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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. 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).]~~

17 (a) Following an injury and after a claim is filed by the  
18 injured employee, the employer may appoint a qualified physician  
19 mutually agreed upon by the parties and paid for by the  
20 employer, to conduct an independent medical examination or a



1 permanent impairment rating examination of the injured employee  
2 and make a report to the employer.

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

12 (c) A physician selected pursuant to this section to  
13 perform an independent medical examination or a permanent  
14 impairment rating examination shall be willing to undertake the  
15 examination and be paid by the employer. The selected physician  
16 shall be currently licensed to practice in Hawaii pursuant to  
17 chapter 442 or 453; except that upon approval by the director, a  
18 physician in a specialty area who resides outside of the State  
19 and is licensed in another state as a physician with  
20 requirements equivalent to a physician's license under chapter  
21 442 or 453, may be selected if there is no physician licensed by



1 the State in that specialty area is available to conduct the  
2 examination.

3 If the employee does not reside in Hawaii, a physician who  
4 is licensed in and who resides in the state of the employee's  
5 residence may be selected if that state's physician licensing  
6 requirements are equivalent to a physician's license under  
7 chapter 442 or 453.

8 If the parties are unable to reach a mutual agreement on  
9 the selection of a physician to conduct the independent medical  
10 examination or permanent impairment rating examination, the  
11 parties shall prepare a list of five physicians qualified to do  
12 the examination. The employer shall appoint the first  
13 physician, the employee shall appoint the second physician, and  
14 the process shall continue by alternating appointments until  
15 there is a list of five physicians. The parties shall then  
16 alternate striking physicians from the list with the employee  
17 striking the first physician. The process shall continue until  
18 there is a single physician remaining on the list and that  
19 physician shall conduct the examination.

20 Any physician mutually selected or otherwise appointed to  
21 do a independent medical examination or permanent impairment



1 rating examination pursuant to this section shall examine the  
2 employee within forty-five days of receiving notice of the  
3 selection or appointment, or otherwise, as soon as possible.

4 (d) In no event shall an independent medical examination  
5 and a permanent impairment rating examination be combined into a  
6 single medical examination unless the employee consents in  
7 writing to the single examination by the selected physician.

8 In no event shall the director, appellate board, or a court  
9 order more than one requested independent medical examination  
10 and one permanent impairment rating examination per case, unless  
11 valid reason exists with regard to the medical progress of the  
12 employee's medical treatment or when major surgery and elective  
13 surgery, or either, is contemplated. In the event of multiple  
14 examinations, the process of mutually selecting or otherwise  
15 appointing a physician set forth in this section shall apply.

16 (e) If an employee refuses to submit to, or unreasonably  
17 interferes with the examination, the employee's right to claim  
18 compensation for the work injury shall be suspended until the  
19 refusal or interference ceases. No compensation shall be  
20 payable to the employee for the period of suspension.



1       The cost of conducting the ordered independent medical  
2 examination or permanent impairment rating exam shall be limited  
3 to the complex consultation charges governed by the medical fee  
4 schedule established pursuant to section 386-21(c).

5       (f) When an employee has attained medical stability as  
6 determined by the employee's attending physician, a physician  
7 may be appointed to conduct a permanent impairment rating  
8 examination. The physician shall be mutually selected by the  
9 parties or otherwise appointed pursuant to this section.

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

14       SECTION 2. This Act does not affect rights and duties that  
15 matured, penalties that were incurred, and proceedings that were  
16 begun before its effective date.

17       SECTION 3. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

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



**Report Title:**

Workers' Compensation; Medical Examination

**Description:**

Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SD1)

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

