

## ACT 11

S.B. NO. 1808

## A Bill for an Act Relating to Workers' Compensation Law.

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

SECTION 1. Section 386-1, Hawaii Revised Statutes, is amended by adding eleven new definitions to be appropriately inserted and to read as follows:

“Able to resume work” means an industrially injured worker’s injury has stabilized after a period of recovery and the worker is capable of performing work in an occupation for which the worker has received previous training or for which the worker has demonstrated aptitude.

“Attending physician” means a physician who is primarily responsible for the treatment of a work injury. There shall not be more than one attending physician. If an injured employee is treated by more than one physician, the employee shall designate a physician as the attending physician.

“Day” or “days” means working days, unless otherwise provided.

“Disciplinary action” means personnel action by an employer in the form of punishment against an employee for infraction of employer or contract rules, in the form of a reprimand, suspension, or discharge.

“Emergency medical services” means the delivery of health care services under emergency conditions occurring as the result of a patient’s condition due to a work injury that manifests itself by symptoms of sufficient severity, including severe pain, such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to be life-threatening or cause serious harm or aggravation of physiological or psychological sickness, injury, or incapacitation.

“Good cause” means a substantial reason amounting in law to be a legal excuse for failing to perform an act required by law considered under the circumstances of the individual case.

“Guide” or “guidelines” means an indication of a suggested criteria, course, or means to a particular end, and not an authoritative or exclusive prescription which limits the exercise of independent judgment, expertise, or care.

“Suitable gainful employment” means employment or self-employment within the geographical area where the employee resides, which is reasonably attainable and which offers an opportunity to restore the employee’s earnings capacity as nearly as possible to that level which the employee was earning at the time of injury and to return the employee to the active labor force as quickly as possible in a cost-effective manner, giving due consideration to the employee’s qualifications, interests, incentives, future earnings capacity, and the present and future labor market.

“Usual and customary employment” means the line or type of work in the gainful employment market consistent with a claimant’s background, training, and experience.

“Vocational rehabilitation plan” means an approved plan prepared by a certified rehabilitation provider with an employee that is designed to assist the employee in obtaining and maintaining suitable gainful employment.

“Vocational rehabilitation services” means services provided in a rehabilitation program to assist an employee in obtaining and maintaining suitable gainful employment that may include but shall not be limited to on-the-job training, job modification, vocational evaluation, adjustment to disability, counseling, guidance, vocational and personal adjustment, referrals, transportation, training, supplies, equipment, appliances, aid, occupational licenses, and other goods and services

needed to assist an employee in obtaining and maintaining suitable gainful employment.”

SECTION 2. Section 371-7, Hawaii Revised Statutes, is amended to read as follows:

**“§371-7 Duties and powers of the department; rules and<sup>1</sup> [regulations], procedure for varying.** In addition to [such] any other duties and powers as may be conferred upon the department of labor and industrial relations by law, the department shall:

- (1) File with the governor a written report or reports at [such] times, at least once in each year, and in [such] a form as shall be requested by the governor covering the condition and activities of the department;
- (2) Make, modify, and repeal reasonable rules [~~and regulations~~] of general application for the protection of life, health, and safety of employees in every employment or place of employment; provided that the rules [~~and regulations~~] shall not conflict with any rules [~~or regulations~~] of the department of health covering the same subject matter; provided further that rules pertaining to any workers' compensation case arising under chapter 386 shall be adopted or amended as specified in section 386-72; and
- (3) Make, modify, and repeal such other reasonable rules [~~and regulations~~] of general application as may be necessary to carry into effect this chapter.

The rules [~~and regulations~~] of the department and any amendments thereto, when adopted in accordance with chapter 91, shall have the force and effect of law and shall be enforced in the same manner as this chapter.

If there are practical difficulties or unnecessary hardships in carrying out a rule, the director of labor and industrial relations [may], after public hearing, may make a variation from [such] the requirement if the spirit of the rule is observed. Any person affected by the rule, or the person's agent, may petition for variation, stating the grounds therefor. The director shall fix a day for a hearing on the petition and give reasonable notice thereof to the petitioner. A properly indexed record of all variations made shall be kept in the office of the department and shall be open to public inspection.

Any interested person may obtain a ruling as to the validity or applicability of any rule in the manner provided in chapter 91.”

SECTION 3. Section 371-8, Hawaii Revised Statutes, is amended to read as follows:

**“§371-8 Duties and powers of director; enforcement of rules.** In addition to [such] any other duties and powers as may be conferred upon the director by law, the director of labor and industrial relations shall:

- (1) Supervise and direct the operations and functions of the department of labor and industrial relations;
- (2) Cause the enforcement of rules [~~and regulations~~]; and
- (3) Propose [such] rules [~~and regulations~~] or changes in rules [~~and regulations~~], as the director deems advisable for the protection of life, health, and safety of employees, in every employment or place of employment[-]; provided that rules pertaining to workers' compensation cases arising under chapter 386 shall be adopted or amended as specified in section 386-72. The director may appoint committees composed of

employers, employees, and experts to suggest rules [and regulations] or changes therein.

The director may make, amend, and repeal rules necessary for the internal administration of the department and for the proper conduct of hearings before the director or the director's authorized agents under this section. The director shall not be bound by technical rules of evidence in the conduct of [such] these hearings."

SECTION 4. 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] earnings capacity as nearly as possible to that level [which] that the worker was earning at the time of injury and to return the injured worker to suitable [work] gainful employment in the active labor force as quickly as possible in a cost-effective manner.

(b) The director may refer employees who may have or have suffered permanent disability as a result of work injuries and who, in the director's opinion, can be vocationally rehabilitated to the department of human services or to private providers of rehabilitation services for vocational rehabilitation services that 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 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] that 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 meeting the minimum standards established under paragraph (2); and
- (4) To enforce the implementation of rehabilitation plans.

(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. The injured employee may select a certified provider of rehabilitation services. Both the certified provider and the injured employee, within a reasonable time after initiating rehabilitation services, shall give proper notice of selection to the employer.

(d) A provider shall submit an initial evaluation report of the employee to the employer and the director within forty-five days of the date of referral or selection. The evaluation shall determine whether the employee requires vocational rehabilitation services to return to suitable gainful employment, identify the necessary services, and state whether the provider can provide these services. The initial evaluation report shall contain:

- (1) An assessment of the employee's:
  - (A) Current medical status;
  - (B) Primary disability;
  - (C) Secondary disability;
  - (D) Disabilities that are not related to the work injury; and
  - (E) Physical or psychological limitations or both.

If this information is not provided by the treating physician within a reasonable amount of time, information from another physician shall be accepted;

- (2) A job analysis addressing the demands of the employee's employment;
- (3) A statement from the provider identifying the employee's vocational handicaps in relation to the employee's ability to:
  - (A) Return to usual and customary employment; and
  - (B) Participate in and benefit from a vocational rehabilitation program;
- (4) A statement from the provider determining the feasibility of vocational rehabilitation services, including:
  - (A) The provider's ability to assist the employee in the employee's efforts to return to suitable gainful employment;
  - (B) An outline of specific vocational rehabilitation services to be provided, justification for the necessity of services, and how the effectiveness of these services is measured; and
  - (C) How the vocational rehabilitation services directly relate to the employee obtaining suitable gainful employment; and
- (5) The enrollment form and the statement of worker's rights and responsibilities form obtained from the department.

(e) A provider shall file the employee's plan with the approval of the employee. Upon receipt of the plan from the provider, an employee shall have ten days to review and sign the plan. The plan shall be submitted to the employer and the employee and be filed with the director within two days from the date of the employee's signature. A plan shall include a statement of the feasibility of the vocational goal, using the process of:

- (1) First determining if the employee's usual and customary employment represents suitable gainful employment, and, should it not;
- (2) Next determining if modified work or other work with a different employer represents suitable gainful employment, and, should it not;
- (3) Next determining if modified or other employment with a different employer represents suitable gainful employment, and finally, should it not;
- (4) Then providing training to obtain employment in another occupational field.
- (f) A plan may be approved by the director; provided the plan includes:
  - (1) A physician's assessment of the employee's physical limitations, psychological limitations, and ability to return to work. If this information is not provided by the treating physician within a reasonable amount of time, information from another physician shall be accepted;
  - (2) A labor market survey indicating there are reasonable assurances that the proposed occupation for which the employee is to be placed or trained is readily available in the community when placement begins, or there are assurances of reemployment by the employer;
  - (3) A job analysis of the proposed occupation, setting forth its duties, responsibilities, physical demands, environmental working conditions, specific qualifications needed for entry-level employment, reasonable accommodations, expected estimated earnings, and other relevant information;
  - (4) The nature and extent of the vocational rehabilitation services to be provided, including:
    - (A) Specific services to be provided;
    - (B) Justification for the necessity of the services;
    - (C) Estimated time frames for delivery of services;

- (D) The manner in which the effectiveness of these services is to be measured;
- (E) Criteria for determining successful completion of the vocational rehabilitation plan; and
- (F) The employee's responsibilities;
- (5) A report of tests and copies thereof that have been administered to the employee, including a statement regarding the need for and use of the tests to identify a vocational goal;
- (6) If retraining, including on-the-job training, is found to be necessary, the estimated cost of retraining, a description of specific skills to be learned or knowledge acquired with specific time periods and clearly defined measurements of success, and the nature, amount, and duration of living expenses;
- (7) The total cost of the plan; and
- (8) The employee's approval of the plan.
- (g) The employer shall have ten calendar days from the postmark date on

which the plan was mailed to submit in writing to the director any objections to the plan.

(h) The director may approve a plan that does not include all of the requirements outlined in subsection (f); provided that the director finds the plan:

- (1) Is in the best interest of the employee;
- (2) Contains reasonable assurances that the employee will be placed in suitable gainful employment; and
- (3) Has been approved by the employee.

(i) If the plan requires the purchase of any tools, supplies, or equipment, the purchase deadline shall be included in the plan. Tools, supplies, and equipment shall be considered to be the property of the employer until the plan is determined by the director to be successfully completed, after which it shall become the property of the employee. If the plan requires the purchase, etc., the employer shall purchase the items prior to the purchase deadline in the plan.

(j) An employee with an approved plan who is determined as able to return to usual and customary employment may choose to complete the plan or request a new plan of which the goal may be the employee's usual and customary employment.

[(d)] (k) 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(a). The employee shall not be entitled to [sueh] temporary total disability compensation for any week during this period where the wages equal or exceed the average weekly wages at the time of injury.

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

[(f)] (m) If the rehabilitation unit determines that vocational rehabilitation is not possible or feasible, it shall certify [sueh] the determination to the director.

(n) Except as otherwise provided, determinations of the rehabilitation unit shall be final unless a written request for reconsideration is filed with the rehabilitation unit within ten calendar days of the date of the determination.

The rehabilitation unit shall issue a reconsideration determination to affirm, reverse, or modify the determination or refer the request for reconsideration for hearing.

(o) A reconsideration determination shall be final unless a written request for hearing is filed within ten calendar days from the date of the reconsideration determination. All hearings shall be held before a hearings officer designated by the director. A written decision shall be issued in the name of the director.

~~[(g)]~~ (p) The eligibility of any injured employee to receive other benefits under this chapter shall in no way be affected by the employee's entrance upon a course of vocational rehabilitation as herein provided.

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

SECTION 5. Section 386-26, Hawaii Revised Statutes, is amended to read as follows:

**"§386-26 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 that are considered necessary and appropriate under this chapter. The guidelines shall not be considered as an authoritative prescription for health care, nor shall they preclude any health care provider from drawing upon the health care provider's medical judgment and expertise in determining the most appropriate care.

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 adopt 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."

SECTION 6. Section 386-31, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

**"(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 three calendar days thereof, shall pay the injured employee a weekly benefit at the rate of sixty-six and two-thirds per cent of the employee's average weekly wages, subject to the limitations on weekly benefit rates prescribed in subsection (a), or if the employee's average weekly wages are less than the minimum weekly benefit rate prescribed in subsection (a), at the rate of one hundred per cent of the employee's average weekly wages.

If an employee is unable to complete a regular daily work shift due to a work injury, the employee shall be deemed totally disabled for work for that day.

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]~~ this right is controverted by the employer in the employer's 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]~~ these benefits shall only be terminated upon order of the director or if the employee is able to resume work. When the employer is of the opinion that temporary total disability benefits should be terminated because the injured employee is able to resume work, the employer shall notify the employee and the director in writing of an intent to terminate ~~[such]~~ the 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 the employee may make a written request to the director for a hearing if the employee 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. If the employee is unable to perform light work, if offered, temporary total disability benefits shall not be discontinued based solely on the inability to perform or continue to perform light work.

An employer or insurance carrier who fails to comply with this section shall pay not more than \$2,500 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]~~ If 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]~~ that 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~~[-]; and~~
  - (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]~~ If 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 7. Section 386-72, Hawaii Revised Statutes, is amended to read as follows:

**“§386-72 Rulemaking powers.** In conformity with and subject to chapter 91, the director of labor and industrial relations shall make rules, not inconsistent with this chapter, which the director deems necessary for or conducive to its proper application and enforcement[-]; provided that the rules were adopted prior to January 1, 2005. No rules adopted or amended on or after January 1, 2005, pertaining to any workers’ compensation standard or procedure arising under this chapter shall have the force and effect of law; provided, however, that annual updates in the medical fee schedules specific to the amount paid to medical providers as provided in section 386-21(c) may be made consistent with this chapter.”

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

**“§386-86 Proceedings upon claim[-]; hearings.** (a) If a claim for compensation is made, the director shall make such further investigation as deemed necessary and render a decision within sixty days after the conclusion of the hearing awarding or denying compensation, stating 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.

(b) The hearing shall be informal and shall afford the parties a full and fair opportunity to present the facts and evidence to be considered. Hearings under this section shall not be subject to chapter 91. No stenographic or tape recording shall be allowed.

(c) The order of presentation shall not alter the burden of proof, including the burden of producing evidence and the burden of persuasion. The party or parties who bear these burdens shall be determined by law consistent with the purposes of this section.

(d) Should the injured employee or injured employee’s representative, or the employer or employer’s representative fail to appear at the hearing, the director may issue a decision based on the information on file. The decision shall be final unless appealed pursuant to section 386-87. In all other circumstances, a decision shall not be rendered by the director without a hearing, which may not be waived by the parties.

(e) For the purpose of obtaining any matter, not privileged, which is relevant to the subject matter involved in the pending action, the director, upon application and for good cause shown, may order the taking of relevant testimony by deposition, upon oral examination, or written interrogatories, or by other means of discovery in the manner and effect prescribed by the Hawaii rules of civil procedure; provided that when the claimant’s deposition is taken, the employer shall pay for the cost to the claimant of attending the deposition, any costs associated with having the deposition transcribed and copied, and any and all reasonable attorney’s fees and costs incurred by the claimant with respect to the deposition.

(f) Subpoenas requiring the attendance of witnesses at a hearing before a hearings officer or for the taking of a deposition or the production of documentary evidence from any place within the State at any designated place of hearing may be issued by the director or a duly authorized representative. The employer shall serve a claimant with a copy of a medical record subpoena unless the employer has

previously obtained the claimant's authorization to examine the claimant's medical records. Should the claimant subpoena medical records, the employer shall be served a copy. The party subpoenaing the records shall provide these records within fifteen calendar days of their receipt to the employer, claimant, and the special compensation fund if a joinder has been filed, or their representatives. These records shall be submitted by the party requesting the subpoena to the director within seven calendar days of the date of the notice of hearing or upon request by the director. A party who desires to enforce the director's subpoena shall seek enforcement from a court of competent jurisdiction."

SECTION 9. Section 386-94, Hawaii Revised Statutes, is amended to read as follows:

**“§386-94 Attorneys, physicians, other health care providers, and other fees.** Claims for services shall not be valid unless approved by the director or, if an appeal is had, by the appellate board or court deciding the appeal. Any claim so approved shall be a lien upon the compensation in the manner and to the extent fixed by the director, the appellate board, or the court.

In approving fee requests, the director, appeals board, or court may consider factors such as the attorney's skill and experience in state workers' compensation matters, the amount of time and effort required by the complexity of the case, the novelty and difficulty of issues involved, the amount of fees awarded in similar cases, benefits obtained for the claimant, and the hourly rate customarily awarded attorneys possessing similar skills and experience. In all cases, reasonable attorney's fees shall be awarded.

Any person who receives any fee, other consideration, or gratuity on account of services so rendered, without approval, in conformity with the preceding paragraph, shall be fined by the director not more than \$10,000.”

SECTION 10. Section 386-96, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any physician, surgeon, or hospital that has given any treatment or rendered any service to an injured employee shall make a report of the injury and treatment on forms prescribed by and to be obtained from the department as follows:

- (1) Within seven days after the date of first attendance or service rendered, an initial report shall be made to the department and to the employer of the injured employee in the manner prescribed by the department;
- (2) Interim reports to the same parties and in the same manner as prescribed in paragraph (1) shall be made at appropriate intervals to verify the claimant's ~~[continuing treatment, periods of temporary disability, the extent of permanent disability, and other information determined necessary by the director;]~~ current diagnosis and prognosis, that the information as to the nature of the examinations and treatments performed is complete, including the dates of those treatments and the results obtained within the current reporting period, the execution of all tests performed within the current reporting period and the results of the tests, whether the injured employee is improving, worsening, or if “medical stabilization” has been reached, the dates of disability, any work restrictions, and the return to work date. When an injured employee is returned to full-time, regular, light, part-time, or restricted work, the attending physician shall submit a report to the employer within seven calendar days indicating the date of release to work or medical stabilization; and

- (3) A final report to the same parties and in the same manner as prescribed in paragraph (1) shall be made within seven days after termination of treatment.

No physician, surgeon, or hospital that has given any treatment or rendered any service to an injured employee shall be required to provide any additional reports not otherwise mandated by this section.

SECTION 11. Section 386-98, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) In lieu of the criminal penalties set forth in subsection (d), any person who violates subsections (a) and (b) may be subject to the administrative penalties of restitution of benefits or payments fraudulently received under this chapter, whether received from an employer, insurer, or the special compensation fund, to be made to the source from which the compensation was received, and one or more of the following:

- (1) A fine of not more than \$10,000 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;
- (5) Recoupment by the insurer of all payments made for medical care, medical services, vocational rehabilitation services, and all other services rendered for payment under this chapter; ~~or~~ and
- (6) Reimbursement of attorney’s fees and costs of the party or parties defrauded.”

SECTION 12. Section 386-121, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Employers, except the State, any county or political subdivision of the State, or other public entity within the State, shall secure compensation to their employees in one of the following ways:

- (1) By insuring and keeping insured the payment of compensation with any stock, mutual, reciprocal, or other insurer authorized to transact the business of workers’ compensation insurance in the State;
- (2) By depositing and maintaining with the state director of finance security satisfactory to the director of labor and industrial relations securing the payment by the employer of compensation according to the terms of this chapter;
- (3) Upon furnishing satisfactory proof to the director of the employer’s solvency and financial ability to pay the compensation and benefits herein provided, no insurance or security shall be required, and the employer shall make payments directly to the employer’s employees, as they may become entitled to receive the same under the terms and conditions of this chapter;
- (4) An employer desiring to maintain security for payment of compensation under this section shall file an application with the director on a form provided for this purpose together with the employer’s most current audited annual financial statement;
- (5) Where an applicant for self-insurance is a subsidiary and the subsidiary cannot submit an independent current audited annual financial statement, an indemnity agreement approved as to form and content by the

director shall be executed by the parent corporation of the subsidiary and submitted with its application;

- (6) Each self-insurance authorization shall be effective from the date of issuance until June 30 of each calendar year;
- (7) A notice of intention to cancel self-insurance shall be submitted in writing to the director within at least thirty days prior to the effective date of cancellation;
- (8) A self-insurance authorization may be revoked by the director for good cause shown upon notification in writing to the self-insurer;
- [~~(4)~~] (9) By membership in a workers' compensation self-insurance group with a valid certificate of approval under section 386-194; or
- [~~(5)~~] (10) By membership in a workers' compensation group insured by a captive insurer under chapter 431, article 19.

Any person who wilfully misrepresents any fact in order to obtain the benefits of paragraph (3) shall be guilty of a misdemeanor."

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 14. This Act shall take effect upon its approval; provided that sections 2, 3, and 7 of this Act shall take effect on January 1, 2005; provided further that section 7 shall be repealed on July 1, 2007, and section 386-72, Hawaii Revised Statutes, shall be reenacted in the form in which it read on December 31, 2004.

(Vetoed by Governor and veto overridden by Legislature on July 12, 2005.)

**Note**

1. Should be bracketed and stricken.