

JAN 20 2023

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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] under mutual~~  
4 agreement between employer and employee. (a) After an injury  
5 ~~[and during the period of disability, the employee, whenever~~  
6 ~~ordered by the director of labor and industrial relations, shall~~  
7 ~~submit 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~~  
10 ~~physician, surgeon, or chaperone designated and paid by the~~  
11 ~~employee present at the examination, which right, however, shall~~  
12 ~~not be construed to deny to the employer's physician the right~~  
13 ~~to visit the injured employee at all reasonable times and under~~  
14 ~~all reasonable conditions during total disability. The employee~~  
15 ~~shall also have the right to record such examination by a~~  
16 ~~recording device designated and paid for by the employee,~~



1 ~~provided that the examining physician or surgeon approves of the~~  
2 ~~recording.~~

3 ~~If an employee refuses to submit to, or the employee or the~~  
4 ~~employee's designated chaperone in any way obstructs such~~  
5 ~~examination, the employee's right to claim compensation for the~~  
6 ~~work injury shall be suspended until the refusal or obstruction~~  
7 ~~ceases and no compensation shall be payable for the period~~  
8 ~~during which the refusal or obstruction continues.] of an~~  
9 ~~employee, the employer may appoint a qualified chiropractor or~~  
10 ~~physician who shall be selected by mutual agreement of the~~  
11 ~~parties and paid for by the employer, to conduct an independent~~  
12 ~~medical examination or a permanent impairment rating examination~~  
13 ~~of the injured employee and submit a report to the employer.~~

14 (b) ~~[In cases where the employer is dissatisfied with the~~  
15 ~~progress of the case or where major and elective surgery, or~~  
16 ~~either, is contemplated, the employer may appoint a physician or~~  
17 ~~surgeon of the employer's choice who shall examine the injured~~  
18 ~~employee and make a report to the employer. If the employer~~  
19 ~~remains dissatisfied, this report may be forwarded to the~~  
20 ~~director.~~



1       ~~Employer requested examinations under this section shall~~  
2 ~~not exceed more than one per case unless good and valid reasons~~  
3 ~~exist with regard to the medical progress of the employee's~~  
4 ~~treatment.] The employer shall send written notice to the~~  
5 ~~chiropractor or physician selected pursuant to subsection (a),~~  
6 ~~stating that the chiropractor or physician has been mutually~~  
7 ~~selected by the parties to conduct an independent medical~~  
8 ~~examination or a permanent impairment rating examination of the~~  
9 ~~injured employee. The written notice shall be transmitted to~~  
10 ~~the injured employee no later than five working days before the~~  
11 ~~appointment. Upon the issuance of the report of the independent~~  
12 ~~medical examination or permanent impairment rating examination,~~  
13 ~~the employee or employee's representative shall be promptly~~  
14 ~~provided with a copy of the report.~~

15       (c) A chiropractor or physician selected pursuant to this  
16 section to conduct an independent medical examination or a  
17 permanent impairment rating examination shall be a chiropractor  
18 or physician who is willing to undertake the examination and  
19 currently licensed in the State to practice chiropractic  
20 pursuant to chapter 442 or medicine or surgery pursuant to  
21 chapter 453; except that upon approval by the director, a



1 chiropractor or physician practicing in the specialty area of  
2 the employee's injury who resides outside of the State and is  
3 licensed in another state with requirements equivalent to the  
4 licensure requirements for chiropractors under chapter 442 or  
5 physicians under chapter 453, may be selected if no chiropractor  
6 or physician licensed in the State practicing in that specialty  
7 area is available to conduct the examination.

8 If the injured employee does not reside in the State, a  
9 chiropractor or physician who is licensed and resides in the  
10 state of the injured employee's residence may be selected;  
11 provided that the licensure requirements for that state are  
12 equivalent to the licensure requirements for chiropractors under  
13 chapter 442 or physicians under chapter 453.

14 (d) If the parties are unable to reach a mutual agreement  
15 on the selection of a chiropractor or physician to conduct the  
16 independent medical examination or permanent impairment rating  
17 examination, the director shall appoint a duly qualified  
18 impartial chiropractor or physician, to be paid for by the  
19 employer, to examine the injured employee and submit a report to  
20 the employer.



1       (e) Any chiropractor or physician mutually selected or  
2 otherwise appointed to conduct an examination of an injured  
3 employee pursuant to this section shall conduct the examination  
4 within forty-five days of receiving written notice of the  
5 selection or appointment, or as soon as possible.

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

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

20       (g) If an employee refuses to submit to, or unreasonably  
21 interferes with an examination conducted pursuant to this



1 section, the employee's right to claim compensation for the work  
2 injury shall be suspended until the refusal or interference  
3 ceases. No compensation shall be payable to the employee for  
4 the period of suspension.

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

10 (i) When an injured employee has attained medical  
11 stability as determined by the employee's attending physician, a  
12 chiropractor or physician may be appointed to conduct a  
13 permanent impairment rating examination. The chiropractor or  
14 physician shall be mutually selected by the parties or otherwise  
15 appointed pursuant to this section. Medical stability is deemed  
16 to have occurred when the injured employee refuses to undergo  
17 further diagnostic tests or treatment that the health care  
18 provider believes will greatly aid in the employee's recovery.

19 For the purposes of this subsection, "medical stability"  
20 means that no further improvement in the injured employee's



1 work-related condition can reasonably be expected from curative  
2 health care or the passage of time."

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

6 SECTION 3. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 4. This Act shall take effect on July 1, 2023.

9

INTRODUCED BY:





# S.B. NO. 919

**Report Title:**

Workers' Compensation; Independent Medical Examination;  
Permanent Impairment Rating Examination; Chiropractor;  
Physician; Mutual Agreement

**Description:**

Requires the independent medical examination and permanent impairment rating examination of an injured employee under the Workers' Compensation Law to be conducted by a qualified chiropractor or physician selected by the mutual agreement of the parties and paid for by the employer. In absence of a mutual agreement, requires the Director of Labor and Industrial Relations to appoint a duly qualified impartial chiropractor or physician to be paid by the employer.

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

