

JAN 27 2016

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# A BILL FOR AN ACT

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RELATING TO LABOR.

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

1       SECTION 1. Section 386-31, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

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 without

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1 waiting for a decision from the director, unless this right is  
2 controverted by the employer in the employer's initial report of  
3 industrial injury. The first payment of benefits shall become  
4 due and shall be paid no later than on the tenth day after the  
5 employer has been notified of the occurrence of the total  
6 disability, and thereafter the benefits due shall be paid weekly  
7 except as otherwise authorized pursuant to section 386-53.

8 The payment of these benefits shall only be terminated upon  
9 order of the director or if the employee is able to resume work.

10 When the employer is of the opinion that temporary total  
11 disability benefits should be terminated because the injured  
12 employee is able to resume work, the employer shall notify the  
13 employee and the director in writing of an intent to terminate  
14 the benefits at least two weeks prior to the date when the last  
15 payment is to be made. The notice shall give the reason for  
16 stopping payment and shall inform the employee that the employee  
17 may make a written request to the director for a hearing if the  
18 employee disagrees with the employer. Upon receipt of the  
19 request from the employee, the director shall conduct a hearing  
20 as expeditiously as possible and render a prompt decision as  
21 specified in section 386-86. If the employee is unable to  
22 perform light work, if offered, temporary total disability

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1 benefits shall not be discontinued based solely on the inability  
2 to perform or continue to perform light work.

3 An employer or insurance carrier who fails to comply with  
4 this section shall pay not more than [~~\$2,500~~] \$5,000 into the  
5 special compensation fund upon the order of the director, in  
6 addition to other penalties prescribed in section 386-92.

7 (1) If the director determines, based upon a review of  
8 medical records and reports and other relevant  
9 documentary evidence, that an injured employee's  
10 medical condition may be stabilized and the employee  
11 is unable to return to the employee's regular job, the  
12 director shall issue a preliminary decision regarding  
13 the [~~claimant's~~] employee's entitlement and limitation  
14 to benefits and rights under Hawaii's workers'  
15 compensation laws. The preliminary decision shall be  
16 sent to the affected employee and the employee's  
17 designated representative and the employer and the  
18 employer's designated representative and shall state  
19 that any party disagreeing with the director's  
20 preliminary findings of medical stabilization and work  
21 limitations may request a hearing within twenty days  
22 of the date of the decision. The director shall be

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1       available to answer any questions during the twenty-  
2       day period from the injured employee and affected  
3       employer. If neither party requests a hearing  
4       challenging the director's finding the determination  
5       shall be deemed accepted and binding upon the  
6       parties. In any case where a hearing is held on the  
7       preliminary findings, any person aggrieved by the  
8       director's decision and order may appeal under section  
9       386-87.

10       A preliminary decision of the director shall  
11       inform the injured employee and the employer of the  
12       following responsibilities, benefits, and limitations  
13       on vocational rehabilitation benefits that are  
14       designed to facilitate the injured employee's early  
15       return to suitable gainful employment:

16       (A) That the injured employee may invoke the  
17       employee's rights under section 378-2, 378-32, or  
18       386-142, or all of them, in the event of unlawful  
19       discrimination or other unlawful employment  
20       practice by the employer; and

21       (B) That after termination of temporary total  
22       disability benefits, an injured employee who

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1 resumes work may be entitled to permanent partial  
2 disability benefits, which if awarded, shall be  
3 paid regardless of the earnings or employment  
4 status of the disabled employee at the time.

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

15 SECTION 2. Section 386-95, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "§386-95 Reports of injuries, other reports, penalty.

18 Every employer shall keep a record of all injuries, fatal or  
19 otherwise, received by the employer's employees in the course of  
20 their employment, when known to the employer or brought to the  
21 employer's attention.

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1        Within seven working days after the employer has knowledge  
2   of such injury causing absence from work for one day or more or  
3   requiring medical treatment beyond ordinary first aid, the  
4   employer shall make a report thereon to the director. The  
5   report shall set forth the name, address, and nature of the  
6   employer's business and the name, age, sex, wages, and  
7   occupation of the injured employee and shall state the date and  
8   hour of the accident, if the injury is produced thereby, the  
9   nature and cause of the injury, and such other information as  
10   the director may require.

11       By January 31 of each year, the employer shall file with  
12   the director a report with respect to each injury on which the  
13   employer is continuing to pay compensation, showing all amounts  
14   paid by the employer on account of the injury.

15       The reports required by this section shall be made on forms  
16   to be obtained from the director pursuant to section 386-71 and  
17   deposit of reports in the United States mail ~~[7]~~ or by electronic  
18   means as approved by the director, addressed to the director,  
19   within the time specified shall be deemed compliance with the  
20   requirements of this section.

21       When an injury results in immediate death, the employer  
22   shall within forty-eight hours notify personally or by telephone

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1 a representative of the department in the county where the  
2 injury occurred.

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

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

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

14 SECTION 3. Section 386-96, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "§386-96 Reports of physicians, surgeons, and  
17 hospitals. (a) Any physician, surgeon, or hospital that has  
18 given any treatment or rendered any service to an injured  
19 employee shall make a report of the injury and treatment on  
20 forms prescribed by and to be obtained from the department as  
21 follows:

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- 1           (1) Within seven days after the date of first attendance  
2           or service rendered, an initial report shall be made  
3           to the department and to the employer of the injured  
4           employee in the manner prescribed by the department;
- 5           (2) Interim reports to the same parties and in the same  
6           manner as prescribed in paragraph (1) shall be made at  
7           appropriate intervals to verify the claimant's current  
8           diagnosis and prognosis, that the information as to  
9           the nature of the examinations and treatments  
10          performed is complete, including the dates of those  
11          treatments and the results obtained within the current  
12          reporting period, the execution of all tests performed  
13          within the current reporting period and the results of  
14          the tests, whether the injured employee is improving,  
15          worsening, or if "medical stabilization" has been  
16          reached, the dates of disability, any work  
17          restrictions, and the return to work date. When an  
18          injured employee is returned to full-time, regular,  
19          light, part-time, or restricted work, the attending  
20          physician shall submit a report to the employer within  
21          seven calendar days indicating the date of release to  
22          work or medical stabilization; and



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1           (3) A final report to the same parties and in the same  
2           manner as prescribed in paragraph (1) shall be made  
3           within seven days after termination of treatment.

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

8           (b) No claim under this chapter for medical treatment,  
9 surgical treatment, or hospital services and supplies, shall be  
10 valid and enforceable unless the reports are made as provided in  
11 this section, except that the director may excuse the failure to  
12 make the report within the prescribed period or a nonsubmission  
13 of the report when the director finds it in the best interest of  
14 justice to do so. If the director does not excuse the  
15 submission of:

16           (1) An initial or interim report within the time  
17           prescribed in subsection (a)(1) and (2); or  
18           (2) A final report that is thirty days late or a  
19           nonsubmission, the delinquent physician shall be fined  
20           not more than [~~\$250.~~] \$500.

21           (c) The director shall furnish to the injured employee a  
22 copy of the final report of the attending physician or surgeon

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1 or, if more than one physician or surgeon should treat or  
2 examine the employee, a copy of the final report of each  
3 physician or surgeon.

4 (d) Within fifteen days after being requested to do so by  
5 the injured employee or the employee's duly authorized  
6 representative, the employer shall furnish the employee or the  
7 employee's duly authorized representative with copies of all  
8 medical reports relating to the employee's injury that are in  
9 the possession of the employer. The copies shall be furnished  
10 at the expense of the employer. The employer shall allow the  
11 employee or the employee's duly authorized representative to  
12 inspect and copy transcripts of depositions of medical  
13 witnesses, relating to the employee's injury, in the possession  
14 of the employer. Any employer who fails to furnish medical  
15 reports or to allow inspection and copying of transcripts of  
16 depositions of medical witnesses, as required by this paragraph  
17 shall be fined in an amount not to exceed [~~\$1,000.~~] \$5,000.

18 (e) Deposit of the records required by subsection (a) (1)  
19 in the United States mail[~~,-~~] or by electronic means as approved  
20 by the director, addressed to the director and to the employer,  
21 within the time limit specified, shall be deemed in compliance  
22 with the requirements of this section."

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SECTION 4. Section 386-123, Hawaii Revised Statutes, is amended to read as follows:

"§386-123 Failure to give security for compensation; penalty; injunction. If an employer fails to comply with section 386-121, the employer shall be liable for a penalty of not less than [~~\$250~~] \$500 or of [~~\$10~~] \$100 for each employee for every day during which such failure continues, whichever sum is greater, to be recovered in an action brought by the director in the name of the State, and the amount so collected shall be paid into the special compensation fund created by section 386-151. The director may, however, in the director's discretion, for good cause shown, remit all or any part of the penalty in excess of [~~\$250,~~] \$500, provided the employer in default complies with section 386-121. With respect to such actions, the attorney general or any county attorney or public prosecutor shall prosecute the same if so requested by the director.

In addition, if any employer is in default under section 386-121 for a period of thirty days, the employer may be enjoined, by the circuit court of the circuit in which the employer's principal place of business is located, from carrying on the employer's business anywhere in the State so long as the default continues, such action for injunction to be prosecuted

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1 by the attorney general or any county attorney if so requested  
2 by the director."

3 SECTION 5. Section 386-129, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§386-129 Employees not to pay for insurance; penalty. No  
6 agreement by an employee to pay any portion of the premium paid  
7 by the employee's employer, or to contribute to a benefit fund  
8 or department maintained by the employer, or to the cost of  
9 mutual or other insurance maintained for or carried for the  
10 purpose of securing compensation as herein required, shall be  
11 valid; and any employer who makes a deduction for that purpose  
12 from the wages or salary of any employee entitled to the  
13 benefits of this chapter shall be fined not more than [~~\$2,500.~~]  
14 \$5,000."

15 SECTION 6. Section 392-5, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "§392-5 Excluded services. "Employment" as defined in  
18 section 392-3 shall not include:

19 (1) Domestic service in a private home, local college  
20 club, or local chapter of a college fraternity or  
21 sorority, performed in any calendar quarter by an.

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individual if the cash remuneration paid by the employer for such service is less than \$225;

(2) Service not in the course of the employer's trade or business performed in any calendar quarter by an individual, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. An individual shall be deemed to be regularly employed to perform service not in the course of the employer's trade or business during a calendar quarter only if:

(A) On each of some twenty-four days during the quarter the individual performs the service for some portion of the day; or

(B) The individual was regularly employed, as determined under subparagraph (A), by the employer in the performance of the service during the preceding calendar quarter;

(3) Service performed on or in connection with a vessel not an American vessel, if the individual performing the service is employed on and in connection with the vessel when outside the United States;

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1           (4) Service performed by an individual in (or as an  
2           officer or member of the crew of a vessel while it is  
3           engaged in) the catching, taking, harvesting,  
4           cultivating, or farming of any kind of fish,  
5           shellfish, crustacea, sponges, seaweeds, or other  
6           aquatic forms of animal and vegetable life, including  
7           service performed as an ordinary incident thereto,  
8           except:

9           (A) The service performed in connection with a vessel  
10           of more than ten net tons (determined in the  
11           manner provided for determining the register  
12           tonnage of merchant vessels under the laws of the  
13           United States);

14           (B) The service performed in connection with a vessel  
15           of ten net tons or less (determined in the manner  
16           provided for determining the register tonnage of  
17           merchant vessels under the laws of the United  
18           States) by an individual who is employed by an  
19           employer who, for some portion in each of twenty  
20           different calendar weeks in either the current or  
21           preceding calendar year, had in the employer's  
22           employ one or more persons performing the

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1 service, whether or not the weeks were  
2 consecutive and whether or not the same  
3 individuals performed the service in each week;  
4 and

5 (C) The service performed in connection with the  
6 catching or taking of salmon or halibut for  
7 commercial purposes;

8 (5) Service performed by an individual in the employ of  
9 the individual's son, daughter, or spouse, and service  
10 performed by a child under the age of twenty-one in  
11 the employ of the child's father or mother;

12 (6) Service performed in the employ of the United States  
13 government or an instrumentality of the United States  
14 exempt under the Constitution of the United States  
15 from the contributions imposed by this chapter;

16 (7) Service performed in the employ of any other state, or  
17 any political subdivision thereof, or any  
18 instrumentality of any one or more of the foregoing  
19 that is wholly owned by one or more such states or  
20 political subdivisions; and any service performed in  
21 the employ of any instrumentality of one or more other  
22 states or their political subdivisions to the extent

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1           that the instrumentality is, with respect to such  
2           service, exempt from the tax imposed by section 3301  
3           of the Internal Revenue Code;

4       (8) Service with respect to which temporary disability  
5           compensation is payable for sickness under a temporary  
6           disability insurance system established by an act of  
7           Congress;

8       (9) Service performed in any calendar quarter in the  
9           employ of any nonprofit organization exempt from  
10          income tax under section 501 of the Internal Revenue  
11          Code, if:

12       (A) The remuneration for such service is less than  
13           \$50;

14       (B) The service is performed by a student who is  
15           enrolled and is regularly attending classes at a  
16           school, college, or university;

17       (C) The service is performed by a duly ordained,  
18           commissioned, or licensed minister or licensed  
19           minister of a church in the exercise of the  
20           minister's ministry or by a member of a religious  
21           order in the exercise of nonsecular duties  
22           required by the order; or



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1 (D) The service is performed for a church by an  
2 employee who fails to meet the eligibility  
3 requirements of section 392-25;

4 (10) Service performed in the employ of a voluntary  
5 employees' beneficiary association providing for the  
6 payment of life, sick, accident, or other benefits to  
7 the members of the association or their dependents,  
8 if:

9 (A) No part of its net earnings inures (other than  
10 through such payments) to the benefit of any  
11 private shareholder or individual; and

12 (B) Eighty-five per cent or more of its income  
13 consists of amounts collected from members and  
14 amounts contributed by the employer of the  
15 members for the sole purpose of making such  
16 payments and meeting expenses;

17 (11) Service performed in the employ of a voluntary  
18 employees' beneficiary association providing for the  
19 payment of life, sick, accident, or other benefits to  
20 the members of the association or their dependents or  
21 their designated beneficiaries, if:

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(A) Admission to membership in the association is limited to individuals who are officers or employees of the United States government; and

(B) No part of the net earnings of the association inures (other than through such payments) to the benefit of any private shareholder or individual;

(12) Service performed in the employ of a school, college, or university, not exempt from income tax under section 501 of the Internal Revenue Code, if the service is performed by a student who is enrolled and is regularly attending classes at the school, college, or university;

(13) Service performed in the employ of any instrumentality wholly owned by a foreign government, if:

(A) The service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and

(B) The United States Secretary of State has certified or certifies to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality

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1 exemption is claimed, grants an equivalent  
2 exemption with respect to similar service  
3 performed in the foreign country by employees of  
4 the United States government and of  
5 instrumentalities thereof;

6 (14) Service performed as a student nurse in the employ of  
7 a hospital or a nurses' training school by an  
8 individual who is enrolled and is regularly attending  
9 classes in a nurses' training school chartered or  
10 approved pursuant to state law; and service performed  
11 as an intern in the employ of a hospital by an  
12 individual who has completed a four years' course in a  
13 medical school chartered or approved pursuant to state  
14 law;

15 (15) Service performed by an individual for an employer as  
16 an insurance producer, if all such service performed  
17 by the individual for the employer is performed for  
18 remuneration solely by way of commission;

19 (16) Service performed by an individual under the age of  
20 eighteen in the delivery or distribution of newspapers  
21 or shopping news, not including delivery or

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1 distribution to any point for subsequent delivery or  
2 distribution;

3 (17) Service covered by an arrangement between the  
4 department and the agency charged with the  
5 administration of any other state or federal  
6 unemployment compensation law pursuant to which all  
7 services performed by an individual for an employer  
8 during the period covered by the employer's duly  
9 approved election, are deemed to be performed entirely  
10 within the agency's state;

11 (18) Service performed by an individual who, pursuant to  
12 the federal Economic Opportunity Act of 1964, is not  
13 subject to the federal laws relating to unemployment  
14 compensation;

15 (19) Domestic in-home and community-based services for  
16 persons with developmental and intellectual  
17 disabilities under the medicaid home and community-  
18 based services program pursuant to title 42 Code of  
19 Federal Regulations sections 440.180 and 441.300, and  
20 title 42 Code of Federal Regulations, part 434,  
21 subpart A, as amended, or when provided through state  
22 funded medical assistance to individuals ineligible

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1 for medicaid, and identified as chore, personal  
2 assistance and habilitation, residential habilitation,  
3 supported employment, respite, and skilled nursing  
4 services, as the terms are defined by the department  
5 of human services, performed by an individual whose  
6 services are contracted by a recipient of social  
7 service payments and who voluntarily agrees in writing  
8 to be an independent contractor of the recipient of  
9 social service payments;

10 (20) Domestic services, which include attendant care, and  
11 day care services authorized by the department of  
12 human services under the Social Security Act, as  
13 amended, or when provided through state-funded medical  
14 assistance to individuals ineligible for medicaid,  
15 when performed by an individual in the employ of a  
16 recipient of social service payments. For the  
17 purposes of this paragraph only, a "recipient of  
18 social service payments" is a person who is an  
19 eligible recipient of social services such as  
20 attendant care or day care services;

21 (21) Service performed by a vacuum cleaner salesperson for  
22 an employing unit, if all such services performed by

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1           the individual for such employing unit are performed  
2           for remuneration solely by way of commission; [øx]

3       (22)   Service performed by an individual for an employer as  
4           a real estate salesperson or as a real estate broker,  
5           if all the service performed by the individual for the  
6           employer is performed for remuneration solely by way  
7           of commission[-];

8       (23)   Service performed by an individual for a corporation  
9           if the individual owns at least fifty per cent of the  
10          corporation; provided that no employer shall require  
11          an employee to incorporate as a condition of  
12          employment;

13       (24)   Service performed by a member of a limited liability  
14          company if the member is an individual and has a  
15          distributional interest, as defined in section 428-  
16          101, of not less than fifty per cent in the company;  
17          provided that no employer shall require an employee to  
18          form a limited liability company as a condition of  
19          employment;

20       (25)   Service performed by a partner of a partnership, as  
21          defined in section 425-101, if the partner is an  
22          individual; provided that no employer shall require an

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1        employee to become a partner or form a partnership as  
2        a condition of employment;

3        (26) Service performed by a partner of a limited liability  
4        partnership if the partner is an individual and has a  
5        transferable interest as described in section 425-127  
6        in the partnership of not less than fifty per cent;  
7        provided that no employer shall require an employee to  
8        form a limited liability partnership as condition of  
9        employment; or

10       (27) Service performed by a sole proprietor."

11       SECTION 7. Section 392-47, Hawaii Revised Statutes, is  
12       amended to read as follows:

13       "\$392-47 Failure to give security for payment of benefits;  
14       penalty; injunction. If an employer fails to comply with  
15       section 392-41 the employer shall be subject to a penalty of not  
16       less than [~~\$25~~] \$500 or of [~~\$1~~] \$100 for each employee for every  
17       day during which such failure continues, whichever sum is  
18       greater, to be recovered in an action brought in the discretion  
19       of the director and the amount so collected shall be paid into  
20       the trust fund for disability benefits created by section 392-  
21       61. The director may, however, in the director's discretion,  
22       for good cause shown, remit all or any part of the penalty in

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1 excess of [~~\$25,~~ \$500, provided the employer in default  
2 forthwith complies with section 392-41.

3 Furthermore, if any employer is in default under section  
4 392-41, for a period of thirty days, the employer may be  
5 enjoined by the circuit court of the circuit in which the  
6 employer's principal place of business is located from carrying  
7 on the employer's business any place in the State so long as the  
8 default continues, such action for injunction to be prosecuted  
9 by the attorney general or any county attorney if so requested  
10 by the director."

11 SECTION 8. This Act does not affect the rights and duties  
12 that matured, penalties that were incurred, and proceedings that  
13 were begun before its effective date.

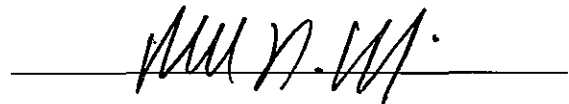
14 SECTION 9. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 10. This Act shall take effect upon its approval.

17

18

INTRODUCED BY:



19

BY REQUEST



# S.B. NO. 2892

**Report Title:**

Temporary Disability Insurance Exclusions; Workers' Compensation Penalties

**Description:**

Excludes employers from providing Temporary Disability Insurance (TDI) coverage for themselves if they perform services for, their own corporation, limited liability company (LLC), limited liability partnership (LLP), partnership, or sole proprietorship. Allows the Director to receive electronic reports of injuries and other workers' compensation required reports. Increases the penalties for not having TDI coverage, for failure to make correct or timely benefit payments, for terminating such benefits, for failure to file medical reports, for employer's failure to provide copies of requested medical reports, for not having Workers' Compensation coverage, and for the deduction of premium payment from employee wages.

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

JUSTIFICATION SHEET

**SB. NO. 2892**

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO LABOR.

PURPOSE: To exclude employers from the requirement to provide Temporary Disability Insurance (TDI) coverage for themselves if they perform service for their own corporation, limited liability company (LLC), limited liability partnership (LLP), partnership, or sole proprietorship, and are an individual and own at least fifty per cent of the corporation, are an individual and have at least fifty per cent distributional interest in the LLC, are a partner, and an individual, and have at least fifty per cent transferable interest in the LLP, or if they are an individual and a partner of a partnership.

To allow the Director to receive electronic copies of injury and other reports.

To increase the penalty for employers who do not have TDI coverage for employees from not less than \$25 or \$1 per employee per day, to not less than \$500 or \$100 per employee per day.

To increase the penalty from not more than \$2,500 to not more than \$5,000 against an employer or insurance carrier for failure to make correct or timely benefit payments or to terminate such benefits without approval or statutory cause.

To increase the penalty for failure to file medical reports from \$250 to \$500, and for employer's failure to provide copies of requested medical reports from \$1,000 to \$5,000.

To increase the penalty for employers who do not have Workers' Compensation (WC) coverage for employees from not less than \$250 or \$10 per employee per day, to not less than \$500 or \$100 per employee per day.

To increase the penalty from \$2,500 to \$5,000 against an employer for the deduction of premium payments from an employee's wages.

MEANS: Amend sections 386-31(b), 386-95, 386-96, 386-123, 386-129, 392-5, and 392-47, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Excluding the services performed by sole proprietors, partners, specified corporate officers, and limited liability company members, from the definition of employment will exempt these individuals from having to cover themselves with Temporary Disability Insurance (TDI). As it is uncommon for an employer to file a TDI claim for him or herself, these individuals should be allowed to be exempt from covering themselves for TDI.

Excluding these type services from employment will also mirror the exclusions in the workers' compensation (WC) law, facilitating the enforcement of the TDI and WC laws by the division's investigation section.

Increasing the penalty for employers who do not provide TDI coverage from a minimum of \$25 to \$500 and from \$1 to \$100 per employee per day will serve as an incentive to employers to cover their employees for TDI. The \$1 penalty was established when the TDI law was enacted 46 years ago in 1970, and some employers have not obtained TDI for their employees as it was cheaper for them to risk being penalized at \$1 per day per employee, than to have to pay the TDI premium.

Penalties of \$2,500 in section 386-31, HRS, for failure to make correct or timely benefit payments or terminate such benefits without

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approval or statutory cause were last amended in 1988. Penalties of \$250 in section 386-96, HRS, for failure to file medical reports and \$1,000 for employer's failure to provide copies of requested medical reports were last amended in 1988. Penalties of not less than \$250 and \$10 for each employee per day under section 386-123, HRS, were last amended in 1988. Penalties of \$2,500 against employer for the deduction of premium payment from employee's wages were last amended in 1988.

Impact on the public: Employers affected by this proposal will realize decreased TDI premium costs from not having to pay for coverage on themselves.

More employees of non-complying employers will be protected under TDI and WC as employers find there is greater financial risk for not providing TDI for their employees.

Impact on the department and other agencies: The caseload of the division's investigation staff will decrease as the number of delinquent employers declines due to both the exclusions and greater compliance afforded by increased penalties.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	LBR183.
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	Upon approval.