

JAN 26 2011

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## A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION FRAUD.

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

1           SECTION 1. Section 386-71, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§386-71 Duties and powers of the director in general.**

4 The director of labor and industrial relations shall be in  
5 charge of all matters of administration pertaining to the  
6 operation and application of this chapter~~[-]~~, except for matters  
7 arising under section 386-98. The director shall have and  
8 exercise all powers necessary to facilitate or promote the  
9 efficient execution of this chapter and, in particular, shall  
10 supervise, and take all measures necessary for, the prompt and  
11 proper payment of compensation.

12           If an injury [~~which~~] that may be compensable under this  
13 chapter is reported to, or comes to the notice of, the  
14 department of labor and industrial relations, the director and  
15 the director's staff shall investigate [~~such~~] the injury to the  
16 extent as may appear necessary. The director shall cause to be  
17 printed and furnished free of charge to any employer or employee  
18 [~~such~~] blank forms as the director deems requisite to the



1 performance of the director's functions. The blanks shall also  
2 be supplied by the director to the clerks of the respective  
3 circuit courts, who shall furnish the same to any employer or  
4 employee free of charge pursuant to any rules [~~issued~~] adopted  
5 by the director."

6 SECTION 2. Section 386-73, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "**§386-73 Original jurisdiction over controversies.** Unless  
9 otherwise provided, the director of labor and industrial  
10 relations shall have original jurisdiction over all  
11 controversies and disputes arising under this chapter~~[-]~~, except  
12 for matters arising under section 386-98. The decisions of the  
13 director shall be enforceable by the circuit court as provided  
14 in section 386-91. There shall be a right of appeal from the  
15 decisions of the director to the appellate board and thence to  
16 the intermediate appellate court, subject to chapter 602, as  
17 provided in sections 386-87 and 386-88, but in no case shall an  
18 appeal operate as a supersedeas or stay unless the appellate  
19 board or the appellate court so orders."

20 SECTION 3. Section 386-98, Hawaii Revised Statutes, is  
21 amended by amending subsection (f) to read as follows:



1           "(f) With respect to the administrative penalties set  
2 forth in subsection (e), no penalty shall be imposed except upon  
3 consideration of a written complaint that specifically alleges a  
4 violation of this section occurring within two years of the date  
5 of [~~said~~] the complaint. A copy of the complaint specifying the  
6 alleged violation shall be served promptly upon the person  
7 charged. The [~~director or board~~] insurance commissioner shall  
8 issue, where a penalty is ordered, a written decision stating  
9 all findings following a hearing held not fewer than twenty days  
10 after written notice to the person charged. Any person  
11 aggrieved by the decision may appeal the decision under  
12 [~~sections 386-87 and 386-88.~~] chapter 91."

13           SECTION 4. Section 431:2-401, Hawaii Revised Statutes, is  
14 amended by amending the definition of "licensee" to read as  
15 follows:

16           ""Licensee" means an entity licensed under and governed by  
17 title 21, including chapter 386, title 24, including an insurer  
18 governed by chapter 431, a mutual benefit society governed by  
19 article 1 of chapter 432, a fraternal benefit society governed  
20 by article 2 of chapter 432, or a health maintenance  
21 organization governed by chapter 432D, and their respective  
22 agents and employees engaged in the business of the licensee."



1 SECTION 5. Section 431:2-402, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3 "(b) The branch shall:

4 (1) Conduct a statewide program for the prevention of  
5 insurance fraud under title 24, including chapters  
6 431, 432, and 432D[~~; provided that the branch shall~~  
7 ~~not have jurisdiction over workers' compensation under~~  
8 ~~chapter 386;~~] and title 21, including chapter 386;

9 (2) Notwithstanding any other law to the contrary,  
10 investigate and prosecute in administrative hearings  
11 and courts of competent jurisdiction all persons  
12 involved in insurance fraud violations; and

13 (3) Promote public and industry-wide education about  
14 insurance fraud."

15 SECTION 6. All rights, powers, functions, and duties of  
16 the department of labor and industrial relations relating to  
17 matters arising under section 386-98, Hawaii Revised Statutes,  
18 are transferred to the department of commerce and consumer  
19 affairs.

20 All officers and employees whose functions are transferred  
21 by this Act shall be transferred with their functions and shall



1 continue to perform their regular duties upon their transfer,  
2 subject to the state personnel laws and this Act.

3 No officer or employee of the State having tenure shall  
4 suffer any loss of salary, seniority, prior service credit,  
5 vacation, sick leave, or other employee benefit or privilege as  
6 a consequence of this Act, and such officer or employee may be  
7 transferred or appointed to a civil service position without the  
8 necessity of examination; provided that the officer or employee  
9 possesses the minimum qualifications for the position to which  
10 transferred or appointed; and provided that subsequent changes  
11 in status may be made pursuant to applicable civil service and  
12 compensation laws.

13 An officer or employee of the State who does not have  
14 tenure and who may be transferred or appointed to a civil  
15 service position as a consequence of this Act shall become a  
16 civil service employee without the loss of salary, seniority,  
17 prior service credit, vacation, sick leave, or other employee  
18 benefits or privileges and without the necessity of examination;  
19 provided that such officer or employee possesses the minimum  
20 qualifications for the position to which transferred or  
21 appointed.



1           If an office or position held by an officer or employee  
2 having tenure is abolished, the officer or employee shall not  
3 thereby be separated from public employment, but shall remain in  
4 the employment of the State with the same pay and classification  
5 and shall be transferred to some other office or position for  
6 which the officer or employee is eligible under the personnel  
7 laws of the State as determined by the head of the department or  
8 the governor.

9           SECTION 7. All appropriations, records, equipment,  
10 machines, files, supplies, contracts, books, papers, documents,  
11 maps, and other personal property heretofore made, used,  
12 acquired, or held by the department of labor and industrial  
13 relations relating to the functions transferred to the  
14 department of commerce and consumer affairs shall be transferred  
15 with the functions to which they relate.

16           SECTION 8. All rules, policies, procedures, guidelines,  
17 and other material adopted or developed by the department of  
18 labor and industrial relations to implement provisions of the  
19 Hawaii Revised Statutes which are reenacted or made applicable  
20 to the department of commerce and consumer affairs by this Act,  
21 shall remain in full force and effect until amended or repealed  
22 by the department of commerce and consumer affairs pursuant to



1 chapter 91, Hawaii Revised Statutes. In the interim, every  
2 reference to the department of labor and industrial relations or  
3 director of labor and industrial relations in those rules,  
4 policies, procedures, guidelines, and other material is amended  
5 to refer to the department of commerce and consumer affairs or  
6 director of commerce and consumer affairs as appropriate.

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

9 SECTION 10. This Act shall take effect on July 1, 2011.

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INTRODUCED BY: \_\_\_\_\_

*Chris Lee*



**Report Title:**

Workers' Compensation Fraud

**Description:**

Transfers jurisdiction over workers' compensation fraud from the department of labor and industrial relations to the insurance fraud investigations unit of the insurance division of the department of commerce and consumer affairs.

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

