed

10 treatment plan within ten calendar days with documentary

11 evidence supporting the denial and a copy of the denied

12 treatment plan or treatment guideline with the director, sending

13 a copy to the attending physician and the injured employee.

14 Both the front page of the denial and the envelope in which the

15 denial is filed shall be clearly identified as a "TREATMENT PLAN

16 DENIAL" in capital letters. The employer shall be responsible

17 for payment for treatment until the date the objection is filed

18 with the director. Furthermore, the employer's objection letter

19 shall explicitly state that if the attending physician or the

20 injured employee does not agree with the denial, they may

21 request a review by the director of the employer's denial. In

22 denying medical treatment, the employer shall disclose to the



1 attending physician and employee the medically, evidenced-based
2 criteria used as the basis of the objection.

3 (g) The attending physician, injured employee, employer,
4 or insurance carrier may request in writing that the director
5 review the denial of the treatment plan or continuation of
6 services. The request for review shall be filed with the
7 director within fourteen calendar days after postmark of the
8 denial. A copy of the denied treatment plan or order for
9 continued services shall be submitted with the request for
10 review. Both the front page of the request for review and the
11 envelope in which the request is filed shall be clearly
12 identified as a "REQUEST FOR REVIEW OF TREATMENT PLAN DENIAL" or
13 "REQUEST FOR REVIEW OF ORDER OF CONTINUED TREATMENT" in capital
14 letters. For cases not under the jurisdiction of the director
15 at the time of the request, the injured employee shall be
16 responsible to have the case remanded to the director's
17 jurisdiction. Failure to file a request for review of the
18 denial or continuation of services with the director within
19 fourteen calendar days after postmark of the denial or order of
20 continued services shall be deemed acceptance of the decision.



1 (h) For treatments and services by providers of service
2 other than physicians, treatment shall be in accordance with
3 subsection (a)."

4 SECTION 2. Section 91-3, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) Except as provided in section 386-72, and subsection
7 (f), prior to the adoption of any rule authorized by law, or the
8 amendment or repeal thereof, the adopting agency shall:

9 (1) Give at least thirty days' notice for a public
10 hearing. The notice shall include:

11 (A) A statement of the topic of the proposed rule
12 adoption, amendment, or repeal or a general
13 description of the subjects involved; [~~and~~]

14 (B) A statement that a copy of the proposed rule to
15 be adopted, the proposed rule amendment, or the
16 rule proposed to be repealed will be mailed to
17 any interested person who requests a copy, pays
18 the required fees for the copy and the postage,
19 if any, together with a description of where and
20 how the requests may be made;

21 (C) A statement of when, where, and during what times
22 the proposed rule to be adopted, the proposed



1 rule amendment, or the rule proposed to be
2 repealed may be reviewed in person; and
3 (D) The date, time, and place where the public
4 hearing will be held and where interested persons
5 may be heard on the proposed rule adoption,
6 amendment, or repeal.

7 The notice shall be mailed to all persons who
8 have made a timely written request of the agency for
9 advance notice of its rulemaking proceedings, given at
10 least once statewide for state agencies and in the
11 county for county agencies. Proposed state agency
12 rules shall also be posted on the Internet as provided
13 in section 91-2.6; and

14 (2) Afford all interested persons opportunity to submit
15 data, views, or arguments, orally or in writing. The
16 agency shall fully consider all written and oral
17 submissions respecting the proposed rule. The agency
18 may make its decision at the public hearing or
19 announce then the date when it intends to make its
20 decision. Upon adoption, amendment, or repeal of a
21 rule, the agency, if requested to do so by an
22 interested person, shall issue a concise statement of



1 the principal reasons for and against its
2 determination."

3 SECTION 3. Section 386-1, Hawaii Revised Statutes, is
4 amended by amending the definition of "employment" to read as
5 follows:

6 ""Employment" means any service performed by an individual
7 for another person under any contract of hire or apprenticeship,
8 express or implied, oral or written, whether lawfully or
9 unlawfully entered into. It includes service of public
10 officials, whether elected or under any appointment or contract
11 of hire express or implied.

12 "Employment" does not include the following service:

13 (1) Service for a religious, charitable, educational, or
14 nonprofit organization if performed in a voluntary or
15 unpaid capacity;

16 (2) Service for a religious, charitable, educational, or
17 nonprofit organization if performed by a recipient of
18 aid therefrom and the service is incidental to or in
19 return for the aid received;

20 (3) Service for a school, college, university, college
21 club, fraternity, or sorority if performed by a
22 student who is enrolled and regularly attending



- 1 classes and in return for board, lodging, or tuition
2 furnished, in whole or in part;
- 3 (4) Service performed by a duly ordained, commissioned, or
4 licensed minister, priest, or rabbi of a church in the
5 exercise of the minister's, priest's, or rabbi's
6 ministry or by a member of a religious order in the
7 exercise of nonsecular duties required by the order;
- 8 (5) Service performed by an individual for another person
9 solely for personal, family, or household purposes if
10 the cash remuneration received is less than \$225
11 during the current calendar quarter and during each
12 completed calendar quarter of the preceding twelve-
13 month period;
- 14 (6) Domestic, which includes attendant care, and day care
15 services authorized by the department of human
16 services under the Social Security Act, as amended,
17 performed by an individual in the employ of a
18 recipient of social service payments;
- 19 (7) Service performed without wages for a corporation
20 without employees by a corporate officer in which the
21 officer is at least a twenty-five per cent
22 stockholder;



1 ~~[(8) Service performed by an individual for a corporation~~
2 ~~if the individual owns at least fifty per cent of the~~
3 ~~corporation; provided that no employer shall require~~
4 ~~an employee to incorporate as a condition of~~
5 ~~employment; and]~~

6 (8) Service performed by an individual who holds an
7 ownership interest of at least fifty per cent in the
8 employing unit, including but not limited to
9 corporations, partnerships, limited liability
10 companies, and limited liability partnerships;
11 provided that:

12 (A) The individual elects to be excluded from
13 coverage under this chapter and files an
14 application with the director;

15 (B) The election for exclusion shall be irrevocable
16 for five years;

17 (C) The individual presents to the director proof
18 that the individual has paid federal unemployment
19 insurance taxes as required by federal law; and

20 (D) The election to be excluded from coverage shall
21 take effect on the first day of the calendar
22 quarter in which the application and all



1 substantiating documents requested by the
2 director have been filed with the director;

3 (9) Service performed by an individual for another person
4 as a real estate salesperson or as a real estate
5 broker, if all the service performed by the individual
6 for the other person is performed for remuneration
7 solely by way of commission[-];

8 (10) Service performed by a partner of a partnership for
9 the partnership, as defined in section 425-101, if the
10 partner is an individual; provided that no employer
11 shall require an employee to become a partner as a
12 condition of employment;

13 (11) Service performed by a partner of a limited liability
14 partnership, if the partner is an individual and has a
15 transferable interest, as defined in section 425-127
16 in the partnership of at least fifty per cent;
17 provided that no employer shall require an employee to
18 form a limited liability partnership as a condition of
19 employment; and

20 (12) Service performed by a sole proprietor for the sole
21 proprietorship.



1 As used in this paragraph, "religious, charitable,
2 educational, or nonprofit organization" means a corporation,
3 unincorporated association, community chest, fund, or foundation
4 organized and operated exclusively for religious, charitable, or
5 educational purposes, no part of the net earnings of which inure
6 to the benefit of any private shareholder or individual."

7 SECTION 4. Section 386-21, Hawaii Revised Statutes, is
8 amended by amending subsection (c) to read as follows:

9 "(c) The liability of the employer for medical care,
10 services, and supplies shall be limited to the charges computed
11 as set forth in this section. The director shall make
12 determinations of the charges and adopt fee schedules based upon
13 those determinations. [~~Effective January 1, 1997, and for each~~
14 ~~succeeding calendar year thereafter, the~~] The charges shall not
15 exceed one hundred ten per cent of fees prescribed in the
16 Medicare Resource Based Relative Value Scale system applicable
17 to Hawaii as prepared by the United States Department of Health
18 and Human Services, except as provided in this subsection. The
19 rates or fees provided for in this section shall be adequate to
20 ensure at all times the standard of services and care intended
21 by this chapter to injured employees.



1 If the director determines that an allowance under the
2 medicare program is not reasonable, or if a medical treatment,
3 accommodation, product, or service existing as of June 29, 1995,
4 is not covered under the medicare program, the director, at any
5 time, may establish an additional fee schedule or schedules not
6 exceeding the prevalent charge for fees for services actually
7 received by providers of health care services to cover charges
8 for that treatment, accommodation, product, or service. If no
9 prevalent charge for a fee for service has been established for
10 a given service or procedure, the director shall adopt a
11 reasonable rate that shall be the same for all providers of
12 health care services to be paid for that service or procedure.

13 The director shall update the schedules required by this
14 section every three years or annually, as required. The updates
15 shall be based upon:

- 16 (1) Future charges or additions prescribed in the Medicare
17 Resource Based Relative Value Scale system applicable
18 to Hawaii as prepared by the United States Department
19 of Health and Human Services; or
- 20 (2) A statistically valid survey by the director of
21 prevalent charges for fees for services actually
22 received by providers of health care services or based



1 upon the information provided to the director by the
2 appropriate state agency having access to prevalent
3 charges for medical fee information.

4 When a dispute exists between an insurer or self-insured
5 employer and a medical services provider regarding the amount of
6 a fee for medical services, the director may resolve the dispute
7 in a summary manner as the director may prescribe; provided that
8 a provider shall not charge more than the provider's private
9 patient charge for the service rendered.

10 When a dispute exists between an injured employee and the
11 employer or the employer's insurer regarding the proposed
12 treatment plan or whether medical services should be continued,
13 the injured employee shall continue to receive essential medical
14 services prescribed by the treating physician necessary to
15 prevent deterioration of the injured employee's condition or
16 further injury until the director issues a decision on whether
17 the injured employee's medical treatment should be continued.
18 The director shall make a decision within thirty days of the
19 filing of a dispute. If the director determines that medical
20 services pursuant to the treatment plan should be or should have
21 been discontinued, the director shall designate the date after
22 which medical services for that treatment plan are denied. The



1 employer or the employer's insurer, may recover from the
2 claimant's personal health care provider pursuant to section
3 386-27, or from any other appropriate occupational or non-
4 occupational insurer, all the sums paid for medical services
5 rendered after the date designated by the director. Under no
6 circumstances shall the claimant be charged for the disallowed
7 services, unless the services were obtained in violation of
8 section 386-98. The attending physician, injured employee,
9 employer, or insurance carrier may request in writing that the
10 director review the denial of the treatment plan or the
11 continuation of medical services."

12 SECTION 5. Section 386-25, Hawaii Revised Statutes, is
13 amended by amending subsection (b) to read as follows:

14 "(b) The director may refer employees who may have or have
15 suffered permanent disability as a result of work injuries or
16 who have otherwise been deemed unable to return to their regular
17 jobs after they have achieved maximum medical improvement, where
18 the employer has made no offer of suitable work that would
19 restore the earnings capacity as nearly as possible to the level
20 that the employee was earning at the time of injury, and who, in
21 the director's opinion, can be vocationally rehabilitated to the
22 department of human services or to private providers of



1 rehabilitation services for vocational rehabilitation services
2 that are feasible. A referral shall be made upon recommendation
3 of the rehabilitation unit established under section 386-71.5
4 and after the employee has been deemed physically able to
5 participate in rehabilitation by the employee's attending
6 physician. The unit shall include appropriate professional
7 staff and shall have the following duties and responsibilities:

- 8 (1) To review and approve rehabilitation plans developed
9 by certified providers of rehabilitation services,
10 whether they [~~be~~] are private or public;
- 11 (2) To adopt rules consistent with this section that shall
12 expedite and facilitate the identification,
13 notification, and referral of industrially injured
14 employees to rehabilitation services[~~r~~] and establish
15 minimum standards for providers providing
16 rehabilitation services under this section;
- 17 (3) To certify private and public providers of
18 rehabilitation services meeting the minimum standards
19 established under paragraph (2); and
- 20 (4) To enforce the implementation of rehabilitation
21 plans."



1 SECTION 6. Section 386-31, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§386-31 Total disability.** (a) Permanent total
4 disability. Where a work injury causes permanent total
5 disability the employer shall pay the injured employee a weekly
6 benefit equal to sixty-six and two-thirds per cent of the
7 employee's average weekly wages, subject to the following
8 limitation:

9 Beginning January 1, 1975, and during each succeeding
10 twelve-month period thereafter, not more than the state average
11 weekly wage last determined by the director, rounded to the
12 nearest dollar, nor less than \$38 or twenty-five per cent of the
13 foregoing maximum amount, rounded to the nearest dollar,
14 whichever is higher.

15 In the case of the following injuries, the disability
16 caused thereby shall be deemed permanent and total:

- 17 (1) The permanent and total loss of sight in both eyes;
18 (2) The loss of both feet at or before the ankle;
19 (3) The loss of both hands at or above the wrist;
20 (4) The loss of one hand and one foot;



1 (5) An injury to the spine resulting in permanent and
2 complete paralysis of both legs or both arms or one
3 leg and one arm; or

4 (6) An injury to the skull resulting in incurable
5 imbecility or insanity.

6 In all other cases the permanency and totality of the
7 disability shall be determined on the facts. No adjudication of
8 permanent total disability shall be made until after two weeks
9 from the date of the injury.

10 (b) Temporary total disability. Where a work injury
11 causes total disability not determined to be permanent in
12 character, the employer, for the duration of the disability, but
13 not including the first three calendar days thereof, shall pay
14 the injured employee a weekly benefit at the rate of sixty-six
15 and two-thirds per cent of the employee's average weekly wages,
16 subject to the limitations on weekly benefit rates prescribed in
17 subsection (a), or if the employee's average weekly wages are
18 less than the minimum weekly benefit rate prescribed in
19 subsection (a), at the rate of one hundred per cent of the
20 employee's average weekly wages.



1 If an employee is unable to complete a regular daily work
2 shift due to a work injury, the employee shall be deemed totally
3 disabled for work for that day.

4 The employer shall pay temporary total disability benefits
5 promptly as they accrue to the person entitled thereto without
6 waiting for a decision from the director, unless this right is
7 controverted by the employer in the employer's initial report of
8 industrial injury. The first payment of benefits shall become
9 due and shall be paid no later than on the tenth day after the
10 employer has been notified of the occurrence of the total
11 disability, and thereafter the benefits due shall be paid weekly
12 except as otherwise authorized pursuant to section 386-53.

13 The payment of these benefits shall only be denied,
14 suspended, or terminated upon order of the director or if the
15 employee's treating physician determines that the employee is
16 able to resume work[-] and the employer has made a bona fide
17 offer of suitable work within the employee's medical
18 restrictions. The order shall only be issued after a full and
19 fair hearing at which the injured employee shall be provided the
20 opportunity to review the employer's evidence and present
21 rebuttal evidence. When the employer is of the opinion that
22 temporary total disability benefits should be terminated



1 ~~[because the injured employee is able to resume work]~~, the
2 employer shall notify the employee and the director in writing
3 of an intent to terminate the benefits at least two weeks prior
4 to the date when the last payment is to be made. The notice
5 shall give the reason for stopping payment and shall inform the
6 employee that the employee may make a written request to the
7 director for a hearing if the employee disagrees with the
8 employer. Upon receipt of the request from the employee, the
9 director shall conduct a hearing as expeditiously as possible
10 and render a prompt decision as specified in section 386-86[-]
11 indicating whether temporary total disability benefits should
12 have been discontinued and, if so, a date shall be designated
13 after which temporary total disability benefits should have been
14 discontinued. The employer may request in writing to the
15 director that the director issue a credit for the amount of
16 temporary total disability benefits paid by an employer after
17 the date which the director had determined should have been the
18 last date of payment. If the employee is unable to perform
19 light work, if offered, temporary total disability benefits
20 shall not be discontinued based solely on the inability to
21 perform or continue to perform light work.



1 An employer or insurance carrier who fails to comply with
2 this section shall pay not more than \$2,500 into the special
3 compensation fund upon the order of the director, in addition to
4 attorney's fees and costs to the employee for enforcement of
5 this section and other penalties prescribed in section 386-92.

6 (1) If the director determines, based upon a review of
7 medical records and reports and other relevant
8 documentary evidence, that an injured employee's
9 medical condition may be stabilized and the employee
10 is unable to return to the employee's regular job, the
11 director shall issue a preliminary decision regarding
12 the claimant's entitlement and limitation to benefits
13 and rights under Hawaii's workers' compensation laws.
14 The preliminary decision shall be sent to the affected
15 employee and the employee's designated representative
16 and the employer and the employer's designated
17 representative and shall state that any party
18 disagreeing with the director's preliminary findings
19 of medical stabilization and work limitations may
20 request a hearing within twenty days of the date of
21 the decision. The director shall be available to
22 answer any questions during the twenty-day period from



1 the injured employee and affected employer. If
2 neither party requests a hearing challenging the
3 director's finding the determination shall be deemed
4 accepted and binding upon the parties. In any case
5 where a hearing is held on the preliminary findings,
6 any person aggrieved by the director's decision and
7 order may appeal under section 386-87.

8 A preliminary decision of the director shall
9 inform the injured employee and the employer of the
10 following responsibilities, benefits, and limitations
11 on vocational rehabilitation benefits that are
12 designed to facilitate the injured employee's early
13 return to suitable gainful employment:

14 (A) That the injured employee may invoke the
15 employee's rights under section 378-2, 378-32, or
16 386-142, or all of them, in the event of unlawful
17 discrimination or other unlawful employment
18 practice by the employer; and

19 (B) That after termination of temporary total
20 disability benefits, an injured employee who
21 resumes work may be entitled to permanent partial
22 disability benefits, which if awarded, shall be



1 paid regardless of the earnings or employment
2 status of the disabled employee at the time.

3 (2) If the rehabilitation unit determines that an injured
4 employee is not a feasible candidate for
5 rehabilitation and that the employee is unable to
6 resume the employee's regular job, it shall promptly
7 certify the same to the director. Soon thereafter,
8 the director shall conduct a hearing to determine
9 whether the injured employee remains temporarily
10 totally disabled, or whether the employee is
11 permanently partially disabled, or permanently totally
12 disabled."

13 SECTION 7. Section 386-72, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§386-72 Rulemaking powers.** (a) In conformity with and
16 subject to chapter 91[~~7~~] and this section, the director of labor
17 and industrial relations shall make rules, not inconsistent with
18 this chapter, which the director deems necessary for or
19 conducive to its proper application and enforcement[~~;~~ ~~provided~~
20 ~~that the rules were adopted prior to January 1, 2005. No rules~~
21 ~~adopted or amended on or after January 1, 2005, pertaining to~~
22 ~~any workers' compensation standard or procedure arising under~~



1 ~~this chapter shall have the force and effect of law; provided,~~
2 ~~however, that annual].~~

3 (b) Beginning June 30, 2007, the director, prior to
4 submitting any proposed adoption, amendment, or repeal of rules
5 under this chapter to the governor for approval, shall first
6 submit those proposed rules to both houses of the legislature
7 for approval. The rules shall be deemed disapproved unless the
8 legislature approves the submitted rules in their entirety by
9 concurrent resolution within three hundred sixty-five days of
10 submission to the legislature. If the proposed rules are not
11 approved by the legislature as provided in this subsection, then
12 the rules shall not be sent to the governor for final approval.

13 (c) Notwithstanding subsection (b), annual updates in the
14 medical fee schedules specific to the amount paid to medical
15 providers as provided in section 386-21(c) may be made
16 consistent with this chapter[-] and subject solely to the
17 requirements of chapter 91."

18 SECTION 8. Section 386-79, Hawaii Revised Statutes, is
19 amended to read as follows:

20 **"§386-79 Medical examination by employer's physician.**

21 After an injury and during the period of disability, the
22 employee, whenever ordered by the director [~~of labor and~~

1 ~~industrial-relations]~~, shall submit to examination, at
2 reasonable times and places, by a duly qualified physician or
3 surgeon designated and paid by the employer. ~~[The]~~ Physicians
4 selected to perform independent medical examinations as provided
5 by this section shall:

- 6 (1) Be licensed in Hawaii;
- 7 (2) Be subject to peer review;
- 8 (3) Currently hold and have held an active professional
9 and occupational license under title 25 for the five
10 consecutive years prior to the examination; and
- 11 (4) Be certified by the American Board of Independent
12 Medical Examiners or any other certification
13 organization approved by the director.

14 The independent medical examiner shall be selected by mutual
15 agreement between the claimant and the employer within fourteen
16 calendar days of a request by either party for an independent
17 medical examination; provided that if no mutual agreement is
18 reached, the director shall provide the parties with the names
19 of three duly qualified independent medical examiners within ten
20 calendar days from the notification of failure to reach mutual
21 agreement, compiled and maintained by the director, to the
22 employer and employee from which they shall choose. If the



1 employer and employee, within ten calendar days. For these
2 examinations, the employee shall have the right to have a
3 physician or surgeon designated by the employee and paid by the
4 [employee] employer present at the examination, which right,
5 however, shall not be construed to deny to the employer's
6 physician the right to visit the injured employee at all
7 reasonable times and under all reasonable conditions during
8 total disability.

9 If an employee unreasonably refuses to submit to, or in any
10 way obstructs ~~[such]~~ the independent medical examination, the
11 employee's right to claim compensation for the work injury
12 [shall] may be suspended, only upon order of the director, until
13 the refusal or obstruction ceases and no compensation shall be
14 payable for the period during which the refusal or obstruction
15 continues. The employee and the employee's physician may record
16 the examination and ask reasonable questions relating to the
17 examining physician's experience, education, certification, and
18 qualifications. Exercising these rights shall not be construed
19 as obstruction.

20 In cases where the employer is dissatisfied with the
21 progress of the case or where major and elective surgery, or
22 either, is contemplated, the employer may appoint a physician or



1 surgeon of the employer's choice who shall examine the injured
2 employee and make a report to the employer. If the employer
3 remains dissatisfied, this report may be forwarded to the
4 director.

5 Employer requested examinations under this section shall
6 not exceed more than one per case unless good and valid reasons
7 exist with regard to the medical progress of the employee's
8 treatment. The cost of conducting the ordered medical
9 examination shall be limited to the complex consultation charges
10 governed by the medical fee schedule established pursuant to
11 section 386-21(c)."

12 SECTION 9. Section 386-94, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§386-94 Claimants' attorneys, defense [Attorneys]**
15 **attorneys, physicians, other health care providers, and other**
16 **fees.** Claims for services shall not be valid unless approved by
17 the director or, if an appeal is had, by the appellate board or
18 court deciding the appeal. Any claim so approved shall be a
19 lien upon the compensation in the manner and to the extent fixed
20 by the director, the appellate board, or the court.

21 In approving fee requests, the director, appeals board, or
22 court may consider factors such as the attorney's skill and



1 experience in state workers' compensation matters, the amount of
2 time and effort required by the complexity of the case, the
3 novelty and difficulty of issues involved, the amount of fees
4 awarded in similar cases, benefits obtained for the claimant,
5 and the hourly rate customarily awarded attorneys possessing
6 similar skills and experience. In all cases, reasonable
7 attorney's fees shall be awarded.

8 Any person who receives any fee, other consideration, or
9 gratuity on account of services so rendered, without approval,
10 in conformity with the preceding paragraph, shall be fined by
11 the director not more than \$10,000."

12 SECTION 10. Section 386-96, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) Any physician, surgeon, or hospital that has given
15 any treatment or rendered any service to an injured employee
16 shall make a report of the injury and treatment on forms
17 prescribed by and to be obtained from the department as follows:

18 (1) Within seven days after the date of first attendance
19 or service rendered, an initial report shall be made
20 to the department and to the employer of the injured
21 employee in the manner prescribed by the department;



- 1 (2) Interim reports to the same parties and in the same
2 manner as prescribed in paragraph (1) shall be made at
3 appropriate intervals to verify the claimant's current
4 diagnosis and prognosis, that the information as to
5 the nature of the examinations and treatments
6 performed is complete, including the dates of those
7 treatments and the results obtained within the current
8 reporting period, the execution of all tests performed
9 within the current reporting period and the results of
10 the tests, whether the injured employee is improving,
11 worsening, or if "medical stabilization" has been
12 reached, the dates of disability, any work
13 restrictions, and the return to work date. When an
14 injured employee is returned to full-time, regular,
15 light, part-time, or restricted work, the attending
16 physician shall submit a report to the employer within
17 seven calendar days indicating the date of release to
18 work or medical stabilization; and
- 19 (3) A final report to the same parties and in the same
20 manner as prescribed in paragraph (1) shall be made
21 within seven days after termination of treatment.



1 No physician, surgeon, or hospital that has given any treatment
2 or rendered any service to an injured employee shall be required
3 to provide any additional reports or treatment plans not
4 otherwise mandated by this section."

5 SECTION 11. Section 386-124, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§386-124 The insurance contract**~~[-]~~**;** annual reports. (a)

8 Every policy of insurance issued by an insurer of an employer
9 referred to in section 386-1 which covers the liability of the
10 employer for compensation shall cover the entire liability of
11 the employer to the employer's employees covered by the policy
12 or contract, and provide for the deductible under section 386-
13 100, at the option of the insured. The policy also shall
14 contain a provision setting forth the right of the employees to
15 enforce in their own names either by filing a separate claim or
16 by making the insurance carrier a party to the original claim,
17 the liability of the insurance carrier in whole or in part for
18 the payment of the compensation. Payment in whole or in part of
19 compensation by either the employer or the insurance carrier
20 shall, to the extent thereof, be a bar to the recovery against
21 the other of the amount so paid.



1 All insurance policies shall be of a standard form, the
2 form to be designated and approved by the insurance
3 commissioner. No policy of insurance different in form from the
4 designated and approved form shall be approved by the director.

5 (b) Every insurer of an employer referred to in section
6 386-1 shall provide to the director and to the insurance
7 commissioner on or before March 1 of each calendar year, an
8 annual report of the costs of its policies, that includes:

- 9 (1) Costs of independent medical examinations;
10 (2) Costs for legal services relating to administration of
11 claims; and
12 (3) Administrative costs.

13 All annual reports shall be of a standard form, the form to
14 be designated and approved by the insurance commissioner."

15 SECTION 12. Act 11, Special Session Laws of Hawaii 2005,
16 is amended by amending section 14 to read as follows:

17 "SECTION 14. This Act shall take effect upon its approval;
18 provided that sections 2, 3, and 7 of this Act shall take effect
19 on January 1, 2005[; ~~provided further that section 7 shall be~~
20 ~~repealed on July 1, 2007, and section 386-72, Hawaii Revised~~
21 ~~Statutes, shall be reenacted in the form in which it read on~~
22 ~~December 31, 2004]."~~



1 SECTION 13. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 14. This Act shall take effect on July 1, 2059.



Report Title:

Workers' Compensation Law

Description:

Amends workers' compensation law, including limiting an employer's ability to terminate benefits, authorizing the recovery of attorney's fees and costs by the injured employee, specifying procedures for medical examinations by the employer's physician, establishing fines for violations, requiring the reporting of denials of claims and relevant information, and further restricting the director of labor and industrial relations' rulemaking authority. (SB1060 HD1)

