

JAN 18 2013

S.B. NO. 875

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, willing to undertake the examination, and
6 paid for by the employer.

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 or
10 as soon as practicably possible.

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

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

21 If an employee refuses to submit to, or in any way
22 obstructs the examination, the employee's right to claim



1 compensation for the work injury shall be suspended until the
2 refusal or obstruction ceases and no compensation shall be
3 payable for the period during which the refusal or obstruction
4 continues. The cost of conducting the ordered independent
5 medical examination or permanent impairment rating examination
6 shall be limited to the complex consultation charges governed by
7 the medical fee schedule established pursuant to section
8 386-21(c).

9 A physician selected to perform an independent medical
10 examination or permanent impairment rating examination, as
11 provided in this subsection, shall be currently licensed
12 pursuant to chapter 453; except that upon approval by the
13 director, a physician who resides outside the State of Hawaii
14 and is licensed in another state as a physician equivalent to a
15 license under chapter 453, may be selected if there is no State
16 of Hawaii-licensed physician available in a relevant medical
17 specialty. Further, if the claimant does not reside in Hawaii,
18 a physician who resides outside the State of Hawaii and is
19 licensed in the state of the out-of-state claimant's residence
20 as a physician equivalent to a license under chapter 453 may be
21 selected. Upon approval of the director, a physician who
22 resides outside the state of the out-of-state claimant's



1 residence and is licensed in another state as a physician
2 equivalent to a license under chapter 453 may be selected if
3 there is no physician available in a relevant medical specialty
4 in the out-of-state claimant's state of residence.

5 (b) When an injured employee has attained medical
6 stability as determined by the injured employee's attending
7 physician, the employer may appoint a physician, paid by the
8 employer and selected by agreement of the parties, who shall
9 conduct a permanent impairment rating examination of the injured
10 employee pursuant to subsection (a).

11 For the purposes of this subsection, "medical stability"
12 means that no further improvement in the injured employee's
13 work-related condition can reasonably be expected from curative
14 health care or the passage of time."

15 SECTION 2. Section 386-79, Hawaii Revised Statutes, is
16 repealed.

17 ~~["§386-79 Medical examination by employer's physician.~~
18 ~~After an injury and during the period of disability, the~~
19 ~~employee, whenever ordered by the director of labor and~~
20 ~~industrial relations, shall submit to examination, at reasonable~~
21 ~~times and places, by a duly qualified physician or surgeon~~
22 ~~designated and paid by the employer. The employee shall have~~

~~1 the right to have a physician or surgeon designated and paid by
2 the employee present at the examination, which right, however,
3 shall not be construed to deny to the employer's physician the
4 right to visit the injured employee at all reasonable times and
5 under all reasonable conditions during total disability.~~

~~6 If an employee refuses to submit to, or in any way
7 obstructs such examination, the employee's right to claim
8 compensation for the work injury shall be suspended until the
9 refusal or obstruction ceases and no compensation shall be
10 payable for the period during which the refusal or obstruction
11 continues.~~

~~12 In cases where the employer is dissatisfied with the
13 progress of the case or where major and elective surgery, or
14 either, is contemplated, the employer may appoint a physician or
15 surgeon of the employer's choice who shall examine the injured
16 employee and make a report to the employer. If the employer
17 remains dissatisfied, this report may be forwarded to the
18 director.~~

~~19 Employer requested examinations under this section shall
20 not exceed more than one per case unless good and valid reasons
21 exist with regard to the medical progress of the employee's
22 treatment. The cost of conducting the ordered medical~~



1 ~~examination shall be limited to the complex consultation charges~~
2 ~~governed by the medical fee schedule established pursuant to~~
3 ~~section 386-21(e)."]~~

4 SECTION 3. There is appropriated out of the general
5 revenues of the State of Hawaii the sum of \$ or so
6 much thereof as may be necessary for fiscal year 2013-2014 and
7 the same sum or so much thereof as may be necessary for fiscal
8 year 2014-2015 for the establishment of three full-time
9 equivalent (3.00 FTE) permanent workers' compensation hearings
10 officer positions and two full-time equivalent (2.00 FTE)
11 permanent office assistant positions in the disability
12 compensation division of the department of labor and industrial
13 relations to assist in workers' compensation claims.

14 The sums appropriated shall be expended by the department
15 of labor and industrial relations for the purposes of this Act.

16 SECTION 4. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun before its effective date.

19 SECTION 5. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 6. This Act shall take effect on October 1, 2013;
22 provided that:



- 1 (1) Section 3 shall take effect on July 1, 2013; and
- 2 (2) This Act shall be repealed on June 30, 2018, and
- 3 section 386-79, Hawaii Revised Statutes, shall be
- 4 reenacted in the form in which it read on the day
- 5 before the effective date of section 2 of this Act.

6

INTRODUCED BY: Man Hee



S.B. NO. 875

Report Title:

Workers' Compensation; Medical Examinations; Appropriation

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. Allows for the use of an out-of-state physician under certain conditions. Appropriates unspecified funds. Effective 10/1/13. Section 3 effective 7/1/13. Repeals on 6/30/2018.

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

