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# A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

1           SECTION 1. Chapter 386, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "~~§386-~~    Labor-management agreements.   (a) Except as  
5 provided in subsection (b), the director and the courts of this  
6 State shall recognize as valid and binding any labor-management  
7 agreement within the construction industry providing workers'  
8 compensation benefits that meets the following requirements:

9           (1) The labor-management agreement shall be negotiated  
10           separate and apart from any collective bargaining  
11           agreement covering affected employees;

12           (2) The labor-management agreement shall be restricted to  
13           the establishment of terms and conditions necessary to  
14           implement this section; and

15           (3) The labor-management agreement shall be negotiated, in  
16           accordance with the authorization of the director  
17           pursuant to subsection (e), between an employer or  
18           groups of employers and a union that is the exclusive



1           bargaining representative and shall establish the  
2           following:

- 3           (A) An alternative dispute resolution system  
4           governing disputes between employees and  
5           employers or their insurers that supplements or  
6           replaces all or part of dispute resolution  
7           processes contained in this chapter, including  
8           but not limited to mediation and arbitration.  
9           Any system of arbitration shall provide that the  
10           decision of the arbitrator or board of  
11           arbitration is subject to review by the director.  
12           The findings of fact, award, order, or decision  
13           of the arbitrator shall have the same force and  
14           effect as an award, order, or decision of the  
15           director; and
- 16           (B) A joint labor-management panel that will select  
17           providers, an ombudsman, mediators, and  
18           arbitrators. The panel shall include at least  
19           one representative from the building trade  
20           unions.



1       (4) In addition to the requirements of paragraph (3), the  
2       labor-management agreement may include one or more of  
3       the following:

4       (A) The use of an agreed list of providers of medical  
5       treatment that may be the exclusive source of all  
6       medical treatment provided under this chapter;

7       (B) The use of an agreed, limited list of impartial  
8       physicians that may be the exclusive list of  
9       impartial physicians under this chapter;

10       (C) Joint labor-management safety committees; and

11       (D) A vocational rehabilitation or retraining program  
12       using an agreed list of providers of  
13       rehabilitation services that may be the exclusive  
14       source of providers of rehabilitation services  
15       under this chapter.

16       (b) Nothing in this section shall be construed to allow a  
17       labor-management agreement authorized by this section to  
18       diminish the entitlement of an employee or the employee's  
19       beneficiary to compensation payments for death or permanent  
20       total disability as otherwise provided in this chapter; nor  
21       shall any agreement authorized by this section deny to any  
22       employee the right to representation by counsel at all stages



1 during the alternative dispute resolution process. Any portion  
2 of any agreement that violates this subsection shall be void.

3 (c) The parties to a labor-management agreement may  
4 negotiate any aspect of the delivery of workers' compensation  
5 benefits.

6 (d) The following entities are authorized to enter into a  
7 labor-management agreement pursuant to this section:

8 (1) An employer who has or estimates as having an annual  
9 workers' compensation insurance premium in this state  
10 of \$20,000 or more;

11 (2) Trade groups of employers who have or estimate as  
12 having an annual workers' compensation insurance  
13 premium in this state of \$50,000 or more; and

14 (3) Workers' compensation self-insurance groups that meet  
15 the requirements of section 386-194.

16 (e) Any exclusive bargaining representative may file a  
17 petition with the director seeking permission to negotiate with  
18 an employer or group of employers to enter into a labor-  
19 management agreement pursuant to this section. The petition  
20 shall specify the bargaining unit or units to be included, the  
21 names of the employers' or workers' compensation self-insurance  
22 group, and shall be accompanied by proof of the union's status



1 as the exclusive bargaining representative. The current  
2 collective bargaining agreement or agreements shall be attached  
3 to the petition. The petition shall be in the form designated  
4 by the director. Upon receipt of the petition, the director  
5 shall promptly verify the petitioner's status as the exclusive  
6 bargaining representative. If the petition satisfies the  
7 requirements set forth in this subsection, the director shall  
8 issue a letter advising each employer and exclusive bargaining  
9 representative of their eligibility to enter into negotiations,  
10 for a period not to exceed one year, for the purpose of reaching  
11 an agreement on a labor-management agreement pursuant to this  
12 section. The parties may jointly request, and shall be granted  
13 by the director, an additional one-year period to negotiate an  
14 agreement.

15 (f) No employer may establish or continue a program  
16 established under this section until it has provided the  
17 director with all of the following:

18 (1) Upon its original application and whenever it is  
19 renegotiated thereafter, a copy of the labor-  
20 management agreement and the approximate number of  
21 employees who will be covered thereby;



1       (2) Upon its original application and annually thereafter,  
2       a statement, signed under penalty of perjury, that no  
3       action has been taken by any administrative agency or  
4       court of the United States to invalidate the labor-  
5       management agreement;

6       (3) The name, address, and telephone number of the contact  
7       person of the employer; and

8       (4) Any other information that the director deems  
9       necessary to further the purposes of this section.

10       (g) No collective bargaining representative may establish  
11 or continue to participate in a program established under this  
12 section unless all of the following requirements are met:

13       (1) Upon its original application and annually thereafter,  
14       it provides to the director a copy of its most recent  
15       LM-2 or LM-3 form filed with the United States  
16       Department of Labor, where the filing is required by  
17       law, along with a statement, signed under penalty of  
18       perjury, that the document is a true and correct copy;  
19       and

20       (2) It provides to the director the name, address, and  
21       telephone number of each contact person of the



1           collective bargaining representative or  
2           representatives.

3           (h) If a labor-management agreement established pursuant  
4 to subsection (a) is not able to procure workers' compensation  
5 coverage from an insurer in the voluntary insurance market and  
6 is not authorized to self insure, the Hawaii employers' mutual  
7 insurance company established pursuant to article 14A of chapter  
8 431 shall serve as the workers' compensation insurer for the  
9 labor management-agreement.

10          (i) Commencing July 1, 2007, and annually thereafter, the  
11 director shall report to the legislature the number of labor-  
12 management agreements received and the number of employees  
13 covered by these agreements. The report based upon aggregate  
14 data shall include the following:

- 15          (1) Person hours and payroll covered by agreements filed;  
16          (2) The number of claims filed;  
17          (3) The average cost per claim, reported by cost  
18               components whenever practicable;  
19          (4) The number of litigated claims, including the number  
20               of claims submitted to mediation, the appeals board,  
21               or the court of appeal;



1       (5) The number of contested claims resolved prior to  
2           arbitration;

3       (6) The projected incurred costs and actual costs of  
4           claims;

5       (7) Safety history;

6       (8) The number of workers participating in vocational  
7           rehabilitation; and

8       (9) Overall worker satisfaction.

9       The director may require employers' and workers'  
10   compensation self-insurance groups participating in labor-  
11   management agreements pursuant to this section to provide the  
12   data enumerated in this subsection.

13       (j) The records obtained by the director pursuant to this  
14   section shall be confidential and shall not be subject to public  
15   disclosure under any law of this State. However, the director  
16   shall create derivative reports pursuant to subsections (g) and  
17   (i) based on the labor-management agreements and records, which  
18   shall be subject to disclosure pursuant to chapter 92F. On a  
19   monthly basis, the director shall make available an updated list  
20   of employers and unions entering into labor-management  
21   agreements authorized by this section.



1        (k) For the purposes of this section, "construction  
2 industry" means the industry where any person who by oneself or  
3 through others offers to undertake, or holds oneself out as  
4 being able to undertake, or does undertake to alter, add to,  
5 subtract from, improve, enhance, or beautify any realty or  
6 construct, alter, repair, add to, subtract from, improve, move,  
7 wreck, or demolish any building, highway, road, railroad,  
8 excavation, or other structure, project, development, or  
9 improvement, or do any part thereof, including the erection of  
10 scaffolding or other structures or works in connection  
11 therewith."

12        SECTION 2. New statutory material is underscored.

13        SECTION 3. This Act shall take effect on July 1, 2096,  
14 shall apply retroactively to January 1, 2006, and shall be  
15 repealed on December 31, 2008; provided that any labor-  
16 management agreement executed pursuant to this Act prior to  
17 December 31, 2008, shall remain in full force and effect until  
18 the expiration of the labor-management agreement.



*H.B. 2646 H.D.2*

**Report Title:**

Workers' Compensation; Labor-Management Agreements

**Description:**

Requires the State and the courts to recognize the validity of labor-management agreements that meet certain specified requirements. Requires HEMIC to act as an insurer for labor management agreements in certain instances. (HB2646 HD2)

HB2646 HD2 HMS 2006-2173

