



GOV. MSG. NO. 1044

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 10, 2007

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith SB1060 SD1 HD2 CD1, without my approval, and with the statement of objections relating to the measure.

SB1060 SD1 HD2 CD1

A BILL FOR AN ACT RELATING TO WORKERS'
COMPENSATION LAW.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

P R O C L A M A T I O N

WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of the Governor's plan to return with the Governor's objections any bill presented to the Governor less than ten days before adjournment sine die or presented to the Governor after adjournment sine die of the Legislature; and

WHEREAS, Senate Bill No. 1060, entitled "A Bill for an Act Relating to Workers' Compensation Law," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 1060 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return Senate Bill No. 1060 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu,
State of Hawaii, this 25th
day of June, 2007.



LINDA LINGLE
Governor of Hawaii

EXECUTIVE CHAMBERS

HONOLULU

July 10, 2007

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 1060

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 1060, entitled "A Bill for an Act Relating to Workers' Compensation Law."

The purpose of this bill is to make numerous changes to the workers' compensation statutes.

This bill is objectionable because the amendment it contains to Act 11, Special Session Laws of Hawaii 2005, would delete the sunset provision of Act 11. In 2005 the Legislature imposed a temporary moratorium on the Director of Labor and Industrial Relations' workers' compensation rule-making authority. By its terms, Act 11 envisioned the repeal of the temporary suspension of the Director's rule-making authority on July 1, 2007.

This bill proposes to make the temporary moratorium on the Director's rule-making authority permanent. Such a provision frustrates and prevents the ability of the Director to perform an important function. The bill permanently limits the Director's

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ability to promptly respond to the changing needs of the workers' compensation program. It is critical that the Director have the ability to expeditiously make, repeal, and amend rules pertaining to workers' compensation in order to be responsive to the immediate needs of the State. To permanently prohibit the Director from adopting or amending rules having the force and effect of law would severely frustrate the State's ability to facilitate and promote the efficient execution of the workers' compensation laws.

This bill is also objectionable because it requires an employer or employer's insurer to continue to pay for medical treatments and temporary total disability benefits after the employer or employer's insurer, using a physician's determination, considers the continued treatments and/or disability to be inappropriate, excessive, or for a non-compensable condition. Requiring payment for medical services and/or temporary total disability benefits that were determined unwarranted and unnecessary will likely result in higher workers' compensation premiums because this adds to the workers' compensation risk exposure of all businesses in Hawaii.

Further, the bill would create a disincentive to return to work. More specifically, it may encourage certain employees to continue to contest returning to work because even if the

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Director determines the employee should and could have returned to work, the employee bears no risk for failing to do so, as the benefits the employee were paid are non-recoverable by the employer.

Finally, this bill fundamentally changes the balance between employer and employee regarding the method by which medical care can be terminated. It essentially overrides the workers' compensation medical fee schedule and negates the "reasonable and necessary" language in current Hawaii workers' compensation law, thereby placing in jeopardy the integrity of the State's workers' compensation system.

For the foregoing reasons, I am returning Senate Bill No. 1060 without my approval.

Respectfully,



LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION LAW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 386, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:

4 "§386- Alternative dispute resolution. (a) In lieu
5 of a hearing before the director, at anytime after a claim for
6 compensation is made and before the director renders a decision,
7 the parties may agree in writing to have any controversy arising
8 under this chapter be decided by a referee paid for by the
9 parties.

10 (b) Before a referee may conduct a hearing, the parties
11 shall submit the agreed upon referee's name to the director for
12 appointment to serve as a referee. The referee shall be a
13 neutral person. An individual who has a known, direct, and
14 material interest in the outcome of the controversy or a known,
15 existing, and substantial relationship with a party may not
16 serve as a referee, unless that interest is disclosed and any
17 conflict is waived by the parties.



1 (c) Unless the parties otherwise agree, the costs and fees
2 of the alternative resolution process shall be divided equally
3 between the parties.

4 (d) If the parties agree to have any controversy referred
5 to a referee, the director shall stay all actions or proceedings
6 until the referee issues a recommended decision.

7 (e) This chapter and its rules remain applicable to
8 proceedings before the referee, except that requests shall be
9 directed to and recommended decisions shall be made by the
10 referee instead of the director.

11 (f) The referee shall issue and submit a recommended
12 decision to the director no later than five days after the
13 hearing and shall deliver the recommended decision to all
14 parties personally or by registered or certified mail.

15 (g) The director shall review the referee's recommended
16 decision to determine whether the recommended decision is in
17 compliance with this chapter.

18 If the recommended decision is in compliance with this
19 chapter, the director shall approve the recommended decision
20 within ten days of receiving the recommendation. Upon the
21 director's approval, the recommended decision shall have the
22 same force and effect as a director's decision rendered under



1 this chapter, and it may be enforced as if it had been rendered
2 in an action before the director. If the recommended decision
3 does not comply with this chapter, the director may modify or
4 vacate the recommended decision within ten days of receiving the
5 recommendation. If the director vacates the recommended
6 decision, the parties may resubmit the controversy to the
7 referee.

8 (h) The parties may appeal the director's decision in
9 accordance with section 386-87.

10 (i) This chapter and Hawaii administrative rules title 12,
11 chapters 10, 14, and 15 shall govern the proceedings before the
12 referee.

13 (j) Unless otherwise provided in the agreement to mediate,
14 the costs and fees of mediation shall be divided equally between
15 the parties."

16 SECTION 2. Section 91-3, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) Except as provided in section 386-72, and subsection
19 (f), prior to the adoption of any rule authorized by law, or the
20 amendment or repeal thereof, the adopting agency shall:



- 1 (1) Give at least thirty days' notice for a public
2 hearing. The notice shall include:
- 3 (A) A statement of the topic of the proposed rule
4 adoption, amendment, or repeal or a general
5 description of the subjects involved; [~~and~~]
- 6 (B) A statement that a copy of the proposed rule to
7 be adopted, the proposed rule amendment, or the
8 rule proposed to be repealed will be mailed to
9 any interested person who requests a copy, pays
10 the required fees for the copy and the postage,
11 if any, together with a description of where and
12 how the requests may be made;
- 13 (C) A statement of when, where, and during what times
14 the proposed rule to be adopted, the proposed
15 rule amendment, or the rule proposed to be
16 repealed may be reviewed in person; and
- 17 (D) The date, time, and place where the public
18 hearing will be held and where interested persons
19 may be heard on the proposed rule adoption,
20 amendment, or repeal.

21 The notice shall be mailed to all persons who
22 have made a timely written request of the agency for



1 advance notice of its rulemaking proceedings, given at
2 least once statewide for state agencies and in the
3 county for county agencies. Proposed state agency
4 rules shall also be posted on the Internet as provided
5 in section 91-2.6; and

- 6 (2) Afford all interested persons opportunity to submit
7 data, views, or arguments, orally or in writing. The
8 agency shall fully consider all written and oral
9 submissions respecting the proposed rule. The agency
10 may make its decision at the public hearing or
11 announce then the date when it intends to make its
12 decision. Upon adoption, amendment, or repeal of a
13 rule, the agency, if requested to do so by an
14 interested person, shall issue a concise statement of
15 the principal reasons for and against its
16 determination."

17 SECTION 3. Section 386-1, Hawaii Revised Statutes, is
18 amended by amending the definition of "employment" to read as
19 follows:

20 "Employment" means any service performed by an individual
21 for another person under any contract of hire or apprenticeship,
22 express or implied, oral or written, whether lawfully or



1 unlawfully entered into. It includes service of public
2 officials, whether elected or under any appointment or contract
3 of hire express or implied.

4 "Employment" does not include the following service:

- 5 (1) Service for a religious, charitable, educational, or
6 nonprofit organization if performed in a voluntary or
7 unpaid capacity;
- 8 (2) Service for a religious, charitable, educational, or
9 nonprofit organization if performed by a recipient of
10 aid therefrom and the service is incidental to or in
11 return for the aid received;
- 12 (3) Service for a school, college, university, college
13 club, fraternity, or sorority if performed by a
14 student who is enrolled and regularly attending
15 classes and in return for board, lodging, or tuition
16 furnished, in whole or in part;
- 17 (4) Service performed by a duly ordained, commissioned, or
18 licensed minister, priest, or rabbi of a church in the
19 exercise of the minister's, priest's, or rabbi's
20 ministry or by a member of a religious order in the
21 exercise of nonsecular duties required by the order;



- 1 (5) Service performed by an individual for another person
2 solely for personal, family, or household purposes if
3 the cash remuneration received is less than \$225
4 during the current calendar quarter and during each
5 completed calendar quarter of the preceding twelve-
6 month period;
- 7 (6) Domestic, which includes attendant care, and day care
8 services authorized by the department of human
9 services under the Social Security Act, as amended,
10 performed by an individual in the employ of a
11 recipient of social service payments;
- 12 (7) Service performed without wages for a corporation
13 without employees by a corporate officer in which the
14 officer is at least a twenty-five per cent
15 stockholder;
- 16 (8) Service performed by an individual for a corporation
17 if the individual owns at least fifty per cent of the
18 corporation; provided that no employer shall require
19 an employee to incorporate as a condition of
20 employment; and
- 21 (9) Service performed by an individual for another person
22 as a real estate salesperson or as a real estate



1 broker, if all the service performed by the individual
2 for the other person is performed for remuneration
3 solely by way of commission[-];

4 (10) Service performed by a partner of a partnership for
5 the partnership, as defined in section 425-101, if the
6 partner is an individual; provided that no employer
7 shall require an employee to become a partner as a
8 condition of employment;

9 (11) Service performed by a partner of a limited liability
10 partnership, if the partner is an individual and has a
11 transferable interest, as defined in section 425-127
12 in the partnership of at least fifty per cent;
13 provided that no employer shall require an employee to
14 form a limited liability partnership as a condition of
15 employment; and

16 (12) Service performed by a sole proprietor for the sole
17 proprietorship.

18 As used in this paragraph, "religious, charitable, educational,
19 or nonprofit organization" means a corporation, unincorporated
20 association, community chest, fund, or foundation organized and
21 operated exclusively for religious, charitable, or educational



1 purposes, no part of the net earnings of which inure to the
2 benefit of any private shareholder or individual."

3 SECTION 4. Section 386-21, Hawaii Revised Statutes, is
4 amended by amending subsection (c) to read as follows:

5 "(c) The liability of the employer for medical care,
6 services, and supplies shall be limited to the charges computed
7 as set forth in this section. The director shall make
8 determinations of the charges and adopt fee schedules based upon
9 those determinations. [~~Effective January 1, 1997, and for each~~
10 ~~succeeding calendar year thereafter, the~~] The charges shall not
11 exceed one hundred ten per cent of fees prescribed in the
12 Medicare Resource Based Relative Value Scale system applicable
13 to Hawaii as prepared by the United States Department of Health
14 and Human Services, except as provided in this subsection. The
15 rates or fees provided for in this section shall be adequate to
16 ensure at all times the standard of services and care intended
17 by this chapter to injured employees.

18 If the director determines that an allowance under the
19 medicare program is not reasonable, or if a medical treatment,
20 accommodation, product, or service existing as of June 29, 1995,
21 is not covered under the medicare program, the director, at any
22 time, may establish an additional fee schedule or schedules not



1 exceeding the prevalent charge for fees for services actually
2 received by providers of health care services to cover charges
3 for that treatment, accommodation, product, or service. If no
4 prevalent charge for a fee for service has been established for
5 a given service or procedure, the director shall adopt a
6 reasonable rate that shall be the same for all providers of
7 health care services to be paid for that service or procedure.

8 The director shall update the schedules required by this
9 section every three years or annually, as required. The updates
10 shall be based upon:

11 (1) Future charges or additions prescribed in the Medicare
12 Resource Based Relative Value Scale system applicable
13 to Hawaii as prepared by the United States Department
14 of Health and Human Services; or

15 (2) A statistically valid survey by the director of
16 prevalent charges for fees for services actually
17 received by providers of health care services or based
18 upon the information provided to the director by the
19 appropriate state agency having access to prevalent
20 charges for medical fee information.

21 When a dispute exists between an insurer or self-insured
22 employer and a medical services provider regarding the amount of



1 a fee for medical services, the director may resolve the dispute
2 in a summary manner as the director may prescribe; provided that
3 a provider shall not charge more than the provider's private
4 patient charge for the service rendered.

5 When a dispute exists between an injured employee and the
6 employer or the employer's insurer regarding the proposed
7 treatment plan or whether medical services should be continued,
8 the injured employee shall continue to receive essential medical
9 services prescribed by the treating physician necessary to
10 prevent deterioration of the injured employee's condition or
11 further injury until the director issues a decision on whether
12 the injured employee's medical treatment should be continued.
13 The director shall make a decision within thirty days of the
14 filing of a dispute. If the director determines that medical
15 services pursuant to the treatment plan should be or should have
16 been discontinued, the director shall designate the date after
17 which medical services for that treatment plan are denied. The
18 employer or the employer's insurer, may recover from the
19 claimant's personal health care provider pursuant to section
20 386-27, or from any other appropriate occupational or non-
21 occupational insurer, all the sums paid for medical services
22 rendered after the date designated by the director. Under no



1 circumstances shall the claimant be charged for the disallowed
2 services, unless the services were obtained in violation of
3 section 386-98. The attending physician, injured employee,
4 employer, or insurance carrier may request in writing that the
5 director review the denial of the treatment plan or the
6 continuation of medical services."

7 SECTION 5. Section 386-25, Hawaii Revised Statutes, is
8 amended by amending subsection (b) to read as follows:

9 "(b) The director may refer employees who may have or have
10 suffered permanent disability as a result of work injuries or
11 who have otherwise been deemed unable to return to their regular
12 jobs after they have achieved maximum medical improvement, where
13 the employer has made no offer of suitable work that would
14 restore the earnings capacity as nearly as possible to the level
15 that the employee was earning at the time of injury, and who, in
16 the director's opinion, can be vocationally rehabilitated to the
17 department of human services or to private providers of
18 rehabilitation services for vocational rehabilitation services
19 that are feasible. A referral shall be made upon recommendation
20 of the rehabilitation unit established under section 386-71.5
21 and after the employee has been deemed physically able to
22 participate in rehabilitation by the employee's attending



1 physician. The unit shall include appropriate professional
2 staff and shall have the following duties and responsibilities:

- 3 (1) To review and approve rehabilitation plans developed
4 by certified providers of rehabilitation services,
5 whether they [be] are private or public;
- 6 (2) To adopt rules consistent with this section that shall
7 expedite and facilitate the identification,
8 notification, and referral of industrially injured
9 employees to rehabilitation services[7] and establish
10 minimum standards for providers providing
11 rehabilitation services under this section;
- 12 (3) To certify private and public providers of
13 rehabilitation services meeting the minimum standards
14 established under paragraph (2); and
- 15 (4) To enforce the implementation of rehabilitation
16 plans."

17 SECTION 6. Section 386-31, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§386-31 Total disability.** (a) Permanent total
20 disability. Where a work injury causes permanent total
21 disability the employer shall pay the injured employee a weekly
22 benefit equal to sixty-six and two-thirds per cent of the



1 employee's average weekly wages, subject to the following
2 limitation:

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

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

- 11 (1) The permanent and total loss of sight in both eyes;
- 12 (2) The loss of both feet at or before the ankle;
- 13 (3) The loss of both hands at or above the wrist;
- 14 (4) The loss of one hand and one foot;
- 15 (5) An injury to the spine resulting in permanent and
16 complete paralysis of both legs or both arms or one
17 leg and one arm; or
- 18 (6) An injury to the skull resulting in incurable
19 imbecility or insanity.

20 In all other cases the permanency and totality of the
21 disability shall be determined on the facts. No adjudication of



1 permanent total disability shall be made until after two weeks
2 from the date of the injury.

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

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

17 The employer shall pay temporary total disability benefits
18 promptly as they accrue to the person entitled [~~thereto~~] to the
19 benefits without waiting for a decision from the director,
20 unless this right is controverted by the employer in the
21 employer's initial report of industrial injury. The first
22 payment of benefits shall become due and shall be paid no later



1 than on the tenth day after the employer has been notified of
2 the occurrence of the total disability, and thereafter the
3 benefits due shall be paid weekly except as otherwise authorized
4 pursuant to section 386-53.

5 The payment of these benefits shall [~~only~~] be terminated
6 only upon order of the director or if the employee's treating
7 physician determines that the employee is able to resume work[-]
8 and the employer has made a bona fide offer of suitable work
9 within the employee's medical restrictions. The order shall
10 only be issued after a full and fair hearing at which the
11 injured employee shall be provided the opportunity to review the
12 employer's evidence and present rebuttal evidence. When the
13 employer is of the opinion that temporary total disability
14 benefits should be terminated [~~because the injured employee is~~
15 ~~able to resume work~~], the employer shall notify the employee and
16 the director in writing of an intent to terminate the benefits
17 at least two weeks prior to the date when the last payment is to
18 be made. The notice shall give the reason for stopping payment
19 and shall inform the employee that the employee may make a
20 written request to the director for a hearing if the employee
21 disagrees with the employer. Upon receipt of the request from
22 the employee, the director shall conduct a hearing as



1 expeditiously as possible and render a prompt decision as
2 specified in section 386-86[-], indicating whether temporary
3 total disability benefits should have been discontinued and, if
4 so, a date shall be designated after which temporary total
5 disability benefits should have been discontinued. The employer
6 may request in writing to the director that the director issue a
7 credit for the amount of temporary total disability benefits
8 paid by an employer after the date that the director had
9 determined should have been the last date of payment. If the
10 employee is unable to perform light work, if offered, temporary
11 total disability benefits shall not be discontinued based solely
12 on the inability to perform or continue to perform light work.

13 An employer or insurance carrier who fails to comply with
14 this section shall pay not more than \$2,500 into the special
15 compensation fund upon the order of the director, in addition to
16 attorney's fees and costs to the employee for enforcement of
17 this section and other penalties prescribed in section 386-92.

18 (1) If the director determines, based upon a review of
19 medical records and reports and other relevant
20 documentary evidence, that an injured employee's
21 medical condition may be stabilized and the employee
22 is unable to return to the employee's regular job, the



1 director shall issue a preliminary decision regarding
2 the claimant's entitlement and limitation to benefits
3 and rights under Hawaii's workers' compensation laws.
4 The preliminary decision shall be sent to the affected
5 employee and the employee's designated representative
6 and the employer and the employer's designated
7 representative and shall state that any party
8 disagreeing with the director's preliminary findings
9 of medical stabilization and work limitations may
10 request a hearing within twenty days of the date of
11 the decision. The director shall be available to
12 answer any questions during the twenty-day period from
13 the injured employee and affected employer. If
14 neither party requests a hearing challenging the
15 director's finding the determination shall be deemed
16 accepted and binding upon the parties. In any case
17 where a hearing is held on the preliminary findings,
18 any person aggrieved by the director's decision and
19 order may appeal under section 386-87.

20 A preliminary decision of the director shall
21 inform the injured employee and the employer of the
22 following responsibilities, benefits, and limitations



1 on vocational rehabilitation benefits that are
2 designed to facilitate the injured employee's early
3 return to suitable gainful employment:

4 (A) That the injured employee may invoke the
5 employee's rights under section 378-2, 378-32, or
6 386-142, or all of them, in the event of unlawful
7 discrimination or other unlawful employment
8 practice by the employer; and

9 (B) That after termination of temporary total
10 disability benefits, an injured employee who
11 resumes work may be entitled to permanent partial
12 disability benefits, which if awarded, shall be
13 paid regardless of the earnings or employment
14 status of the disabled employee at the time.

15 (2) If the rehabilitation unit determines that an injured
16 employee is not a feasible candidate for
17 rehabilitation and that the employee is unable to
18 resume the employee's regular job, it shall promptly
19 certify the same to the director. Soon thereafter,
20 the director shall conduct a hearing to determine
21 whether the injured employee remains temporarily
22 totally disabled, or whether the employee is



1 permanently partially disabled, or permanently totally
2 disabled.

3 (c) An injured employee shall be entitled to receive a
4 weekly benefit equal to seventy per cent of the injured
5 employee's average weekly wages, or a maximum weekly income
6 benefit based on the state average weekly wage applicable on the
7 date of compensation was first received if:

8 (1) A work injury causes permanent or temporary dsability;
9 and

10 (2) Payment of compensation due under this chapter was not
11 begun within thirty days of or within the same year as
12 the date of injury, whichever is later."

13 SECTION 7. Section 386-79, Hawaii Revised Statutes, is
14 amended to read as follows:

15 **"§386-79 Medical examination by employer's physician.**

16 After an injury and during the period of disability, the
17 employee, whenever ordered by the director [~~of labor and~~
18 ~~industrial relations~~], shall submit to examination, at
19 reasonable times and places, by a duly qualified physician or
20 surgeon [designated] pursuant to this section and paid by the
21 employer. [~~The~~] Physicians selected to perform independent
22 medical examinations as provided by this section shall:



- 1 (1) Be licensed in Hawaii; provided that for claimants
2 whose residency is not Hawaii, the physicians shall be
3 licensed in the state where the claimant resides;
4 (2) Be subject to peer review; and
5 (3) Currently hold and have held an active professional
6 and occupational license under title 25 for the five
7 consecutive years prior to the examination.

8 The independent medical examiner shall be selected by
9 mutual agreement between the employee and the employer within
10 fourteen calendar days of a request by either party for an
11 independent medical examination; provided that if no mutual
12 agreement is reached within ten calendar days from the
13 notification of failure to reach mutual agreement, the director
14 shall provide the parties with the names of three independent
15 medical examiners, from a list compiled and maintained by the
16 director, to the employer and employee from which they shall
17 choose. If the employer and employee are unable to choose an
18 independent medical examiner, then within ten calendar days,
19 the director shall appoint an independent medical examiner from
20 the names provided to the employer and employee. For these
21 examinations, the employee shall have the right to have a
22 physician or surgeon designated by the employee and paid by the



1 [employee] employer present at the examination, which right,
2 however, shall not be construed to deny to the employer's
3 physician the right to visit the injured employee at all
4 reasonable times and under all reasonable conditions during
5 total disability.

6 If an employee unreasonably refuses to submit to, or in any
7 way obstructs [~~such~~] the independent medical examination, the
8 employee's right to claim compensation for the work injury
9 [~~shall~~] may be suspended, only upon order of the director, until
10 the refusal or obstruction ceases and no compensation shall be
11 payable for the period during which the refusal or obstruction
12 continues.

13 In cases where the employer is dissatisfied with the
14 progress of the case or where major and elective surgery, or
15 either, is contemplated, the employer may appoint a physician or
16 surgeon of the employer's choice who shall examine the injured
17 employee and make a report to the employer. If the employer
18 remains dissatisfied, this report may be forwarded to the
19 director.

20 Employer requested examinations under this section shall
21 not exceed more than one per case unless good and valid reasons
22 exist with regard to the medical progress of the employee's



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

5 SECTION 8. Section 386-94, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§386-94** [~~Attorneys,~~] **Claimants' attorneys, defense**
8 **attorneys, physicians, other health care providers, and other**
9 **fees.** Claims for services shall not be valid unless approved by
10 the director or, if an appeal is had, by the appellate board or
11 court deciding the appeal. Any claim by a claimant's attorney
12 and so approved shall be a lien upon the compensation in the
13 manner and to the extent fixed by the director, the appellate
14 board, or the court.

15 In approving fee requests, the director, appeals board, or
16 court may consider factors such as [~~the~~]:

17 (1) The attorney's skill and experience in state workers'
18 compensation matters[~~the~~];

19 (2) The amount of time and effort required by the
20 complexity of the case[~~the~~];

21 (3) The novelty and difficulty of issues involved[~~the~~];



- 1 (4) The amount of fees awarded in similar cases [7
2 benefits];
- 3 (5) Benefits obtained for the claimant [~~7~~ and the]; and
- 4 (6) The hourly rate customarily awarded attorneys
5 possessing similar skills and experience.

6 In all cases, reasonable attorney's fees shall be awarded.

7 Any person who receives any fee, other consideration, or
8 gratuity on account of services so rendered, without approval,
9 in conformity with the preceding paragraph, shall be fined by
10 the director not more than \$10,000."

11 SECTION 9. Section 386-96, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) Any physician, surgeon, or hospital that has given
14 any treatment or rendered any service to an injured employee
15 shall make a report of the injury and treatment on forms
16 prescribed by and to be obtained from the department as follows:

17 (1) Within seven days after the date of first attendance
18 or service rendered, an initial report shall be made
19 to the department and to the employer of the injured
20 employee in the manner prescribed by the department;



1 (2) Interim reports to the same parties and in the same
2 manner as prescribed in paragraph (1) shall be made at
3 appropriate intervals to verify [~~the~~]:

4 (A) The claimant's current diagnosis and prognosis[~~7~~
5 ~~that~~];

6 (B) That the information as to the nature of the
7 examinations and treatments performed is
8 complete, including the dates of those treatments
9 and the results obtained within the current
10 reporting period[~~7~~~~the~~];

11 (C) The execution of all tests performed within the
12 current reporting period and the results of the
13 tests[~~7~~~~whether~~];

14 (D) Whether the injured employee is improving,
15 worsening, or if "medical stabilization" has been
16 reached[~~7~~~~the~~];

17 (E) The dates of disability[~~7~~~~any~~];

18 (F) Any work restrictions[~~7~~]; and [~~the~~]

19 (G) The return to work date.

20 When an injured employee is returned to full-time,
21 regular, light, part-time, or restricted work, the
22 attending physician shall submit a report to the



1 employer within seven calendar days indicating the
2 date of release to work or medical stabilization; and
3 (3) A final report to the same parties and in the same
4 manner as prescribed in paragraph (1) shall be made
5 within seven days after termination of treatment.

6 No physician, surgeon, or hospital that has given any treatment
7 or rendered any service to an injured employee shall be required
8 to provide any additional reports or treatment plans not
9 otherwise mandated by this section."

10 SECTION 10. Section 386-124, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§386-124 The insurance contract**[-]; **annual reports.** (a)

13 Every policy of insurance issued by an insurer of an employer
14 referred to in section 386-1 which covers the liability of the
15 employer for compensation shall cover the entire liability of
16 the employer to the employer's employees covered by the policy
17 or contract, and provide for the deductible under section 386-
18 100, at the option of the insured. The policy also shall
19 contain a provision setting forth the right of the employees to
20 enforce in their own names either by filing a separate claim or
21 by making the insurance carrier a party to the original claim,
22 the liability of the insurance carrier in whole or in part for



1 the payment of the compensation. Payment in whole or in part of
2 compensation by either the employer or the insurance carrier
3 shall, to the extent thereof, be a bar to the recovery against
4 the other of the amount so paid.

5 All insurance policies shall be of a standard form, the
6 form to be designated and approved by the insurance
7 commissioner. No policy of insurance different in form from the
8 designated and approved form shall be approved by the director.

9 (b) Every insurer of an employer referred to in section
10 386-1 shall provide to the director and to the insurance
11 commissioner on or before March 1 of each calendar year an
12 annual report of the costs of its policies, which includes:

- 13 (1) Costs of independent medical examinations;
14 (2) Costs for legal services relating to administration of
15 claims; and
16 (3) Administrative costs.

17 All annual reports shall be of a standard form to be
18 designated and approved by the insurance commissioner."

19 SECTION 11. Act 11, Special Session Laws of Hawaii 2005,
20 is amended by amending section 14 to read as follows:

21 "SECTION 12. This Act shall take effect upon its approval;
22 provided that sections 2, 3, and 7 of this Act shall take effect



1 on January 1, 2005 [~~provided further that section 7 shall be~~
2 ~~repealed on July 1, 2007, and section 386-72, Hawaii Revised~~
3 ~~Statutes, shall be reenacted in the form in which it read on~~
4 ~~December 31, 2004]."~~

5 SECTION 13. The rules adopted by the department of labor
6 and industrial relations entitled:

7 (1) "Amendments to Chapter 12-10, Hawaii Administrative
8 Rules, Worker's Compensation Law" dated April 20,
9 2005, and adopted May 13, 2005; and

10 (2) "Amendments to Chapter 12-15, Hawaii Administrative
11 Rules, Worker's Compensation Law, Medical Fee
12 Schedule" dated April 20, 2005, and adopted May 13,
13 2005;

14 on file in the office of the lieutenant governor pursuant to
15 recordation number 2640, are repealed.

16 SECTION 14. This Act shall take effect on June 30, 2007;
17 provided that the amendments made to subsections 386-21(c) and
18 386-31(b), Hawaii Revised Statutes, by this Act shall be
19 superseded by any other amendments made to the same subsections
20 of law by any other Act:

21 (1) enacted before or after this Act by the twenty-fourth
22 legislature during the 2007 regular session; or



1 (2) if vetoed that has been reenacted pursuant to an
2 override of the veto in a special session convened
3 during the interim of 2007; provided that, if an
4 amendment to subsection 386-21(c) or subsection 386-
5 31(b), Hawaii Revised Statutes, contained in any Act
6 enacted by the twenty-fourth legislature during the
7 regular session of 2007 or any special session
8 convened during the 2007 interim that does not
9 conflict with the intent of this Act, then the revisor
10 of statutes may harmonize those amendments with this
11 Act.



