

JAN 25 2017

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# A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

1           SECTION 1. Section 386-79, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "~~§386-79 Medical examination [by employer's physician.]~~  
4 under mutual agreement between employer and employee. ~~[After an~~  
5 ~~injury and during the period of disability, the employee,~~  
6 ~~whenever ordered by the director of labor and industrial~~  
7 ~~relations, shall submit to examination, at reasonable times and~~  
8 ~~places, by a duly qualified physician or surgeon designated and~~  
9 ~~paid by the employer. The employee shall have the right to have~~  
10 ~~a physician or surgeon designated and paid by the employee~~  
11 ~~present at the examination, which right, however, shall not be~~  
12 ~~construed to deny to the employer's physician the right to visit~~  
13 ~~the injured employee at all reasonable times and under all~~  
14 ~~reasonable conditions during total disability.~~

15           ~~If an employee refuses to submit to, or in any way~~  
16 ~~obstructs such examination, the employee's right to claim~~  
17 ~~compensation for the work injury shall be suspended until the~~



1 ~~refusal or obstruction ceases and no compensation shall be~~  
2 ~~payable for the period during which the refusal or obstruction~~  
3 ~~continues.~~

4 ~~In cases where the employer is dissatisfied with the~~  
5 ~~progress of the case or where major and elective surgery, or~~  
6 ~~either, is contemplated, the employer may appoint a physician or~~  
7 ~~surgeon of the employer's choice who shall examine the injured~~  
8 ~~employee and make a report to the employer. If the employer~~  
9 ~~remains dissatisfied, this report may be forwarded to the~~  
10 ~~director.~~

11 ~~Employer requested examinations under this section shall~~  
12 ~~not exceed more than one per case unless good and valid reasons~~  
13 ~~exist with regard to the medical progress of the employee's~~  
14 ~~treatment. The cost of conducting the ordered medical~~  
15 ~~examination shall be limited to the complex consultation charges~~  
16 ~~governed by the medical fee schedule established pursuant to~~  
17 ~~section 386-21(e).] (a) Following an injury and after a claim~~  
18 ~~is filed by the injured employee, the employer may appoint a~~  
19 ~~qualified chiropractor or physician mutually agreed upon by the~~  
20 ~~parties and paid for by the employer, to conduct an independent~~



1 medical examination or a permanent impairment rating examination  
2 of the injured employee and make a report to the employer.

3 (b) The employer shall send a cover letter notifying the  
4 selected chiropractor or physician that the chiropractor or  
5 physician has been mutually selected by the parties to conduct  
6 the examination. The cover letter shall be transmitted to the  
7 injured employee at least five working days prior to the  
8 appointment. Upon the issuance of the report of the independent  
9 medical examination or permanent impairment rating examination,  
10 the employee or employee's representative shall be promptly  
11 provided with a copy thereof.

12 (c) A chiropractor or physician selected pursuant to this  
13 section to perform an independent medical examination or a  
14 permanent impairment rating examination shall be a chiropractor  
15 or physician who is willing to undertake the examination, will  
16 be paid by the employer, and is currently licensed in Hawaii to  
17 practice chiropractic pursuant to chapter 442 or medicine or  
18 surgery pursuant to chapter 453; except that upon approval by  
19 the director, a chiropractor or physician in a specialty area  
20 who resides outside of the State and is licensed in another  
21 state with requirements equivalent to the licensure requirements



1 for chiropractors under chapter 442 or physicians under chapter  
2 453, may be selected if no chiropractor or physician licensed in  
3 the State in that specialty area is available to conduct the  
4 examination.

5 If the employee does not reside in Hawaii, a chiropractor  
6 or physician who is licensed in and who resides in the state of  
7 the employee's residence may be selected if that state's  
8 licensure requirements are equivalent to the licensure  
9 requirements for chiropractors under chapter 442 or physicians  
10 under chapter 453.

11 (d) If the parties are unable to reach a mutual agreement  
12 on the selection of a chiropractor or physician to conduct the  
13 independent medical examination or permanent impairment rating  
14 examination, the director of labor and industrial relations  
15 shall appoint a duly qualified impartial chiropractor or  
16 physician to examine the injured employee and submit a report.  
17 The fees for such examination shall be paid from the funds  
18 appropriated by the legislature for use by the department of  
19 labor and industrial relations.

20 (e) Any chiropractor or physician mutually selected or  
21 otherwise appointed to do an independent medical examination or



1 permanent impairment rating examination pursuant to this section  
2 shall examine the employee within forty-five days of receiving  
3 notice of the selection or appointment, or otherwise, as soon as  
4 possible.

5 (f) In no event shall an independent medical examination  
6 and a permanent impairment rating examination be combined into a  
7 single medical examination unless the employee consents in  
8 writing to the single examination by the selected chiropractor  
9 or physician.

10 In no event shall the director, appellate board, or a court  
11 order more than one requested independent medical examination  
12 and one permanent impairment rating examination per case, unless  
13 valid reason exists with regard to the medical progress of the  
14 employee's medical treatment or when major surgery or elective  
15 surgery is contemplated. In the event of multiple examinations,  
16 the process of mutually selecting or otherwise appointing a  
17 chiropractor or physician set forth in this section shall apply.

18 (g) If an employee refuses to submit to, or unreasonably  
19 interferes with the examination, the employee's right to claim  
20 compensation for the work injury shall be suspended until the



1 refusal or interference ceases. No compensation shall be  
2 payable to the employee for the period of suspension.

3 The cost of conducting the ordered independent medical  
4 examination or permanent impairment rating examination shall be  
5 limited to the complex consultation charges governed by the  
6 medical fee schedule established pursuant to section 386-21(c).

7 (h) When an employee has attained medical stability as  
8 determined by the employee's attending physician, a chiropractor  
9 or physician may be appointed to conduct a permanent impairment  
10 rating examination. The chiropractor or physician shall be  
11 mutually selected by the parties or otherwise appointed pursuant  
12 to this section.

13 For the purposes of this subsection, "medical stability"  
14 means that no further improvement in the injured employee's  
15 work-related condition can reasonably be expected from curative  
16 health care or the passage of time. Medical stability is also  
17 deemed to have occurred when the injured employee refuses to  
18 undergo further diagnostic tests or treatment that the health  
19 care provider believes will greatly aid in the employee's  
20 recovery."



# S.B. NO. 1116

1 SECTION 2. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4 SECTION 3. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect on July 1, 2017.

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INTRODUCED BY:

~~Don C. Fink~~  
Kal Rhoas



# S.B. NO. 1116

**Report Title:**

Workers' Compensation; Medical Examination; Mutual Agreement

**Description:**

Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified chiropractor or physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

