

A Bill for an Act Relating to Labor and Industrial Relations Appeals Board and Making Appropriation Therefor.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 371, Hawaii Revised Statutes is amended as follows:

a. Section 371-4 is amended to read:

“Section 371-4. Labor and Industrial Relations Appeals Board. (a) There is hereby created a labor and industrial relations appeals board composed of three members nominated and, by and with the advice and consent of the senate, appointed by the governor for terms of ten years each, except that the terms of members first appointed shall be for six, eight and ten years respectively as designated by the governor at the time of appointments. The governor shall designate the chairman of the board who shall be an attorney at law licensed to practice in all of the courts of this State. Each member shall hold office until his successor is appointed and qualified. Because cumulative experience and continuity in office are essential to the proper handling of appeals under workmen’s compensation law and other labor laws, it is hereby declared to be in the public interest to continue board members in office as long as efficiency is demonstrated. The members shall devote full time to their duties as members of the board. The chairman of the board shall be paid a salary at the rate of ninety-five per cent of the salary of a circuit court judge. Each of the other members shall be paid a salary at the rate of ninety per cent of the chairman’s salary.

(b) The board shall have power to decide appeals from decisions and orders of the director of labor and industrial relations issued under the workmen’s compensation law and any other law for which an appeal to the board is provided by law.

(c) A decision concurred in by any two members shall constitute a decision of the board.

(d) A vacancy in the board, if there remain two members of it, shall not impair the authority of two members to act.

(e) If any member of the board is unable to act because of absence, temporary disability, or disqualification, the governor may make a temporary appointment and the appointee shall have all the powers and duties of a regular member of the board.

(f) The chairman of the board shall employ employees as may be required to carry out the board's duties, shall assign the work of the board to the members thereof and its employees and shall serve as administrative officer of the board.

(g) The board shall be within the department of labor and industrial relations for budgetary and administrative purposes only.

(h) The board may adopt rules and regulations within its area of responsibilities in accordance with chapter 91."

b. Section 371-5 is repealed.

SECTION 2. Chapter 386, Hawaii Revised Statutes is amended as follows:

a. The definition of "appellate board" in section 386-1 is amended to read:

" 'Appellate Board' means the labor and industrial relations appeals board."

b. The last sentence in section 386-73 is amended to read:

"There shall be a right of appeal from the decisions of the director to the appellate board and thence to the supreme court as provided in sections 386-87 and 386-88, but in no case shall an appeal operate as a supersedeas or stay unless the appellate board or the supreme court so orders."

c. Sections 386-74, 386-75, 386-76 and 386-77 are repealed.

d. Section 386-87 is amended to read:

"Section 386-87. Appeals to appellate board. (a) A decision of the director shall be final and conclusive between the parties, except as provided in section 386-89, unless within thirty days after a copy has been sent to each party, either party appeals therefrom to the appellate board by filing a written notice of appeal with the appellate board or the department. In all cases of appeal filed with the department the appellate board shall be notified of the pendency thereof by the director. No compromise shall be effected in the appeal except in compliance with section 386-78.

(b) The appellate board shall hold a full hearing de novo on the appeal.

(c) The appellate board shall have power to review the findings of fact, conclusions of law and exercise of discretion by the director in hearing, determining or otherwise handling of any compensation case and may affirm, reverse or modify any compensation case upon review, or remand the case to the director for further proceedings and action.

(d) In the absence of an appeal and within thirty days after mailing of a certified copy of the appellate board's decision or order, the appellate board may, upon the application of the director or any other party, or upon its own motion, reopen the matter and thereupon may take further evidence or may modify its findings, conclusions or decisions. The time to initiate judicial review shall run from the date of mailing of the further decision if the matter has been

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reopened. If the application for reopening is denied, the time to initiate judicial review shall run from the date of mailing of the denial decision."

e. Section 386-88 is amended to read:

"Section 386-88. Judicial Review. The decision or order of the appellate board shall be final and conclusive, except as provided in section 386-89, unless within thirty days after mailing of a certified copy of the decision or order, the director or any other party appeals to the supreme court by filing a written notice of appeal with the appellate board. The appeal shall be on the record and the court shall review the appellate board's decision on matters of law only. No new evidence shall be introduced in the supreme court, except that the court may, if evidence is offered which is clearly newly discovered evidence and material to the just decision of the appeal, admit the same."

f. Section 386-90 is amended to read:

"Section 386-90. Conforming prior decisions on appeal. Upon the filing of a certified copy of a decision of the director rendered pursuant to section 386-89 with the appellate board, the board shall revoke or modify its prior decision so that it will conform to the decision of the director."

g. Section 386-93(b) is amended to read:

"(b) If an employer appeals a decision of the director or appellate board, the costs of the proceedings of the appellate board or the supreme court of the State, together with reasonable attorney's fees shall be assessed against the employer, if the employer loses; provided that if an employer or an insurance carrier, other than the employer who appealed, is held liable for compensation, the costs of the proceedings of the appellate board or the supreme court of the State together with reasonable attorney's fees shall be assessed against the party held liable for the compensation."

SECTION 3. Section 373-17, Hawaii Revised Statutes is amended to read:

"Section 373-17. Appeals from the appeal board. Any person aggrieved by the decision of the appeal board may appeal therefrom as provided in section 91-14."

SECTION 4. Section 375-12(c), Hawaii Revised Statutes is amended to read:

"(c) Appeals from the appeal board. Any person aggrieved by the decision of the appeal board may appeal therefrom as provided in section 91-14."

SECTION 5. All laws and parts of laws heretofore enacted which are in conflict with this Act are hereby amended to conform herewith. All acts passed during this session 1969, whether enacted before or after the passage of this Act, shall be amended to conform to this Act, unless the acts specifically provide that this Act is being amended. The terms of the current members of the labor and industrial relations appeal board and the industrial accident boards of the counties of Hawaii, Maui and Kauai shall expire on the effective date of this Act.

SECTION 6. Appropriation. The sum of \$140,000, or so much thereof as

may be necessary, is appropriated out of the general revenues of the State of Hawaii to be used for the fiscal period beginning July 1, 1969 and ending June 30, 1970 for the purpose of carrying out this Act. The department of labor and industrial relations shall include in its budget in succeeding fiscal years sums as may be necessary to carry out this Act.

SECTION 7. This Act shall take effect on July 1, 1969.

(Approved July 14, 1969.)