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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. The legislature finds that certain adjustments  
2 to Hawai'i's workers' compensation law are necessary to better  
3 address issues pertaining to the compensation process, including  
4 delays, denial of claims, and required notices. The legislature  
5 also finds that California's workers' compensation laws offer  
6 guidance and have been identified by some Hawai'i practitioners  
7 as a useful model.

8           The purpose of this Act is to incorporate certain aspects  
9 of California's workers' compensation laws into the State's  
10 workers' compensation law, including:

- 11           (1) Establishing notice requirements for employers;
- 12           (2) Requiring employers who deny the compensability of an  
13           employee's injury to submit a written report  
14           supporting the denial to the director of labor and  
15           industrial relations within a specific period;
- 16           (3) Requiring employers to furnish to the injured employee  
17           up to \$10,000 for medical care, services, and supplies



1 for the period immediately following the injury and so  
2 long as reasonably needed or until the employer files  
3 a written report with the director of labor and  
4 industrial relations denying the compensability of the  
5 injury, whichever is earlier; and

6 (4) Clarifying that failure to give an employer notice of  
7 an employee's injury does not bar a claim for  
8 compensation if any person having authority in the  
9 interest of the employer had knowledge of the injury.

10 SECTION 2. Chapter 386, Hawaii Revised Statutes, is  
11 amended by adding four new sections to be appropriately  
12 designated and to read as follows:

13 "§386- Income and indemnity benefits; temporary  
14 disability; notice by employer. (a) Initial notice of  
15 temporary total or partial disability benefits payment. Except  
16 where the employer denies or otherwise controverts an injured  
17 employee's right to compensation under this chapter in the  
18 employer's initial report of industrial injury filed with the  
19 director, the employer shall, no later than ten days after the  
20 employer obtains knowledge of the employee's injury and  
21 disability, provide the injured employee with written notice



1 stating the amount of temporary total or partial disability  
2 benefits due to the employee, the method by which the amount was  
3 calculated, and the duration and schedule of benefit payments.

4 (b) Notice of delay in temporary total or partial  
5 disability benefits payments. If the employer cannot determine  
6 the employee's right to any period of temporary total or partial  
7 disability benefits within ten days after the employer obtains  
8 knowledge of the employee's injury and disability, the employer  
9 shall, within the ten-day period, provide the injured employee  
10 with written notice informing the employee of the delay; the  
11 reasons for the delay; the need, if any, for additional  
12 information required to make a determination; and when a  
13 determination is likely to be made.

14 If the employer cannot make a determination by the date  
15 specified in the notice, the employer shall send a subsequent  
16 notice to the employee no later than the determination date  
17 specified in the previous notice, notifying the employee of the  
18 revised date by which the employer expects the determination to  
19 be made. Any notices sent after the initial notice shall comply  
20 with all requirements for the initial notice.



1        If the reason for the delay is related to a medical issue  
2 and the employer is requesting or has requested the director to  
3 issue an order requiring the employee to submit to a medical  
4 examination pursuant to section 386-79, the delay notice shall  
5 include one of the following statements:

6        (1) If the employee has already submitted to a medical  
7 examination pursuant to section 386-79, the notice  
8 shall state that:

9        (A) The employee may be asked to return to the  
10 physician or surgeon who conducted the  
11 examination for a new examination; or

12        (B) The employee shall contact the employer to  
13 arrange for the employee to return to the  
14 physician or surgeon who conducted the  
15 examination for a new examination, if possible;

16        or

17        (2) If the employee has not yet submitted to a medical  
18 examination pursuant to section 386-79, the notice  
19 shall state that if the employee disagrees with the  
20 results of the examination, the employee shall, no  
21 later than thirty days after the employee's receipt of



1           the medical examination report, contact the employer  
2           to obtain a form prescribed by the director to request  
3           the director to appoint a duly qualified, impartial  
4           physician to examine the employee pursuant to section  
5           386-80.

6           (c) Notice of denial of temporary total or partial  
7           disability benefits payment. If the employer denies or  
8           otherwise controverts liability for the payment of any temporary  
9           total or partial disability benefits for any period for which an  
10          employee claims indemnity for temporary total or partial  
11          disability, the employer shall, no later than thirty days after  
12          the filing of the employer's initial report of industrial  
13          injury, provide the employee and the director with a written  
14          notice of the employer's denial of liability and the reasons for  
15          the denial; provided that, if the employer's denial is based on  
16          a medical report, the notice shall be provided no later than  
17          thirty days after the employer's receipt of the report,  
18          accompanied by a copy of the report, except for psychiatric  
19          reports that the psychiatrist has recommended not be provided to  
20          the employee.



1       If the employer's denial of liability is related to a  
2 medical issue, the notice shall include one of the following  
3 statements:

4       (1) If the denial is based on a medical examination  
5 conducted pursuant to section 386-79 or 386-80, the  
6 notice shall state that if the employee disputes the  
7 results of the examination, the employee may:

8       (A) File a claim for workers' compensation benefits  
9 using a form prescribed by the director; or

10       (B) Contact the employer to arrange for the employee  
11 to return to the physician or surgeon who  
12 conducted the examination for a new examination  
13 if possible;

14       (2) If the denial is based on the treating physician's  
15 evaluation of the employee's temporary total or  
16 partial disability status and the employer agrees with  
17 the treating physician's findings, the notice shall  
18 state that if the employee disagrees with the results  
19 of the evaluation, the employee shall, no later than  
20 thirty days after the employee's receipt of the  
21 evaluation report, contact the employer to obtain a



1 form prescribed by the director to request the  
2 director for an appointment of a duly qualified,  
3 impartial physician to examine the injured employee  
4 pursuant to section 386-80; or

5 (3) If the denial is based on the treating physician's  
6 evaluation of the employee's temporary total or  
7 partial disability status and the employer disagrees  
8 with the treating physician's findings, the notice  
9 shall state that the employer disputes the result of  
10 the evaluation and if the employee disagrees with the  
11 results of the evaluation, the employee shall, no  
12 later than thirty days after the employee's receipt of  
13 the evaluation report, contact the employer to obtain  
14 a form prescribed by the director to request the  
15 director to appoint a duly qualified, impartial  
16 physician to examine the injured employee pursuant to  
17 section 386-80.

18 (d) Notice of changes to temporary total or partial  
19 disability benefit rate, payment amount, or payment schedule.  
20 Upon any changes to the benefit rate, payment amount, or payment  
21 schedule for temporary total or partial disability benefits,



1 before or at the same time as the new payment, the employer  
2 shall provide written notice to the employee stating the new  
3 benefit rate, new payment amount, and new payment schedule, as  
4 applicable, and the reason for the change.

5 (e) Notice of intent to terminate temporary total or  
6 partial disability benefits payment. When the employer is of  
7 the opinion that the payment of temporary total or partial  
8 disability benefits should be terminated, the employer shall, in  
9 accordance with section 386-31(b), provide written notice to the  
10 employee and the director of the employer's intent to terminate  
11 the benefits.

12 (f) Notice of resumed temporary total or partial  
13 disability benefits payment. If the payment of temporary total  
14 or partial disability benefits is resumed after the termination  
15 of any disability benefits, the employer shall, no later than  
16 ten days after the employer obtains knowledge of the employee's  
17 entitlement to additional benefits, provide written notice to  
18 the injured employee advising the employee of the amount of  
19 temporary total or partial disability benefits due to the  
20 employee, the method by which the amount was calculated, and the  
21 duration and schedule of benefit payments.





1        §386-    Income and indemnity benefits; permanent  
2 disability; notice by employer. (a) Notice of monitoring until  
3 medical stabilization. If the employee's injury has resulted or  
4 may result in permanent total or partial disability but the  
5 employee's medical condition is not stabilized, the employer  
6 shall, with the final payment of temporary total or partial  
7 disability benefits, provide the employee with a written notice  
8 stating that:

9        (1) The employee may be eligible to receive permanent  
10        total or partial disability benefits, but the amount  
11        cannot be determined because the employee's medical  
12        condition has not yet stabilized;

13        (2) The employee's medical condition will be monitored  
14        until the employer obtains information indicating that  
15        the employee's medical condition is stabilized, at  
16        which time the employer will request the director for  
17        a declaration of medical stability pursuant to section  
18        386-31(b); and

19        (3) The estimated date when a determination is likely to  
20        be made.



1        If the determination of medical stability is not made by  
2 the date specified in the notice, the employer shall send a  
3 subsequent notice to the employee no later than the  
4 determination date specified in the previous notice, notifying  
5 the employee of the revised date by which the employer expects  
6 the determination to be made. Any notices sent after the  
7 initial notice shall comply with all requirements for the  
8 initial notice.

9        (b) Notice of first permanent total or partial disability  
10 benefit payment. The employer shall, with the first payment of  
11 permanent total or partial disability benefits, provide the  
12 injured employee with written notice stating the weekly amount  
13 of permanent total or partial disability benefits due to the  
14 employee, how the amount was calculated, the duration and  
15 schedule of benefit payments, and the employer's reasonable  
16 estimate of permanent total or partial disability benefits to be  
17 paid.

18        (c) Notice of changes to permanent total or partial  
19 disability benefit rate, payment amount, or payment schedule.  
20 Upon any changes to the benefit rate, payment amount, or payment  
21 schedule for permanent total or partial disability benefits,



1 before or at the same time as the new payment, the employer  
2 shall provide written notice to the employee stating the new  
3 benefit rate, new payment amount, and new payment schedule, as  
4 applicable, and the reason for the change.

5 (d) Notice to terminate permanent total or partial  
6 disability benefits payment. When the employer is of the  
7 opinion that the payment of permanent total or partial  
8 disability benefits should be terminated because the injured  
9 employee is able to resume work, the employer shall provide  
10 written notice to the employee and the director of the  
11 employer's intent to terminate the benefits no later than two  
12 weeks before the date when the final payment is to be made;  
13 provided that if the decision to terminate payment of benefits  
14 was made after the final payment, the employer shall send the  
15 notice no later than ten days after the final payment. The  
16 notice shall state the reason for stopping payment; make an  
17 accounting of all benefits paid to or on behalf of the employee,  
18 including the dates and amounts paid and any related penalties;  
19 and inform the employee that the employee may file a written  
20 request with the director for a hearing if the employee  
21 disagrees with the employer.



1        If the employer's determination to terminate payment is  
2 based on a medical report, a copy of the medical report shall be  
3 provided with the notice, except for psychiatric reports that  
4 the psychiatrist has recommended not be provided to the  
5 employee.

6        If the employer's determination to terminate payment is  
7 related to a medical issue, the notice shall include one of the  
8 following statements:

9        (1) If the termination is based on a medical examination  
10 conducted pursuant to section 386-79 or 386-80, the  
11 notice shall state that, if the employee disputes the  
12 results of the examination, the employee may:

13        (A) File a written request with the director for a  
14 hearing using a form prescribed by the director;  
15        or

16        (B) Contact the employer to arrange for the employee  
17 to return to the physician or surgeon who  
18 conducted the examination for a new examination  
19 if possible; or

20        (2) If the termination is based on the treating  
21 physician's evaluation of the employee's permanent



1           total or partial disability status, the notice shall  
2           state that, if the employee disagrees with the results  
3           of the evaluation, the employee shall, no later than  
4           thirty days after the employee's receipt of the  
5           evaluation report, contact the employer to obtain a  
6           form prescribed by the director to request the  
7           director for an appointment of a duly qualified  
8           impartial physician to examine the injured employee  
9           pursuant to section 386-80.

10           (e) Notice of resumed permanent total or partial  
11           disability benefit payments. If the payment of permanent total  
12           or partial disability benefits is resumed after the termination  
13           of any disability benefits, the employer shall, no later than  
14           ten days after the employer obtains knowledge of the employee's  
15           right to additional benefits, provide the injured employee with  
16           written notice stating the amount of permanent total or partial  
17           disability benefit due to the employee, the method by which the  
18           amount was calculated, and the duration and schedule of benefit  
19           payments.

20           §386-     Income and indemnity benefits; death; notice by  
21           employer. (a) Where a work injury for which compensation is



1 payable under this chapter causes death of an employee or where  
2 an employee who is entitled to weekly permanent total or partial  
3 disability benefits dies from any cause other than the  
4 compensable work injury, the employer shall provide written  
5 notice to the employee's dependents regarding the status of any  
6 benefits to which the dependents may be entitled or have claimed  
7 as a result of the employee's death, including funeral and  
8 burial allowance pursuant to section 386-41(a). The employer  
9 shall send to each dependent a copy of all notices concerning  
10 benefits claimed by, or which may be payable to, the dependent,  
11 including notices sent to other dependents if the benefit amount  
12 payable to the different dependent affects payments made to  
13 other dependents. If the employer discovers a new dependent  
14 after having sent a notice, the employer shall send to that  
15 dependent copies of each prior notice concerning benefits to  
16 which the newly-discovered dependent may be entitled.

17 (b) Notice of death benefits. If the employer pays death  
18 benefits, the employer shall, no later than ten days after the  
19 employer obtains knowledge of the employee's death and the  
20 identity and address of dependents affected by the death,  
21 provide written notice to each affected dependent stating the



1 amount of death benefits due to the dependent, the method by  
2 which the amount was calculated, the duration and schedule of  
3 benefit payments, and any other information as deemed  
4 appropriate by the director.

5 (c) Notice of delay in determining death benefits. If the  
6 employer cannot determine the right of dependents to some or all  
7 death benefits no later than ten days after the employer obtains  
8 knowledge of the employee's death, the identity and address of  
9 dependents affected by the death, and the nature of the benefit  
10 claimed or which might be due, the employer shall, within the  
11 ten-day period, provide written notice informing each affected  
12 dependent of any delay; the reasons for the delay; the need, if  
13 any, for additional information required to make a  
14 determination; and when a determination is likely to be made.

15 If the employer cannot make a determination by the date the  
16 employer specified in the initial notice, the employer shall, no  
17 later than the determination date specified in the previous  
18 notice, notify the affected dependents in writing of the revised  
19 date by which the employer expects the determination to be made.  
20 Any notices sent after the initial delay notice shall include



1 the dependents' remedies and comply with all requirements for  
2 the initial notice.

3 (d) Notice of denial of death benefits payment. If the  
4 employer denies or otherwise controverts liability for the  
5 payment of any or all death benefits, the employer shall, no  
6 later than ten days after the determination to deny liability  
7 was made, provide each affected dependent with written notice  
8 informing the dependent of the denial; the reasons for the  
9 denial; and that if the dependent disagrees with the employer,  
10 the dependent may file a written request with the director for a  
11 hearing.

12 (e) Notice of changes to death benefit rate, payment  
13 amount, or payment schedule. Upon any changes to the benefit  
14 rate, payment amount, or payment schedule for death benefits,  
15 the employer shall provide written notice to each affected  
16 dependent stating the new benefit rate, new payment amount, and  
17 new payment schedule, as applicable, and the reason for the  
18 change. The notice may be sent before or with the changed  
19 payment, but no later than ten days after the payment of  
20 benefits made immediately before the change.





1        (f) Notice to terminate death benefits payment. When the  
2 employer is of the opinion that the payment of death benefits  
3 should be terminated for a dependent, the employer shall, no  
4 later than ten days before the date when the final payment is to  
5 be made, notify the affected dependent and the director in  
6 writing of the employer's intent to terminate the benefits;  
7 provided that if the decision to terminate payment of benefits  
8 was made after the final payment, the employer shall send the  
9 notice no later than ten days after the final payment. The  
10 notice shall state the reason for stopping payment; make an  
11 accounting of all benefits paid to or on behalf of the  
12 dependent, including the dates and amounts paid and any related  
13 penalties; and state that if the dependent disagrees with the  
14 employer, the dependent may file a written request with the  
15 director for a hearing.

16        §386- Provisions common to benefits for disability;  
17 notice by employer. (a) Notice of delay in determining all  
18 liability. If the employer cannot determine whether the  
19 employer has any liability for an injury other than an injury  
20 causing death, the employer shall, no later than ten days after  
21 the employer obtains knowledge of injury, provide the injured



1 employee with written notice informing the employee of the  
2 delay; the reasons for the delay; the need, if any, for  
3 additional information required to make a determination; and  
4 when a determination is likely to be made.

5 If the employer cannot make a determination by the date the  
6 employer specified in the notice, or if the reason for the delay  
7 has changed, the employer shall send a subsequent notice to the  
8 employee as soon as reasonably practical but in no event later  
9 than the determination date specified in the previous notice,  
10 stating the reason for the additional delay and revised date  
11 when the employer expects the determination to be made. Any  
12 notices sent after the initial notice shall comply with all  
13 requirements for the initial notice.

14 Any notice that is provided to the injured employee with a  
15 copy of the employer's report of industrial injury sent to the  
16 employee in compliance with section 386-95, shall include an  
17 explanation that:

18 (1) Any employer who denies or otherwise controverts the  
19 compensability of an injury shall submit a written  
20 report to the director supporting the denial no later  
21 than thirty days after the date on which the employer



1 filed the employer's initial report of industrial  
2 injury; provided that the director may, upon showing  
3 of good cause in writing, extend the submittal period;

4 (2) The employer's failure to submit the written report  
5 within the required period shall be deemed as the  
6 employer's acceptance of compensability, which  
7 establishes a presumption that the injury is  
8 compensable, which may be rebutted only by evidence  
9 discovered after the expiration of the period to file  
10 the written report; and

11 (3) Section 386-21.1 requires an employer to furnish the  
12 employee with all medical care, services, and supplies  
13 as the nature of the injury requires, immediately  
14 after a work injury is sustained by the employee and  
15 so long as reasonably needed, or until the employer  
16 files a written report with the director denying or  
17 otherwise controverting the compensability of the  
18 injury, whichever is earlier, up to \$10,000.

19 If the reason for the delay is related to a medical issue  
20 and the employer is requesting or has requested a medical  
21 examination of the injured employee conducted by a duly



1 qualified physician, the notice shall be accompanied by the form  
2 prescribed by the director to request the director to appoint a  
3 duly qualified, impartial physician to examine the injured  
4 employee pursuant to section 386-80; and include the following  
5 statement printed in no smaller than ten point in size with the  
6 phrase "TEN DAYS" in a bold typeface print:

7 Enclosed is a form that you must submit to the  
8 Disability Compensation Division of the  
9 Department of Labor and Industrial Relations  
10 within TEN DAYS to request the Director of  
11 Labor and Industrial Relations to appoint a  
12 duly qualified impartial physician to conduct  
13 your medical examination. If you do not  
14 submit the form within TEN DAYS, we will have  
15 the right to request the Director of Labor and  
16 Industrial Relations to order you to submit to  
17 a medical examination conducted by a duly  
18 qualified physician or surgeon designated and  
19 paid by us. In addition, within TEN DAYS after  
20 the Director of Labor and Industrial Relations  
21 appoints a duly qualified, impartial



1           physician, you must make an appointment with  
2           that physician for an examination and inform  
3           us of your appointment date and time. If you  
4           do not inform us of your appointment, we will  
5           make an appointment on your behalf.

6           (b) Notice accompanying the form to request the director  
7           for appointment of a duly qualified, impartial physician. An  
8           employee may object to a medical determination made by a  
9           treating physician by requesting the employer for a form  
10          prescribed by the director to request the director to appoint a  
11          duly qualified, impartial physician to examine the injured  
12          employee. Upon receiving a request from an employee, the  
13          employer shall, no later than ten days after the request,  
14          acknowledge receipt of the employee's objection and provide the  
15          employee with a copy of the form with a written notice including  
16          the following statements printed in no smaller than ten point in  
17          size with the phrase "TEN DAYS" in a bold typeface print:

18               If you wish to receive a medical examination  
19               conducted by a duly qualified, impartial  
20               physician, enclosed is a form that you must  
21               submit to the Disability Compensation Division



1 of the Department of Labor and Industrial  
2 Relations within TEN DAYS to request the  
3 Director of Labor and Industrial Relations to  
4 appoint a duly qualified impartial physician  
5 to conduct your medical examination. If you  
6 do not submit the form within TEN DAYS, we  
7 will have the right to request the Director of  
8 Labor and Industrial Relations to order you to  
9 submit to a medical examination conducted by  
10 a duly qualified physician or surgeon  
11 designated and paid by us. In addition,  
12 within TEN DAYS after the Director of Labor  
13 and Industrial Relations appoints a duly  
14 qualified, impartial physician, you must make  
15 an appointment with that physician for an  
16 examination and inform us of your appointment  
17 date and time. If you do not inform us of  
18 your appointment, we will make an appointment  
19 on your behalf.

20 (c) Notice denying liability for all compensation  
21 benefits. If the employer denies liability for the payment of



1 all workers' compensation benefits for any claim except a claim  
2 for death benefits, including claims limited to the furnishing  
3 of medical care, services, and supplies, the employer shall, no  
4 later than ten days after the denial determination was made,  
5 provide written notice informing the employee of the denial and  
6 the reasons for the denial.

7 If the employer's denial of liability is based on a medical  
8 report, a copy of the medical report shall be provided with the  
9 notice, except for psychiatric reports that the psychiatrist has  
10 recommended not be provided to the employee.

11 If the employer's denial of liability is related to a  
12 medical issue, the notice shall include one of the following  
13 statements:

14 (1) If the denial is based on a medical examination  
15 conducted pursuant to section 386-79 or 386-80, the  
16 notice shall state that, if the employee disputes the  
17 results of the examination, the employee may:

18 (A) File an employee's claim for workers'  
19 compensation benefits using a form prescribed by  
20 the director; or



1           (B) Contact the employer to arrange for the employee  
2           to return to the physician or surgeon who  
3           conducted the examination for a new examination  
4           if possible; or

5       (2) If the employee has not submitted to a medical  
6       examination pursuant to section 386-79, the notice  
7       shall be accompanied by a form prescribed by the  
8       director to request the director to appoint a duly  
9       qualified, impartial physician to examine the employee  
10       pursuant to section 386-80, and include the following  
11       statement printed in no smaller than ten point in size  
12       with the phrase "TEN DAYS" in a bold typeface print:

13           If you disagree with the decision to deny  
14           your claim and wish to receive a medical  
15           examination conducted by a duly qualified  
16           impartial physician, enclosed is a form  
17           that you must submit to the Disability  
18           Compensation Division of the Department  
19           of Labor and Industrial Relations within  
20           TEN DAYS to request the Director of Labor  
21           and Industrial Relations to appoint a





1 duly qualified, impartial physician to  
2 conduct your medical examination. If you  
3 do not submit the form within TEN DAYS,  
4 we will have the right to request the  
5 Director of Labor and Industrial  
6 Relations to order you to submit to a  
7 medical examination conducted by a duly  
8 qualified physician or surgeon  
9 designated and paid by us. In addition,  
10 within TEN DAYS after the Director of  
11 Labor and Industrial Relations appoints  
12 a duly qualified, impartial physician,  
13 you must make an appointment with that  
14 physician for an examination and inform  
15 us of your appointment date and time. If  
16 you do not inform us of your appointment,  
17 we will make an appointment on your  
18 behalf.

19 A copy of the notice denying liability for all compensation  
20 benefits shall be sent to all lien claimants; all claimants for  
21 costs; and all persons authorized by the employer to furnish



1 benefits, goods, or services for which a lien or claim for costs  
2 may be approved by the director or, if appealed, by the appeals  
3 board or court deciding the appeal."

4 SECTION 3. Section 386-21.1, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "[+]§386-21.1[+] **Medical care, services, and supplies for**  
7 **controverted claims[-]; notice; limitations.** [~~In the event of a~~  
8 ~~controverted claim, the injured employee's private health care~~  
9 ~~plan shall pay for or provide medical care, services, and~~  
10 ~~supplies in accordance with the private health care contract.~~  
11 ~~When the claim is accepted or determined to be compensable, the~~  
12 ~~employer shall reimburse the private health care plan and the~~  
13 ~~injured employee in amounts as authorized by this chapter and~~  
14 ~~rules adopted by the director.] (a) Immediately after a work  
15 injury sustained by an employee and so long as reasonably needed  
16 or until the employer files a written report with the director  
17 pursuant to section 386-95(c) denying or otherwise controverting  
18 the compensability of the injury, whichever is earlier, the  
19 employer shall furnish to the employee all medical care,  
20 services, and supplies as the nature of the injury requires;  
21 provided that the amount of the employer's liability for the~~



1 medical care, services, and supplies under this section shall be  
2 limited to \$10,000. The liability for the medical care,  
3 services, and supplies shall be subject to the deductible under  
4 section 386-100.

5 (b) An employer, upon obtaining knowledge of an employee's  
6 injury, shall provide the employee with a written instruction to  
7 submit all bills for medical care, services, and supplies  
8 provided between the date the employee was injured and the date  
9 the employer submitted a written report to the director pursuant  
10 to section 386-95(c) denying or otherwise controverting the  
11 employer's liability, unless the employee has done so already.  
12 The employer shall also inform the employee that the maximum  
13 payment for medical care, services, and supplies that were  
14 provided in compliance with the requirements of this chapter is  
15 \$10,000.

16 (c) The furnishing of medical care, services, and supplies  
17 under subsection (a) shall not give rise to a presumption of  
18 liability on the part of the employer."

19 SECTION 4. Section 386-31, Hawaii Revised Statutes, is  
20 amended to read as follows:



1           "§386-31 Total disability. (a) Permanent total  
2 disability. Where a work injury causes permanent total  
3 disability, the employer shall pay the injured employee a weekly  
4 benefit equal to sixty-six and two-thirds per cent of the  
5 employee's average weekly wages, subject to the following  
6 limitation:

7           Beginning January 1, 1975, and during each succeeding  
8 twelve-month period thereafter, not more than the state average  
9 weekly wage last determined by the director, rounded to the  
10 nearest dollar, nor less than \$38 or twenty-five per cent of the  
11 foregoing maximum amount, rounded to the nearest dollar,  
12 whichever is higher.

13           In the case of the following injuries, the disability  
14 caused thereby shall be deemed permanent and total:

- 15           (1) The permanent and total loss of sight in both eyes;
- 16           (2) The loss of both feet at or before the ankle;
- 17           (3) The loss of both hands at or above the wrist;
- 18           (4) The loss of one hand and one foot;
- 19           (5) An injury to the spine resulting in permanent and  
20           complete paralysis of both legs or both arms or one  
21           leg and one arm; and



1           (6) An injury to the skull resulting in incurable  
2                    imbecility or insanity.

3           In all other cases the permanency and totality of the  
4 disability shall be determined on the facts. No adjudication of  
5 permanent total disability shall be made until after [~~two weeks~~]  
6 ten days from the date of the injury.

7           (b) Temporary total disability. Where a work injury  
8 causes total disability not determined to be permanent in  
9 character, the employer, for the duration of the disability, but  
10 not including the first three calendar days thereof, shall pay  
11 the injured employee a weekly benefit at the rate of sixty-six  
12 and two-thirds per cent of the employee's average weekly wages,  
13 subject to the limitations on weekly benefit rates prescribed in  
14 subsection (a), or if the employee's average weekly wages are  
15 less than the minimum weekly benefit rate prescribed in  
16 subsection (a), at the rate of one hundred per cent of the  
17 employee's average weekly wages.

18           If an employee is unable to complete a regular daily work  
19 shift due to a work injury, the employee shall be deemed totally  
20 disabled for work for that day.



1           The employer shall pay temporary total disability benefits  
2 promptly as they accrue to the person entitled thereto without  
3 waiting for a decision from the director, unless this right is  
4 controverted by the employer in the employer's initial report of  
5 industrial injury. The first payment of benefits shall become  
6 due and shall be paid no later than on the tenth day after the  
7 employer has been notified of the occurrence of the total  
8 disability, and thereafter the benefits due shall be paid weekly  
9 except as otherwise authorized pursuant to section 386-53.

10           The payment of these benefits shall only be terminated upon  
11 order of the director or if the employee is able to resume work.  
12 When the employer is of the opinion that the payment of  
13 temporary total disability benefits should be terminated because  
14 the injured employee is able to resume work, the employer shall  
15 notify the employee and the director in writing of ~~an~~ the  
16 employer's intent to terminate the benefits ~~[at least two weeks~~  
17 ~~prior to]~~ no later than ten days before the date when the ~~[last]~~  
18 final payment is to be made~~[ ]~~; provided that if the decision to  
19 terminate payment of benefits was made after the final payment,  
20 the employer shall send the notice no later than ten days after  
21 the final payment. The notice shall ~~[give]~~ state the reason for



1 stopping payment; make an accounting of all benefits paid to or  
2 on behalf of the employee, including the dates and amounts paid  
3 and any related penalties; and [~~shall~~] inform the employee that  
4 the employee may [~~make~~] file a written request [~~to~~] with the  
5 director for a hearing if the employee disagrees with the  
6 employer.

7 If the employer's determination to terminate payment is  
8 based on a medical report, a copy of the medical report shall be  
9 provided with the notice, except for psychiatric reports that  
10 the psychiatrist has recommended not be provided to the  
11 employee.

12 If the employer's determination to terminate payment is  
13 related to a medical issue, the notice shall include one of the  
14 following statements:

15 (1) If the termination is based on a medical examination  
16 conducted pursuant to section 386-79 or 386-80, the  
17 notice shall state that, if the employee disputes the  
18 results of the examination, the employee may:

19 (A) File a written request with the director for a  
20 hearing using a form prescribed by the director;

21 or



1           (B) Contact the employer to arrange for the employee  
2                   to return to the physician or surgeon who  
3                   conducted the examination for a new examination  
4                   if possible; or

5           (2) If the termination is based on the treating  
6                   physician's evaluation of the employee's temporary  
7                   disability status, the notice shall state that if the  
8                   employee disagrees with the results of the evaluation,  
9                   the employee shall, no later than thirty days after  
10                  the employee's receipt of the evaluation report,  
11                  contact the employer to obtain a form prescribed by  
12                  the director to request the director for an  
13                  appointment of a duly qualified, impartial physician  
14                  to examine the injured employee pursuant to section  
15                  386-80.

16           Upon receipt of the request for a hearing from the  
17 employee, the director shall conduct a hearing as expeditiously  
18 as possible and render a prompt decision as specified in section  
19 386-86. If the employee is unable to perform light work, if  
20 offered, temporary total disability benefits shall not be





1 discontinued based solely on the inability to perform or  
2 continue to perform light work.

3 ~~[An employer or insurance carrier who fails to comply with  
4 this section shall pay not more than \$5,000 into the special  
5 compensation fund upon the order of the director, in addition to  
6 other penalties prescribed in section 386-92.~~

7 ~~(1)~~ (c) The employer, upon obtaining information  
8 indicating that the injured employee's medical condition may be  
9 stabilized, shall file a written request to the director for a  
10 declaration of medical stability. If the director determines,  
11 based upon a review of medical records and reports and other  
12 relevant documentary evidence, that an injured employee's  
13 medical condition may be stabilized and the employee is unable  
14 to return to the employee's regular job, the director shall  
15 issue a preliminary decision regarding the employee's  
16 entitlement and limitation to benefits and rights under Hawaii's  
17 workers' compensation laws. The preliminary decision shall be  
18 sent to the affected employee ~~and~~, the employee's designated  
19 representative ~~and~~, the employer, and the employer's  
20 designated representative, and shall state that any party  
21 disagreeing with the director's preliminary findings of medical



1 stabilization and work limitations may request a hearing  
2 [~~within~~] no later than twenty days [~~of~~] after the date of the  
3 decision. [~~The~~] During the twenty-day period, the director  
4 shall be available to answer any questions [~~during the twenty-~~  
5 ~~day period~~] from the injured employee and affected employer. If  
6 neither party requests a hearing challenging the director's  
7 finding, the determination shall be deemed accepted and binding  
8 upon the parties. In any case where a hearing is held on the  
9 preliminary findings, any person aggrieved by the director's  
10 decision and order may appeal under section 386-87.

11 A preliminary decision of the director shall inform the  
12 injured employee and the employer of the following  
13 responsibilities, benefits, and limitations on vocational  
14 rehabilitation benefits that are designed to facilitate the  
15 injured employee's early return to suitable gainful employment:  
16 [~~(A)~~] (1) That the injured employee may invoke the employee's  
17 rights under section 378-2, 378-32, or 386-142, or all  
18 of them, in the event of unlawful discrimination or  
19 other unlawful employment practice by the employer;  
20 and



1 [~~(B)~~] (2) That after termination of temporary total disability  
2 benefits, an injured employee who resumes work may be  
3 entitled to permanent partial disability benefits,  
4 which if awarded, shall be paid regardless of the  
5 earnings or employment status of the disabled employee  
6 at the time.

7 [~~(2)~~] If the rehabilitation unit determines that an  
8 injured employee is not a feasible candidate for rehabilitation  
9 and that the employee is unable to resume the employee's regular  
10 job, it shall promptly certify the same to the director. Soon  
11 thereafter, the director shall conduct a hearing to determine  
12 whether the injured employee remains temporarily totally  
13 disabled, or whether the employee is permanently partially  
14 disabled, or permanently totally disabled.

15 (d) An employer or insurance carrier who fails to comply  
16 with this section shall pay not more than \$5,000 into the  
17 special compensation fund upon the order of the director, in  
18 addition to other penalties prescribed in section 386-92."

19 SECTION 5. Section 386-81, Hawaii Revised Statutes, is  
20 amended to read as follows:



1           "§386-81 Notice of injury; waiver. (a) No proceedings  
2 for compensation under this chapter shall be maintained unless  
3 written notice of the injury claimed to have caused the  
4 disability or death of the employee has been given to the  
5 employer as soon as practicable after the [~~happening thereof.~~]  
6 occurrence of the injury. The notice may be given by the  
7 injured employee or by some other person on the employee's  
8 behalf.

9           (b) Failure to give [~~such~~] notice pursuant to subsection  
10 (a) shall not bar a claim under this chapter if[+]:[+]

11           (1) The employer [~~or~~], the injured employee's supervisor,  
12 the employer's agent in charge of the work in the  
13 place where the injury was sustained, or any other  
14 person having authority in the interest of the  
15 employer, had knowledge of the injury[+] or knowledge  
16 of the assertion of a claim of injury sufficient to  
17 afford the employer an opportunity to investigate the  
18 matter;

19           (2) Medical, surgical, or hospital service and supplies  
20 have been furnished to the injured employee by the  
21 employer; or



1           (3) For some satisfactory reason the notice could not be  
2           given and the employer has not been prejudiced by  
3           ~~[such]~~ the failure.

4           (c) Unless the employer is prejudiced thereby, notice of  
5 injury pursuant to subsection (a) shall be deemed to have been  
6 waived by the employer if objection to the failure to give  
7 ~~[such]~~ notice is not raised at the first hearing on a claim in  
8 respect ~~[of such]~~ to the injury of which the employer is given  
9 reasonable notice and opportunity to be heard."

10           SECTION 6. Section 386-95, Hawaii Revised Statutes, is  
11 amended to read as follows:

12           "**§386-95 Reports of injuries~~[-]~~; other reports~~[-]~~;**  
13 **penalty.** (a) Every employer shall keep a record of all  
14 injuries, fatal or otherwise, ~~[received]~~ incurred by the  
15 employer's employees in the course of their employment, when  
16 known to the employer or brought to the employer's attention.

17           (b) Within seven working days after the employer ~~[has]~~  
18 obtains knowledge of ~~[such]~~ an employee's injury causing absence  
19 from work for one day or more or requiring medical treatment  
20 beyond ordinary first aid, the employer shall ~~[make a report~~



1 ~~thereon to~~ file an employer's report of industrial injury with  
2 the director. The report shall ~~[set forth the]~~ include:

3 (1) The name, address, and nature of the employer's  
4 business ~~[and the]~~;

5 (2) The name, age, sex, wages, and occupation of the  
6 injured employee ~~[and shall state the]~~;

7 (3) The date and hour of the accident~~[7]~~ if the injury ~~[is~~  
8 ~~produced thereby, the]~~ was incurred as a result  
9 thereof;

10 (4) The nature and cause of the injury~~[, and such other]~~;

11 (5) Information on insurance, including the name of the  
12 insurance carrier, whether liability is denied, and if  
13 liability is denied, the reason for the denial; and

14 (6) Any other information as the director may require.

15 (c) Any employer who denies or otherwise controverts the  
16 compensability of an injury shall submit a written report to the  
17 director supporting the denial no later than thirty days after  
18 the date on which the employer filed the initial employer's  
19 report of industrial injury; provided that the director may,  
20 upon showing of good cause in writing, extend the filing  
21 deadline. The employer's failure to submit a written report in



1 compliance with this subsection shall be deemed as the  
2 employer's acceptance of compensability and the injury shall be  
3 presumed compensable. The presumption of compensability  
4 established pursuant to this subsection may be rebutted only by  
5 evidence discovered after the expiration of the period to file  
6 the written report.

7       (d) By January 31 of each year, the employer shall file  
8 with the director a report with respect to each injury on which  
9 the employer is continuing to pay compensation, showing all  
10 amounts paid by the employer on account of the injury.

11       (e) The reports required by this section shall be made on  
12 forms to be obtained from the director pursuant to section 386-  
13 71 and deposit of reports in the United States mail or by  
14 electronic means as approved by the director, addressed to the  
15 director, within the time specified shall be deemed in  
16 compliance with the requirements of this section.

17       (f) When an injury results in immediate death, the  
18 employer shall within forty-eight hours notify personally or by  
19 telephone a representative of the department in the county where  
20 the injury occurred.



1        (g) Within thirty days after final payment of compensation  
2 for an injury, the employer shall file a final report with the  
3 director showing the total payments made, the date of  
4 termination of temporary total disability, and ~~such~~ other  
5 information as the director may require.

6        (h) Any employer who wilfully refuses or neglects to file  
7 any of the reports or give any notice required by this section  
8 shall be fined by the director not more than \$5,000.

9        (i) Copies of all reports, other than those of fatal  
10 injuries, filed with the director as required by this section  
11 shall be sent to the injured employee by the employer."

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

15        SECTION 8. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17        SECTION 9. This Act shall take effect on July 1, 2025.

18

INTRODUCED BY:

Karl Rhoads





# S.B. NO. 402

**Report Title:**

Workers' Compensation; Disability Benefits; Death Benefits;  
Notice by Employer; Medical Benefits; Knowledge of Injury

**Description:**

Establishes notice requirements for employers under Hawaii's Workers' Compensation Law. Requires employers who deny the compensability of an employee's injury to submit a written report supporting the denial to the Director of Labor and Industrial Relations within a specified period. Requires employers to furnish to the injured employee up to \$10,000 for medical care, services, and supplies for the period immediately following the injury and so long as reasonably needed or until the employer files a written report with the Director denying the compensability of the injury, whichever is earlier. Clarifies that failure to give an employer notice of an employee's injury does not bar a claim for compensation if any person having authority in the interest of the employer had knowledge of the injury.

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

