THE SENATE THIRTY-SECOND LEGISLATURE, 2023 STATE OF HAWAII

S.B. NO. 918

JAN 2 0 2023

A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

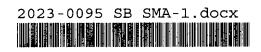
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 The legislature finds that certain adjustments SECTION 1. 2 to Hawai'i's workers' compensation law are necessary to better 3 address issues pertaining to the compensation process, including delays, denial of claims, and required notices. The legislature 4 also finds that California's workers' compensation laws offer 5 6 guidance and have been identified by some Hawai'i practitioners 7 as a useful model. The purpose of this Act is to incorporate certain aspects 8 9 of California's workers' compensation laws into the State's 10 workers' compensation law, including: Establishing notice requirements for employers; 11 (1)12 (2) Requiring employers who deny the compensability of an employee's injury to submit a written report 13 supporting the denial to the director of labor and 14 industrial relations within a specific period; 15 16 Requiring employers to furnish to the injured employee (3) up to \$10,000 for medical care, services, and supplies 17



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| 1 | | for the period immediately following the injury and so |
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| 2 | | long as reasonably needed or until the employer files |
| 3 | | a written report with the director of labor and |
| 4 | | industrial relations denying the compensability of the |
| 5 | | injury, whichever is earlier; and |
| 6 | (4) | Clarifying that failure to give an employer notice of |
| 7 | | an employee's injury does not bar a claim for |
| 8 | | compensation if any person having authority in the |
| 9 | | interest of the employer had knowledge of the injury. |
| 10 | SECT | ION 2. Chapter 386, Hawaii Revised Statutes, is |
| 11 | amended b | y adding four new sections to be appropriately |
| 12 | designate | d and to read as follows: |
| 13 | " <u>§38</u> | 6- Income and indemnity benefits; temporary |
| 14 | disabilit | y; notice by employer. (a) Initial notice of |
| 15 | temporary | total or partial disability benefits payment. Except |
| 16 | where the | employer denies or otherwise controverts an injured |
| 17 | employee' | s right to compensation under this chapter in the |
| 18 | employer' | s initial report of industrial injury filed with the |
| 19 | director, | the employer shall, no later than ten days after the |
| 20 | employer | obtains knowledge of the employee's injury and |
| 21 | disabilit | y, provide the injured employee with written notice |



| 1 | stating the amount of temporary total or partial disability |
|----|--|
| 2 | benefits due to the employee, the method by which the amount was |
| 3 | calculated, and the duration and schedule of benefit payments. |
| 4 | (b) Notice of delay in temporary total or partial |
| 5 | disability benefits payments. If the employer cannot determine |
| 6 | the employee's right to any period of temporary total or partial |
| 7 | disability benefits within ten days after the employer obtains |
| 8 | knowledge of the employee's injury and disability, the employer |
| 9 | shall, within the ten-day period, provide the injured employee |
| 10 | with written notice informing the employee of the delay; the |
| 11 | reasons for the delay; the need, if any, for additional |
| 12 | information required to make a determination; and when a |
| 13 | determination is likely to be made. |
| 14 | If the employer cannot make a determination by the date |
| 15 | specified in the notice, the employer shall send a subsequent |
| 16 | notice to the employee no later than the determination date |
| 17 | specified in the previous notice, notifying the employee of the |
| 18 | revised date by which the employer expects the determination to |
| 19 | be made. Any notices sent after the initial notice shall comply |
| 20 | with all requirements for the initial notice. |



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| 1 | <u>If</u> t | he re | ason for the delay is related to a medical issue |
|----|-------------|-------------|--|
| 2 | and the e | mploy | er is requesting or has requested the director to |
| 3 | issue an | order | requiring the employee to submit to a medical |
| 4 | examinati | on pu | rsuant to section 386-79, the delay notice shall |
| 5 | include o | ne of | the following statements: |
| 6 | (1) | <u>If t</u> | he employee has already submitted to a medical |
| 7 | | <u>exam</u> | ination pursuant to section 386-79, the notice |
| 8 | | shal | 1 state that: |
| 9 | | (A) | The employee may be asked to return to the |
| 10 | | | physician or surgeon who conducted the |
| 11 | | | examination for a new examination; or |
| 12 | | <u>(B)</u> | The employee shall contact the employer to |
| 13 | | | arrange for the employee to return to the |
| 14 | | | physician or surgeon who conducted the |
| 15 | | | examination for a new examination, if possible; |
| 16 | | | or |
| 17 | (2) | <u>If t</u> | he employee has not yet submitted to a medical |
| 18 | | exam | ination pursuant to section 386-79, the notice |
| 19 | | shal | l state that if the employee disagrees with the |
| 20 | | resu | lts of the examination, the employee shall, no |
| 21 | | late | r than thirty days after the employee's receipt of |



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| 1 | the medical examination report, contact the employer |
|----|--|
| 2 | to obtain a form prescribed by the director to request |
| 3 | the director to appoint a duly qualified, impartial |
| 4 | physician to examine the employee pursuant to section |
| 5 | 386-80. |
| 6 | (c) Notice of denial of temporary total or partial |
| 7 | disability benefits payment. If the employer denies or |
| 8 | otherwise controverts liability for the payment of any temporary |
| 9 | total or partial disability benefits for any period for which an |
| 10 | employee claims indemnity for temporary total or partial |
| 11 | disability, the employer shall, no later than thirty days after |
| 12 | the filing of the employer's initial report of industrial |
| 13 | injury, provide the employee and the director with a written |
| 14 | notice of the employer's denial of liability and the reasons for |
| 15 | the denial; provided that, if the employer's denial is based on |
| 16 | a medical report, the notice shall be provided no later than |
| 17 | thirty days after the employer's receipt of the report, |
| 18 | accompanied by a copy of the report, except for psychiatric |
| 19 | reports that the psychiatrist has recommended not be provided to |
| 20 | the employee. |



S.B. NO. 9/9

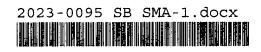
| 1 | <u>If</u> t | he employer's denial of liability is related to a | | | |
|----|--|--|--|--|--|
| 2 | medical issue, the notice shall include one of the following | | | | |
| 3 | statement | <u>s:</u> | | | |
| 4 | (1) | If the denial is based on a medical examination | | | |
| 5 | | conducted pursuant to section 386-79 or 386-80, the | | | |
| 6 | | notice shall state that if the employee disputes the | | | |
| 7 | | results of the examination, the employee may: | | | |
| 8 | | (A) File a claim for workers' compensation benefits | | | |
| 9 | | using a form prescribed by the director; or | | | |
| 10 | | (B) Contact the employer to arrange for the employee | | | |
| 11 | | to return to the physician or surgeon who | | | |
| 12 | | conducted the examination for a new examination | | | |
| 13 | | if possible; | | | |
| 14 | (2) | If the denial is based on the treating physician's | | | |
| 15 | | evaluation of the employee's temporary total or | | | |
| 16 | | partial disability status and the employer agrees with | | | |
| 17 | | the treating physician's findings, the notice shall | | | |
| 18 | | state that if the employee disagrees with the results | | | |
| 19 | | of the evaluation, the employee shall, no later than | | | |
| 20 | | thirty days after the employee's receipt of the | | | |
| 21 | | evaluation report, contact the employer to obtain a | | | |

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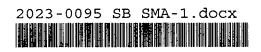
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| 1 | | form prescribed by the director to request the |
|----|-----------|---|
| 2 | | director for an appointment of a duly qualified, |
| 3 | | impartial physician to examine the injured employee |
| 4 | | pursuant to section 386-80; or |
| 5 | (3) | If the denial is based on the treating physician's |
| 6 | | evaluation of the employee's temporary total or |
| 7 | | partial disability status and the employer disagrees |
| 8 | | with the treating physician's findings, the notice |
| 9 | | shall state that the employer disputes the result of |
| 10 | | the evaluation and if the employee disagrees with the |
| 11 | | results of the evaluation, the employee shall, no |
| 12 | | later than thirty days after the employee's receipt of |
| 13 | | the evaluation report, contact the employer to obtain |
| 14 | | a form prescribed by the director to request the |
| 15 | | director to appoint a duly qualified, impartial |
| 16 | | physician to examine the injured employee pursuant to |
| 17 | | section 386-80. |
| 18 | (d) | Notice of changes to temporary total or partial |
| 19 | disabilit | y benefit rate, payment amount, or payment schedule. |
| 20 | Upon any | changes to the benefit rate, payment amount, or payment |
| 21 | schedule | for temporary total or partial disability benefits, |
| | | |



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| 1 | before or at the same time as the new payment, the employer |
|----|--|
| 2 | shall provide written notice to the employee stating the new |
| 3 | benefit rate, new payment amount, and new payment schedule, as |
| 4 | applicable, and the reason for the change. |
| 5 | (e) Notice of intent to terminate temporary total or |
| 6 | partial disability benefits payment. When the employer is of |
| 7 | the opinion that the payment of temporary total or partial |
| 8 | disability benefits should be terminated, the employer shall, in |
| 9 | accordance with section 386-31(b), provide written notice to the |
| 10 | employee and the director of the employer's intent to terminate |
| 11 | the benefits. |
| 12 | (f) Notice of resumed temporary total or partial |
| 13 | disability benefits payment. If the payment of temporary total |
| 14 | or partial disability benefits is resumed after the termination |
| 15 | of any disability benefits, the employer shall, no later than |
| 16 | ten days after the employer obtains knowledge of the employee's |
| 17 | entitlement to additional benefits, the employer shall provide |
| 18 | written notice to the injured employee advising the employee of |
| 19 | the amount of temporary total or partial disability benefits due |
| 20 | to the employee, the method by which the amount was calculated, |
| 21 | and the duration and schedule of benefit payments. |



| 1 | <u>§386</u> | - Income and indemnity benefits; permanent |
|----|------------------|--|
| 2 | <u>disabilit</u> | y; notice by employer. (a) Notice of monitoring until |
| 3 | medical s | tabilization. If the employee's injury has resulted or |
| 4 | may resul | t in permanent total or partial disability but the |
| 5 | employee' | s medical condition is not stabilized, the employer |
| 6 | shall, wi | th the final payment of temporary total or partial |
| 7 | disabilit | y benefits, provide the employee with a written notice |
| 8 | stating t | hat: |
| 9 | (1) | The employee may be eligible to receive permanent |
| 10 | | total or partial disability benefits, but the amount |
| 11 | | cannot be determined because the employee's medical |
| 12 | | condition has not yet stabilized; |
| 13 | (2) | The employee's medical condition will be monitored |
| 14 | | until the employer obtains information indicating that |
| 15 | | the employee's medical condition is stabilized, at |
| 16 | | which time the employer will request the director for |
| 17 | | a declaration of medical stability pursuant to section |
| 18 | | <u>386-31(b); and</u> |
| 19 | (3) | The estimated date when a determination is likely to |
| 20 | | be made. |

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| 1 | If the determination of medical stability is not made by |
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| 2 | the date specified in the notice, the employer shall send a |
| 3 | subsequent notice to the employee no later than the |
| 4 | determination date specified in the previous notice, notifying |
| 5 | the employee of the revised date by which the employer expects |
| 6 | the determination to be made. Any notices sent after the |
| 7 | initial notice shall comply with all requirements for the |
| 8 | initial notice. |
| 9 | (b) Notice of first permanent total or partial disability |
| 10 | benefit payment. The employer shall, with the first payment of |
| 11 | permanent total or partial disability benefits, provide the |
| 12 | injured employee with written notice stating the weekly amount |
| 13 | of permanent total or partial disability benefits due to the |
| 14 | employee, how the amount was calculated, the duration and |
| 15 | schedule of benefit payments, and the employer's reasonable |
| 16 | estimate of permanent total or partial disability benefits to be |
| 17 | paid. |
| 18 | (c) Notice of changes to permanent total or partial |
| 19 | disability benefit rate, payment amount, or payment schedule. |
| 20 | Upon any changes to the benefit rate, payment amount, or payment |
| 21 | schedule for permanent total or partial disability benefits. |

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| 1 | before or at the same time as the new payment, the employer |
|----|--|
| 2 | shall provide written notice to the employee stating the new |
| 3 | benefit rate, new payment amount, and new payment schedule, as |
| 4 | applicable, and the reason for the change. |
| 5 | (d) Notice to terminate permanent total or partial |
| 6 | disability benefits payment. When the employer is of the |
| 7 | opinion that the payment of permanent total or partial |
| 8 | disability benefits should be terminated because the injured |
| 9 | employee is able to resume work, the employer shall provide |
| 10 | written notice to the employee and the director of the |
| 11 | employer's intent to terminate the benefits no later than two |
| 12 | weeks before the date when the final payment is to be made; |
| 13 | provided that if the decision to terminate payment of benefits |
| 14 | was made after the final payment, the employer shall send the |
| 15 | notice no later than ten days after the final payment. The |
| 16 | notice shall state the reason for stopping payment; make an |
| 17 | accounting of all benefits paid to or on behalf of the employee, |
| 18 | including the dates and amounts paid and any related penalties; |
| 19 | and inform the employee that the employee may file a written |
| 20 | request with the director for a hearing if the employee |
| 21 | disagrees with the employer. |



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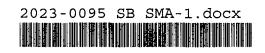
| 1 | If the | he em | oloyer's determination to terminate payment is |
|----|------------|------------|--|
| 2 | based on a | a med | ical report, a copy of the medical report shall be |
| 3 | provided v | with | the notice, except for psychiatric reports that |
| 4 | the psych: | iatri | st has recommended not be provided to the |
| 5 | employee. | | |
| 6 | If t | he em | oloyer's determination to terminate payment is |
| 7 | related to | oam | edical issue, the notice shall include one of the |
| 8 | following | stat | ements: |
| 9 | (1) | If t | he termination is based on a medical examination |
| 10 | | cond | ucted pursuant to section 386-79 or 386-80, the |
| 11 | | noti | ce shall state that, if the employee disputes the |
| 12 | | resu | lts of the examination, the employee may: |
| 13 | | <u>(A)</u> | File a written request with the director for a |
| 14 | | | hearing using a form prescribed by the director; |
| 15 | | | or |
| 16 | | <u>(B)</u> | Contact the employer to arrange for the employee |
| 17 | | | to return to the physician or surgeon who |
| 18 | | | conducted the examination for a new examination |
| 19 | | | if possible; or |
| 20 | (2) | If t | he termination is based on the treating |
| 21 | | phys | ician's evaluation of the employee's permanent |



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| 1 | total or partial disability status, the notice shall |
|----|---|
| 2 | state that, if the employee disagrees with the results |
| 3 | of the evaluation, the employee shall, no later than |
| 4 | thirty days after the employee's receipt of the |
| 5 | evaluation report, contact the employer to obtain a |
| 6 | form prescribed by the director to request the |
| 7 | director for an appointment of a duly qualified |
| 8 | impartial physician to examine the injured employee |
| 9 | pursuant to section 386-80. |
| 10 | (e) Notice of resumed permanent total or partial |
| 11 | disability benefit payments. If the payment of permanent total |
| 12 | or partial disability benefits is resumed after the termination |
| 13 | of any disability benefits, the employer shall, no later than |
| 14 | ten days after the employer obtains knowledge of the employee's |
| 15 | right to additional benefits, provide the injured employee with |
| 16 | written notice stating the amount of permanent total or partial |
| 17 | disability benefit due to the employee, the method by which the |
| 18 | amount was calculated, and the duration and schedule of benefit |
| 19 | payments. |
| 20 | \$386- Income and indemnity benefits, death, notice by |

20 §386- Income and indemnity benefits; death; notice by 21 employer. (a) Where a work injury for which compensation is



| 1 | payable under this chapter causes death of an employee or where |
|----|--|
| 2 | an employee who is entitled to weekly permanent total or partial |
| 3 | disability benefits dies from any cause other than the |
| 4 | compensable work injury, the employer shall provide written |
| 5 | notice to the employee's dependents regarding the status of any |
| 6 | benefits to which the dependents may be entitled or have claimed |
| 7 | as a result of the employee's death, including funeral and |
| 8 | burial allowance pursuant to section 386-41(a). The employer |
| 9 | shall send to each dependent a copy of all notices concerning |
| 10 | benefits claimed by, or which may be payable to, the dependent, |
| 11 | including notices sent to other dependents if the benefit amount |
| 12 | payable to the different dependent affects payments made to |
| 13 | other dependents. If the employer discovers a new dependent |
| 14 | after having sent a notice, the employer shall send to that |
| 15 | dependent copies of each prior notice concerning benefits to |
| 16 | which the newly-discovered dependent may be entitled. |
| 17 | (b) Notice of death benefits. If the employer pays death |
| 18 | benefits, the employer shall, no later than ten days after the |
| 19 | employer obtains knowledge of the employee's death and the |
| 20 | identity and address of dependents affected by the death, |
| 21 | provide written notice to each affected dependent stating the |



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| 1 | amount of death benefits due to the dependent, the method by | | |
|----|--|--|--|
| 2 | which the amount was calculated, the duration and schedule of | | |
| 3 | benefit payments, and any other information as deemed | | |
| 4 | appropriate by the director. | | |
| 5 | (c) Notice of delay in determining death benefits. If the | | |
| 6 | employer cannot determine the right of dependents to some or all | | |
| 7 | death benefits no later than ten days after the employer obtains | | |
| 8 | knowledge of the employee's death, the identity and address of | | |
| 9 | dependents affected by the death, and the nature of the benefit | | |
| 10 | claimed or which might be due, the employer shall, within the | | |
| 11 | ten-day period, provide written notice informing each affected | | |
| 12 | dependent of any delay; the reasons for the delay; the need, if | | |
| 13 | any, for additional information required to make a | | |
| 14 | determination; and when a determination is likely to be made. | | |
| 15 | If the employer cannot make a determination by the date the | | |
| 16 | employer specified in the initial notice, the employer shall, no | | |
| 17 | later than the determination date specified in the previous | | |
| 18 | notice, notify the affected dependents in writing of the revised | | |
| 19 | date by which the employer expects the determination to be made. | | |
| 20 | Any notices sent after the initial delay notice shall include | | |



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| 1 | the employee's remedies and comply with all requirements for the | | |
|----|--|--|--|
| 2 | initial notice. | | |
| 3 | (d) Notice of denial of death benefits payment. If the | | |
| 4 | employer denies or otherwise controverts liability for the | | |
| 5 | payment of any or all death benefits, the employer shall, no | | |
| 6 | later than ten days after the determination to deny liability | | |
| 7 | was made, provide each affected dependent with written notice | | |
| 8 | informing the dependent of the denial; the reasons for the | | |
| 9 | denial; and stating that if the dependent disagrees with the | | |
| 10 | employer, the dependent may file a written request with the | | |
| 11 | director for a hearing. | | |
| 12 | (e) Notice of changes to death benefit rate, payment | | |
| 13 | amount, or payment schedule. Upon any changes to the benefit | | |
| 14 | rate, payment amount, or payment schedule for death benefits, | | |
| 15 | the employer shall provide written notice to the employee | | |
| 16 | stating the new benefit rate, new payment amount, and new | | |
| 17 | payment schedule, as applicable, and the reason for the change. | | |
| 18 | The notice shall be sent before or with the changed payment, but | | |
| 19 | no later than ten days after the payment of benefits made | | |
| 20 | immediately before the change. | | |

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| 1 | (f) Notice to terminate death benefits payment. When the |
|----|--|
| 2 | employer is of the opinion that the payment of death benefits |
| 3 | should be terminated for a dependent, the employer shall, no |
| 4 | later than ten days before the date when the final payment is to |
| 5 | be made, notify the affected dependent and the director in |
| 6 | writing of the employer's intent to terminate the benefits; |
| 7 | provided that if the decision to terminate payment of benefits |
| 8 | was made after the final payment, the employer shall send the |
| 9 | notice no later than ten days after the final payment. The |
| 10 | notice shall state the reason for stopping payment; make an |
| 11 | accounting of all benefits paid to or on behalf of the |
| 12 | dependent, including the dates and amounts paid and any related |
| 13 | penalties; and state that if the dependent disagrees with the |
| 14 | employer, the dependent may file a written request with the |
| 15 | director for a hearing. |
| 16 | §386- Provisions common to benefits for disability; |
| 17 | notice by employer. (a) Notice of delay in determining all |
| 18 | liability. If the employer cannot determine whether the |
| 19 | employer has any liability for an injury other than an injury |
| 20 | causing death, the employer shall, no later than ten days after |
| 21 | the employer obtains knowledge of injury, provide the injured |



| 1 | employee with written notice informing the employee of the | | | |
|----|--|--|--|--|
| 2 | delay; the reasons for the delay; the need, if any, for | | | |
| 3 | additional information required to make a determination; and | | | |
| 4 | when a determination is likely to be made. | | | |
| 5 | If the employer cannot make a determination by the date the | | | |
| 6 | employer specified in the notice, or if the reason for the delay | | | |
| 7 | has changed, the employer shall send a subsequent notice to the | | | |
| 8 | employee as soon as reasonably practical but in no event later | | | |
| 9 | than the determination date specified in the previous notice, | | | |
| 10 | stating the reason for the additional delay and revised date | | | |
| 11 | when the employer expects the determination to be made. Any | | | |
| 12 | notices sent after the initial notice shall comply with all | | | |
| 13 | requirements for the initial notice. | | | |
| 14 | Any notice that is provided to the injured employee with a | | | |
| 15 | copy of the employer's report of industrial injury sent to the | | | |
| 16 | employee in compliance with section 386-95, shall include an | | | |
| 17 | explanation that: | | | |
| 18 | (1) Any employer who denies or otherwise controverts the | | | |
| 19 | compensability of an injury shall submit a written | | | |
| 20 | report to the director supporting the denial no later | | | |
| 21 | than thirty days after the date on which the employer | | | |

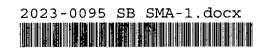


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| 1 | | filed the employer's initial report of industrial |
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| 2 | | injury; provided that the director may, upon showing |
| 3 | | of good cause in writing, extend the submittal period; |
| 4 | (2) | The employer's failure to submit the written report |
| 5 | | within the required period shall be deemed as the |
| 6 | | employer's acceptance of compensability, which |
| 7 | | establishes a presumption that the injury is |
| 8 | | compensable, which may be rebutted only by evidence |
| 9 | | discovered after the expiration of the period to file |
| 10 | | the written report; and |
| 11 | (3) | Section 386-21.1 requires an employer to furnish the |
| 12 | | employee with all medical care, services, and supplies |
| 13 | | as the nature of the injury requires, immediately |
| 14 | | after a work injury is sustained by the employee and |
| 15 | | so long as reasonably needed, or until the employer |
| 16 | | files a written report with the director denying or |
| 17 | | otherwise controverting the compensability of the |
| 18 | | injury, whichever is earlier, up to \$10,000. |
| 19 | <u>If t</u> | he reason for the delay is related to a medical issue |
| 20 | and the e | mployer is requesting or has requested a medical |
| 21 | examinati | on of the injured employee conducted by a duly |

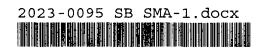
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| 1 | qualified physician, the notice shall be accompanied by the form | | | | |
|----|--|--|--|--|--|
| 2 | prescribed by the director to request the director to appoint a | | | | |
| 3 | duly qualified, impartial physician to examine the injured | | | | |
| 4 | employee pursuant to section 386-80; and include the following | | | | |
| 5 | statement printed in no smaller than ten point in size with the | | | | |
| 6 | phrase "TEN DAYS" in a bold typeface print: | | | | |
| 7 | Enclosed is a form that you must submit to the | | | | |
| 8 | Department of Labor and Industrial Relations' | | | | |
| 9 | Disability Compensation Division within TEN | | | | |
| 10 | DAYS to request the Director of Labor and | | | | |
| 11 | Industrial Relations to appoint a duly | | | | |
| 12 | qualified impartial physician to conduct your | | | | |
| 13 | medical examination. If you do not submit the | | | | |
| 14 | form within TEN DAYS, we will have the right | | | | |
| 15 | to request the Director of Labor and | | | | |
| 16 | Industrial Relations to order you to submit to | | | | |
| 17 | a medical examination conducted by a duly | | | | |
| 18 | qualified physician or surgeon designated and | | | | |
| 19 | paid by us. In addition, within TEN DAYS after | | | | |
| 20 | the Director of Labor and Industrial Relations | | | | |
| 21 | appoints a duly qualified, impartial | | | | |



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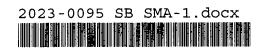
| 1 | physician, you must make an appointment with | | |
|----|--|--|--|
| 2 | that physician for an examination and inform | | |
| 3 | us of your appointment date and time. If you | | |
| 4 | do not inform us of your appointment, we will | | |
| 5 | make an appointment on your behalf. | | |
| 6 | (b) Notice accompanying the form to request the director | | |
| 7 | for appointment of a duly qualified, impartial physician. An | | |
| 8 | employee may object to a medical determination made by a | | |
| 9 | treating physician by requesting the employer for a form | | |
| 10 | prescribed by the director to request the director to appoint a | | |
| 11 | duly qualified, impartial physician to examine the injured | | |
| 12 | employee. Upon receiving a request from an employee, the | | |
| 13 | employer shall, no later than ten days after the request, | | |
| 14 | acknowledge receipt of the employee's objection and provide the | | |
| 15 | employee with a copy of the form with a written notice including | | |
| 16 | the following statements printed in no smaller than ten point in | | |
| 17 | size with the phrase "TEN DAYS" in a bold typeface print: | | |
| 18 | If you wish to receive a medical examination | | |
| 19 | conducted by a duly qualified, impartial | | |
| 20 | physician, enclosed is a form that you must | | |
| 21 | submit to the Department of Labor and | | |



| 1 | | Industrial Relations' Disability Compensation |
|----|-----------|---|
| 2 | | Division within TEN DAYS to request the |
| 3 | | Director of Labor and Industrial Relations to |
| 4 | | appoint a duly qualified impartial physician |
| 5 | | to conduct your medical examination. If you |
| 6 | | do not submit the form within TEN DAYS, we |
| 7 | | will have the right to request the Director of |
| 8 | | Labor and Industrial Relations to order you to |
| 9 | | submit to a medical examination conducted by |
| 10 | | a duly qualified physician or surgeon |
| 11 | | designated and paid by us. In addition, |
| 12 | | within TEN DAYS after the Director of Labor |
| 13 | | and Industrial Relations appoints a duly |
| 14 | | qualified, impartial physician, you must make |
| 15 | | an appointment with that physician for an |
| 16 | | examination and inform us of your appointment |
| 17 | | date and time. If you do not inform us of |
| 18 | | your appointment, we will make an appointment |
| 19 | | on your behalf. |
| 20 | (c) | Notice denying liability for all compensation |
| 21 | benefits. | If the employer denies liability for the payment of |



| 1 | all workers' compensation benefits for any claim except a claim | | | |
|----|--|--|--|--|
| 2 | for death benefits, including claims limited to the furnishing | | | |
| 3 | of medical care, services, and supplies, the employer shall, no | | | |
| 4 | later than ten days after the denial determination was made, | | | |
| 5 | provide written notice informing the employee of the denial and | | | |
| 6 | the reasons for the denial. | | | |
| 7 | If the employer's denial of liability is based on a medical | | | |
| 8 | report, a copy of the medical report shall be provided with the | | | |
| 9 | notice, except for psychiatric reports that the psychiatrist has | | | |
| 10 | recommended not be provided to the employee. | | | |
| 11 | If the employer's denial of liability is related to a | | | |
| 12 | medical issue, the notice shall include one of the following | | | |
| 13 | statements: | | | |
| 14 | (1) If the denial is based on a medical examination | | | |
| 15 | conducted pursuant to section 386-79 or 386-80, the | | | |
| 16 | notice shall state that, if the employee disputes the | | | |
| 17 | results of the examination, the employee may: | | | |
| 18 | (A) File an employee's claim for workers' | | | |
| 19 | compensation benefits using a form prescribed by | | | |
| 20 | the director; or | | | |



23

Page 23

| 1 | | (B) Contact the employer to arrange for the employee |
|----|-----|--|
| 2 | | to return to the physician or surgeon who |
| 3 | | conducted the examination for a new examination |
| 4 | | if possible; or |
| 5 | (2) | If the employee has not submitted to a medical |
| 6 | | examination pursuant to section 386-79, the notice |
| 7 | | shall be accompanied by a form prescribed by the |
| 8 | | director to request the director to appoint a duly |
| 9 | | qualified, impartial physician to examine the employee |
| 10 | | pursuant to section 386-80, and include the following |
| 11 | | statement printed in no smaller than ten point in size |
| 12 | | with the phrase "TEN DAYS" in a bold typeface print: |
| 13 | | If you disagree with the decision to deny |
| 14 | | your claim and wish to receive a medical |
| 15 | | examination conducted by a duly qualified |
| 16 | | impartial physician, enclosed is a form |
| 17 | | that you must submit to the Department of |
| 18 | | Labor and Industrial Relations' |
| 19 | | Disability Compensation Division within |
| 20 | | TEN DAYS to request the Director of Labor |
| 21 | | and Industrial Relations to appoint a |



| 1 | | duly qualified, impartial physician to |
|----|----------------|---|
| 2 | | conduct your medical examination. If you |
| 3 | | do not submit the form within TEN DAYS, |
| 4 | | we will have the right to request the |
| 5 | | Director of Labor and Industrial |
| 6 | | Relations to order you to submit to a |
| 7 | | medical examination conducted by a duly |
| 8 | | qualified physician or surgeon |
| 9 | | designated and paid by us. In addition, |
| 10 | | within TEN DAYS after the Director of |
| 11 | | Labor and Industrial Relations appoints |
| 12 | | a duly qualified, impartial physician, |
| 13 | | you must make an appointment with that |
| 14 | | physician for an examination and inform |
| 15 | | us of your appointment date and time. If |
| 16 | | you do not inform us of your appointment, |
| 17 | | we will make an appointment on your |
| 18 | | behalf. |
| 19 | A copy of | the notice denying liability for all compensation |
| 20 | benefits shall | be sent to all lien claimants; all claimants for |
| 21 | costs; and all | persons authorized by the employer to furnish |

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| 1 | benefits, goods, or services for which a lien or claim for costs | | |
|----|---|--|--|
| 2 | may be approved by the director or, if appealed, by the appeals | | |
| 3 | board or court deciding the appeal." | | |
| 4 | SECTION 3. Section 386-21.1, Hawaii Revised Statutes, is | | |
| 5 | amended to read as follows: | | |
| 6 | "[[]§386-21.1[]] Medical care, services, and supplies for | | |
| 7 | controverted claims; notice; limitations. [In the event of a | | |
| 8 | controverted claim, the injured employee's private health care | | |
| 9 | plan shall pay for or provide medical care, services, and | | |
| 10 | supplies in accordance with the private health care contract. | | |
| 11 | When the claim is accepted or determined to be compensable, the | | |
| 12 | employer shall reimburse the private health care plan and the | | |
| 13 | injured employee in amounts as authorized by this chapter and | | |
| 14 | rules adopted by the director.] (a) Immediately after a work | | |
| 15 | injury sustained by an employee and so long as reasonably needed | | |
| 16 | or until the employer files a written report with the director | | |
| 17 | pursuant to section 386-95(c) denying or otherwise controverting | | |
| 18 | the compensability of the injury, whichever is earlier, the | | |
| 19 | employer shall furnish to the employee all medical care, | | |
| 20 | services, and supplies as the nature of the injury requires; | | |
| 21 | provided that the amount of the employer's liability for the | | |

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| 1 | medical care, services, and supplies under this section shall be |
|----|--|
| 2 | limited to \$10,000. The liability for the medical care, |
| 3 | services, and supplies shall be subject to the deductible under |
| 4 | section 386-100. |
| 5 | (b) An employer, upon obtaining knowledge of an employee's |
| 6 | injury, shall provide the employee with a written instruction to |
| 7 | submit all bills for medical care, services, and supplies |
| 8 | provided between the date the employee was injured and the date |
| 9 | the employer submitted a written report to the director pursuant |
| 10 | to section 386-95(c) denying or otherwise controverting the |
| 11 | employer's liability, unless the employee has done so already. |
| 12 | The employer shall also inform the employee that the maximum |
| 13 | payment for medical care, services, and supplies that were |
| 14 | provided in compliance with the requirements of this chapter is |
| 15 | \$10,000. |
| 16 | (c) The furnishing of medical care, services, and supplies |
| 17 | under subsection (a) shall not give rise to a presumption of |
| 18 | liability on the part of the employer." |
| 19 | SECTION 4. Section 386-31, Hawaii Revised Statutes, is |
| 20 | amended to read as follows: |

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| 1 | "§386-31 Total disability. (a) Permanent total | | |
|----|---|--|--|
| 2 | disability. Where a work injury causes permanent total | | |
| 3 | disability, the employer shall pay the injured employee a weekly | | |
| 4 | benefit equal to sixty-six and two-thirds per cent of the | | |
| 5 | employee's average weekly wages, subject to the following | | |
| 6 | limitation: | | |
| 7 | Beginning January 1, 1975, and during each succeeding | | |
| 8 | twelve-month period thereafter, not more than the state average | | |
| 9 | weekly wage last determined by the director, rounded to the | | |
| 10 | nearest dollar, nor less than \$38 or twenty-five per cent of the | | |
| 11 | foregoing maximum amount, rounded to the nearest dollar, | | |
| 12 | whichever is higher. | | |
| 13 | In the case of the following injuries, the disability | | |
| 14 | caused thereby shall be deemed permanent and total: | | |
| 15 | (1) The permanent and total loss of sight in both eyes; | | |
| 16 | (2) The loss of both feet at or before the ankle; | | |
| 17 | (3) The loss of both hands at or above the wrist; | | |
| 18 | (4) The loss of one hand and one foot; | | |
| 19 | (5) An injury to the spine resulting in permanent and | | |
| 20 | complete paralysis of both legs or both arms or one | | |
| 21 | leg and one arm; and | | |



S.B. NO. 919

1 (6) An injury to the skull resulting in incurable imbecility or insanity. 2 3 In all other cases the permanency and totality of the 4 disability shall be determined on the facts. No adjudication of 5 permanent total disability shall be made until after [two weeks] 6 ten days from the date of the injury. 7 Temporary total disability. Where a work injury (b) causes total disability not determined to be permanent in 8 9 character, the employer, for the duration of the disability, but 10 not including the first three calendar days thereof, shall pay 11 the injured employee a weekly benefit at the rate of sixty-six and two-thirds per cent of the employee's average weekly wages, 12 13 subject to the limitations on weekly benefit rates prescribed in 14 subsection (a), or if the employee's average weekly wages are 15 less than the minimum weekly benefit rate prescribed in subsection (a), at the rate of one hundred per cent of the 16 17 employee's average weekly wages. If an employee is unable to complete a regular daily work 18

19 shift due to a work injury, the employee shall be deemed totally20 disabled for work for that day.

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S.B. NO. 910

1 The employer shall pay temporary total disability benefits 2 promptly as they accrue to the person entitled thereto without 3 waiting for a decision from the director, unless this right is controverted by the employer in the employer's initial report of 4 5 industrial injury. The first payment of benefits shall become 6 due and shall be paid no later than on the tenth day after the 7 employer has been notified of the occurrence of the total 8 disability, and thereafter the benefits due shall be paid weekly 9 except as otherwise authorized pursuant to section 386-53.

10 The payment of these benefits shall only be terminated upon 11 order of the director or if the employee is able to resume work. 12 When the employer is of the opinion that the payment of 13 temporary total disability benefits should be terminated because 14 the injured employee is able to resume work, the employer shall 15 notify the employee and the director in writing of [an] the 16 employer's intent to terminate the benefits [at least two weeks] 17 no later than ten days prior to the date when the [last] final 18 payment is to be made [-]; provided that if the decision to 19 terminate payment of benefits was made after the final payment, 20 the employer shall send the notice no later than ten days after 21 the final payment. The notice shall [give] state the reason for

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| 1 | stopping payment; make an accounting of all benefits paid to or | | |
|----|--|--|--|
| 2 | on behalf of the employee, including the dates and amounts paid | | |
| 3 | and any related penalties; and [shall] inform the employee that | | |
| 4 | the employee may [make] file a written request [to] with the | | |
| 5 | director for a hearing if the employee disagrees with the | | |
| 6 | employer. | | |
| 7 | If the employer's determination to terminate payment is | | |
| 8 | based on a medical report, a copy of the medical report shall be | | |
| 9 | provided with the notice, except for psychiatric reports that | | |
| 10 | the psychiatrist has recommended not be provided to the | | |
| 11 | employee. | | |
| 12 | If the employer's determination to terminate payment is | | |
| 13 | related to a medical issue, the notice shall include one of the | | |
| 14 | following statements: | | |
| 15 | (1) If the termination is based on a medical examination | | |
| 16 | conducted pursuant to section 386-79 or 386-80, the | | |
| 17 | notice shall state that, if the employee disputes the | | |
| 18 | results of the examination, the employee may: | | |
| 19 | (A) File a written request with the director for a | | |
| 20 | hearing using a form prescribed by the director; | | |
| 21 | or | | |



31

Page 31

| 1 | | (B) Contact the employer to arrange for the employee |
|----|-----------|---|
| 2 | | to return to the physician or surgeon who |
| 3 | | conducted the examination for a new examination |
| 4 | | if possible; or |
| 5 | (2) | If the termination is based on the treating |
| 6 | | physician's evaluation of the employee's temporary |
| 7 | | disability status, the notice shall state that if the |
| 8 | | employee disagrees with the results of the evaluation, |
| 9 | | the employee shall, no later than thirty days after |
| 10 | | the employee's receipt of the evaluation report, |
| 11 | | contact the employer to obtain a form prescribed by |
| 12 | | the director to request the director for an |
| 13 | | appointment of a duly qualified, impartial physician |
| 14 | | to examine the injured employee pursuant to section |
| 15 | | 386-80. |
| 16 | Upon | receipt of the request for a hearing from the |
| 17 | employee, | the director shall conduct a hearing as expeditiously |
| 18 | as possib | le and render a prompt decision as specified in section |
| | | |

20 offered, temporary total disability benefits shall not be

386-86. If the employee is unable to perform light work, if



19

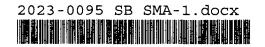
1 discontinued based solely on the inability to perform or continue to perform light work. 2 3 [An employer or insurance carrier who fails to comply with 4 this section shall pay not more than \$5,000 into the special 5 compensation fund upon the order of the director, in addition to 6 other penalties prescribed in section 386-92. 7 (1)] (c) The employer, upon obtaining information 8 indicating that the injured employee's medical condition may be stabilized, shall file a written request to the director for a 9 declaration of medical stability. If the director determines, 10 11 based upon a review of medical records and reports and other 12 relevant documentary evidence, that an injured employee's 13 medical condition may be stabilized and the employee is unable 14 to return to the employee's regular job, the director shall 15 issue a preliminary decision regarding the employee's entitlement and limitation to benefits and rights under Hawaii's 16 workers' compensation laws. The preliminary decision shall be 17 18 sent to the affected employee [and], the employee's designated 19 representative [and], the employer, and the employer's 20 designated representative, and shall state that any party disagreeing with the director's preliminary findings of medical 21

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1 stabilization and work limitations may request a hearing 2 [within] no later than twenty days of the date of the decision. 3 [The] During the twenty-day period, the director shall be 4 available to answer any questions [during the twenty day period] 5 from the injured employee and affected employer. If neither 6 party requests a hearing challenging the director's finding, the 7 determination shall be deemed accepted and binding upon the 8 parties. In any case where a hearing is held on the preliminary 9 findings, any person aggrieved by the director's decision and 10 order may appeal under section 386-87.

11 A preliminary decision of the director shall inform the 12 injured employee and the employer of the following 13 responsibilities, benefits, and limitations on vocational rehabilitation benefits that are designed to facilitate the 14 15 injured employee's early return to suitable gainful employment: 16 (1)That the injured employee may invoke the employee's 17 rights under section 378-2, 378-32, or 386-142, or all 18 of them, in the event of unlawful discrimination or 19 other unlawful employment practice by the employer; 20 and



S.B. NO. 918

(2) That after termination of temporary total disability
 benefits, an injured employee who resumes work may be
 entitled to permanent partial disability benefits,
 which if awarded, shall be paid regardless of the
 earnings or employment status of the disabled employee
 at the time.

7 [(2)] If the rehabilitation unit determines that an 8 injured employee is not a feasible candidate for rehabilitation 9 and that the employee is unable to resume the employee's regular 10 job, it shall promptly certify the same to the director. Soon 11 thereafter, the director shall conduct a hearing to determine 12 whether the injured employee remains temporarily totally 13 disabled, or whether the employee is permanently partially 14 disabled, or permanently totally disabled.

(d) An employer or insurance carrier who fails to comply
with this section shall pay not more than \$5,000 into the
special compensation fund upon the order of the director, in
addition to other penalties prescribed in section 386-92."
SECTION 5. Section 386-81, Hawaii Revised Statutes, is
amended to read as follows:



S.B. NO. 918

| 1 | "§386-81 Notice of injury; waiver. (a) No proceedings | | | |
|----|--|--|--|--|
| 2 | for compensation under this chapter shall be maintained unless | | | |
| 3 | written notice of the injury claimed to have caused the | | | |
| 4 | disability or death of the employee has been given to the | | | |
| 5 | employer as soon as practicable after the [happening-thereof.] | | | |
| 6 | occurrence of the injury. The notice may be given by the | | | |
| 7 | injured employee or by some other person on the employee's | | | |
| 8 | behalf. | | | |
| 9 | (b) Failure to give [such] notice <u>pursuant to subsection</u> | | | |
| 10 | (a) shall not bar a claim under this chapter if $[+]: [+]$ | | | |
| 11 | (1) The employer [or], the injured employee's supervisor, | | | |
| 12 | the employer's agent in charge of the work in the | | | |
| 13 | place where the injury was sustained, or any other | | | |
| 14 | person having authority in the interest of the | | | |
| 15 | employer, had knowledge of the injury $[7]$ or knowledge | | | |
| 16 | of the assertion of a claim of injury sufficient to | | | |
| 17 | afford the employer an opportunity to investigate the | | | |
| 18 | matter; | | | |
| 19 | (2) Medical, surgical, or hospital service and supplies | | | |
| 20 | have been furnished to the injured employee by the | | | |
| 21 | employer; or | | | |



(3) For some satisfactory reason the notice could not be
 given and the employer has not been prejudiced by
 [such] the failure.

(c) Unless the employer is prejudiced thereby, notice of
injury <u>pursuant to subsection (a)</u> shall be deemed to have been
waived by the employer if objection to the failure to give
[such] notice is not raised at the first hearing on a claim in
respect [of such] to the injury of which the employer is given
reasonable notice and opportunity to be heard."

10 SECTION 6. Section 386-95, Hawaii Revised Statutes, is 11 amended to read as follows:

12 "§386-95 Reports of injuries[7]; other reports[7];
13 penalty. (a) Every employer shall keep a record of all
14 injuries, fatal or otherwise, [received] incurred by the
15 employer's employees in the course of their employment, when
16 known to the employer or brought to the employer's attention.

17 (b) Within seven working days after the employer [has]
18 obtains knowledge of [such] an employee's injury causing absence
19 from work for one day or more or requiring medical treatment
20 beyond ordinary first aid, the employer shall [make a report

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| 1 | thereon t | e] file an employer's report of industrial injury with |
|----|----------------------|--|
| 2 | the direc | tor. The report shall [set forth the] <u>include:</u> |
| 3 | (1) | The name, address, and nature of the employer's |
| 4 | | business [and the] <u>;</u> |
| 5 | (2) | The name, age, sex, wages, and occupation of the |
| 6 | | injured employee [and shall state the] <u>;</u> |
| 7 | (3) | The date and hour of the accident[$_{7}$] if the injury [is |
| 8 | | produced thereby, the] was incurred as a result |
| 9 | | thereof; |
| 10 | (4) | The nature and cause of the injury[, and such other] <u>;</u> |
| 11 | (5) | Information on insurance, including the name of the |
| 12 | | insurance carrier, whether liability is denied, and if |
| 13 | | liability is denied, the reason for the denial; and |
| 14 | (6) | Any other information as the director may require. |
| 15 | (c) | Any employer who denies or otherwise controverts the |
| 16 | compensab | ility of an injury shall submit a written report to the |
| 17 | director | supporting the denial no later than thirty days after |
| 18 | the date | on which the employer filed the initial employer's |
| 19 | report of | industrial injury; provided that the director may, |
| 20 | upon show | ing of good cause in writing, extend the filing |
| 21 | deadline. | The employer's failure to submit a written report in |



S.B. NO. 918

1 compliance with this subsection shall be deemed as the 2 employer's acceptance of compensability and the injury shall be 3 presumed compensable. The presumption of compensability 4 established pursuant to this subsection may be rebutted only by 5 evidence discovered after the expiration of the period to file 6 the written report. 7 (d) By January 31 of each year, the employer shall file 8 with the director a report with respect to each injury on which 9 the employer is continuing to pay compensation, showing all 10 amounts paid by the employer on account of the injury. 11 The reports required by this section shall be made on (e) 12 forms to be obtained from the director pursuant to section 13 386-71 and deposit of reports in the United States mail or by 14 electronic means as approved by the director, addressed to the 15 director, within the time specified shall be deemed in 16 compliance with the requirements of this section. 17 (f) When an injury results in immediate death, the 18 employer shall within forty-eight hours notify personally or by 19 telephone a representative of the department in the county where 20 the injury occurred.



S.B. NO. 918

(g) Within thirty days after final payment of compensation
 for an injury, the employer shall file a final report with the
 director showing the total payments made, the date of
 termination of temporary total disability, and [such] other
 information as the director may require.

6 (h) Any employer who wilfully refuses or neglects to file
7 any of the reports or give any notice required by this section
8 shall be fined by the director not more than \$5,000.

9 (i) Copies of all reports, other than those of fatal
10 injuries, filed with the director as required by this section
11 shall be sent to the injured employee by the employer."

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

15 SECTION 8. Statutory material to be repealed is bracketed16 and stricken. New statutory material is underscored.

17 SECTION 9. This Act shall take effect on July 1, 2023.

18

) he that

INTRODUCED BY:



Report Title:

Workers' Compensation; Disability Benefits; Death Benefits; Notice by Employer; Medical Benefits; Knowledge of Injury

Description:

Establishes notice requirements for employers under Hawaii's Workers' Compensation Law. Requires employers who deny the compensability of an employee's injury to submit a written report supporting the denial to the Director of Labor and Industrial Relations within a specified period. Requires employers to furnish to the injured employee up to \$10,000 for medical care, services, and supplies for the period immediately following the injury and so long as reasonably needed or until the employer files a written report with the Director denying the compensability of the injury, whichever is earlier. Clarifies that failure to give an employer notice of an employee's injury does not bar a claim for compensation if any person having authority in the interest of the employer had knowledge of the injury.

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

