

JAN 20 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 examinations; selection of physicians. ~~[After an injury and~~  
5 ~~during the period of disability, the employee, whenever ordered~~  
6 ~~by the director of labor and industrial relations, shall submit~~  
7 ~~to examination, at reasonable times and places, by a duly~~  
8 ~~qualified physician or surgeon designated and paid by the~~  
9 ~~employer. The employee shall have the right to have a physician~~  
10 ~~or surgeon designated and paid by the employee present at the~~  
11 ~~examination, which right, however, shall not be construed to~~  
12 ~~deny to the employer's physician the right to visit the injured~~  
13 ~~employee at all reasonable times and under all reasonable~~  
14 ~~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, upon mutual~~  
19 ~~agreement of the parties, may appoint a qualified physician,~~  
20 ~~paid by the employer, to conduct an independent medical~~  
21 ~~examination or a permanent impairment rating examination of the~~



1 injured employee, and make a report to the employer. The  
2 employee or the employee's representative shall be promptly  
3 provided with a copy of the report of the independent medical  
4 examination or permanent impairment rating examination.

5 The director shall keep and maintain a list of qualified  
6 physicians and their respective qualifications. If the employer  
7 and the employee cannot agree on a physician to perform the  
8 independent medical examination or permanent impairment rating  
9 examination, the employer or employee may request in writing  
10 that the physician be appointed by the director. Within seven  
11 calendar days of the receipt of request, the director shall  
12 appoint from the director's list of qualified physicians, a  
13 physician licensed in a relevant medical specialty, licensed to  
14 practice in Hawaii, willing to undertake the examination, and  
15 paid for by the employer.

16 Any physician mutually selected by the employer and  
17 employee or appointed by the director shall examine the employee  
18 within forty-five calendar days of selection or appointment or  
19 as soon as practicably possible.

20 In no event shall an independent medical examination and a  
21 permanent impairment rating examination be combined into a



1 single medical examination unless the injured employee consents  
2 in writing prior to the scheduling of the examinations.

3 In no event shall the director, appellate board, or court  
4 order more than one employer-requested independent medical  
5 examination and one permanent impairment rating examination per  
6 case, unless valid reasons exist with regard to the medical  
7 progress of the employee's treatment or where major surgery and  
8 elective surgery, or either, is contemplated.

9 If an employee refuses to submit to, or in any way  
10 obstructs the examination, the employee's right to claim  
11 compensation for the work injury shall be suspended until the  
12 refusal or obstruction ceases, and no compensation shall be  
13 payable for the period during which the refusal or obstruction  
14 continues. The cost of conducting the ordered independent  
15 medical examination or permanent impairment rating examination  
16 shall be limited to the complex consultation charges governed by  
17 the medical fee schedule established pursuant to section  
18 386-21(c).

19 A physician selected to perform an independent medical  
20 examination or permanent impairment rating examination, as  
21 provided in this subsection, shall be currently licensed



1 pursuant to chapter 453; except that upon approval by the  
2 director, a physician who resides outside the State of Hawaii  
3 and is licensed in another state as a physician equivalent to a  
4 license under chapter 453, may be selected if there is no State  
5 of Hawaii-licensed physician available in a relevant medical  
6 specialty. Further, if the claimant does not reside in Hawaii,  
7 a physician who resides outside the State of Hawaii and is  
8 licensed in the state of the out-of-state claimant's residence  
9 as a physician equivalent to a physician licensee under chapter  
10 453 may be selected. Upon approval of the director, a physician  
11 who resides outside the state of the out-of-state claimant's  
12 residence and is licensed in another state as a physician  
13 equivalent to a physician licensee under chapter 453 may be  
14 selected if there is no physician available in a relevant  
15 medical specialty in the out-of-state claimant's state of  
16 residence.

17 (b) When an injured employee has attained medical  
18 stability as determined by the injured employee's attending  
19 physician, the employer may appoint a physician, paid by the  
20 employer and selected by agreement of the parties, who shall



1 conduct a permanent impairment rating examination of the injured  
2 employee pursuant to subsection (a).

3 For the purposes of this subsection, "medical stability"  
4 means that no further improvement in the injured employee's  
5 work-related condition can reasonably be expected from curative  
6 health care or the passage of time."

7 SECTION 2. There is appropriated out of the general  
8 revenues of the State of Hawaii the sum of \$ or so  
9 much thereof as may be necessary for fiscal year 2017-2018 and  
10 the same sum or so much thereof as may be necessary for fiscal  
11 year 2018-2019 for the establishment of three full-time  
12 equivalent (3.0 FTE) permanent workers' compensation hearings  
13 officer positions and two full-time equivalent (2.0 FTE)  
14 permanent office assistant positions in the disability  
15 compensation division of the department of labor and industrial  
16 relations to assist in workers' compensation claims.

17 The sums appropriated shall be expended by the department  
18 of labor and industrial relations for the purposes of this Act.

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



# S.B. NO. 253

1 SECTION 4. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect on January 1, 2018;  
4 provided that:

5 (1) Section 2 shall take effect on July 1, 2017; and

6 (2) This Act shall be repealed on June 30, 2023, and  
7 section 386-79, Hawaii Revised Statutes, shall be  
8 reenacted in the form in which it read on the day  
9 before the effective date of section 1 of this Act.

10

INTRODUCED BY:

~~D. C. Fisher~~ - *Joseph*  
BY REQUEST OF  
ANOTHER PARTY



# S.B. NO. 253

**Report Title:**

Workers' Compensation; Medical Examinations; Selection of Physician; Appropriation

**Description:**

Requires, among other things, independent medical examinations and permanent impairment rating examinations for workers' compensation claims to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of labor and industrial relations. Allows for the use of an out-of-state physician under certain conditions. Appropriates funds for positions to assist with workers' compensation claims. Effective January 1, 2018. Repeals on June 30, 2023.

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

