

JAN 24 2019

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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 duly qualified  
4 physician[-] or duly qualified surgeon. (a) After an injury  
5 and during the period of disability, the employee, whenever  
6 ordered by the director of labor and industrial relations, shall  
7 submit to examination, at reasonable times and places, by a duly  
8 qualified physician or duly qualified surgeon designated and  
9 paid by the employer. The employee shall have the right to have  
10 a duly qualified physician, duly qualified surgeon, or chaperone  
11 designated and paid by the employee present at the examination,  
12 which right, however, shall not be construed to deny to the  
13 employer's physician the right to visit the injured employee at  
14 all reasonable times and under all reasonable conditions during  
15 total disability. The employee shall also have the right to  
16 record such examination by a recording device designated and  
17 paid for by the employee; provided that the examining duly



1 qualified physician or duly qualified surgeon approves of the  
2 recording.

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

9 (b) In cases where the employer is dissatisfied with the  
10 progress of the case or where major and elective surgery, or  
11 either, is contemplated, the employer may appoint a duly  
12 qualified physician or duly qualified surgeon of the employer's  
13 choice who shall examine the injured employee and make a report  
14 to the employer. If the employer remains dissatisfied, this  
15 report may be forwarded to the director.

16 Employer requested examinations under this section shall  
17 not exceed more than one per case unless good and valid reasons  
18 exist with regard to the medical progress of the employee's  
19 treatment. The cost of conducting the ordered medical  
20 examination shall be limited to the complex consultation charges



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

3 (c) A physician or surgeon who is selected and paid for by  
4 the employer to perform a medical examination on an employee  
5 pursuant to this section shall be duly qualified.

6 (d) As used in this section, "duly qualified" means the  
7 physician or surgeon:

8 (1) Is appropriately licensed in the State under chapter  
9 453;

10 (2) Possesses medical malpractice insurance; and

11 (3) Owes the same duty and standard of care to the injured  
12 employee as would be owed to a traditional patient."

13 SECTION 2. Act 172, Session Laws of Hawaii 2017, is  
14 amended by amending section 4 to read as follows:

15 "SECTION 4. This Act shall take effect upon its approval [~~+~~  
16 ~~provided that on June 30, 2019, this Act shall be repealed and~~  
17 ~~section 386-79, Hawaii Revised Statutes, shall be reenacted in~~  
18 ~~the form in which it read on the day before the effective date~~  
19 ~~of this Act]."~~



# S.B. NO. 1411

1           SECTION 3. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4           SECTION 4. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6           SECTION 5. This Act shall take effect on June 29, 2019.

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INTRODUCED BY: \_\_\_\_\_



# S.B. NO. 1411

**Report Title:**

Workers' Compensation; Medical Examination; Duly Qualified

**Description:**

Requires a physician or surgeon who performs a medical exam on an employee for workers' compensation purposes to be licensed in the State, possess medical malpractice insurance, and owe the same duty and standard of care to the injured employee as owed to a traditional patient. Makes permanent an employee's right to record medical examinations.

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