

JAN 20 2012

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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. The legislature finds that most motor vehicle  
2 insurers do not penalize an insured for losses due to injuries  
3 caused by the negligence of third parties. The legislature  
4 finds that in workers' compensation claims, however, insurers  
5 will increase an insured's premiums in order to recover claim  
6 losses, if the claim is not subrogated against the third party.

7           The purpose of this Act is to clarify the workers'  
8 compensation insurance underwriting procedures with regard to  
9 premiums and reserves on subrogated claim recoveries.

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

13           "§386-       Subrogation; indemnity; reserves; premiums. (a)

14 Pursuant to section 386-8, the employer or insurer of the  
15 employer shall have the right to indemnification by the third  
16 party or by the liability insurer of the third party for the  
17 amount of compensation paid to the injured employee covered  
18 under this chapter.



1       To recover the amount of compensation paid by the employer  
2 or insurer of the employer to the employee for injuries covered  
3 under this chapter, an employer or the insurer of an employer  
4 may exercise subrogation rights against a third party for the  
5 wilful or negligent act directed against an employee receiving  
6 compensation.

7       (b) Upon receipt of a notice of injury under section  
8 386-81, the employer or insurer of the employer shall  
9 immediately assess the likelihood of a successful recovery in  
10 subrogation against a third person, if any.

11       (c) If the employer or the insurer of the employer  
12 determines from the assessment under subsection (b) that there  
13 is a high likelihood of successful recovery in subrogation, the  
14 insurer shall set an amount for claim reserve no greater than  
15 the estimated net subrogated claim, which shall be calculated by  
16 subtracting the amount of subrogated recovery from the total  
17 amount of compensation paid; provided that the reserved amount  
18 may be changed from time to time as circumstances warrant. The  
19 director shall ensure that the amount of claim reserve is not in  
20 excess of the estimated net subrogated claim at any one time  
21 during the pendency of the claim.



1        (d) The insurer shall not increase the policy premium on  
2 the employer, by reason of the claim, in excess of the estimated  
3 net subrogated claim calculated pursuant to subsection (c).

4        (e) This section shall not prohibit the injured employee  
5 from bringing an action against the third party for injuries  
6 received because of the negligence or wilful act of the third  
7 party; provided that the insurer of the employer shall have a  
8 lien as a matter of law against any recovery in the amount of  
9 compensation paid."

10        SECTION 3. New statutory material is underscored.

11        SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: Johai Gan (br)



# S.B. NO. 2523

**Report Title:**

Workers' Compensation; Subrogation; Premiums

**Description:**

Allows a workers' compensation insurer to exercise subrogation rights against a third party that causes a compensable injury. Clarifies limits of reserves for the claim. Prohibits premiums from rising on the claim in excess of the estimated net subrogated claim.

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