

---

---

# A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

1           SECTION 1. Section 386-79, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "~~§386-79 [Medical examination by employer's physician.]~~

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

15           ~~If an employee refuses to submit to, or in any way~~  
16 ~~obstructs such examination, the employee's right to claim~~  
17 ~~compensation for the work injury shall be suspended until the~~  
18 ~~refusal or obstruction ceases and no compensation shall be~~



1 ~~payable for the period during which the refusal or obstruction~~  
2 ~~continues.~~

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

10 ~~Employer requested examinations under this section shall~~  
11 ~~not exceed more than one per case unless good and valid reasons~~  
12 ~~exist with regard to the medical progress of the employee's~~  
13 ~~treatment. The cost of conducting the ordered medical~~  
14 ~~examination shall be limited to the complex consultation charges~~  
15 ~~governed by the medical fee schedule established pursuant to~~  
16 ~~section 386-21(e).]~~ (a) Following an injury and after a claim  
17 is filed by the injured employee, the employer, upon mutual  
18 agreement of the parties, may appoint a qualified physician,  
19 paid by the employer, to conduct an independent medical  
20 examination or a permanent impairment rating examination of the  
21 injured employee and make a report to the employer.



1       (b) The cover letter to the physician selected to perform  
2 the examination under this section shall notify the physician  
3 that the physician has been mutually selected to conduct an  
4 independent examination by the parties. The cover letter shall  
5 be transmitted to the injured worker at least five working days  
6 before the appointment. The employee or the employee's  
7 representative shall be promptly provided with a copy of the  
8 report of the independent medical examination or permanent  
9 impairment rating examination.

10       (c) A physician selected pursuant to this section to  
11 perform an independent medical examination or permanent  
12 impairment rating examination shall be willing to undertake the  
13 examination and shall be paid for by the employer. The selected  
14 physician shall be currently licensed pursuant to chapter 453 or  
15 442 to practice in Hawaii; except that upon approval by the  
16 director, a physician who resides outside of the State of Hawaii  
17 and is licensed in another state as a physician equivalent to a  
18 license under chapter 453 or 442, may be selected if there is no  
19 State of Hawaii-licensed physician available in a specialty to  
20 conduct the examination. If the employee does not reside in  
21 Hawaii, a physician who resides outside the State of Hawaii and  
22 is licensed in the state of the out-of-state employee's



1 residence as a physician equivalent to a license under chapter  
2 453 or 442 may be selected.

3 If the parties are unable to reach a mutual agreement  
4 within five working days, the parties shall jointly prepare a  
5 list of five physicians. Within the five-working day period,  
6 the employee shall appoint the first physician, the employer  
7 shall appoint the second, and the process shall continue until  
8 there is a list of five physicians. The parties shall  
9 alternatively strike a physician from the list. The employer  
10 shall strike first, the employee shall strike next, and the  
11 process shall continue until only one physician remains who  
12 shall conduct the examination and prepare a report.

13 Any physician mutually selected by the employer and  
14 employee shall examine the employee within forty-five calendar  
15 days of the selection or appointment process or as soon as  
16 practicably possible.

17 (d) In no event shall an independent medical examination  
18 and a permanent impairment rating examination be combined into a  
19 single medical examination unless the employee consents in  
20 writing prior to the scheduling of the examination of the final  
21 independent selected physician.



1       In no event shall the director, appellate board, or court  
2 order more than one requested independent medical examination  
3 and one permanent impairment rating examination per case, unless  
4 valid reasons exist with regard to the medical progress of the  
5 employee's treatment or where major surgery and elective  
6 surgery, or either, is contemplated. In such case, the process  
7 of selecting a physician by mutual agreement under this section  
8 shall apply.

9       (e) If an employee refuses to submit to, or in any way  
10 unreasonably interferes with the examination, the employee's  
11 right to claim compensation for the work injury shall be  
12 suspended until the refusal or obstruction ceases and no  
13 compensation shall be payable for the period during which the  
14 unreasonable interference continues. The cost of conducting the  
15 ordered independent medical examination or permanent impairment  
16 rating examination shall be limited to the complex consultation  
17 charges governed by the medical fee schedule established  
18 pursuant to section 386-21(c).

19       (f) When an employee has attained medical stability as  
20 determined by the injured employee's attending physician, the  
21 employer may appoint a physician, paid by the employer and  
22 selected by agreement of the parties, who shall conduct a



1 permanent impairment rating examination of the injured employee  
2 pursuant to subsection (c).

3 For the purposes of this subsection, "medical stability"  
4 means that no further improvement in the employee's work-related  
5 condition can reasonably be expected from curative health care  
6 or the passage of time.

7 (g) Whenever an employee is requested or ordered to  
8 undergo an independent medical examination, the employer shall  
9 provide notice approved by the director that:

10 (1) Informs the employee of the employee's rights and  
11 obligations with regard to independent medical  
12 examinations; and

13 (2) Provides the employee with instructions on how to  
14 participate in the process for independent medical  
15 examinations as established in this section."

16 SECTION 2. 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 3. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

21 SECTION 4. This Act shall take effect on July 1, 2014;  
22 provided that this Act shall be repealed on June 30, 2018, and



1 section 386-79, Hawaii Revised Statutes, shall be reenacted in  
2 the form in which it read on the day before the effective date  
3 of this Act.



**Report Title:**

Workers' Compensation; Medical Examinations; Mutual Agreement

**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. Allows for the use of an out-of-state physician under certain conditions. Repeals on June 30, 2018. (HB1961 HD1)

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

