

---

---

# 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 the safety and well-  
2 being of employees on the job are important to their employers.  
3 However, accidents and illnesses can arise from work and when  
4 they do, employees are covered under the State's workers'  
5 compensation law. The Hawaii workers' compensation law was  
6 initially enacted in 1915 to provide wage loss compensation and  
7 medical care to employees who suffer a work-related injury. The  
8 workers' compensation law in essence requires the employer to  
9 provide certain benefits without regard to the fault of the  
10 employer and prohibits an employee from filing civil action  
11 against the employer for work-related injuries or illnesses.

12           The workers' compensation law includes certain statutory  
13 presumptions that place on the employer the burden of producing  
14 substantial evidence to the contrary to rebut a claim for a  
15 covered work injury. Despite this presumption, recommended  
16 medical treatment or vocational rehabilitation plans are delayed  
17 or arbitrarily and capriciously denied; approved services



1 provided by medical or other health care professionals go  
2 unpaid; and there is a reluctance to accept workers'  
3 compensation cases for fear of being denied reimbursements, all  
4 of which contribute to a dysfunctional health care system that  
5 cannot rehabilitate the injured worker.

6 The purpose of this Act is to increase employee health and  
7 safety in the workplace and to provide timely and appropriate  
8 health care and vocational rehabilitation services for employees  
9 injured on the job in a supportive and non-confrontational  
10 environment by:

- 11 (1) Repealing the Hawaii employers' mutual insurance  
12 company;
- 13 (2) Establishing the state workers' compensation insurance  
14 company, as a public body corporate attached to the  
15 department of labor and industrial relations, to  
16 provide workers' compensation insurance; and
- 17 (3) Requiring employers to either obtain workers'  
18 compensation coverage only from the state workers'  
19 compensation insurance company or be self-insured.



1 SECTION 2. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4 "CHAPTER

5 STATE WORKERS' COMPENSATION INSURANCE COMPANY

6 § -1 Purpose. The state workers' compensation insurance  
7 company is established to provide workers' compensation coverage  
8 to employers of the State at the highest level of service with  
9 the lowest possible cost, consistent with reasonable and  
10 applicable actuarial standards and the sound financial integrity  
11 of the company. The purposes of the company are to provide the  
12 highest standard of workplace safety and loss prevention, to  
13 encourage employer involvement, and to be responsive to each  
14 policyholder's experience, practice, and operating  
15 effectiveness. Nothing in this chapter shall create any implied  
16 third-party duty or impose additional legal liability for the  
17 company toward its members or beneficiaries beyond that  
18 explicitly created by this chapter, chapter 386, or common law,  
19 and generally applicable to all issuers of workers' compensation  
20 insurance in this State.

21 § -2 Definitions. As used in this chapter:



1 "Administrator" means the chief executive officer of the  
2 company.

3 "Board" means the board of directors of the company.

4 "Company" means the state workers' compensation insurance  
5 company established by this chapter.

6 "Council" means the company oversight council.

7 "Investment manager" means any fiduciary, who has been  
8 designated by the board to manage, acquire, or dispose of the  
9 company's assets, a bank as defined by law, or an insurance  
10 company qualified to perform services under the laws of more  
11 than one state.

12 "Qualified actuary" means a member of the American Academy  
13 of Actuaries who is either a fellow of the Casualty Actuarial  
14 Society or an Associate of the Casualty Actuarial Society who  
15 has five or more years of experience.

16 § -3 State workers' compensation insurance company;  
17 established. (a) The state workers' compensation insurance  
18 company is established as a public body corporate to provide  
19 workers' compensation insurance and related services to Hawaii  
20 employers. The company shall be placed within the department of  
21 labor and industrial relations for administrative purposes.



1 (b) The company shall comply with, unless specifically  
2 excluded, all requirements of the insurance code regarding a  
3 domestic mutual insurance company. The company shall write  
4 workers' compensation insurance policies covering Hawaii  
5 employers as required or authorized by law and employers'  
6 liability. The company shall not write other lines of  
7 insurance, reinsurance, or excess insurance.

8 (c) The company shall insure Hawaii employers against  
9 their liability for compensation or damages for injury or death  
10 under the United States Longshore and Harbor Workers'  
11 Compensation Act or federal or maritime laws like any other  
12 private insurer.

13 (d) The company's assets shall consist of real and  
14 personal property and shall include all premiums and other  
15 moneys paid to the company, all property, and other income  
16 acquired, earned, or otherwise gained by the use of premiums and  
17 other moneys paid to the company by deposits, investments,  
18 exchanges, and other transactions. The company's assets shall  
19 be the sole property of the company and shall be used  
20 exclusively by the company for the operation and obligations of  
21 the company.



1           (e) Notwithstanding any other law to the contrary, the  
2 company shall be excluded from the surplus requirements of  
3 domestic mutual insurers. The company is also excluded from any  
4 assessments by the Hawaii hurricane relief fund otherwise  
5 required by section 431P-5(b)(8).

6           (f) The company is exempt from participation, and shall  
7 not join, contribute financially to, nor be entitled to the  
8 protection of, any plan, association, guaranty, insolvency fund,  
9 or education and training fund authorized or required by this  
10 chapter. Notwithstanding the foregoing exemptions, the company  
11 shall participate in the property and liability insurance  
12 guaranty association, pursuant to sections 431:16-101 to 431:16-  
13 117; provided that the company shall meet the surplus  
14 requirements applicable to all other domestic insurers under  
15 chapter 431.

16           (g) The company shall provide workers' compensation  
17 coverage to Hawaii employers otherwise entitled to coverage but  
18 not able to or not electing to self-insure. An authorized self-  
19 insured is eligible for coverage upon termination of self-  
20 insurance.



1           §   -4   Company divisions. (a) For purposes of providing  
2 representation on the board, the company shall consist of  
3 industry divisions and a high risk division. Assignments to  
4 each division shall be made by the administrator with the  
5 approval of the board. The initial company divisions shall  
6 include:

- 7           (1) Manufacturing and producers;
- 8           (2) Services, entertainment, and amusement;
- 9           (3) Professions;
- 10          (4) Construction;
- 11          (5) Wholesale and retail sales;
- 12          (6) Transportation and public utilities;
- 13          (7) Finance, insurance, and real estate; and
- 14          (8) High risk.

15          (b) An employer with two or more lost-time claims greater  
16 than \$10,000, and a loss ratio greater than 1.0, over the  
17 immediately preceding three years shall be placed in the high  
18 risk division.

19          (c) The administrator, with the approval of the board,  
20 shall modify the requirements for placing employers in the high  
21 risk division if the qualifications result in the high risk



1 division being limited to only those employers with measurable  
2 adverse loss ratios, demonstrated accident frequency records, or  
3 a demonstrated attitude of noncompliance with workplace safety  
4 and health programs or claims management requirements.

5 (d) The company shall give notice to each employer in the  
6 high risk division not less than thirty days prior to the policy  
7 renewal date requesting a report on the employer's lost-time  
8 claims for the policy year. The report shall be used to  
9 determine the employer's qualification for placement in the high  
10 risk division.

11 (e) The company may apply a rating differential and charge  
12 a surcharge to any employer placed in the high risk division.  
13 The company may make multiple rate filings, consistent with  
14 sound actuarial judgment for each classification. These rate  
15 filings may be applied to risks in any division.

16 (f) The contingent liabilities of members provided in  
17 section 431:4-317 may be separated so that members assigned to  
18 the high risk division have a further contingent liability for  
19 deficits in the high risk division; provided that no contingent  
20 liability shall be in the aggregate for more than five times the





1 annual premium rate of the member's policy nor for a term of  
2 more than one year.

3 § -5 Board of directors, established. (a) The board of  
4 directors of the company shall be responsible for the  
5 organization, management, policies, and activities of the  
6 company. The board shall consist of nine members to be  
7 appointed by the governor in accordance with section 26-34;  
8 provided that the nine members shall be owners, officers, or  
9 employees of policyholders of the company and shall represent  
10 each of the company divisions. The administrator shall be an ex  
11 officio, nonvoting member of the board.

12 (b) Each director shall receive necessary traveling and  
13 board expenses incurred in the performance of duty as director  
14 and a fee commensurate with the duties expected of actual  
15 attendance at board meetings.

16 § -6 Powers; generally. Except as otherwise limited by  
17 this chapter, the company may:

18 (1) Sue, be sued, complain, and defend, in its corporate  
19 name;

20 (2) Have a corporate seal, which may be altered at  
21 pleasure, and use the seal by causing it, or a



- 1 facsimile thereof, to be impressed, affixed, or in any  
2 other manner reproduced;
- 3 (3) Purchase, take, receive, lease, take by gift, devise,  
4 or bequest, or otherwise acquire, own, hold, improve,  
5 use, and otherwise deal in and with real or personal  
6 property, or any interest therein, wherever situated;
- 7 (4) Sell, convey, mortgage, pledge, lease, exchange,  
8 transfer, and otherwise dispose of all and any part of  
9 its property and assets;
- 10 (5) Make contracts and incur liabilities, borrow money at  
11 such rates of interest as the board may determine,  
12 issue guaranty capital shares and surplus notes,  
13 require capital contributions, issue its notes,  
14 debenture bonds, and other obligations, secure any of  
15 its obligations by mortgage or pledge of all or any  
16 portion of its property or income, and secure  
17 financing by any board approved mechanism;
- 18 (6) Allocate fiduciary responsibilities among the  
19 directors and designate other persons to carry out  
20 fiduciary responsibilities;



- 1 (7) Collect, receive, hold, and disburse all money payable  
2 to or by the company;
- 3 (8) Deposit the company's money in banks or depositories  
4 selected by the board and withdraw the company's money  
5 from the banks or depositories; provided that the  
6 withdrawal shall be made or authorized only upon the  
7 signatures of at least two persons approved by the  
8 board;
- 9 (9) Pay money from the company to effectuate the company's  
10 purpose and administration, including amounts for  
11 costs incurred to establish the company; and
- 12 (10) Exercise all powers necessary or convenient to effect  
13 the purposes of the company.

14 § -7 Duties and responsibilities. (a) All corporate  
15 powers shall be exercised by or under the authority of the  
16 board, unless otherwise provided in this chapter or in the  
17 articles of incorporation.

18 (b) The board shall discharge its duties:

- 19 (1) In accordance with the company's purpose;
- 20 (2) With the care, skill, prudence, and diligence under  
21 the circumstances that a prudent director, acting in a



- 1           like capacity and familiar with such matters would use  
2           in conducting a similar enterprise and purpose;
- 3           (3) By diversifying the company's investments to minimize  
4           the risk of losses, unless it is prudent not to do so;
- 5           (4) In accordance with governing legal documents;
- 6           (5) By having an annual audit of the company by an  
7           independent certified public accountant;
- 8           (6) By securing a fidelity bond for the administrator and  
9           in its discretion for other agents dealing with the  
10          company's assets at the company's expense;
- 11          (7) By purchasing liability insurance for errors and  
12          omissions for the board, each director, and any other  
13          fiduciary employed or contracted by the company to  
14          cover liability or losses caused by the act or  
15          omission of a fiduciary;
- 16          (8) By maintaining proper books of accounts and records of  
17          the company's administration;
- 18          (9) By carrying out the reporting and disclosure  
19          requirements required by law;
- 20          (10) By appointing a qualified actuary to develop and  
21          recommend a responsible schedule of premium rates with



- 1 consideration of the company's investment income or  
2 refunds, or both, and to provide actuarial  
3 certification of the company's loss reserves; and  
4 (11) By cooperating with and assisting the council in its  
5 duties and responsibilities.
- 6 (c) Except as otherwise provided by law, the board shall:
- 7 (1) Transact workers' compensation insurance policies  
8 required or authorized by state law;
- 9 (2) Provide the terms and conditions of an insurance  
10 policy;
- 11 (3) Provide that any written instrument be executed for  
12 the company by the administrator or the  
13 administrator's agent;
- 14 (4) Enter into agreements to reinsure all or part of the  
15 company's exposure to loss and to limit the risk to  
16 the company; and
- 17 (5) Employ, without regard to chapter 76 or 89, persons to  
18 administer the company, including legal counsel,  
19 accountants, insurance consultants, administrators,  
20 qualified actuaries, investment managers, adjusters,



1 other experts, and clerical employees and pay  
2 compensation and expenses in connection therewith.

3 § -8 Administrator; appointment; duties. (a) The board  
4 shall hire an administrator who shall serve at the pleasure of  
5 the board and be exempt from chapter 76 and 89. The  
6 administrator shall be the chief executive officer and shall be  
7 responsible for the day-to-day operations and management of the  
8 company.

9 (b) The administrator shall have proven, successful  
10 experience as an executive at the general management level in  
11 the insurance business. The administrator shall manage and  
12 conduct the business of the company according to the board's  
13 direction and policies. The administrator shall receive  
14 compensation authorized by the board.

15 (c) Before entering the duties of office, the  
16 administrator shall give a fidelity bond in an amount and with  
17 sureties approved by the board. The premium for the bond shall  
18 be paid by the company.

19 § -9 Financial management. (a) The board shall select  
20 a custodial trustee to collect, receive, hold, or disburse  
21 moneys payable to or by the company.



1           (b) The board shall invest the company's principal and  
2 income without distinction between principal and income and keep  
3 the company's assets invested in real or personal property or  
4 other securities. The board may retain cash temporarily  
5 awaiting investment or to meet contemplated payments without  
6 liability for interest thereon.

7           (c) The board shall manage the company's assets, except to  
8 the extent that the authority to manage the company's assets is  
9 delegated to other qualified investment managers. The board may  
10 appoint investment managers to manage, acquire, or dispose of  
11 any of the company's assets. An investment manager may be  
12 designated as an "investment agent". The investment manager  
13 shall acknowledge in writing that the investment manager is a  
14 fiduciary under the company.

15           (d) The board may:

- 16           (1) Sell the company's securities. No purchaser of the  
17 company's securities is bound to see to the  
18 application of the purchase money or inquire as to the  
19 validity of the sale;
- 20           (2) Vote on behalf of any stocks, bonds, or securities of  
21 any corporation or issuer held in the company or



1 request any action to the corporation or issuer. The  
2 board may give general or special proxies or powers of  
3 attorney with or without powers of substitution;

4 (3) Participate in reorganizations, recapitalization,  
5 consolidations, mergers, and similar transactions for  
6 stocks, bonds, or other securities of any corporation  
7 that are held by the company, and accept and retain  
8 any property received thereunder for the company;

9 (4) Exercise any subscription rights and conversion  
10 privileges for the company's stocks or securities;

11 (5) Compromise, compound, and settle any debt or  
12 obligation due to or from the company, and reduce the  
13 amount of principal and interest, damages, and costs  
14 of collection in settling the debts;

15 (6) Cause securities held by it to be registered in its  
16 own name or in the name of a nominee without  
17 indicating that the securities are held in a fiduciary  
18 capacity and to hold any securities in bearer form.  
19 The company's records, however, shall show that the  
20 investments are part of the company;





- 1           (7) Delegate its investment powers to investment managers  
2           of the company to expedite the purchase and sale of  
3           securities. The purchase or sale of securities by  
4           these managers shall be in the name selected by the  
5           board. The authority of these managers to purchase or  
6           sell securities for the company shall be evidenced by  
7           written authority executed by the administrator. The  
8           board shall require these managers to keep it  
9           currently informed as to the nature and amount of the  
10          investments made for the company by them. The board  
11          may enter into appropriate agreements with these  
12          managers setting forth their investment powers and  
13          limitations. The board may terminate the services of  
14          these managers. These managers shall be subject to  
15          the board's instructions;
- 16          (8) Pay taxes or assessments that are assessed against the  
17          company;
- 18          (9) Require any applicant or policyholder to furnish the  
19          board with information necessary for the company's  
20          administration; and



1           (10) Delegate its authority to the administrator or any  
2           authorized representative to maintain any legal  
3           proceedings necessary to protect the company or the  
4           directors or to secure payment due to the company. In  
5           connection with this delegation, the board or the  
6           administrator or their representative may compromise,  
7           settle, or release claims on behalf of or against the  
8           company or the board.

9           § -10 Premium rates, determination. (a) The board  
10          shall establish the premium rates to be charged for insurance  
11          sold by the company. The company shall comply with the  
12          requirements set forth in article 14 of chapter 431. Premium  
13          rates shall be set at levels sufficient, when invested, to carry  
14          all claims to maturity, to meet the reasonable expenses for  
15          administering the company, and to maintain a reasonable surplus.

16          (b) The board shall hire a qualified actuary to assist  
17          with the development of sound premium rates.

18          § -11 Reserves, investment. The board may invest or  
19          reinvest any surplus or reserves within the limitations  
20          established for insurance companies under chapter 431.



1           §   -12   Financial statements and other reports. (a) The  
2 company shall submit to the insurance commissioner an annual  
3 statement of financial condition audited by an independent  
4 certified accountant. The audit report shall contain an  
5 actuarial opinion prepared by a qualified actuary on the  
6 company's claims reserves and expenses. The financial statement  
7 shall be on a form prescribed by the insurance commissioner and  
8 shall include actuarially appropriate reserves for:

- 9           (1)   Known claims and associated expenses;  
10          (2)   Claims incurred but not reported and associated  
11             expenses;  
12          (3)   Unearned premiums; and  
13          (4)   Bad debts, reserves for which shall be shown as  
14             liabilities.

15          (b)   The company shall compile and maintain statistical and  
16 actuarial data relating to the determination of premium rate  
17 levels, the incidence of work-related injuries, the cost of  
18 injuries, and other data relating to work injuries. The  
19 compiled information shall be submitted annually to the  
20 insurance commissioner and to the director of labor and  
21 industrial relations.



1           §   -13   Annual accounting; dividends. (a) The company  
2 shall conduct an annual accounting of its incurred loss  
3 experience and expenses.

4           (b) The board may declare and apportion reasonable  
5 dividends to policyholders, determined by an actuarial opinion  
6 prepared by a qualified actuary after evaluating the impact of  
7 the dividends on the solvency of the company. The dividends may  
8 be paid or credited to policyholders according to  
9 classifications of policies established by the board.

10          (c) No dividends shall be:

11          (1) Paid or credited in a manner that unfairly  
12               discriminates between policies within the same  
13               classification;

14          (2) Made contingent upon payment of any renewal premium on  
15               any policy; or

16          (3) Paid or credited in the first three years of operation  
17               of the company.

18          §   -14   Audits. The administrator, or designated  
19 representative, shall have reasonable access to any  
20 policyholder's payroll and employment records during regular  
21 working hours to carry out audits of payroll reported, the



1 number of employees on the payroll, and other information  
2 necessary for the administration of this chapter.

3 § -15 Denial, cancellation, and termination. The  
4 company may deny coverage or renewal of an existing policy or  
5 may terminate an existing policy of a policyholder or applicant  
6 for:

- 7 (1) Nonpayment of an undisputed premium;
- 8 (2) Refusal to permit on-site workplace safety  
9 examinations;
- 10 (3) Failure to comply with workplace safety and health  
11 programs required by the company; or
- 12 (4) Failure to accurately disclose information concerning  
13 the applicant's or policyholder's ownership, change of  
14 ownership, operations, or payroll, including the  
15 allocation of payroll among state and federal  
16 compensation programs, and other information necessary  
17 for the board to determine premium rates.

18 § -16 Wilful misrepresentation and fraud. (a) Any  
19 person who wilfully makes a false statement or representation  
20 for the purpose of directly obtaining any compensation or  
21 payment or for the purpose of avoiding any compensation or



1 payment under this article shall be subject to the penalties in  
2 section 386-98.

3 (b) The company shall develop and implement a program to  
4 identify and investigate fraudulent insurance acts.

5 § -17 Workplace safety and health programs. (a) The  
6 company shall work with policyholders, health care providers,  
7 and employees to develop, implement, and monitor workplace  
8 safety and health and return to work programs. The programs  
9 shall include the development of a workplace accident and injury  
10 reduction plan that promotes safe working conditions.

11 (b) The company shall promote safety programs to  
12 policyholders through programs and activities which may include:

13 (1) Analyzing reports of industrial accidents of members  
14 to help determine the cause of those accidents;

15 (2) Conducting studies for risk and hazard identification  
16 and assessments by safety and medical professionals;

17 (3) Conducting educational programs designed to prevent  
18 frequently recurring industrial accidents; and

19 (4) Inspecting work sites and investigating unsafe working  
20 conditions to promote job safety and eliminate  
21 hazards.



1 (c) Company representatives shall have reasonable access  
2 to the premises of any policyholder or applicant during regular  
3 working hours to carry out workplace evaluations.

4 (d) Where the company finds, upon the completion of a  
5 detailed inspection that an insured has policies and practices  
6 in place that demonstrate a high regard for employee work  
7 safety, the company may apply a deviation to the insured's rate  
8 structure, noting special recognition of those efforts.

9 (e) The company shall not incur additional legal liability  
10 toward its members or beneficiaries as a result of any action  
11 taken or not taken pursuant to this chapter beyond that  
12 explicitly created by this chapter, chapter 386, or common law,  
13 and generally applicable to the acts or omissions of all issuers  
14 of workers' compensation insurance in this State."

15 SECTION 3. Section 386-121, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "§386-121 Security for payment of compensation;  
18 misdemeanor. (a) Employers, except the State, any county or  
19 political subdivision of the State, or other public entity  
20 within the State, shall secure compensation to their employees  
21 in one of the following ways:



- 1           (1) By insuring and keeping insured the payment of  
2           compensation with ~~[any stock, mutual, reciprocal, or~~  
3           ~~other insurer authorized to transact the business of~~  
4           ~~workers' compensation insurance in the State,]~~ the  
5           state workers' compensation insurance company;
- 6           ~~[-(2) By depositing and maintaining with the state director~~  
7           ~~of finance security satisfactory to the director of~~  
8           ~~labor and industrial relations securing the payment by~~  
9           ~~the employer of compensation according to the terms of~~  
10           ~~this chapter,~~
- 11           ~~-(3)]~~ (2) Upon furnishing satisfactory proof to the  
12           director of the employer's solvency and financial  
13           ability to pay the compensation and benefits herein  
14           provided, no insurance or security shall be required,  
15           and the employer shall make payments directly to the  
16           employer's employees, as they may become entitled to  
17           receive the same under the terms and conditions of  
18           this chapter;
- 19           ~~[-(4)]~~ (3) An employer desiring to maintain security for  
20           payment of compensation under this section shall file  
21           an application with the director on a form provided





1 for this purpose together with the employer's most  
2 current audited annual financial statement;

3 [~~5~~] (4) Where an applicant for self-insurance is a  
4 subsidiary and the subsidiary cannot submit an  
5 independent current audited annual financial  
6 statement, an indemnity agreement approved as to form  
7 and content by the director shall be executed by the  
8 parent corporation of the subsidiary and submitted  
9 with its application;

10 [~~6~~] (5) Each self-insurance authorization shall be  
11 effective from the date of issuance until June 30 of  
12 each calendar year;

13 [~~7~~] (6) A notice of intention to cancel self-insurance  
14 shall be submitted in writing to the director within  
15 at least thirty days prior to the effective date of  
16 cancellation;

17 [~~8~~] (7) A self-insurance authorization may be revoked by  
18 the director for good cause shown upon notification in  
19 writing to the self-insurer;



1       ~~[(9)]~~ (8) By membership in a workers' compensation self-  
2           insurance group with a valid certificate of approval  
3           under section 386-194; or

4       ~~[(10)]~~ (9) By membership in a workers' compensation group  
5           insured by a captive insurer under chapter 431,  
6           article 19.

7           Any person who wilfully misrepresents any fact in order to  
8   obtain the benefits of paragraph ~~[(3)]~~ (2) shall be guilty of a  
9   misdemeanor.

10          (b) Any decision of the director rendered under  
11   ~~[paragraphs (2) and (3) of]~~ subsection ~~[(a) of this section]~~  
12   (a) (2) with respect to the amount of security required or  
13   refusing to permit no security to be given shall be subject to  
14   review on appeal in conformity with sections 386-87 and 386-88."

15          SECTION 4. Section 386-124, Hawaii Revised Statutes, is  
16   amended to read as follows:

17          "**§386-124 The insurance contract.** Every policy of  
18   insurance issued by ~~[an insurer of an employer referred to in~~  
19   ~~section 386-1 which]~~ the state workers' compensation insurance  
20   company that covers the liability of the employer for  
21   compensation shall cover the entire liability of the employer to



1 the employer's employees covered by the policy or contract, and  
2 provide for the deductible under section 386-100, at the option  
3 of the insured. The policy also shall contain a provision  
4 setting forth the right of the employees to enforce in their own  
5 names either by filing a separate claim or by making the  
6 ~~[insurance carrier]~~ state workers' compensation insurance  
7 company a party to the original claim, the liability of the  
8 ~~[insurance carrier]~~ state workers' compensation insurance  
9 company in whole or in part for the payment of the compensation.  
10 Payment in whole or in part of compensation by either the  
11 employer or the ~~[insurance carrier]~~ state workers' compensation  
12 insurance company ~~[shall]~~, to the extent thereof, shall be a bar  
13 to the recovery against the other of the amount so paid.

14 All insurance policies shall be ~~[of]~~ in a standard form,  
15 ~~[the form to]~~ which shall be designated and approved by the  
16 insurance commissioner. No policy of insurance different in  
17 form from the designated and approved form shall be approved by  
18 the director."

19 SECTION 5. Section 386-125, Hawaii Revised Statutes, is  
20 amended to read as follows:



1           "§386-125 Knowledge of employer imputed to [~~insurance~~  
2 ~~carrier.~~] the state workers' compensation insurance company.  
3 Every policy and contract shall contain a provision that, as  
4 between the employee and the [~~insurance carrier,~~] state workers'  
5 compensation insurance company, the notice to or knowledge of  
6 the occurrence of the injury on the part of the employer shall  
7 be deemed notice or knowledge, as the case may be, on the part  
8 of the [~~insurance carrier,~~] state workers' compensation  
9 insurance company; that jurisdiction of the employer [~~shall~~],  
10 for the purpose of this chapter, shall be jurisdiction of the  
11 [~~insurance carrier,~~] company; and that the [~~insurance carrier~~]  
12 state workers' compensation insurance company shall in all  
13 respects be bound by and subject to the orders, findings, and  
14 decisions rendered against the employer for the payment of  
15 compensation under this chapter."

16           SECTION 6. Section 386-126, Hawaii Revised Statutes, is  
17 amended to read as follows:

18           "§386-126 Insolvency of employer not to release [~~insurance~~  
19 ~~carrier.~~] the state workers' compensation insurance company.  
20 Every policy and contract shall contain a provision to the  
21 effect that the insolvency or bankruptcy of the employer and the



1 employer's discharge therein shall not relieve the [~~insur~~  
2 ~~carrier~~] state workers' compensation insurance company from the  
3 payment of compensation for an injury suffered by a covered  
4 employee during the life of the policy or contract."

5 SECTION 7. Section 386-127, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "§386-127 Cancellation of insurance contracts. No policy  
8 or contract of insurance issued by [~~a stock company or mutual~~  
9 ~~association~~] the state workers' compensation insurance company  
10 against liability arising under this chapter shall be canceled  
11 within the time limited in the contract for its expiration until  
12 at least ten days after notice of intention to cancel [~~such~~] the  
13 contract, on a date specified in the notice, has been filed with  
14 and served on the director of labor and industrial relations and  
15 the employer."

16 SECTION 8. Section 386-128, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "§386-128 Insurance by the State, counties, and  
19 municipalities. The State, any county or other political  
20 subdivision of the State, and any other public entity within the  
21 State [~~which~~] that is liable to its employees for compensation,



1 may insure with ~~[any authorized insurance carrier.]~~ the state  
2 workers' compensation insurance company."

3 SECTION 9. Section 386-153, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§386-153 Levy on insurers of employers insured under  
6 section 386-121(a)(1). ~~[(a) For the calendar year 1974 and~~  
7 ~~for]~~ For each calendar year ~~[thereafter, insurers of employers,~~  
8 ~~as defined in section 386-1]~~, the state workers' compensation  
9 insurance company shall pay a levy determined by the director  
10 ~~[which]~~ that shall be based on a percentage on gross premiums,  
11 as defined in section 431:7-202(a), derived from workers'  
12 compensation insurance issued during the prior year in  
13 accordance with chapter 386 and chapter 431, if the levying and  
14 collecting of ~~[such a]~~ the levy is required pursuant to section  
15 386-152, which levy shall be collected in the same manner as the  
16 tax provided for in section 431:7-202 is collected and shall be  
17 deposited in the special compensation fund established in  
18 section 386-151. This levy shall be in addition to any tax  
19 imposed in chapter 431 on gross premiums derived from workers'  
20 compensation insurance.



1       ~~[(b) Notwithstanding subsection (a), from its inception~~  
2 ~~through December 31, 2007, the Hawaii Employers' Mutual~~  
3 ~~Insurance Company, Inc., shall be exempt from this levy,~~  
4 ~~provided that this exemption shall apply to the first~~  
5 ~~\$25,000,000 of written premiums in each calendar year; and~~  
6 ~~provided further that annual written premiums in excess of~~  
7 ~~\$25,000,000 shall be subject to this levy at the same rate as~~  
8 ~~other insurers. Any moneys heretofore paid by Hawaii Employers'~~  
9 ~~Mutual Insurance Company, Inc., to the special compensation fund~~  
10 ~~shall be retained by the special compensation fund to be~~  
11 ~~credited to future levy balances owed by Hawaii Employers'~~  
12 ~~Mutual Insurance Company, Inc.] "~~

13       SECTION 10. Section 386-154, Hawaii Revised Statutes, is  
14 amended by amending subsection (a) to read as follows:

15       "(a) As used in this section:

16       "Anticipated total assessment" means the amount derived by  
17 dividing the total amount of the levy to be paid by insurance  
18 carriers in a calendar year as required by section 386-153 by  
19 the most recent carrier's compensation ratio.

20       "Average annual compensation" means the average of annual  
21 compensation payments made by an employing unit for a period



1 consisting of two consecutive calendar years immediately  
2 preceding the year for which the charge is assessed under this  
3 section; provided that if, at the end of a calendar year, an  
4 employing unit was subject to this chapter for a period less  
5 than twelve consecutive months, the total amount of compensation  
6 payments made by the employing unit during ~~[such]~~ that period  
7 shall constitute the employing unit's average annual  
8 compensation.

9 "Carrier's compensation ratio" means the quotient derived  
10 by dividing the total average annual compensation paid during  
11 the two most recent calendar years by ~~[all insurance carriers]~~  
12 the state workers' compensation insurance company on behalf of  
13 employers insured and keeping insured under section 386-  
14 121(a)(1) by the total average annual compensation paid during  
15 the same two calendar years by all employers subject to this  
16 chapter.

17 "Employing unit" means an employer who has not secured  
18 compensation to the employer's employees under section 386-  
19 121(a)(1); except that, for employers who are members of a  
20 workers' compensation group under part VI, the term means the  
21 group.





1 "Employing unit's compensation ratio" means the percentage  
2 ratio derived by dividing an employing unit's average annual  
3 compensation at the end of a calendar year by the total average  
4 annual compensation paid during the same two calendar years by  
5 all employers subject to this chapter."

6 SECTION 11. Section 386-124.5, Hawaii Revised Statutes, is  
7 repealed.

8 ~~["[§386-124.5] Insurer's requirements; failure to maintain~~  
9 ~~claims service office; penalty; injunction.—(a) By January 1,~~  
10 ~~1992, each insurer shall establish and maintain a complete~~  
11 ~~claims service office or engage an independent claims adjusting~~  
12 ~~service as its claims agent in this State with draft authority~~  
13 ~~for the processing and payment of compensation.~~

14 ~~(b) Failure to comply with subsection (a) shall subject~~  
15 ~~the insurer to a civil penalty of not less than \$2,500, or \$100~~  
16 ~~for every day during which the failure continues, whichever sum~~  
17 ~~is greater, to be recovered in an action brought by the director~~  
18 ~~in the name of the State in a court of competent jurisdiction.~~  
19 ~~Any amounts so collected shall be paid into the special~~  
20 ~~compensation fund provided by section 386-151. The director~~  
21 ~~shall have discretion, for good cause shown, to remit all or any~~



1 ~~part of the penalty in excess of \$2,500, if the insurer in~~  
2 ~~default forthwith complies with subsection (a).~~

3 ~~(c) If any insurer violates subsection (a) for a period of~~  
4 ~~thirty days, the insurer may be enjoined by the circuit court~~  
5 ~~from carrying on the insurer's business in any place in the~~  
6 ~~State so long as the violation continues.~~

7 ~~(d) The attorney general shall enforce this section if so~~  
8 ~~requested by the director."]~~

9 SECTION 12. Chapter 431, article 14A, Hawaii Revised  
10 Statutes, is repealed.

11 SECTION 13. (a) The department of labor and industrial  
12 relations shall establish an employee insurance transition and  
13 implementation plan to facilitate the repeal of the Hawaii  
14 employers' mutual insurance company and the establishment of the  
15 state workers' compensation insurance company. The department  
16 of labor and industrial relations may consult with the Hawaii  
17 employers' mutual insurance company and the department of  
18 commerce and consumer affairs, insurance division, to assist in  
19 developing and drafting the transition plan, which shall be  
20 implemented by January 1, .



1 (b) The department of labor and industrial relations shall  
2 submit a report on the transition and implementation plan,  
3 including proposed legislation, if any, to the legislature no  
4 later than twenty days prior to the convening of the regular  
5 session of 2017.

6 SECTION 14. This Act does not affect rights and duties  
7 that matured, penalties that were incurred, and proceedings that  
8 were begun before its effective date.

9 SECTION 15. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 16. This Act shall take effect on July 1, 2091.



**Report Title:**

Workers' Compensation; State as Insurer; DLIR

**Description:**

Repeals HEMIC. Establishes a public corporation attached to DLIR to provide workers' compensation insurance. Requires employers to obtain worker's compensation insurance coverage only from the public corporation or be self-insured. Requires DLIR to create a transition and implementation plan for the established public corporation. (HB2715 HD1)

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

