



GOV. MSG. NO. 906

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

July 8, 2008

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 HB2929 HD1 SD1, without my approval, and with the statement of objections relating to the measure.

HB2929 HD1 SD1

A BILL FOR AN ACT RELATING TO WORKERS'  
COMPENSATION.

Sincerely,

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

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 8, 2008

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2929

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, House Bill No. 2929, entitled "A Bill for an Act Relating to Workers' Compensation."

The purpose of this bill is to revise the conduct of independent medical examinations and permanent impairment ratings by requiring the use of physicians who are mutually agreed upon by the employer and the employee, and if no agreement can be reached between them, then establishing a process for the appointment of a physician by the Director of Labor and Industrial Relations ("Director"). The bill also requires that the Director order no more than one independent medical examination or impairment rating unless valid reasons exist regarding the employee's medical treatment.

This bill is objectionable because the independent medical evaluation process under the current law is an important means by which the employer is able to determine the medical progress of a case. Current law requires full disclosure of the independent medical evaluation report so the injured worker is afforded the opportunity to challenge the report.

This bill eliminates the right of the worker to have a physician present during the examination. Further, the seven-day period in the bill is ambiguous as to whether it applies to the time period within which a physician must accept an appointment or the time period for the Director to appoint a

STATEMENT OF OBJECTIONS  
HOUSE BILL NO. 2929  
Page 2

physician. The five-year requirement in subsection (b) of the bill is ambiguous as to whether it applies to the claimant or the physician. The bill also redefines certain terms in a manner that conflicts with Hawaii Administrative Rules, thus opening the potential for litigation.

I am concerned that this measure would be a detriment to the employee receiving good medical advice. There may not be an adequate number of physicians willing to have their names placed on the list due to the time constraints imposed on the doctors to respond and perform the examinations. Further, the requirement that only the attending physician determine medical stability may limit the opportunity to have a permanent impairment rating performed by a knowledgeable expert to resolve the case and advise the employee what work he or she can perform for the remainder of his or her employable lifetime.

It should be noted that the current process for the selection and payment of an independent medical examiner has worked well for many years and correctly recognizes that employers, who bear the burden of paying workers' compensation benefits, should be responsible for the medical examination that assesses the employee's recovery progress.

For the foregoing reasons, I am returning House Bill No. 2929 without my approval.

Respectfully,



LINDA LINGLE  
Governor of Hawaii

---

---

## A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

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

4           "~~§386-~~    Independent medical examination; permanent  
5 impairment rating examination; mutual agreement. (a) After an  
6 injury and after a claim is filed by the injured employee, the  
7 employer, upon mutual agreement of the parties, may appoint a  
8 qualified physician, paid by the employer, to conduct an  
9 independent medical examination of the injured employee, or a  
10 permanent impairment rating examination of the injured employee,  
11 and make a report to the employer.

12           If the parties cannot agree on a physician to perform the  
13 independent medical examination, or permanent impairment rating  
14 examination, the employer may request in writing that the  
15 director, from the director's list of qualified physicians,  
16 appoint a physician licensed in a relevant medical specialty,  
17 licensed to practice in Hawaii, and willing to undertake such  
18 examination within seven calendar days of the director's receipt



1 of the request. Any physician mutually selected by the employer  
2 and employee or selected by the director shall examine the  
3 employee within thirty days of selection. The director shall  
4 keep and maintain a list of qualified physicians including their  
5 respective qualifications.

6 In no event shall an independent medical examination and a  
7 permanent impairment rating examination be combined into a  
8 single medical examination unless the injured employee consents  
9 in writing prior to the scheduling of the examinations.

10 In no event shall the director, appellate board, or court  
11 order more than one employer requested independent medical  
12 examination and one permanent impairment rating per case, unless  
13 valid reasons exist with regard to the medical progress of the  
14 employee's treatment.

15 If an employee unreasonably refuses to submit to, or in any  
16 way unreasonably obstructs an examination, the employee's right  
17 to claim compensation for the work injury shall be suspended  
18 until the unreasonable refusal or obstruction ceases and no  
19 compensation shall be payable for the period during which the  
20 refusal or obstruction continues. The cost of conducting the  
21 ordered independent medical examination shall be limited to the



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

3 (b) Every physician selected to perform independent  
4 medical examinations or permanent impairment rating examinations  
5 as provided in subsection (a) shall be currently licensed in  
6 Hawaii; provided that for claimants whose residency is not  
7 Hawaii, the physicians performing the independent medical  
8 examination or permanent impairment rating shall be licensed in  
9 the state where the claimant resides for a period of five  
10 consecutive years immediately preceding the examination.

11 (c) When an injured employee has attained medical  
12 stability as determined by the injured employee's attending  
13 physician, the employer may appoint a physician, paid by the  
14 employer and selected by agreement of the parties, who shall  
15 conduct a permanent impairment rating examination of the injured  
16 employee pursuant to section (a).

17 For the purposes of this subsection, "medical stability"  
18 means that the injured employee's medical condition is well  
19 stabilized so that no further improvement in the injured  
20 employee's work injury can be expected from further medical  
21 treatment and continued medical care will only prevent  
22 deterioration of the condition."



1 SECTION 2. Section 386-79, Hawaii Revised Statutes, is  
2 repealed.

3 ~~["§386-79 Medical examination by employer's physician.~~

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

14 ~~If an employee refuses to submit to, or in any way~~  
15 ~~obstructs such examination, the employee's right to claim~~  
16 ~~compensation for the work injury shall be suspended until the~~  
17 ~~refusal or obstruction ceases and no compensation shall be~~  
18 ~~payable for the period during which the refusal or obstruction~~  
19 ~~continues.~~

20 ~~In cases where the employer is dissatisfied with the~~  
21 ~~progress of the case or where major and elective surgery, or~~  
22 ~~either, is contemplated, the employer may appoint a physician or~~



1 ~~surgeon of the employer's choice who shall examine the injured~~  
2 ~~employee and make a report to the employer. If the employer~~  
3 ~~remains dissatisfied, this report may be forwarded to the~~  
4 ~~director.~~

5 ~~Employer requested examinations under this section shall~~  
6 ~~not exceed more than one per case unless good and valid reasons~~  
7 ~~exist with regard to the medical progress of the employee's~~  
8 ~~treatment. The cost of conducting the ordered medical~~  
9 ~~examination shall be limited to the complex consultation charges~~  
10 ~~governed by the medical fee schedule established pursuant to~~  
11 ~~section 386-21(e)."]~~

12 SECTION 3. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 4. This Act shall take effect on July 1, 2008, and  
15 shall be repealed on July 1, 2011.

