

---

---

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



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

6 Any physician mutually selected by the employer and  
7 employee or appointed by the director shall examine the employee  
8 within thirty calendar days of selection or appointment.

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

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

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



1 continues. The cost of conducting the ordered independent  
2 medical examination or permanent impairment rating examination  
3 shall be limited to the complex consultation charges governed by  
4 the medical fee schedule established pursuant to section 386-  
5 21(c).

6 A physician selected to perform independent medical  
7 examinations or permanent impairment rating examinations, as  
8 provided in this subsection, shall be currently licensed  
9 pursuant to chapter 453; provided that for claimants who do not  
10 reside in Hawaii, any physician performing an independent  
11 medical examination or permanent impairment rating examination  
12 shall have been licensed in the State where the claimant resides  
13 for a period of five consecutive years immediately preceding the  
14 examination.

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

21 For the purposes of this subsection, "medical stability"  
22 means that no further improvement in the injured employee's



1 work-related condition can reasonably be expected from curative  
2 health care or the passage of time."

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

5 [~~§386-79 Medical examination by employer's physician.~~

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

16 ~~If an employee refuses to submit to, or in any way~~  
17 ~~obstructs such examination, the employee's right to claim~~  
18 ~~compensation for the work injury shall be suspended until the~~  
19 ~~refusal or obstruction ceases and no compensation shall be~~  
20 ~~payable for the period during which the refusal or obstruction~~  
21 ~~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. There is appropriated out of the general  
16 revenues of the State of Hawaii the sum of \$194,000 or so much  
17 thereof as may be necessary for fiscal year 2011-2012 for the  
18 establishment of three full-time equivalent (3.00 FTE) permanent  
19 workers' compensation hearings officer positions and two full-  
20 time equivalent (2.00 FTE) permanent office assistant positions  
21 in the disability compensation division of the department of



1 labor and industrial relations to assist in workers'  
2 compensation claims.

3 The sum appropriated shall be expended by the department of  
4 labor and industrial relations for the purposes of this Act.

5 SECTION 4. This Act does not affect rights and duties that  
6 matured, penalties that were incurred, and proceedings that were  
7 begun before its effective date.

8 SECTION 5. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 6. This Act shall take effect on January 1, 2050.



**Report Title:**

Workers' Compensation; Medical Examinations

**Description:**

Requires independent medical examinations and permanent impairment rating examinations for workers' compensation claims to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of the Department of Labor and Industrial Relations. Effective January 1, 2050.

(HB466 HD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

