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# A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION LAW.

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

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

4 "§386- Alternative dispute resolution. (a) In lieu  
5 of a hearing before the director, at anytime after a claim for  
6 compensation is made and before the director renders a decision,  
7 the parties may agree in writing to have any controversy arising  
8 under this chapter be decided by a referee paid for by the  
9 parties.

10 (b) Appointment of referee. Before a referee can conduct  
11 a hearing, the parties shall submit the agreed upon referee's  
12 name to the director for appointment to serve as a referee. The  
13 referee shall be a neutral person. An individual who has a  
14 known, direct, and material interest in the outcome of the  
15 controversy or a known, existing, and substantial relationship  
16 with a party may not serve as a referee, unless that interest is  
17 disclosed, and any conflict is waived by the parties.



1        (c) Costs. Unless the parties otherwise agree, the costs  
2 and fees of the alternative resolution process shall be divided  
3 equally between the parties.

4        (d) Stay of proceedings before the director. If the  
5 parties agree to have any controversy referred to a referee, the  
6 director shall stay all actions or proceedings until the referee  
7 issues a recommended decision.

8        (e) Discovery and other matters. This chapter and its  
9 rules remain applicable to proceedings before the referee except  
10 that requests shall be directed to and recommended decisions  
11 shall be made by the referee instead of the director.

12        (f) Referee's recommended decision. The referee shall  
13 issue and submit the referee's recommended decision to the  
14 director no later than five days after the hearing, and shall  
15 deliver the recommended decision to all parties personally or by  
16 registered or certified mail.

17        (g) Approval of recommended decision. The director shall  
18 review the referee's recommended decision to determine whether  
19 the recommended decision is in compliance with chapter 386. If  
20 the recommended decision is in compliance with chapter 386, the  
21 director shall approve the recommended decision within ten days  
22 of receiving the recommendation. Upon the director's approval,



1 the recommended decision has the same force and effect as a  
2 director's decision rendered under chapter 386, and it may be  
3 enforced as if it had been rendered in an action before the  
4 director. If the recommended decision does not comply with  
5 chapter 386, the director may modify or vacate the recommended  
6 decision within ten days of receiving the recommendation. If  
7 the director vacates the recommended decision, the parties may  
8 resubmit the controversy to the referee.

9 (h) Appeals. The parties may appeal the director's  
10 decision in accordance with section 386-87.

11 (i) Applicable law. Chapter 386 and Hawaii Administrative  
12 Rules title 12, chapters 10, 14, and 15 shall govern the  
13 proceedings before the referee.

14 (j) Mediation. At anytime after a claim for compensation  
15 is made and before the director renders a decision, the parties  
16 may agree to resolve any controversy regarding this chapter  
17 through mediation by a mediator agreed upon by the parties.  
18 Unless otherwise provided in the agreement to mediate, the costs  
19 and fees of mediation shall be divided equally between the  
20 parties. Upon the successful conclusion of the mediation, the  
21 parties shall submit the settlement agreement to the director  
22 for approval. If any controversy remains unresolved after the



1 mediation, the parties may request the director to resolve the  
2 controversy.

3 §386- Alternative guidelines on frequency of treatment  
4 and reasonable use of health care and services. (a) This  
5 section establishes the use of evidence-based treatment  
6 guidelines for medical providers to provide treatment to injured  
7 workers as an option to section 386-26 and its applicable Hawaii  
8 administrative rules. The use of this alternative guideline  
9 from the guidelines issued under section 386-26 shall be  
10 optional and to the sole discretion of the medical provider.

11 (b) Frequency and extent of treatment shall be in  
12 accordance with the most current edition of the ODG Treatment in  
13 Workers' Comp issued by the Work Loss Data Institute, Hawaii  
14 State Chiropractic Association Treatment Guidelines, or any  
15 other medical guidelines approved by the director. In addition  
16 to the most current edition of the ODG Treatment in Workers'  
17 Comp, this section references Chapters 1-7 of the practice  
18 guides issued by the American College of Occupational and  
19 Environmental Medicine, 2<sup>nd</sup> Edition, and any other medical  
20 guidelines approved by the director.

21 (c) The treatment guidelines required by this section are  
22 presumed medically necessary and correct, as such, the attending



1 physician is not required to provide a treatment plan to the  
2 employer and may begin treatment, so long as the diagnosis is  
3 correct and medical treatment conforms to subsection (b).

4 However, the attending physician shall inform the employer, on a  
5 form prescribed by the department, a diagnosis of the injury.

6 (d) The presumption in subsection (c) is rebuttable and  
7 may be contested by a preponderance of medical evidence  
8 establishing that a variance from the guidelines is reasonably  
9 required to cure and relieve the employee from the effects of  
10 the injury condition. The attending physician may choose not to  
11 use the treatment guidelines by submitting written notification  
12 to the employer, and provide treatment as covered by section  
13 386-26.

14 (e) For all injuries not covered by subsection (b), or in  
15 cases in which the attending physician believes that additional  
16 treatments beyond that provided by subsection (b) are necessary,  
17 or that a treatment guideline different than that specified in  
18 subsection (b) is necessary, the attending physician shall mail  
19 a treatment plan to the employer at least fourteen calendar days  
20 prior to the start of treatment. The treatment plan shall  
21 detail:



- 1        (1) Projected commencement and termination dates of
- 2        treatment;
- 3        (2) A clear statement as to the impression or diagnosis;
- 4        (3) Number and frequency of treatments;
- 5        (4) Modalities and procedures to be used; and
- 6        (5) An estimated total cost of services.

7        With the exception of emergency medical services, any  
 8 provider who provides medical treatment without proper  
 9 authorization shall be denied compensation for the unauthorized  
 10 services. Unless agreed by the employee, disallowed fees shall  
 11 not be charged to the injured employee.

12        (f) The employer may file an objection to the proposed  
 13 treatment plan within ten calendar days with documentary  
 14 evidence supporting the denial and a copy of the denied  
 15 treatment plan or treatment guideline with the director, copying  
 16 the attending physician and the injured employee. Both the  
 17 front page of the denial and the envelope in which the denial is  
 18 filed shall be clearly identified as a "TREATMENT PLAN DENIAL"  
 19 in capital letters. The employer shall be responsible for  
 20 payment for treatment until the date the objection is filed with  
 21 the director. Furthermore, the employer's objection letter  
 22 shall explicitly state that if the attending physician or the



1 injured employee does not agree with the denial, they may  
2 request a review by the director of the employer's denial. In  
3 denying medical treatment, the employer shall disclose to the  
4 attending physician and employee the medically, evidenced-based  
5 criteria used as the basis of the objection.

6 (g) The attending physician, injured employee, employer,  
7 or insurance carrier may request in writing that the director  
8 review the denial of the treatment plan or continuation of  
9 services. The request for review shall be filed with the  
10 director within fourteen calendar days after postmark of the  
11 denial. A copy of the denied treatment plan or order for  
12 continued services shall be submitted with the request for  
13 review. Both the front page of the request for review and the  
14 envelope in which the request is filed shall be clearly  
15 identified as a "REQUEST FOR REVIEW OF TREATMENT PLAN DENIAL" or  
16 "REQUEST FOR REVIEW OF ORDER OF CONTINUED TREATMENT" in capital  
17 letters. For cases not under the jurisdiction of the director  
18 at the time of the request, the injured employee shall be  
19 responsible to have the case remanded to the director's  
20 jurisdiction. Failure to file a request for review of the  
21 denial or continuation of services with the director within



1 fourteen calendar days after postmark of the denial or order of  
2 continued services shall be deemed acceptance of the decision.

3 (h) For treatments and services by providers of service  
4 other than physicians, treatment shall be in accordance with  
5 subsection (a) of this section."

6 SECTION 2. Section 91-3, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

8 "(a) Except as provided in section 386-72, and subsection  
9 (f), prior to the adoption of any rule authorized by law, or the  
10 amendment or repeal thereof, the adopting agency shall:

11 (1) Give at least thirty days' notice for a public  
12 hearing. The notice shall include:

13 (A) A statement of the topic of the proposed rule  
14 adoption, amendment, or repeal or a general  
15 description of the subjects involved; [~~and~~]

16 (B) A statement that a copy of the proposed rule to  
17 be adopted, the proposed rule amendment, or the  
18 rule proposed to be repealed will be mailed to  
19 any interested person who requests a copy, pays  
20 the required fees for the copy and the postage,  
21 if any, together with a description of where and  
22 how the requests may be made;





1 (C) A statement of when, where, and during what times  
2 the proposed rule to be adopted, the proposed  
3 rule amendment, or the rule proposed to be  
4 repealed may be reviewed in person; and

5 (D) The date, time, and place where the public  
6 hearing will be held and where interested persons  
7 may be heard on the proposed rule adoption,  
8 amendment, or repeal.

9 The notice shall be mailed to all persons who  
10 have made a timely written request of the agency for  
11 advance notice of its rulemaking proceedings, given at  
12 least once statewide for state agencies and in the  
13 county for county agencies. Proposed state agency  
14 rules shall also be posted on the Internet as provided  
15 in section 91-2.6; and

16 (2) Afford all interested persons opportunity to submit  
17 data, views, or arguments, orally or in writing. The  
18 agency shall fully consider all written and oral  
19 submissions respecting the proposed rule. The agency  
20 may make its decision at the public hearing or  
21 announce then the date when it intends to make its  
22 decision. Upon adoption, amendment, or repeal of a



1 rule, the agency, if requested to do so by an  
 2 interested person, shall issue a concise statement of  
 3 the principal reasons for and against its  
 4 determination."

5 SECTION 3. Section 386-1, Hawaii Revised Statutes, is  
 6 amended by amending the definition of "employment" to read as  
 7 follows:

8 ""Employment" means any service performed by an individual  
 9 for another person under any contract of hire or apprenticeship,  
 10 express or implied, oral or written, whether lawfully or  
 11 unlawfully entered into. It includes service of public  
 12 officials, whether elected or under any appointment or contract  
 13 of hire express or implied.

14 "Employment" does not include the following service:

- 15 (1) Service for a religious, charitable, educational, or  
 16 nonprofit organization if performed in a voluntary or  
 17 unpaid capacity;
- 18 (2) Service for a religious, charitable, educational, or  
 19 nonprofit organization if performed by a recipient of  
 20 aid therefrom and the service is incidental to or in  
 21 return for the aid received;



- 1 (3) Service for a school, college, university, college  
2 club, fraternity, or sorority if performed by a  
3 student who is enrolled and regularly attending  
4 classes and in return for board, lodging, or tuition  
5 furnished, in whole or in part;
- 6 (4) Service performed by a duly ordained, commissioned, or  
7 licensed minister, priest, or rabbi of a church in the  
8 exercise of the minister's, priest's, or rabbi's  
9 ministry or by a member of a religious order in the  
10 exercise of nonsecular duties required by the order;
- 11 (5) Service performed by an individual for another person  
12 solely for personal, family, or household purposes if  
13 the cash remuneration received is less than \$225  
14 during the current calendar quarter and during each  
15 completed calendar quarter of the preceding twelve-  
16 month period;
- 17 (6) Domestic, which includes attendant care, and day care  
18 services authorized by the department of human  
19 services under the Social Security Act, as amended,  
20 performed by an individual in the employ of a  
21 recipient of social service payments;



1 (7) Service performed without wages for a corporation  
 2 without employees by a corporate officer in which the  
 3 officer is at least a twenty-five per cent  
 4 stockholder;

5 [~~(8) Service performed by an individual for a corporation  
 6 if the individual owns at least fifty per cent of the  
 7 corporation; provided that no employer shall require  
 8 an employee to incorporate as a condition of  
 9 employment; and]~~

10 (8) Service performed by an individual who holds an  
 11 ownership interest of at least fifty per cent in the  
 12 employing unit, including but not limited to  
 13 corporations, partnerships, limited liability  
 14 companies, and limited liability partnerships;  
 15 provided that:

16 (A) The individual elects to be excluded from  
 17 coverage under this chapter and files an  
 18 application with the director;

19 (B) The election for exclusion shall be irrevocable  
 20 for five years;



1           (C) The individual presents to the director proof  
2           that the individual has paid federal unemployment  
3           insurance taxes as required by federal law; and

4           (D) The election to be excluded from coverage shall  
5           take effect on the first day of the calendar  
6           quarter in which the application and all  
7           substantiating documents requested by the  
8           director are filed with the director;

9           (9) Service performed by an individual for another person  
10           as a real estate salesperson or as a real estate  
11           broker, if all the service performed by the individual  
12           for the other person is performed for remuneration  
13           solely by way of commission[-];

14           (10) Service performed by a partner of a partnership for  
15           the partnership, as defined in chapter 425, if the  
16           partner is an individual; provided that no employer  
17           shall require an employee to become a partner as a  
18           condition of employment;

19           (11) Service performed by a partner of a limited liability  
20           partnership, if the partner is an individual and has a  
21           transferable interest, as defined in section 425-127  
22           in the partnership of at least fifty per cent;



1           provided that no employer shall require an employee to  
2           form a limited liability partnership as a condition of  
3           employment; and

4           (12) Service performed by a sole proprietor for the sole  
5           proprietorship.

6           As used in this paragraph, "religious, charitable,  
7           educational, or nonprofit organization" means a corporation,  
8           unincorporated association, community chest, fund, or foundation  
9           organized and operated exclusively for religious, charitable, or  
10          educational purposes, no part of the net earnings of which inure  
11          to the benefit of any private shareholder or individual."

12          SECTION 4. Section 386-21, Hawaii Revised Statutes, is  
13          amended by amending subsection (c) to read as follows:

14          "(c) The liability of the employer for medical care,  
15          services, and supplies shall be limited to the charges computed  
16          as set forth in this section. The director shall make  
17          determinations of the charges and adopt fee schedules based upon  
18          those determinations. [~~Effective January 1, 1997, and for each~~  
19          ~~succeeding calendar year thereafter, the] The charges shall not  
20          exceed one hundred ten per cent of fees prescribed in the  
21          Medicare Resource Based Relative Value Scale system applicable  
22          to Hawaii as prepared by the United States Department of Health~~



1 and Human Services, except as provided in this subsection. The  
2 rates or fees provided for in this section shall be adequate to  
3 ensure at all times the standard of services and care intended  
4 by this chapter to injured employees.

5 If the director determines that an allowance under the  
6 medicare program is not reasonable, or if a medical treatment,  
7 accommodation, product, or service existing as of June 29, 1995,  
8 is not covered under the medicare program, the director, at any  
9 time, may establish an additional fee schedule or schedules not  
10 exceeding the prevalent charge for fees for services actually  
11 received by providers of health care services to cover charges  
12 for that treatment, accommodation, product, or service. If no  
13 prevalent charge for a fee for service has been established for  
14 a given service or procedure, the director shall adopt a  
15 reasonable rate that shall be the same for all providers of  
16 health care services to be paid for that service or procedure.

17 The director shall update the schedules required by this  
18 section every three years or annually, as required. The updates  
19 shall be based upon:

20 (1) Future charges or additions prescribed in the Medicare  
21 Resource Based Relative Value Scale system applicable



1 to Hawaii as prepared by the United States Department  
2 of Health and Human Services; or

3 (2) A statistically valid survey by the director of  
4 prevalent charges for fees for services actually  
5 received by providers of health care services or based  
6 upon the information provided to the director by the  
7 appropriate state agency having access to prevalent  
8 charges for medical fee information.

9 When a dispute exists between an insurer or self-insured  
10 employer and a medical services provider regarding the amount of  
11 a fee for medical services, the director may resolve the dispute  
12 in a summary manner as the director may prescribe; provided that  
13 a provider shall not charge more than the provider's private  
14 patient charge for the service rendered.

15 When a dispute exists between an injured employee and the  
16 employer or the employer's insurer regarding the proposed  
17 treatment plan or whether medical services should be continued,  
18 the injured employee shall continue to receive essential medical  
19 services prescribed by the treating physician necessary to  
20 prevent deterioration of the injured employee's condition or  
21 further injury until the director issues a decision on whether  
22 the injured employee's medical treatment should be continued.





1 The director shall make a decision within thirty days of the  
2 filing of a dispute. If the director determines that medical  
3 services pursuant to the treatment plan should be or should have  
4 been discontinued, the director shall designate the date after  
5 which medical services for that treatment plan are denied. The  
6 employer or the employer's insurer, may recover from the  
7 claimant's personal health care provider or other appropriate  
8 occupation or non-occupational insurer, all the sums paid for  
9 medical services rendered after the date designated by the  
10 director. Under no circumstances shall the claimant be charged  
11 for the disallowed services, unless the services were obtained  
12 in violation of section 386-98. The attending physician,  
13 injured employee, employer, or insurance carrier may request in  
14 writing that the director review the denial of the treatment  
15 plan or the continuation of medical services."

16 SECTION 5. Section 386-25, Hawaii Revised Statutes, is  
17 amended by amending subsection (b) to read as follows:

18 "(b) The director may refer employees who may have or have  
19 suffered permanent disability as a result of work injuries or  
20 who have otherwise been deemed unable to return to their regular  
21 jobs after they have achieved maximum medical improvement, where  
22 the employer has made no offer of suitable work that would



1 restore the earnings capacity as nearly as possible to that  
2 level that the employee was earning at the time of injury, and  
3 who, in the director's opinion, can be vocationally  
4 rehabilitated to the department of human services or to private  
5 providers of rehabilitation services for vocational  
6 rehabilitation services that are feasible. A referral shall be  
7 made upon recommendation of the rehabilitation unit established  
8 under section 386-71.5 and after the employee has been deemed  
9 physically able to participate in rehabilitation by the  
10 employee's attending physician. The unit shall include  
11 appropriate professional staff and shall have the following  
12 duties and responsibilities:

- 13 (1) To review and approve rehabilitation plans developed  
14 by certified providers of rehabilitation services,  
15 whether they [~~be~~] are private or public;
- 16 (2) To adopt rules consistent with this section that shall  
17 expedite and facilitate the identification,  
18 notification, and referral of industrially injured  
19 employees to rehabilitation services[7] and establish  
20 minimum standards for providers providing  
21 rehabilitation services under this section;



1 (3) To certify private and public providers of  
2 rehabilitation services meeting the minimum standards  
3 established under paragraph (2); and

4 (4) To enforce the implementation of rehabilitation  
5 plans."

6 SECTION 6. Section 386-31, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 **"§386-31 Total disability.** (a) Permanent total  
9 disability. Where a work injury causes permanent total  
10 disability the employer shall pay the injured employee a weekly  
11 benefit equal to sixty-six and two-thirds per cent of the  
12 employee's average weekly wages, subject to the following  
13 limitation:

14 Beginning January 1, 1975, and during each succeeding  
15 twelve-month period thereafter, not more than the state average  
16 weekly wage last determined by the director, rounded to the  
17 nearest dollar, nor less than \$38 or twenty-five per cent of the  
18 foregoing maximum amount, rounded to the nearest dollar,  
19 whichever is higher.

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

22 (1) The permanent and total loss of sight in both eyes;



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

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

13 (b) Temporary total disability. Where a work injury  
14 causes total disability not determined to be permanent in  
15 character, the employer, for the duration of the disability, but  
16 not including the first three calendar days thereof, shall pay  
17 the injured employee a weekly benefit at the rate of sixty-six  
18 and two-thirds per cent of the employee's average weekly wages,  
19 subject to the limitations on weekly benefit rates prescribed in  
20 subsection (a), or if the employee's average weekly wages are  
21 less than the minimum weekly benefit rate prescribed in



1 subsection (a), at the rate of one hundred per cent of the  
2 employee's average weekly wages.

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

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

15 The payment of these benefits shall [~~only~~] be denied,  
16 suspended, or terminated only upon order of the director or if  
17 the employee's treating physician determines that the employee  
18 is able to resume work and the employer has made a bona fide  
19 offer of suitable work within the employee's medical  
20 restrictions. The order shall only be issued after a full and  
21 fair hearing at which the injured employee shall be provided the  
22 opportunity to review the employer's evidence and present



1 rebuttal evidence. When the employer is of the opinion that  
2 temporary total disability benefits should be terminated  
3 [~~because the injured employee is able to resume work~~], the  
4 employer shall notify the employee and the director in writing  
5 of an intent to terminate the benefits at least two weeks prior  
6 to the date when the last payment is to be made. The notice  
7 shall give the reason for stopping payment and shall inform the  
8 employee that the employee may make a written request to the  
9 director for a hearing if the employee disagrees with the  
10 employer. Upon receipt of the request from the employee, the  
11 director shall conduct a hearing as expeditiously as possible  
12 and render a prompt decision as specified in section 386-86[+] and  
13 indicating that if temporary total disability benefits should  
14 have been discontinued and, if so, designate the date after  
15 which temporary total disability benefits should have been  
16 discontinued. The employer may request in writing to the  
17 director that the director issue a credit for the amount of  
18 temporary total disability benefits paid by an employer after  
19 the date which the director had determined should have been the  
20 last date of payment. If the employee is unable to perform  
21 light work, if offered, temporary total disability benefits



1 shall not be discontinued based solely on the inability to  
2 perform or continue to perform light work.

3 An employer or insurance carrier who fails to comply with  
4 this section shall pay not more than \$2,500 into the special  
5 compensation fund upon the order of the director, in addition to  
6 attorney's fees and costs to the employee for enforcement of  
7 this section and other penalties prescribed in section 386-92.

8 (1) If the director determines, based upon a review of  
9 medical records and reports and other relevant  
10 documentary evidence, that an injured employee's  
11 medical condition may be stabilized and the employee  
12 is unable to return to the employee's regular job, the  
13 director shall issue a preliminary decision regarding  
14 the claimant's entitlement and limitation to benefits  
15 and rights under Hawaii's workers' compensation laws.  
16 The preliminary decision shall be sent to the affected  
17 employee and the employee's designated representative  
18 and the employer and the employer's designated  
19 representative and shall state that any party  
20 disagreeing with the director's preliminary findings  
21 of medical stabilization and work limitations may  
22 request a hearing within twenty days of the date of



1 the decision. The director shall be available to  
2 answer any questions during the twenty-day period from  
3 the injured employee and affected employer. If  
4 neither party requests a hearing challenging the  
5 director's finding the determination shall be deemed  
6 accepted and binding upon the parties. In any case  
7 where a hearing is held on the preliminary findings,  
8 any person aggrieved by the director's decision and  
9 order may appeal under section 386-87.

10 A preliminary decision of the director shall  
11 inform the injured employee and the employer of the  
12 following responsibilities, benefits, and limitations  
13 on vocational rehabilitation benefits that are  
14 designed to facilitate the injured employee's early  
15 return to suitable gainful employment:

16 (A) That the injured employee may invoke the  
17 employee's rights under section 378-2, 378-32, or  
18 386-142, or all of them, in the event of unlawful  
19 discrimination or other unlawful employment  
20 practice by the employer; and

21 (B) That after termination of temporary total  
22 disability benefits, an injured employee who





1 resumes work may be entitled to permanent partial  
 2 disability benefits, which if awarded, shall be  
 3 paid regardless of the earnings or employment  
 4 status of the disabled employee at the time.

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

15 SECTION 7. Section 386-72, Hawaii Revised Statutes, is  
 16 amended to read as follows:

17 "**§386-72 Rulemaking powers.** (a) In conformity with and  
 18 subject to chapter 91[7] and this section, the director of labor  
 19 and industrial relations shall make rules, not inconsistent with  
 20 this chapter, which the director deems necessary for or  
 21 conducive to its proper application and enforcement[, ~~provided~~  
 22 ~~that the rules were adopted prior to January 1, 2005.~~ No rules



1 ~~adopted or amended on or after January 1, 2005, pertaining to~~  
2 ~~any workers' compensation standard or procedure arising under~~  
3 ~~this chapter shall have the force and effect of law; provided,~~  
4 ~~however, that annual].~~

5 (b) Beginning June 30, 2007, the director, prior to  
6 submitting any proposed adoption, amendment, or repeal of rules  
7 under this chapter to the governor for approval, shall first  
8 submit those proposed rules to both houses of the legislature  
9 for approval. The rules shall be deemed disapproved unless the  
10 legislature approves the submitted rules in their entirety by  
11 concurrent resolution within three hundred sixty-five days of  
12 submission to the legislature. If the proposed rules are not  
13 approved by the legislature as provided in this subsection, then  
14 the rules may not be sent to the governor for final approval.

15 (c) Notwithstanding subsection (b), annual updates in the  
16 medical fee schedules specific to the amount paid to medical  
17 providers as provided in section 386-21(c) may be made  
18 consistent with this chapter[-] and subject solely to the  
19 requirements of chapter 91."

20 SECTION 8. Section 386-79, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           **"§386-79 Medical examination by employer's physician.**  
2 After an injury and during the period of disability, the  
3 employee, whenever ordered by the director [~~of labor and~~  
4 ~~industrial relations~~], shall submit to examination, at  
5 reasonable times and places, by a duly qualified physician or  
6 surgeon who shall submit a report of findings to the director.  
7 [The] Physicians selected to perform independent medical  
8 examinations as provided by this section shall be licensed in  
9 Hawaii and be subject to peer review; be one who currently holds  
10 and has held an active professional and occupational license  
11 under title 25 for the five consecutive years prior to the  
12 examination, and be certified by the American Board of  
13 Independent Medical Examiners or any other certification  
14 orgaqnization approved by the director. The independent medical  
15 examiner shall be selected by mutual agreement between the  
16 claimant and the employer within fourteen calendar days of a  
17 request by either party for an independent medical examination;  
18 provided that if no mutual agreement is reached, the director is  
19 to provide the parties with names of three duly qualified  
20 independent medical examiners within ten calendar days from the  
21 notification of failure to reach mutual agreement, compiled and  
22 maintained by the director, to the employer and employee from



1 which they must choose. If the employer and employee are unable  
2 to choose an independent medical examiner, then the director  
3 shall appoint one independent medical examiner from the list  
4 provided to the employer and employee, within ten calendar days.  
5 For these examinations, the employee shall have the right to  
6 have a physician or surgeon designated and paid by the  
7 [~~employee~~] employer present at the examination, which right,  
8 however, shall not be construed to deny to the employer's  
9 physician the right to visit the injured employee at all  
10 reasonable times and under all reasonable conditions during  
11 total disability.

12 If an employee unreasonably refuses to submit to, or in any  
13 way obstructs [~~such~~] the independent medical examination, the  
14 employee's right to claim compensation for the work injury  
15 [~~shall~~] may be suspended, only upon order of the director, until  
16 the refusal or obstruction ceases. No compensation shall be  
17 payable for the period during which the refusal or obstruction  
18 continues. The employee and the employee's physician may record  
19 the examination and ask reasonable questions relating to the  
20 examining physician's experience, education, certification, and  
21 qualifications. Exercising these rights shall not be construed  
22 as obstruction.



1           Employer requested examinations under this section shall  
2 not exceed more than one per case unless good and valid reasons  
3 exist with regard to the medical progress of the employee's  
4 treatment. The cost of conducting the ordered medical  
5 examination shall be limited to the complex consultation charges  
6 governed by the medical fee schedule established pursuant to  
7 section 386-21(c)."

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

10           "**§386-94 Claimants' attorneys, defense attorneys,**  
11 **physicians, other health care providers, and other fees.** Claims  
12 for services shall not be valid unless approved by the director  
13 or, if an appeal is had, by the appellate board or court  
14 deciding the appeal. Any claim so approved shall be a lien upon  
15 the compensation in the manner and to the extent fixed by the  
16 director, the appellate board, or the court.

17           In approving fee requests, the director, appeals board, or  
18 court may consider factors such as the attorney's skill and  
19 experience in state workers' compensation matters, the amount of  
20 time and effort required by the complexity of the case, the  
21 novelty and difficulty of issues involved, the amount of fees  
22 awarded in similar cases, benefits obtained for the claimant,



1 and the hourly rate customarily awarded attorneys possessing  
2 similar skills and experience. In all cases, reasonable  
3 attorney's fees shall be awarded.

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

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

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

14 (1) Within seven days after the date of first attendance  
15 or service rendered, an initial report shall be made  
16 to the department and to the employer of the injured  
17 employee in the manner prescribed by the department;

18 (2) Interim reports to the same parties and in the same  
19 manner as prescribed in paragraph (1) shall be made at  
20 appropriate intervals to verify the claimant's current  
21 diagnosis and prognosis, that the information as to  
22 the nature of the examinations and treatments



1 performed is complete, including the dates of those  
2 treatments and the results obtained within the current  
3 reporting period, the execution of all tests performed  
4 within the current reporting period and the results of  
5 the tests, whether the injured employee is improving,  
6 worsening, or if "medical stabilization" has been  
7 reached, the dates of disability, any work  
8 restrictions, and the return to work date. When an  
9 injured employee is returned to full-time, regular,  
10 light, part-time, or restricted work, the attending  
11 physician shall submit a report to the employer within  
12 seven calendar days indicating the date of release to  
13 work or medical stabilization; and

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

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

21 SECTION 11. Section 386-124, Hawaii Revised Statutes, is  
22 amended to read as follows:



1           "§386-124 The insurance contract[-]; annual reports. (a)

2 Every policy of insurance issued by an insurer of an employer  
3 referred to in section 386-1 which covers the liability of the  
4 employer for compensation shall cover the entire liability of  
5 the employer to the employer's employees covered by the policy  
6 or contract, and provide for the deductible under section 386-  
7 100, at the option of the insured. The policy also shall  
8 contain a provision setting forth the right of the employees to  
9 enforce in their own names either by filing a separate claim or  
10 by making the insurance carrier a party to the original claim,  
11 the liability of the insurance carrier in whole or in part for  
12 the payment of the compensation. Payment in whole or in part of  
13 compensation by either the employer or the insurance carrier  
14 shall, to the extent thereof, be a bar to the recovery against  
15 the other of the amount so paid.

16           All insurance policies shall be of a standard form, the  
17 form to be designated and approved by the insurance  
18 commissioner. No policy of insurance different in form from the  
19 designated and approved form shall be approved by the director.

20           (b) Every insurer of an employer referred to in section  
21 386-1 shall provide to the director and to the insurance  
22 commissioner on or before March 1 of each calendar year, an





1 annual report of the costs of its policies, that includes but is  
2 not limited to:

- 3       (1) Costs of independent medical examinations;
- 4       (2) Costs for legal services relating to administration of  
5           claims; and
- 6       (3) Administrative costs.

7       All annual reports shall be of a standard form, the form to  
8 be designated and approved by the insurance commissioner."

9       SECTION 12. Act 11, Special Session Laws of Hawaii 2005,  
10 is amended by amending section 14 to read as follows:

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

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

19       SECTION 14. This Act shall take effect on July 1, 2059.



**Report Title:**

Workers' Compensation Law

**Description:**

Amends workers' compensation law, including limiting an employer's ability to terminate benefits, authorizing the recovery of attorney's fees and costs by the injured employee, specifying procedures for medical examinations by the employer's physician, establishing fines for violations, requiring the reporting of denials of claims and relevant information, and further restricting the director of labor and industrial relations' rulemaking authority. (HB763 HD1)

