

ACT 296

H.B. NO. 463

A Bill for an Act Relating to Workers' Compensation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to amend the workers' compensation law to make the system both effective and efficient. This Act is based upon certain findings in the Study of the Workers' Compensation

Program of the State of Hawaii by Haldi Associates, Inc. as submitted by the Legislative Auditor and the Report of the Workers' Compensation Program Commission dated January 1982 and incorporates those reforms deemed necessary.

The legislature also finds that aligned with these concerns to reduce workers' compensation costs, employers and organizations that represent employees should make an effort to lessen work-connected injuries and illnesses through cooperative endeavors in accident prevention programs.

SECTION 2. Section 386-25, Hawaii Revised Statutes, is amended to read as follows:

"§386-25 Vocational rehabilitation. (a) The purposes of vocational rehabilitation are to restore an injured worker's earning capacity as nearly as possible to that level which the worker was earning at the time of injury and to return the injured worker to suitable work in the active labor force as quickly as possible in a cost-effective manner.

(b) The director shall refer employees who may have or have suffered permanent disability as a result of work injuries and who in his opinion can be physically or vocationally rehabilitated to the department of social services and housing or to private providers of rehabilitation services for such physical and vocational rehabilitation services as are feasible. A referral shall be made upon recommendation of the rehabilitation unit established under section 386-71.5 and after the employee has been deemed physically able to participate in rehabilitation by the employee's attending physician. The unit shall include appropriate professional staff and shall have the following duties and responsibilities:

- (1) To foster, review, and approve rehabilitation plans developed by certified providers of rehabilitation services, whether they be private or public;
- (2) To adopt rules consistent with this section which shall expedite and facilitate the identification, notification, and referral of industrially injured employees to rehabilitation services, and establish minimum standards for providers providing rehabilitation services under this section;
- (3) To certify private and public providers of rehabilitation services in accordance with the minimum standards established; and
- (4) To coordinate and enforce the implementation of rehabilitation plans.

[(b)] (c) Enrollment in a rehabilitation plan or program shall not be mandatory and the approval of a proposed rehabilitation plan or program by the injured employee shall be required. After securing such approval the director shall select a certified provider of rehabilitation services for the injured employee after consultation with the employee and the employer.

[(c)] (d) An injured employee's enrollment in a rehabilitation plan or program shall not affect the employee's entitlement to temporary total disability compensation if the employee earns no wages during the period of enrollment. If the employee receives wages for work performed under the plan or program, the employee shall be entitled to temporary total disability compensation in an amount equal to the difference between the employee's average weekly wages at the time of injury and the wages received under the plan or program, subject to the limitations on weekly benefit rates prescribed in section [386-31.] 386-31(a). The employee shall not be entitled to such compensation for any week during

this period where the wages equal or exceed the average weekly wages at the time of injury.

[(d)] (e) The director shall adopt rules for additional living expenses necessitated by the rehabilitation program, together with all reasonable and necessary vocational training.

[(e)] (f) If the rehabilitation unit determines that physical and vocational rehabilitation are not possible or feasible, it shall certify such determination to the director.

[(f)] (g) The eligibility of any injured employee to receive other benefits under this chapter shall in no way be affected by his entrance upon a course of physical or vocational rehabilitation as herein provided.

(h) Vocational rehabilitation services for the purpose of developing a vocational rehabilitation plan shall be approved by the director and the director shall periodically review progress in each case."

SECTION 3. Section 386-31, Hawaii Revised Statutes, is amended to read as follows:

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

Beginning January 1, 1975, and during each succeeding [12] twelve -month¹ period thereafter, not more than the state average weekly wage last determined by the director, rounded to the nearest dollar, nor less than \$38 or [25] twenty-five per cent of the foregoing maximum amount, rounded to the nearest dollar, whichever is higher.

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

- (1) The permanent and total loss of sight in both eyes;
- (2) The loss of both feet at or before the ankle;
- (3) The loss of both hands at or above the wrist;
- (4) The loss of one hand and one foot;
- (5) An injury to the spine resulting in permanent and complete paralysis of both legs or both arms or one leg and one arm;
- (6) An injury to the skull resulting in incurable imbecility or insanity.

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

(b) Temporary total disability. Where a work injury causes total disability not determined to be permanent in character, the employer, for the duration of the disability but not including the first [two] three calendar days thereof shall pay the injured employee a weekly benefit at the rate of sixty-six and two-thirds per cent of his average weekly wages, subject to the limitations on weekly benefit rates prescribed in subsection (a), or if his average weekly wages are less than the minimum weekly benefit rate prescribed in subsection (a), at the rate of one hundred per cent of his average weekly wages. [In case the total disability exceeds five days, the compensation shall be allowed from the date of disability.]

The employer shall pay temporary total disability benefits promptly as they accrue to the person entitled thereto without waiting for a decision from the director, unless such right is controverted by the employer in his initial report of industrial injury. The first payment of benefits shall become due and shall be paid no later than on the tenth day after the employer has been notified of the

occurrence of the total disability, and thereafter the benefits due shall be paid weekly except as otherwise authorized pursuant to section 386-53.

The payment of such benefits shall only be terminated upon order of the director or if the employee is able to resume work [or if the employee has filed a false claim]. When the employer is of the opinion that temporary total disability benefits should be terminated because the injured employee is able to resume work [or because he has filed a false claim], the employer shall notify the employee and the director in writing of an intent to terminate such benefits at least two weeks prior to the date when the last payment is to be made. The notice shall give the reason for stopping payment and shall inform the employee that he may make a written request to the director for a hearing if he disagrees with the employer. Upon receipt of the request from the employee, the director shall conduct a hearing as expeditiously as possible and render a prompt decision[.] as specified in section 386-86.

An employer or insurance carrier who fails to comply with this section shall pay \$250 into the special compensation fund upon the order of the director, in addition to other penalties prescribed in section 386-92.

- (1) In any case where the director determines based upon a review of medical records and reports and other relevant documentary evidence that an injured employee's medical condition may be stabilized and the employee is unable to return to the employee's regular job the director shall issue a preliminary decision regarding the claimant's entitlement and limitation to benefits and rights under Hawaii's workers' compensation laws. The preliminary decision shall be sent to the affected employee and the employee's designated representative and the employer and the employer's designated representative and shall state that any party disagreeing with the director's preliminary findings of medical stabilization and work limitations may request a hearing within twenty days of the date of the decision. The director shall be available to answer any questions during the twenty-day period from the injured employee and affected employer. If neither party requests a hearing challenging the director's finding the determination shall be deemed accepted and binding upon the parties. In any case where a hearing is held on the preliminary findings any person aggrieved by the director's decision and order may appeal under section 386-87. A preliminary decision of the director shall inform the injured employee and the employer of the following responsibilities, benefits, and limitations on vocational rehabilitation benefits which are designed to facilitate the injured employee's early return to suitable gainful employment:
 - (A) That the injured employee may invoke the employee's rights under section 378-2, 378-32, or 386-142, or all of them, in the event of unlawful discrimination or other unlawful employment practice by the employer.
 - (B) 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.
- (2) In any case in which the rehabilitation unit determines that an injured employee is not a feasible candidate for rehabilitation and that the employee is unable to resume the employee's regular job, it

shall promptly certify the same to the director. Soon thereafter the director shall conduct a hearing to determine whether the injured employee remains temporarily totally disabled, or whether the employee is permanently partially disabled, or permanently totally disabled."

SECTION 4. Section 386-1, Hawaii Revised Statutes, is amended by adding a new definition of "health care provider" to be appropriately inserted and to read as follows:

" "Health care provider" means a person qualified by the director to render health care and service and who has a license for the practice of:

- (1) Medicine under chapter 453;
- (2) Dentistry under chapter 448;
- (3) Chiropractic under chapter 442;
- (4) Osteopathy under chapter 460;
- (5) Naturopathy under chapter 455;
- (6) Optometry under chapter 459;
- (7) Podiatry under chapter 463E; and
- (8) Psychology under chapter 465."

SECTION 5. Chapter 386, Hawaii Revised Statutes, is amended by adding two new sections to Part II, subpart A, to be appropriately designated and to read as follows:

"§386- Guidelines on frequency of treatment and reasonable utilization of health care and services. The director shall issue guidelines for the frequency of treatment and for reasonable utilization of medical care and services by health care providers which are considered necessary and appropriate under this chapter. The guidelines shall be adopted pursuant to chapter 91 and shall not interfere with the injured employee's rights to exercise free choice of physicians under section 386-21.

In addition, the director shall promulgate updated medical fee schedules referred to in section 386-21 and where deemed appropriate shall establish separate fee schedules for services of health care providers as defined in section 386-1 to become effective no later than June 30, 1986 in accordance with chapter 91.

§386- Qualification and duties of health care providers. (a) All health care providers rendering health care and services under this chapter shall be qualified by the director and shall remain qualified by satisfying the requirements established in this section. The director shall qualify any person initially who has a license for the practice of:

- (1) Medicine under chapter 453;
- (2) Dentistry under chapter 448;
- (3) Chiropractic under chapter 442;
- (4) Osteopathy under chapter 460;
- (5) Naturopathy under chapter 455;
- (6) Optometry under chapter 459;
- (7) Podiatry under chapter 463E; or
- (8) Psychology under chapter 465.

(b) To remain a qualified provider under this chapter a health care provider shall:

- (1) Comply with guidelines established by the director on the frequency of treatment and reasonable utilization of health care and services;

- (2) Conform to limitations established by the director for charges on services under medical fee and other fee schedules;
- (3) File timely reports required under section 386-96;
- (4) Avoid unnecessary and unreasonable referrals of injured employees to other health care providers;
- (5) Refrain from ordering unnecessary and unreasonable diagnostic tests and studies;
- (6) Remain available as a treating health care provider to injured employees and as an advisor to the director in proceedings under this section; and
- (7) Comply with all requirements established under this chapter and by rules and decisions adopted and issued by the director pursuant to this chapter.

(c) Any health care provider who fails to comply with subsections (a) and (b) may be subject to such sanctions deemed just and proper by the director which may include:

- (1) Disallowance of fees for services rendered to an injured employee;
- (2) Forfeiture of payments for services rendered to an injured employee under this chapter;
- (3) Fines of not more than \$1,000 for each violation;
- (4) Suspension as a qualified provider; and
- (5) Disqualification as a provider of services under this chapter.

(d) No sanction shall be imposed by the director under this section except upon submission of a written complaint which shall specifically allege that a violation of this section occurred within two years of the date of the complaint. A copy of the complaint shall be sent to the health care provider charged promptly upon receipt by the director. The director may establish an advisory panel of health care providers consisting of three members, one selected by the complainant, another selected by the health care provider charged, and the third selected by the director who shall assist the director in any case arising under this section. Fees for services rendered by members of the advisory panel shall be paid for by the special compensation fund. No member of the advisory panel shall be liable in damages for libel, slander, or other defamation of character of any party for any action taken while acting within their capacities as members of the advisory panel.

The director shall issue, where a sanction is ordered under this section, a written decision of findings following a hearing held upon not less than² twenty days written notice to the complainant and the health care provider charged. No violation shall be found unless the director determines that the violator acted in bad faith. Any person aggrieved by a decision of the director may appeal the decision under section 386-87.

(e) In any case arising under this section, the injured employee treated by the health care provider charged with a violation of this section shall not be a party to the proceeding and shall not appear unless called as a witness before the director or the appellate board. Charges for services rendered by the health care provider alleged to be in violation of this section shall be suspended pending action by the director and the appellate board in cases on appeal.

In any case in which fees for services rendered by a health care provider are disallowed by the director, the health care provider shall be ordered to forfeit payment."

SECTION 6. Section 386-94, Hawaii Revised Statutes, is amended to read as follows:

“§386-94 Attorneys, physicians, other health care providers,³ and other fees. Claims of attorneys and physicians and other health care providers for services under this chapter and claims for any other services rendered in respect of a claim for compensation, to or on account of any person shall not be valid unless approved by the director of labor and industrial relations or, if an appeal is had, by the appellate board or court deciding the appeal. Any claims so approved shall be a lien upon such compensation in the manner and to the extent fixed by the director, the appellate board or the court.

Any person who receives any fee, other consideration or gratuity on account of services so rendered, without approval of such fee, other consideration or gratuity in conformity with the preceding paragraph shall be fined not more than \$1,000, or imprisoned not more than one year, or both.”

SECTION 7. Section 386-98, Hawaii Revised Statutes, is amended to read as follows:

“§386-98 Penalties for [false representations] fraud.³ [If for the purpose of obtaining any benefit or payment under this chapter, either for himself or for any other person, anyone wilfully makes a false statement or representation, he shall be fined not more than \$1,000.] No person shall wilfully make a false statement or representation for the purpose of directly obtaining any compensation or payment or for the purpose of avoiding on behalf of employer or carrier any compensation or payment under this chapter. Any person who violates this section shall be subject to one or more of the following:

- (1) a fine of not more than \$2,500.00 for each violation;
- (2) suspension or termination of benefits in whole or in part;
- (3) suspension or disqualification from providing medical care or services, vocational rehabilitation services, and all other services rendered for payment under this chapter;
- (4) suspension or termination of payments for medical, vocational rehabilitation and all other services rendered under this chapter;

No penalty shall be imposed except upon consideration of a written complaint which specifically alleges a violation of this section occurring within two years of the date of said complaint. A copy of said complaint specifying the alleged violation shall be served promptly upon the person charged. The director or Board shall issue, where a penalty is ordered, a written decision stating all findings following a hearing held not less than twenty days after written notice to the person charged. Any person aggrieved by the decision may appeal said decision under section 386-87 and 386-88.”

SECTION 8. Section 386-86, Hawaii Revised Statutes, is amended to read as follows:

“§386-86 Proceedings upon claim. If a claim for compensation is made, the director [of labor and industrial relations] shall make such further investigation as [he deems] deemed necessary and render a decision within sixty days after the conclusion of the hearing awarding or denying compensation, stating [his] the findings of fact and conclusions of law. The director may extend the due date for decisions for good cause provided all parties agree. The decision shall be filed with the record of the proceedings and a copy of the decision shall be sent immediately to each party.”

SECTION 9. Section 386-89, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) On the application of any party in interest, supported by a showing of substantial evidence, on the ground of a change in or of a mistake in a determination of fact related to the physical condition of the injured employee, the director may, at any time prior to [ten] eight years after date of the last payment of compensation, whether or not a decision awarding compensation has been issued, or at any time prior to [ten] eight years after the rejection of a claim, review a compensation case and issue a decision which may award, terminate, continue, reinstate, increase, or decrease compensation. No compensation case may be reviewed oftener than once in six months and no case in which a claim has been rejected shall be reviewed more than once if on such review the claim is again rejected. The decision shall not affect any compensation previously paid, except that an increase of the compensation may be made effective from the date of the injury, and if any part of the compensation due or to become due is unpaid, a decrease of the compensation may be made effective from the date of the injury, and any payment made prior thereto in excess of such decreased compensation shall be deducted from any unpaid compensation in such manner and by such method as may be determined by the director. In the event any such decision increases the compensation in a case where the employee has received damages from a third party pursuant to section 386-8 in excess of compensation previously awarded, the amount of such excess shall constitute a pro tanto satisfaction of the amount of the additional compensation awarded. This subsection shall not apply when the employer's liability for compensation has been discharged in whole by the payment of a lump sum in accordance with section 386-54.”

SECTION 10. Chapter 431, Hawaii Revised Statutes, is amended by adding the following new sections to be appropriately designated and to read as follows:

“§431- Standing to intervene in rate-filing and rate-making proceedings. In any proceeding on workers' compensation insurance rate-filing and rate-making before the insurance commissioner under the casualty rating law of Hawaii, section 431-691 et seq., an insured who is covered by a workers' compensation insurance shall have full rights to participate as a party in interest.

§431- Actuaries, accountants, and other staff. There shall be established within the office of the insurance commissioner a unit to assist the insurance commissioner in workers' compensation insurance rate-filing and rate-making proceedings under the casualty rating law of Hawaii, section 431-691, et seq. The insurance commissioner may employ or contract actuaries, accountants, investigators, clerks, stenographers, and other assistants as may be necessary for the purpose of assisting the insurance commissioner in workers' compensation insurance rate-filing and rate-making proceedings, not subject to chapters 76 and 77.

§431- Additional powers for workers' compensation rate-filing and rate-making. Whenever it appears to the insurance commissioner that an insurance carrier or other interested persons regulated by the casualty rating law of Hawaii affecting workers' compensation insurance rates has: (1) violated or failed to comply with any provision of this chapter or of any state or federal law; or (2) failed to comply with any rule, regulation, or other requirement of any other state or federal agency which affects workers' compensation insurance rates; or (3) failed to comply with any provision of its charter or franchise; or (4) set or applied any rates, classifications, charges, or rules affecting workers' compensation insurance that are unreasonable or are unreasonably discriminatory, or (5) failed to give appropriate consideration to investment income earned or realized

by insurers, including investment income earned from unearned premium and loss reserve funds in making rates; or (6) failed to recognize good safety performance records of employers in setting premium rates and levels, the insurance commissioner may institute proceedings for appropriate relief including but not limited to proceedings to roll-back current rates."

SECTION 11. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

HAWAII WORKERS' COMPENSATION STATE FUND

§ -1 **Definitions.** As used in this chapter:

"Board" means the fund's board of directors.

"Fund" means the Hawaii workers' compensation state fund.

§ -2 **Fund's establishment.** (a) There is established a workers' compensation state insurance fund to be known as the "Hawaii workers' compensation state fund".

(b) The fund shall be a nonprofit organization under the control of a board of directors and placed within the department of budget and finance for administrative purposes, except as otherwise provided herein. The fund shall pay taxes and license fees like other insurance carriers.

(c) The fund's assets shall consist of legislative appropriations and all of the fund's real and personal property.

(d) Except for a state loan at its inception, the fund shall be self-supporting. The fund shall repay the State for the loan with interest within ten years.

(e) The department of budget and finance shall have custody of the fund's assets as determined by the board.

(f) The fund's principal office shall be in Honolulu, Hawaii. The board may establish branch offices in other locations.

§ -3 **Fund's purpose.** The fund's purpose is to sell workers' compensation insurance at the lowest actuarially responsible price as determined by the fund's board. The fund shall commence operation on the effective date of this Act, but the workers' compensation insurance sold initially by the fund shall provide insurance coverage for work injuries occurring from July 1, 1986.

The fund may serve as a model for the workers' compensation insurance industry to determine minimum insurance premium rates. It shall be competitive with other private workers' compensation insurance carriers.

§ -4 **Number, appointment, term.** (a) The board shall be composed of five directors, who shall be appointed by the governor, upon the Hawaii workers' compensation state fund becoming operational as provided in Sec. -13.

(b) A director's term of office shall be five years and each director shall hold office until the appointment and qualification of the director's successor.

The terms of the first five directors, who shall be appointed by July 1, 1986, shall expire as follows:

- (1) One for one year;
- (2) One for two years;
- (3) One for three years;
- (4) One for four years; and
- (5) One for five years.

Thereafter, each director shall be appointed for a term of five years.

(c) A vacancy on the board shall be filled by appointment of the governor. The person appointed to fill a vacancy shall serve for the remainder of the term of the person's predecessor.

(d) Each director shall receive necessary travelling and board expenses incurred in the performance of duty as a director and a fee of \$100 for each day of actual attendance at board meetings, but not to exceed \$500 a month.

(e) Within one year after appointment, each director shall be a policyholder or an employee of a policyholder of the fund and shall continue in such status during the director's term of office.

No person who has any interest as a stockholder, employee, attorney, or contractor of a competing insurance carrier shall be a director.

(f) The board shall determine the content and sale of workers' compensation insurance policies.

(g) The board shall discharge its duties:

- (1) In accordance with the fund's purpose;
- (2) With the care, skill, prudence, and diligence under the circumstances that a prudent director, acting in a like capacity and familiar with such matters would use in conducting a similar enterprise and purpose;
- (3) By diversifying the fund's investments to minimize the risk of losses, unless it is prudent not to do so;
- (4) In accordance with governing legal documents;
- (5) By having an annual audit of the fund by a certified public accountant and by making copies of such audit available to the governor and the state legislature;
- (6) By securing fidelity bonds for the directors and in its discretion for other agents dealing with the fund's assets at the fund's expense;
- (7) By purchasing liability insurance for errors and omissions for the board, each director, and any other fiduciary employed or contracted by the fund to cover liability or losses caused by the act or omission of a fiduciary;
- (8) By maintaining proper books of accounts and records of the fund's administration;
- (9) By carrying out the reporting and disclosure requirements required by law; and
- (10) By determining an actuarially responsible schedule of premium rates with consideration of the fund's investment income or refunds, or both, to policyholders.

(h) Except as otherwise provided by law, the fund may:

- (1) Transact workers' compensation insurance policies required or authorized by state law to the same extent as any other insurer.
 - (A) The fund may insure Hawaii employers against their liability for compensation or damages for injury or death under the United States Longshoremen's and Harbor Workers' Compensation Act or other federal or maritime laws like any other private insurer;
 - (B) The fund may insure an out-of-state employer against its liability for damages under the State's law for bodily injury or death occurring within the State of Hawaii if the fund also sold workers' compensation insurance to the employer as an in-state employer.
- (2) Allocate fiduciary responsibilities among the directors and designate other persons to carry out fiduciary responsibilities.
- (3) Collect, receive, hold, and disburse all money payable to or by the fund.

- (4) Deposit the fund's money in banks or depositories selected by the board. Withdrawals from such banks or depositories shall be made or authorized only upon the signatures of at least two persons approved by the board.
- (5) Pay money from the fund to effectuate the fund's purpose and administration, including costs incurred to establish the fund.
- (6) Employ persons to administer the fund, including, but not limited to, legal counsels, accountants, insurance consultants, administrators, actuaries, investment managers, adjustors, and any other expert and clerical employees and pay compensation and expenses in connection therewith, without the restrictions or requirements affecting public officers and employees under title 7, Hawaii Revised Statutes.
- (7) By August 1, 1986, appoint an administrator, establish an administration office, and secure real and personal property to maintain such office to administer the fund.
- (8) Provide for the fund's administration, jointly, with other similar funds or similar purposes, to reduce expenses of administration.
- (9) Select the department of budget and finance or other organization to serve as custodial trustee to collect, receive, hold, or disburse money payable to or by the fund.
- (10) Invest the fund's principal and income without distinction between principal and income and keep the fund's assets invested in real or personal property or other securities. The board may retain cash temporarily awaiting investment or to meet contemplated payments without liability for interest thereon.

The board may manage the fund's assets, except to the extent that such authority to manage the fund's assets is delegated to other qualified investment managers.

The board may appoint investment managers to manage, acquire, or dispose of any of the fund's assets. An investment manager may be designated as an "investment agent".

An investment manager is any fiduciary, who has been designated by the board to manage, acquire, or dispose of the fund's assets, a bank as defined by law, or an insurance company qualified to perform services under laws of more than one state. Such investment manager shall acknowledge in writing that it is a fiduciary under the fund.

The board may, but not by way of limitation:

- (A) Sell the fund's securities. No purchaser of the fund's securities is bound to see to the application of the purchase money or inquire as to the validity of such sale;
- (B) Vote in behalf of any stocks, bonds, or securities of any corporation or issuer held in the fund or request any action to such corporation or issuer. The board may give general or special proxies or powers of attorney with or without powers of substitution.
- (C) Participate in reorganizations, recapitalizations, consolidations, mergers, and similar transactions for stocks, bonds, or other securities of any corporation which are held in the fund and may accept and retain any property received thereunder for the fund.

- The board may exercise any subscription rights and conversion privileges for the fund's stocks or securities.
- (D) Compromise, compound, and settle any debt or obligation due to or from the fund. The board may reduce the amount of principal and interest, damages, and costs of collection in settling such debts.
 - (E) Cause securities held by it to be registered in its own name or in the name of a nominee without indicating that such securities are held in the fiduciary capacity and to hold any securities in bearer form. The fund's records, however, shall show that such investments are part of the fund.
 - (F) In order to expedite the purchase and sale of securities, the board may delegate their investment powers to investment managers of the fund. The purchase or sale of any securities by such managers shall be in the name selected by the board. The authority of such managers to purchase or sell such securities for the fund shall be evidenced by written authority executed by the fund's administrator. The board shall require such managers to keep them currently informed as to the nature and amount of the investments made for the fund by them. The board may enter into appropriate agreements with such managers setting forth their investment powers and limitations. The board may terminate the services of such managers. Such managers shall be subject to the board's instructions.
- (11) Borrow money from any source and secure repayment thereof by pledging any of the fund's assets.
 - (12) Buy, sell, exchange, lease, convey, and otherwise acquire or dispose of any real or personal property under proper terms and sign and deliver any necessary instrument of conveyances or transfer, or both, in connection therewith.
 - (13) Enter into any agreement to carry out this chapter and to administer the fund.
 - (14) Pay taxes or assessments assessed against the fund.
 - (15) Require any employer or policyholder or any employee to furnish the board with such information necessary for the fund's administration.
 - (16) Delegate its authority to the administrator or any authorized representative to maintain any legal proceedings necessary to protect the fund or the directors or to secure payment due to the fund. In connection therewith the board or the administrator or their representative may compromise, settle, or release claims on behalf of or against the fund or the board.
 - (17) Promote safety programs to employer clients, including, but not limited to, the following activities:
 - (A) Analysis of reports of industrial accidents of employer clients to help determine the cause of these accidents;
 - (B) Conduct of studies for the purpose of risk and hazard identification and assessment by safety and medical professionals;
 - (C) Conduct of educational programs designed to prevent frequently recurring industrial accidents; and

- (D) Inspection of work sites and investigation of unsafe working conditions to promote job safety and elimination of hazards.
- (18) Provide the terms and conditions of an insurance policy.
- (19) Provide that any written instrument be executed for the fund by the administrator or the administrator's agent.
- (20) Pay for reasonable expenses to educate the directors and fund personnel, including but not limited to travelling, room and board, and tuition expenses.

§ -5 Board meetings. (a) The board's quorum to transact business shall consist of at least three directors. Unless a quorum is present, no business shall be transacted.

(b) Each director shall have one vote. All board actions and decisions shall be by majority vote.

(c) Directors shall determine the time and place of the board's regular meetings. The fund's administrator shall notify directors of the time and place of meetings.

(d) Special meetings may be held at the call of the chairperson or any two directors upon giving at least seven days' written notice to all other directors. Unless otherwise specified in the call and notice, meetings shall be held at the fund's principal office.

(e) Directors shall elect a chairperson, secretary, and treasurer and other officers as it decides.

(f) Directors may also exercise their powers by written assent of all directors.

§ -6 Limitation of liability of directors. If an investment manager has been appointed under this chapter, no director shall be liable for the acts or omissions of such investment manager or be under an obligation to invest or otherwise manage any assets of the fund, which are subject to management by the investment manager.

§ -7 Liability and rights of parties and third persons. (a) Neither the State nor any policyholder nor any director or employee of the fund shall be liable to make any payments to the fund or pay any expenses of the fund, except as provided under this chapter.

No policyholder shall have any right to the return of any money paid to the fund, except as determined by the directors or by law.

(b) The board may refund premiums to policyholders; provided that such refunds do not jeopardize the fund's actuarial responsibility.

§ -8 Termination and merger. (a) The fund may be terminated only by law.

(b) Any assets remaining in the fund after the termination of the fund and any assets acquired or disbursed as a result of merger, consolidation, amalgamation, affiliation, exchange of credits, or otherwise, shall be used by the board solely for the purposes under this chapter and for administrative expenses incident thereto.

§ -9 Governing law. The interpretation of this chapter shall be governed by the laws of Hawaii.

§ -10 Administrator's appointment and duties. The board shall appoint and may remove the fund's administrator and fix the administrator's salary. The administrator shall manage and conduct the fund's business affairs under the board's direction and policies. The administrator shall perform other duties prescribed by the board.

§ -11 Exemptions. The fund shall be exempt from the application of title 7, title 8, and title 9, Hawaii Revised Statutes, in conducting the fund's business.

§ -12 There is established an interim committee of eight persons, four to be designated by the speaker of the house of representatives and four to be designated by the president of the senate who shall review the provisions of Section 11 of this Act. This committee shall select a consultant to advise the committee regarding feasible means to implement a workers' compensation state insurance fund. The interim committee shall submit a report to the legislature twenty days before the regular session of 1986. There is hereby appropriated to the legislative reference bureau the sum of \$100,000, or so much thereof as may be necessary to underwrite the expenses of the consultant.

§ -13 **State Fund Operational.** The Hawaii Workers' Compensation State Fund shall become operational upon funding by special appropriation by the legislature."

SECTION 12. There is appropriated out of the general revenues of the State of Hawaii the following sums:

(1) \$100,000, or so much thereof as may be necessary for fiscal year 1985-1986, and \$100,000, or so much thereof as may be necessary for fiscal year 1986-1987, to the department of commerce and consumer affairs to effectuate the purposes of Section 10 of the Act relating to the insurance commissioner. The sum appropriated shall be expended by the department of commerce and consumer affairs.

(2) \$707,400, or so much thereof as may be necessary for fiscal year 1985-1986, and \$742,770, or so much thereof as may be necessary for fiscal year 1986-1987, for personnel and other related costs to implement Sections 3, 5, and 7 of this Act. The sum appropriated shall be expended by the department of labor and industrial relations.

SECTION 13. Chapter 386, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§386- Deductible option for medical benefits in insurance policy. (a) Each workers' compensation insurance policy issued by every insurer shall offer, at the option of the insured employer, a deductible for medical benefits in the amount of \$100, \$150, \$200, \$300, \$400, or \$500. The insured employer, if choosing to exercise the option, shall choose only one of the amounts as the deductible.

(b) If an insured employer exercises the option and chooses a deductible, the insured employer shall be liable for the amount of the deductible for the medical benefits paid for each claim of work injury suffered by an injured employee. The insurer shall not be liable for the deductible.

The insurer shall pay the entire cost of medical bills directly to the provider of services and then seek reimbursement from the insured for the deductible amount.

Deductible medical benefit amounts shall be reported by insurers as required by section 386-95 and shall be included in the total average annual compensation paid by all insurance carriers in determining the charge against employers not insured under section 386-121(a)(1) for the purpose of the special compensation fund."

SECTION 14. Section 386-1, Hawaii Revised Statutes, is amended by amending the definition of "employer" to read as follows:

" "Employer" means any person having one or more persons in his employment. It includes the legal representative of a deceased employer and the

State, any county or political subdivision of the State, and any other public entity within the State.

The insurer of an employer is subject to the employer's liabilities, shall pay the deductible as provided for under section 386- , shall collect the amount of the deductible from the employer, and be entitled to [his] rights and remedies under this chapter as far as applicable."

SECTION 15. Section 386-21, Hawaii Revised Statutes, is amended to read as follows:

"§386-21 Medical care, services,³and supplies. (a) Immediately after a work injury sustained by an employee and so long as reasonably needed the employer shall furnish to the employee all medical care, services, and supplies as the nature of the injury requires.The liability for the medical care, services, and supplies shall be subject to the deductible under section 386- .

(b) Whenever medical care is needed, the injured employee may select any physician or surgeon who is practicing on the island where the injury was incurred to render such care. If the services of a specialist are indicated, the employee may select any such physician or surgeon practicing in the State. The director [of labor and industrial relations] may authorize the selection of a specialist practicing outside the State where no comparable medical attendance within the State is available. Upon procuring the services of such physician or surgeon, the injured employee shall give proper notice of his selection to the employer within a reasonable time after the beginning of the treatment. If for any reason during the period when medical care is needed, the employee wishes to change to another physician or surgeon, he may do so in accordance with rules prescribed by the director. If the employee is unable to select a physician or surgeon and the emergency nature of the injury requires immediate medical attendance, or if he does not desire to select a physician or surgeon and so advises the employer, the employer shall select the physician or surgeon. Such selection, however, shall not deprive the employee of his right of subsequently selecting a physician or surgeon for continuance of needed medical care.

(c) The liability of the employer for [required] medical care, medical services, and medical supplies shall be limited to the charges computed as set forth in the section. The director shall make determinations of such charges and promulgate fee schedules based upon such determinations as are set forth in this section. For the calendar year 1974 and for each succeeding calendar year thereafter the charges shall be limited to the amounts determined in [Regulation XXXI] applicable regulations of the department which became effective on August []13,[] 1971, and amendments thereto, adjusted to reflect increases or decreases in the Consumer Price Index for the Honolulu region prepared by the Bureau of Labor Statistics of the United States Department of Labor which have occurred in the last twelve months ending August 31 of the year preceding.

The adjustments in charges provided for in this section shall be computed annually and rounded to the next higher multiple of [ten] 10 cents in each case.

Notwithstanding the foregoing, the director shall review and if necessary revise [said Regulation XXXI] the applicable regulations every three years, the review and revision to be conducted in accordance with section 91-3. The first review and revision shall be completed no later than December 1, 1974, to be effective January 1, 1975, and subsequent reviews or revisions shall be made at each three year interval thereafter. In making such reviews and revisions and [promulgating] adopting fee schedules pursuant thereto, the director shall establish reasonable fees for medical care, medical services, and medical supplies

and may take into consideration in making such determination the charges made in the State for similar treatment of injuries which are not compensable under this chapter. The director may at any time, in the foregoing manner, establish an additional fee schedule or schedules to cover charges for medical care, medical services, and medical supplies not previously regulated pursuant to [the provisions of] this section.

The liability of the employer may exceed the amount set forth in such fee schedule or schedules[,] only under conditions prescribed by the director.

(d) If it appears to the director that the injured employee has wilfully refused to accept the services of a competent physician or surgeon selected as provided in this section, or has wilfully obstructed the physician or surgeon, or medical, surgical, or hospital services or supplies, the director may [in his discretion] consider such refusal or obstruction on the part of the injured employee to be a waiver [by him] in whole or in part of [his] the right to medical care, services, and supplies, and may [in his discretion] suspend the weekly benefit payments, if any, to which the employee is entitled so long as such refusal or obstruction continues.

(e) Such funds as are periodically necessary to the department to implement the foregoing provisions may be charged to and paid from the special compensation fund provided by section 386-151."

SECTION 16. Section 386-22, Hawaii Revised Statutes, is amended to read as follows:

"§386-22 Artificial member and other aids. Where an injury results in the amputation of an arm, hand, leg, or foot, or the enucleation of an eye, or the loss of natural or artificial teeth, or the loss of vision which may be partially or wholly corrected by the use of lenses, the employer shall furnish an artificial member to take the place of each member lost and, in the case of correctible loss of vision, a set of suitable glasses. Where it is certified to be necessary by a licensed physician or surgeon chosen by agreement of the employer and the employee, the employer shall furnish such other aids, appliances, apparatus, and supplies as are required to cure or relieve the effects of the injury. When a licensed physician or surgeon, chosen as above, certifies that it is necessitated by ordinary wear, the employer shall repair or replace such artificial members, aids, appliances, or apparatus.

Where an employee suffers the loss of or damage to any artificial member, aid, appliance, or apparatus by accident arising out of and in the course of his employment, the employer shall repair or replace the member, aid, appliance, or apparatus whether or not the same was furnished initially by the employer.

The liability of the employer for artificial members, aids, appliances, apparatus, or supplies as is imposed by this section shall be limited to such charges as prevail in the same community for similar equipment of a person of a like standard of living when the equipment is paid for by that person[.] and shall be subject to the deductible under section 386- ."

SECTION 17. Section 386-23, Hawaii Revised Statutes, is amended to read as follows:

"§386-23 Services of attendant. When the director of labor and industrial relations finds that the service of an attendant for the injured employee is constantly necessary he may award a monthly sum of not more than the product of four times the effective maximum weekly benefit rate prescribed in section 386-31, as the director may deem necessary, for the procurement of such service.

Payment for the services of an attendant shall be the liability of the employer, but shall be subject to the deductible under section 386- .”

SECTION 18. Section 386-56, Hawaii Revised Statutes, is amended to read as follows:

“§386-56 Payment from the special compensation fund in case of default. Where an injured employee or his dependents fail to receive prompt and proper compensation and this default is caused through no fault of the employee, the director [of labor and industrial relations] shall pay the full amount of all compensation awards and benefits from the special compensation fund to the employee or dependent.

The employer, upon order of the director, shall reimburse the special compensation fund for the sums paid therefrom under this section, and the fund, represented by the director, shall be subrogated to all the rights and remedies of the individual receiving the payments.

In case a defaulting employer moves to another state without reimbursing the special compensation fund, the director shall be authorized to contract, on a contingent fee basis, with a private collection agency in that state to effect collection from [said] the employer.”

SECTION 19. Section 386-124, Hawaii Revised Statutes, is amended to read as follows:

“§386-124 The insurance contract. Every policy of insurance issued by an insurer of an employer referred to in section 386-1 which covers the liability of the employer for compensation shall cover the entire liability of the employer to his employees covered by the policy or contract, and provide for the deductible under section 386- , at the option of the insured. The policy also shall contain a provision setting forth the right of the employees to enforce in their own names either by filing a separate claim or by making the insurance carrier a party to the original claim, the liability of the insurance carrier in whole or in part for the payment of the compensation. Payment in whole or in part of compensation by either the employer or the insurance carrier shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

All insurance policies shall be of a standard form, the form to be designated and approved by the insurance commissioner [of the State]. No policy of insurance different in form from the designated and approved form shall be approved by the director [of labor and industrial relations].”

SECTION 20. Section 431-693, Hawaii Revised Statutes, is amended to read as follows:

“§431-693 Making of rates. (a) All rates shall be made in accordance with the following provisions:

- (1) Due consideration shall be given to past and prospective loss experience within and outside this State[.]; provided that if the claim does not exceed the selected deductible amount pursuant to section 386- , and the employer reimburses the insurer for that amount, such claims shall not be calculated in the employer's experience rating or risk category. Due consideration shall also be given to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers, to past and prospective expenses both countrywide and those specially applicable to

this State, and to all other relevant factors within and outside this State; including, without limitation of the foregoing, that in the case of workers' compensation insurance, due consideration shall be given to investment income earned or realized by insurers, including investment income earned from unearned premium and loss reserve funds.

- (2) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any class of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.
- (3) Risks may be grouped by classifications for the establishing of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.
- (4) Rates shall not be excessive, inadequate, or unfairly discriminatory.
- (5) No insurer authorized to do business in this State shall issue any policy which provides or makes available to any risks preferred rates based upon any grouping of persons, firms, or corporations by way of membership, license, franchise, contract, agreement, or any other method or means, other than common majority ownership of such risks, or except where:
 - (A) A common stock ownership in and management control of such risks are held by the same person, corporation, or firm;
 - (B) Permitted or authorized by filings in existence as of January 1, 1957, under sections 431-691 to 431-707, as such filings may be amended from time to time;
 - (C) Health care providers, as defined in section 671-1 who could have joined the patients' compensation fund as it existed in chapter 671, part III, prior to May 31, 1984, join together in one or more groups of related or unrelated health care providers; or
 - (D) Otherwise expressly provided by law.

(b) Except to the extent necessary to meet the provisions of [item (4) of] subsection [(a) of this section,] (a)(4), uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

(c) In cases of workers' compensation insurance, all rates made in accordance with this section shall give due consideration for good safety records of employers. By premium reductions, dividends, or both, insurance carriers shall recognize good safety performance records of employers in the State of Hawaii."

SECTION 21. Chapter 386, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§386- Standing to intervene in appeals. In any proceeding before the appellate board under section 386-87, a pre-paid health care plan contractor, as defined in section 393-3, Hawaii Revised Statutes, may participate as a party in interest for the sole purpose of asserting its subrogation rights or other

reimbursement right against any employer or insurance carrier for medical benefits which were previously paid by the contractor provided however any reimbursement shall be in accordance with the appropriate health care provider fee schedule. A pre-paid health care plan contractor shall not have a right to intervene or participate on any other contested issue including the issue of compensability or entitlement to benefits before the appellate board.”

SECTION 22. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 23. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 24. Statutory material to be repealed is bracketed. New statutory material is underscored.⁴

SECTION 25. This Act shall take effect upon approval; provided that the provisions affecting entitlement to compensation or modification of benefit provisions shall apply only to those cases in which the work-connected accident or injury arises after the effective date of this Act.

(Approved June 12, 1985.)

Notes

1. Hyphen should be underscored.
2. So in original.
3. Underscoring missing.
4. Edited pursuant to HRS §23G-16.5.