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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-       Medical examinations; selection of physicians.

5           (a) After an injury and after a claim is filed by the injured  
6 employee, the employer, upon mutual agreement of the parties,  
7 may appoint a qualified physician, paid by the employer, to  
8 conduct an independent medical examination or a permanent  
9 impairment rating examination of the injured employee, and make  
10 a report to the employer. The employee or the employee's  
11 representative shall be promptly provided with a copy of the  
12 report of the independent medical examination or permanent  
13 impairment rating examination.

14           The director shall keep and maintain a list of qualified  
15 physicians and their respective qualifications. If the employer  
16 and the employee cannot agree on a physician to perform the  
17 independent medical examination or permanent impairment rating



1 examination, the employer or employee may request in writing  
2 that the physician be appointed by the director. Within seven  
3 calendar days of the receipt of request, the director shall  
4 appoint from the director's list of qualified physicians, a  
5 physician licensed in a relevant medical specialty, licensed to  
6 practice in Hawaii, and willing to undertake the examination.

7 Any physician mutually selected by the employer and  
8 employee or appointed by the director shall examine the employee  
9 within forty-five calendar days of selection or appointment.

10 In no event shall an independent medical examination and a  
11 permanent impairment rating examination be combined into a  
12 single medical examination unless the injured employee consents  
13 in writing prior to the scheduling of the examinations.

14 In no event shall the director, appellate board, or court  
15 order more than one employer-requested independent medical  
16 examination and one permanent impairment rating examination per  
17 case, unless valid reasons exist with regard to the medical  
18 progress of the employee's treatment.

19 If an employee unreasonably refuses to submit to, or in any  
20 way unreasonably obstructs an examination, the employee's right  
21 to claim compensation for the work injury shall be suspended  
22 until the unreasonable refusal or obstruction ceases, and no



1 compensation shall be payable for the period during which the  
2 refusal or obstruction continues. The cost of conducting the  
3 ordered independent medical examination shall be limited to the  
4 complex consultation charges governed by the medical fee  
5 schedule established pursuant to section 386-21(c).

6 Every physician selected to perform independent medical  
7 examinations or permanent impairment rating examinations, as  
8 provided in this subsection, shall be currently licensed in  
9 Hawaii; provided that for claimants who do not reside in Hawaii,  
10 any physician performing an independent medical examination or  
11 permanent impairment rating examination shall have been licensed  
12 in the state where the claimant resides for a period of five  
13 consecutive years immediately preceding the examination.

14 (b) When an injured employee has attained medical  
15 stability as determined by the injured employee's attending  
16 physician, the employer may appoint a physician, paid by the  
17 employer and selected by agreement of the parties, who shall  
18 conduct a permanent impairment rating examination of the injured  
19 employee pursuant to subsection (a).

20 For the purposes of this subsection, "medical stability"  
21 means that the injured employee's medical condition is well  
22 stabilized so that no further improvement in the injured



1 employee's work injury can be expected from further medical  
2 treatment and continued medical care will only prevent  
3 deterioration of the condition."

4 SECTION 2. Section 386-79, Hawaii Revised Statutes, is  
5 repealed.

6 [~~"§386-79 Medical examination by employer's physician.~~  
7 ~~After an injury and during the period of disability, the~~  
8 ~~employee, whenever ordered by the director of labor and~~  
9 ~~industrial relations, shall submit to examination, at reasonable~~  
10 ~~times and places, by a duly qualified physician or surgeon~~  
11 ~~designated and paid by the employer. The employee shall have~~  
12 ~~the right to have a physician or surgeon designated and paid by~~  
13 ~~the employee present at the examination, which right, however,~~  
14 ~~shall not be construed to deny to the employer's physician the~~  
15 ~~right to visit the injured employee at all reasonable times and~~  
16 ~~under all reasonable conditions during total disability.~~

17 ~~If an employee refuses to submit to, or in any way~~  
18 ~~obstructs such examination, the employee's right to claim~~  
19 ~~compensation for the work injury shall be suspended until the~~  
20 ~~refusal or obstruction ceases and no compensation shall be~~  
21 ~~payable for the period during which the refusal or obstruction~~  
22 ~~continues.~~



1 ~~In cases where the employer is dissatisfied with the~~  
2 ~~progress of the case or where major and elective surgery, or~~  
3 ~~either, is contemplated, the employer may appoint a physician or~~  
4 ~~surgeon of the employer's choice who shall examine the injured~~  
5 ~~employee and make a report to the employer. If the employer~~  
6 ~~remains dissatisfied, this report may be forwarded to the~~  
7 ~~director.~~

8 ~~Employer requested examinations under this section shall~~  
9 ~~not exceed more than one per case unless good and valid reasons~~  
10 ~~exist with regard to the medical progress of the employee's~~  
11 ~~treatment. The cost of conducting the ordered medical~~  
12 ~~examination shall be limited to the complex consultation charges~~  
13 ~~governed by the medical fee schedule established pursuant to~~  
14 ~~section 386-21(e)."]~~

15 SECTION 3. This Act does not affect rights and duties that  
16 matured, penalties that were incurred, and proceedings that were  
17 begun, before its effective date.

18 SECTION 4. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20 SECTION 5. This Act shall take effect on July 1, 2009, and  
21 shall be repealed on July 1, 2012; provided that section 386-79,



- 1 Hawaii Revised Statutes, shall be reenacted in the form in which
- 2 it read on the day before the effective date of this Act.



S.B. NO. 62  
S.D. 1  
H.D. 1

**Report Title:**

Workers' Compensation; Medical Examinations; Selection of  
Physicians

**Description:**

Requires independent medical examinations and permanent  
impairment rating examinations to be performed by physicians  
mutually agreed upon by employers and employees or appointed by  
the director of labor and industrial relations. (SB62 HD1)

