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



1 ~~refusal or obstruction ceases and no compensation shall be~~  
2 ~~payable for the period during which the refusal or obstruction~~  
3 ~~continues.~~

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

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



1 examination or a permanent impairment rating examination of the  
2 injured employee 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. Upon the issuance of the report of  
9 the independent medical examination or permanent impairment  
10 rating examination, the employee or employee's representative  
11 shall be promptly provided with a copy thereof.

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 no physician licensed by the



1 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, then the  
11 director shall appoint a duly qualified impartial physician to  
12 examine the injured employee and make the report to the  
13 employer. The fees for the examination shall be paid from the  
14 funds appropriated by the legislature for the use of the  
15 department.

16 Any physician mutually selected or otherwise appointed to  
17 do an independent medical examination or permanent impairment  
18 rating examination pursuant to this section shall examine the  
19 employee within forty-five days of receiving notice of the  
20 selection or appointment, or otherwise, as soon as possible.



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

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

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

19           The cost of conducting the ordered independent medical  
20 examination or permanent impairment rating examination shall be



1 limited to the complex consultation charges governed by the  
2 medical fee schedule established pursuant to section 386-21(c).

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

8 For the purposes of this subsection, "medical stability"  
9 means that no further improvement in the injured employee's  
10 work-related condition can reasonably be expected from curative  
11 health care or the passage of time. Medical stability is also  
12 deemed to have occurred when the injured employee refuses to  
13 undergo further diagnostic tests or treatment that the health  
14 care provider believes will greatly aid in the employee's  
15 recovery."

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.

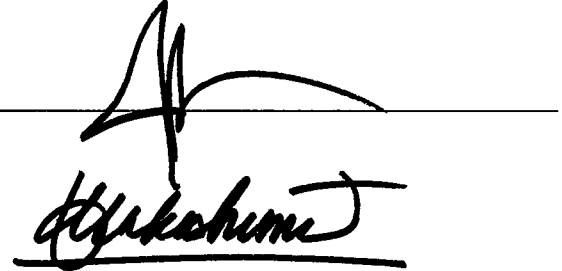


# H.B. NO. 1592

1 SECTION 4. This Act shall take effect on July 1, 2017.

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INTRODUCED BY:

A handwritten signature in black ink, appearing to read "H. K. ...", is written over a horizontal line. The signature is stylized and cursive.

JAN 25 2017



# H.B. NO. 1592

**Report Title:**

Workers' Compensation; Medical Examination

**Description:**

Provides for workers' compensation claims that an employer may appoint, at the employer's expense, a qualified physician selected by the mutual agreement of the parties to conduct an independent medical examination or permanent impairment rating examination. Provides a process for appointment in the event that there is no mutual agreement.

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

