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# A BILL FOR AN ACT

RELATING TO FAMILY LEAVE.

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

1 SECTION 1. Chapter 392, Hawaii Revised Statutes, is  
2 amended by amending its title to read as follows:

3 **"FAMILY LEAVE AND TEMPORARY DISABILITY INSURANCE"**

4 SECTION 2. Section 392-1, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "[+]§392-1[+] **Short title.** This chapter shall be known as  
7 the "Hawaii Family Leave and Temporary Disability Insurance  
8 Law"."

9 SECTION 3. Section 392-2, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "[+]§392-2[+] **Findings and purpose.** [A] The legislature  
12 finds that Hawaii's working families do not receive adequate  
13 caregiving support while a family member suffers from a serious  
14 illness or other health condition.

15 While the federal Family and Medical Leave Act of 1993 and  
16 current state law provide for unpaid leave for employees to care  
17 for a new child or attend to the needs of a family member with a



1 serious health condition, the majority of Hawaii's workforce  
2 cannot afford to take unpaid leave. Only seventeen per cent of  
3 workers in the United States have access to paid family leave  
4 through their employers. Women, who are often the primary  
5 caregivers of infants, children, and elderly parents, are  
6 affected disproportionately by the absence of paid family leave.

7 The legislature also finds that each year, a large portion  
8 of the labor force of this State [annually] is disabled from  
9 pursuing gainful employment by reason of nonoccupational  
10 sickness or accident, and as a result, suffers serious loss of  
11 income. In approximately ten per cent of [the] cases [such],  
12 the worker's sickness or accident can be expected to cause [an  
13 employee's] a disability [of] that extends more than one [week's  
14 duration.] week. More than two-fifths of the employees in  
15 private employment have either no fixed legal protection against  
16 wage loss from disabling nonoccupational sickness or accident,  
17 or [only] protection for only a period of one workweek or less[+]  
18 more]. More than one-third of the workers covered by formal  
19 sick leave plans are not protected against disability extending  
20 beyond two workweeks.



1           Since the hardship for workers and their families [~~mounts~~]  
2 corresponds with [~~the extension of~~] the duration of [~~the~~] a  
3 family member's serious illness or the worker's disability [~~from~~  
4 ~~whatever cause~~], there is a need to fill the existing gaps in  
5 protection and to provide benefits to individuals in current  
6 employment that will afford to them reasonable compensation for  
7 wage loss caused by caring for a family member's serious health  
8 condition or by disabling nonoccupational sickness or accident  
9 that [~~where the disability is temporary in nature and exceeds~~  
10 ~~the period of~~] results in the worker losing more than one  
11 workweek. This legislation is designed not to impede the growth  
12 of voluntary plans which afford additional protection.

13           The purpose of this chapter is to ensure that employees in  
14 Hawaii are provided with:

- 15           (1) Leave of absence to care for family members while  
16           receiving reasonable compensation for wage loss; and  
17           (2) Reasonable compensation for wage loss during the  
18           employees' non-work-related temporary disability.

19           This chapter shall be liberally construed in the light of  
20 the stated reasons for its enactment and its declared purpose."



1 SECTION 4. Section 392-3, Hawaii Revised Statutes, is  
2 amended as follows:

3 1. By adding six new definitions to be appropriately  
4 inserted and to read:

5 "Child" means an individual's biological, adopted, step,  
6 or foster son or daughter; or legal ward.

7 "Family leave" means leave of absence taken by an  
8 individual in current employment for the purposes set forth in  
9 section 392-21(a).

10 "Family member" means an individual's spouse, reciprocal  
11 beneficiary, child, parent, sibling, grandparent, grandparent-  
12 in-law, or grandchild.

13 "Parent" means an individual's biological, adoptive, step,  
14 or foster father or mother; a father- or mother-in-law; or a  
15 legal guardian.

16 "Serious health condition" means a physical or mental  
17 condition that warrants care by another during the period of  
18 treatment or supervision by a health care provider, and:

19 (1) Involves inpatient care in a hospital, hospice, or  
20 residential health care facility; or



1       (2) Requires continuing treatment or continuing  
2             supervision by a health care provider.

3       "Sibling" means an individual's biological, adopted, step,  
4 or foster brother or sister."

5       2. By amending the definitions of "benefit year" and  
6 "contributions" to read:

7        "Benefit year" with respect to any individual means the  
8 one-year period beginning with the first day of the first week  
9 of family leave or disability with respect to which the  
10 individual first files a valid claim for [~~temporary disability~~]  
11 benefits[+] under this chapter. A subsequent benefit year is  
12 the one-year period following a preceding benefit year,  
13 beginning either with the first:

14       (1) Day of the first week of family leave or disability  
15 with respect to which the individual files a  
16 subsequent claim for [~~temporary disability~~]  
17 benefits[+] under this chapter; or

18       (2) Workday following the expiration of the preceding  
19 benefit year if a serious health condition of the  
20 individual's family member or the individual's  
21 disability for which [~~temporary disability~~] benefits



1           are payable during the last week of the preceding  
2           benefit year continues and the individual is eligible  
3           for further benefit payments.

4           "Contributions" means the amounts of money authorized by  
5 this chapter to be withheld from employees' wages for the  
6 payment of [~~temporary~~] family leave benefits or disability  
7 benefits."

8           3. By amending the definition of "weekly benefit amount"  
9 to read:

10          "Weekly benefit amount" means the amount payable under this  
11 chapter for a period of continuous family leave or disability  
12 throughout a calendar week. If the period of family leave or  
13 disability or the initial or terminal portion thereof is shorter  
14 than a calendar week, the benefit amount payable for that  
15 portion shall be the weekly benefit amount multiplied by a  
16 factor consisting of a quotient having the number of workdays  
17 lost during the portion of the week for the numerator and the  
18 number of regular workdays of the employee during a calendar  
19 week for the denominator."

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



1           "§392-6 Individual in current employment. "Individual in  
2 current employment" means:

3           (1) An individual who performed regular service in  
4 employment [~~immediately or not longer than~~] within two  
5 weeks prior to family leave or the onset of the  
6 sickness or accident causing disability, and who would  
7 have continued in or resumed employment except for  
8 [~~such~~] the family leave or disability.

9           (2) An individual who performed regular service in  
10 employment [~~immediately or not longer than~~] within two  
11 weeks prior to becoming totally disabled from  
12 performing the duties of [~~her~~] employment because of  
13 pregnancy or termination of pregnancy and who would  
14 have continued in or resumed [~~such~~] the employment  
15 except for [~~such~~] the disability."

16           SECTION 6. Chapter 392, part II, Hawaii Revised Statutes,  
17 is amended by amending its title to read as follows:

18           "PART II. FAMILY LEAVE AND TEMPORARY DISABILITY BENEFITS"

19           SECTION 7. Section 392-21, Hawaii Revised Statutes, is  
20 amended to read as follows:



1           "§392-21 Establishment of family leave, family leave  
2 benefits, and temporary disability benefits. (a) Any  
3 individual in current employment is entitled to family leave and  
4 family leave benefits in the manner and amount provided in this  
5 chapter:

6           (1) During the first year after birth of the individual's  
7 child, adoption of a child by the individual, or  
8 placement of a child with the individual through  
9 foster care, to care for the new child; provided that  
10 entitlement to family leave benefits shall not be  
11 duplicative of disability benefits for disability  
12 caused by termination of pregnancy; or

13           (2) To care for the individual's family member with a  
14 serious health condition.

15           (b) Any individual in current employment who suffers  
16 disability resulting from accident, sickness, pregnancy,  
17 termination of pregnancy, or organ donation, except accident or  
18 disease connected with or resulting from employment as defined  
19 in section 386-3 or any other applicable workers' compensation  
20 law, shall be entitled to receive temporary disability benefits  
21 in the amount and manner provided in this chapter.



1        [~~(b)~~] (c) It is the policy of this chapter that [~~the~~]:

2        (1) The computation and distribution of benefit payments  
3            shall correspond to the greatest extent feasible, to  
4            the employee's wage loss due to the employee's family  
5            leave or disability; [~~that an~~]

6        (2) An employee shall not be entitled to family leave  
7            benefits or temporary disability benefits for periods  
8            [~~of disability~~] during which the employee would not  
9            have earned wages from employment according to the  
10          schedule of operations of the employee's employer, and  
11          [~~that an~~]

12       (3) An employee is entitled to benefits only for periods  
13          of family leave or disability during which, but for  
14          the family leave or disability, the employee would  
15          have earned wages from employment.

16        This policy, however, shall not be applied to terminate the  
17        benefits of an employee who is receiving benefits under this  
18        chapter for family leave or a disability that commenced while  
19        the employee was in current employment, nor shall it be applied  
20        to deny benefits under this chapter if a period of family leave  
21        or disability that commenced while the employee was in current



1 employment continues into a period during which the employee  
2 would earn wages but for the family leave or disability."

3 SECTION 8. Section 392-23, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "[+]§392-23[+] Duration of benefit payments. [Temporary]

6 (a) Family leave benefits and temporary disability benefits  
7 shall be payable for any period of family leave or disability  
8 following the expiration of the waiting period required in  
9 section 392-24.

10 (b) The duration of benefit payments shall not exceed  
11 [~~twenty-six~~]:

12 (1) Twenty-six weeks for any period of disability [~~or~~]  
13 during any benefit year;

14 (2) Eight weeks for any period of family leave taken  
15 pursuant to section 392-21(a) (1) during the first year  
16 after birth of the individual's child, adoption of a  
17 child by the individual, or placement of a child with  
18 the individual through foster care; and

19 (3) Eight weeks for any period of family leave taken  
20 pursuant to section 392-21(a) (2) during any benefit  
21 year."



1 SECTION 9. Section 392-24, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[~~§~~392-24] **Waiting period.** No [~~temporary disability~~]  
4 benefits shall be payable during the first seven consecutive  
5 days of any period of family leave or disability. Consecutive  
6 periods of family leave or disability due to the same or related  
7 cause and not separated by an interval of more than two weeks  
8 shall be considered as a single period of family leave or  
9 disability."

10 SECTION 10. Section 392-26, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "**§392-26 Care by physician, advanced practice registered**  
13 **nurse, or equivalent required.** (a) An individual shall be  
14 ineligible to receive [~~temporary disability~~] benefits with  
15 respect to any period during which the family member claiming a  
16 serious health condition or the individual claiming temporary  
17 disability is not under the care of a person duly licensed to  
18 practice medicine, surgery, dentistry, chiropractic, osteopathy,  
19 or naturopathic medicine, or an advanced practice registered  
20 nurse, who shall certify, in the form and manner specified by  
21 rule of the director, the serious health condition of the family



1 member or disability of the claimant, the probable duration [~~of~~  
2 ~~the disability,~~] thereof, and [~~such~~] other medical facts within  
3 the person's knowledge as required by rule.

4 (b) This section shall not apply to a family member or an  
5 individual who, pursuant to the teachings, faith, or belief of  
6 any group, depends for healing upon prayer or other spiritual  
7 means [~~—In~~]; provided that in that case, the serious health  
8 condition or disability, the probable duration thereof, and any  
9 other pertinent facts required to be certified by regulation of  
10 the director shall be certified, in the form and manner  
11 specified by [~~the regulation,~~] rule by the director, by a duly  
12 authorized or accredited practitioner of [~~such~~] the group.

13 (c) The proof of a serious health condition or temporary  
14 disability duly certified by a person licensed to practice  
15 medicine, surgery, dentistry, chiropractic, osteopathy, or  
16 naturopathic medicine, [~~or~~] an advanced practice registered  
17 nurse, or an authorized or accredited practitioner of any group  
18 that depends for healing upon prayer or other spiritual means  
19 shall be submitted by the certifying person to the [~~disabled~~]  
20 employee within seven working days after the date on which the  
21 family member or employee was examined and found to have a



1 serious health condition or disabled[-], as the case may be. If  
2 the certifying person fails to submit the required proof within  
3 seven working days, the director, upon notification by the  
4 insurer, may levy a penalty of \$25 for each delinquent  
5 certification where the certifying person fails to show good  
6 cause for the person's failure to file on time."

7 SECTION 11. Section 392-27, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "§392-27 **Ineligibility in certain cases.** An individual  
10 shall not be eligible to receive family leave benefits or  
11 temporary disability benefits:

12 (1) For any period of family leave or disability during  
13 which the individual would be disqualified from  
14 receiving benefits under the Hawaii employment  
15 security law by reason of unemployment due to a  
16 stoppage of work existing because of a labor dispute  
17 for the duration of [~~such~~] the disqualification.

18 (2) If the director finds that the individual has  
19 knowingly made a false statement or representation of  
20 a fact or knowingly failed to disclose a material fact  
21 [~~in order~~] to obtain benefits under this chapter to



1           which the individual is not otherwise entitled. The  
2           ineligibility shall be for a period determined by the  
3           director[7] but shall not exceed the period of family  
4           leave or disability with respect to which the false  
5           statement or representation was made or the  
6           nondisclosure occurred.

7           (3) For any period of disability due to wilfully and  
8           intentionally self-inflicted injury or to injury  
9           sustained in the commission of a criminal offense  
10          specified in title 37.

11          (4) For any day of family leave or disability during which  
12          the employee performed work for remuneration or  
13          profit, except that, if an employee returning to work  
14          suffers a relapse after performing work for less than  
15          a full day, the employee shall be paid benefits or be  
16          given waiting period credit, provided the employee's  
17          wages for the partial day's work did not equal or  
18          exceed the prorated family leave benefits or  
19          disability benefits to which the employee is entitled.  
20          The amount of the benefit payable is derived by  
21          subtracting the gross wages received for performing



1 less than a full day's work, from the prorated  
2 [~~disability~~] benefits to which the employee is  
3 entitled.

4 (5) Unless the claim for family leave benefits or  
5 temporary disability benefits is filed within ninety  
6 days after the commencement of the period of family  
7 leave or disability or as soon thereafter as is  
8 reasonably possible."

9 SECTION 12. Section 392-28, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "§392-28 Duplication of benefits not permitted. No  
12 [~~temporary disability~~] benefits shall be payable for any period  
13 of family leave or disability for which the employee is entitled  
14 to receive:

15 (1) Weekly benefits under the Employment Security Law or  
16 similar laws of this State or of any other state or of  
17 the United States, or under any family leave or  
18 temporary disability benefits law of any other state  
19 or of the United States except as provided in section  
20 392-66.



- 1           (2) Weekly disability insurance benefits under 42 United  
2           States Code Annotated [†]section[†] 423.
- 3           (3) Weekly benefits for total disability under the  
4           Workers' Compensation Law of this State or any other  
5           state or of the United States, except benefits for  
6           permanent partial or permanent total disability  
7           previously incurred. If the claimant does not receive  
8           benefits under [~~such~~] the workers' compensation law  
9           and the claimant's entitlement to such benefits is  
10          seriously disputed, the employee, if otherwise  
11          eligible, shall receive temporary disability benefits  
12          under this chapter, but any insurer or employer or the  
13          trust fund for family leave and disability benefits  
14          providing [~~such~~] the benefits shall be subrogated, as  
15          hereinafter provided, to the employee's right to  
16          benefits under the workers' compensation law for the  
17          period of disability for which the employee received  
18          benefits under this chapter to the extent of the  
19          benefits so received.
- 20          (4) Indemnity payments for wage loss under any applicable  
21          employers' liability law of this State, or of any



1 other state or of the United States. If an employee  
2 has received benefits under this chapter for a period  
3 of family leave or disability for which the employee  
4 is entitled to [such] indemnity payments, any insurer  
5 or employer or the trust fund for family leave and  
6 disability benefits providing [such] the benefits  
7 shall be subrogated to the employee's right to [such]  
8 indemnity payments in the amount of the benefits paid  
9 under this chapter as hereinafter provided."

10 SECTION 13. Chapter 392, part III, Hawaii Revised  
11 Statutes, is amended by amending its title to read as follows:

12 "PART III. PROVISION FOR FAMILY LEAVE AND TEMPORARY DISABILITY  
13 INSURANCE BENEFITS"

14 SECTION 14. Section 392-41, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "§392-41 Provision for payment of benefits. (a) An  
17 employer or an association of employers shall secure family  
18 leave benefits and temporary disability benefits for their  
19 employees in one or more of the following ways:

- 20 (1) By insuring and keeping insured the payment of family  
21 leave benefits and temporary disability benefits with



1 any stock, mutual, reciprocal or other insurer  
2 authorized to transact the business of [~~disability~~]  
3 insurance for family leave, temporary disability, or  
4 both, in the State;

5 (2) By depositing and maintaining with the state director  
6 of finance, securities, or the bond of a surety  
7 company authorized to transact business in the State,  
8 as are satisfactory to the director securing the  
9 payment by the employer of family leave benefits and  
10 temporary disability benefits according to the terms  
11 of this chapter;

12 (3) Upon furnishing satisfactory proof to the director of  
13 the employer's or its solvency and financial ability  
14 to pay the family leave benefits and temporary  
15 disability benefits herein provided, no insurance or  
16 security or surety bond shall be required, and the  
17 employer shall make payments directly to the  
18 employer's employees, as they may become entitled to  
19 receive the same under the terms and conditions of  
20 this chapter;



1           (4) By a plan~~[,]~~ or agreement entitling employees to cash  
2           benefits or wages during a period of family leave or  
3           disability~~[, in existence on the effective date of~~  
4           ~~this chapter.~~

5           ~~(A) If the employees of an employer or any class or~~  
6           ~~classes of such employees are entitled to receive~~  
7           ~~disability benefits under a plan or agreement~~  
8           ~~which remains in effect on January 1, 1970, the~~  
9           ~~employer, subject to the requirements of this~~  
10           ~~section, shall be relieved of responsibility for~~  
11           ~~making provision for benefit payments required~~  
12           ~~under this chapter until the earliest date,~~  
13           ~~determined by the director for the purposes of~~  
14           ~~this chapter, upon which the employer has the~~  
15           ~~right to discontinue the plan or agreement or to~~  
16           ~~discontinue the employer's contributions toward~~  
17           ~~the cost of the temporary disability benefits.~~  
18           ~~Any plan or agreement referred to in this~~  
19           ~~subparagraph may be extended, with or without~~  
20           ~~modification, by agreement or collective~~  
21           ~~bargaining between the employer or employers or~~



1 ~~an association of employers and an association of~~  
2 ~~employees; provided the benefits under the plan~~  
3 ~~or agreement, as extended or modified, are found~~  
4 ~~by the director to be at least as favorable as~~  
5 ~~the disability benefits required by this chapter.~~

6 ~~(B) Any other plan or agreement in existence on~~  
7 ~~January 1, 1970, which the employer may, by the~~  
8 ~~employer's sole act, terminate at any time, or~~  
9 ~~with respect to which the employer is not~~  
10 ~~obligated to continue for any period to make~~  
11 ~~contributions, may be accepted by the director as~~  
12 ~~satisfying the obligation to provide for the~~  
13 ~~payment of benefits under this chapter if the~~  
14 ~~plan or agreement provides benefits at least as~~  
15 ~~favorable as the disability benefits required by~~  
16 ~~this chapter and does not require contributions~~  
17 ~~of any employee or of any class or classes of~~  
18 ~~employees in excess of the amount authorized in~~  
19 ~~section 392-43, except by agreement and provided~~  
20 ~~the contribution is reasonably related to the~~  
21 ~~value of the benefits as determined by the~~



1           ~~director. The director may require the employer~~  
2           ~~to enter into an agreement in writing with the~~  
3           ~~director that until the employer shall have filed~~  
4           ~~written notice with the director of the~~  
5           ~~employer's election to terminate such plan or~~  
6           ~~agreement or to discontinue making necessary~~  
7           ~~contributions toward the cost of providing~~  
8           ~~benefits under the plan or agreement, the~~  
9           ~~employer will continue to provide for the payment~~  
10          ~~of the disability benefits under the plan or~~  
11          ~~agreement. Any plan or agreement referred to in~~  
12          ~~this subparagraph may be extended, with or~~  
13          ~~without modification, provided the benefits under~~  
14          ~~the plan or agreement, as extended or modified,~~  
15          ~~are found by the director to be at least as~~  
16          ~~favorable as the disability benefits required by~~  
17          ~~this chapter;] accepted by the director as~~  
18          ~~satisfying the obligations to provide the payment~~  
19          ~~of benefits under this chapter; or~~

- 20           (5) By a new plan or agreement [~~On or after January 1,~~  
21           ~~1970, a new plan or agreement]~~ with an insurer [may



1           ~~be~~] accepted by the director as satisfying the  
2           obligation to provide for the payment of benefits  
3           under this chapter [~~if~~]; provided that the plan or  
4           agreement [~~provides~~]:

5           (A) Provides benefits at least as favorable as the  
6           leave benefits and disability benefits required  
7           by this chapter; [~~and does~~]

8           (B) Does not require contributions of any employee or  
9           of any class or classes of employees in excess of  
10          the amount authorized in section 392-43, except  
11          by agreement; and [~~provided the~~]

12          (C) The contribution is reasonably related to the  
13          value of the benefits as determined by the  
14          director.

15          Any [~~such~~] plan or agreement under this paragraph  
16          shall continue until written notice [~~is filed with the~~  
17          ~~director~~] of intention to terminate the plan or  
18          agreement [~~7~~] is filed with the director, and any  
19          modification of the plan or agreement shall be subject  
20          to the written approval of the director.



1 (b) During any period in which any plan or agreement or  
2 extension or modification thereof authorized under subsection  
3 (a) (4) or (5) provides for payments of benefits under this  
4 chapter, the responsibility of the employer and the obligations  
5 and benefits of the employees shall be as provided in the plan  
6 or agreement or its extension or modification rather than as  
7 required under this chapter; provided that[+

8 ~~(1) The~~ the employer or insurer has agreed in writing  
9 with the director to pay the assessments imposed by  
10 section 392-67 [~~+~~and

11 ~~(2) If the benefits provided by the plan or agreement or~~  
12 ~~extension or modification thereof include benefits~~  
13 ~~falling within the definition of "sick leave" as~~  
14 ~~defined in section 398-1, any amount in excess of the~~  
15 ~~minimum statutory equivalent, as determined by the~~  
16 ~~department, may be used for the purposes of chapter~~  
17 ~~398].~~

18 (c) If any plan or agreement authorized under subsection  
19 (a) (4) or (5) covers less than all of the employees of a covered  
20 employer, the requirements of this chapter shall apply with



1 respect to the employer's remaining employees not covered under  
2 the plan or agreement.

3 (d) As used in subsection (a) [~~(4) or~~] (5), "benefits at  
4 least as favorable as the leave and disability benefits required  
5 by this chapter" means the family leave benefits or temporary  
6 disability benefits under any plan or agreement, in whole or in  
7 part, whose component parts (waiting period for illness, waiting  
8 period for accident, duration of benefits, and percentage of  
9 wage loss replaced) add in total to cash benefits or wages that  
10 are determined by the director to be at least as favorable as  
11 the leave benefits and disability benefits required by this  
12 chapter. The insurance commissioner shall establish a set of  
13 tables showing the relative value of different types of cash  
14 benefits and wages to assist the director in determining whether  
15 the cash benefits and wages under a plan are at least as  
16 favorable as the family leave benefits and temporary disability  
17 benefits required by this chapter.

18 (e) Any decision of the director rendered pursuant to this  
19 section with respect to the amount of security required,  
20 refusing to permit security to be given or refusing to accept a  
21 plan or agreement as satisfying the obligation to provide for



1 the payment of benefits under this chapter shall be subject to  
2 review on appeal in conformity with the provisions of this  
3 chapter.

4 (f) In order to provide the coverage required by this  
5 chapter for employers otherwise unable to obtain or provide  
6 [such] coverage, the insurance commissioner may, after  
7 consultation with the insurers licensed to transact the business  
8 of family leave and disability insurance in this State, approve  
9 a reasonable plan or plans for the equitable apportionment among  
10 [such] the insurers of employer applicants for [such] the  
11 insurance who are in good faith entitled to but are unable to  
12 procure [such] the insurance through ordinary methods and, when  
13 [such] a plan has been approved, all [such] the insurers shall  
14 subscribe thereto and participate therein; provided, however,  
15 that the commissioner shall not, for insurance issued or in  
16 connection with any [such] plan or plans, require or allow the  
17 use of premium rates which are either inadequate or excessive in  
18 relation to the benefits to be provided. Any employer applying  
19 for [such] insurance or any insured under [such] the plan and  
20 any insurer affected may appeal to the commissioner from any  
21 ruling or decision of the manager or committee designated to



1 operate [~~such~~] the plan. All orders of the commissioner in  
2 connection with any [~~such~~] plan pursuant to this section shall  
3 be subject to judicial review as provided in chapter 91.

4 (g) All insurers shall, in a form prescribed by the  
5 director, notify employer applicants who are unable to procure  
6 the required insurance through ordinary methods, the  
7 availability of the plan described in [†]subsection[†] (f)  
8 [~~above~~]."

9 SECTION 15. Section 392-42, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "**§392-42 Notice of insurance.** If payment of family leave  
12 benefits or disability benefits is provided for in whole or in  
13 part by insurance pursuant to section 392-41(a)(1), (4), or (5),  
14 the employer or insurer shall forthwith file with the director,  
15 in a form prescribed by the director, a notice of the employer's  
16 or insurer's insurance together with a statement of benefits  
17 provided by the policy. If an employer or insurer fails to file  
18 the notice of insurance within thirty days after purchase of  
19 insurance, the director may levy a penalty of not more than  
20 [~~\$10~~] \$50 for each delinquent notice, unless good cause for  
21 failure to file can be shown by the employer or insurer."



1 SECTION 16. Section 392-43, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§392-43 Authority to withhold contributions, rate of  
4 contribution, maximum weekly wage base. (a) Subject to the  
5 limitation set forth in subsection (b), an employer may deduct  
6 and withhold contributions [7] from each employee of up to one-  
7 half the cost but not more than .5 per cent of the weekly wages  
8 earned by the employee in employment, and the employer shall  
9 provide for the balance of the cost of providing family leave  
10 benefits and temporary disability benefits under this chapter  
11 over the amount of contributions of the employer's employees.  
12 Unless a different rule is prescribed by regulation of the  
13 director, the withholding period shall be equal to the pay-  
14 period of the respective employee.

15 (b) Weekly wages for the purposes of this section shall  
16 not include:

17 (1) Wages earned by an employee in employment during any  
18 payroll period unless, during the fifty-two weeks  
19 immediately preceding [~~such~~] the payroll period, the  
20 employee has earned wages of at least \$400 and has  
21 been in employment for at least fourteen weeks during



1 each of which the employee has received remuneration  
2 in any form for twenty or more hours; and

3 (2) Remuneration in excess of one fifty-second of the  
4 average annual wage in the State as determined for the  
5 preceding year pursuant to section 383-61(b)  
6 multiplied by the factor 1.21, which amount the  
7 director shall cause to be published annually prior to  
8 the first day of January following the determination.

9 (c) The contributions of the employees deducted and  
10 withheld from their wages by their employer shall be held in a  
11 separate fund or be paid to insurance carriers as premiums, for  
12 the purpose of providing benefits required by this chapter.

13 (d) The director shall have authority to prescribe by  
14 regulation the reports and information necessary to determine  
15 the cost of providing [~~temporary disability~~] benefits under this  
16 chapter, especially in the case of employers or employer  
17 associations providing [~~sueh~~] the benefits by means of self-  
18 insurance, and to determine the procedures for the determination  
19 of [~~sueh~~] the cost.

20 (e) An employee from whose wages amounts greater than  
21 those authorized by this chapter have been withheld by the



1 employee's employer shall be entitled to a refund or credit of  
2 the excess as prescribed by regulation of the director.

3 (f) The contributions of employees deducted and withheld  
4 in amounts greater than those authorized by this chapter, shall  
5 be deposited in the trust fund for family leave and disability  
6 benefits if [~~such~~] the employees are no longer with the employer  
7 and cannot be located. A refund of the excess shall be paid  
8 from the trust fund for family leave and disability benefits to  
9 the employees when they are located or if [~~such~~] the employees  
10 remain unlocated for a period of two years from the date of  
11 deposit, [~~such~~] the moneys shall become a part of the trust  
12 fund.

13 (g) If an employer fails to provide coverage for the  
14 employer's employees after deducting and withholding  
15 contributions from the employer's employees as prescribed by  
16 this chapter, the employer shall deposit [~~such~~] the  
17 contributions in the [~~+~~]trust fund for family leave and  
18 disability benefits[~~+~~]."

19 SECTION 17. Section 392-45, Hawaii Revised Statutes, is  
20 amended to read as follows:



1           "§392-45 Subrogation rights if employee entitled to  
2 workers' compensation benefits or indemnity under employers'  
3 liability acts. (a) If an individual has received [~~temporary~~  
4 ~~disability~~] benefits under this chapter during a period of the  
5 individual's disability for which benefits for any disability  
6 under the Workers' Compensation Law of this State or of any  
7 other state or of the United States are subsequently awarded or  
8 accepted in any agreement or compromise, the employer, the  
9 association of employers, the insurer, or the trust fund for  
10 family leave and disability benefits, as the case may be,  
11 providing [~~such temporary disability~~] the benefits shall be  
12 subrogated to the individual's right to [~~such~~] the benefits in  
13 the amount of the benefits paid under this chapter.

14           In the event more than one employer or insurer have  
15 subrogation rights to the employee's workers' compensation  
16 benefits, [~~such~~] the benefits shall be divided proportionately  
17 among the employers or insurers according to the amount of  
18 benefits each employer or insurer paid under this chapter.  
19 Should the subrogated amount of either one or both employers or  
20 insurers total less than the amount of benefits that [~~such~~] the  
21 employers or insurers paid under this chapter, neither the



1 employee nor the trust fund for family leave and disability  
2 benefits nor any other source shall be required to make up the  
3 difference.

4 To protect its subrogation rights to benefits payable under  
5 the Workers' Compensation Law of this State, the employer, the  
6 association of employers, the insurer, or the trust fund for  
7 family leave and disability benefits, providing [~~temporary~~  
8 ~~disability~~] the benefits shall file a claim with the division of  
9 workers' compensation in the department and notify the insurer  
10 for workers' compensation or the employer, if self-insured, of  
11 its claim and thereupon the employer, the association of  
12 employers, the insurer, or the trust fund for family leave and  
13 disability benefits, providing [~~temporary disability~~] the  
14 benefits shall have a lien against the amounts payable as family  
15 leave benefits pursuant to this chapter or benefits for  
16 disability under the Workers' Compensation Law in the amount of  
17 the benefits paid under this chapter during the period for which  
18 benefits [~~for disability~~] under this chapter or the Workers'  
19 Compensation Law have been accepted or awarded as payable. The  
20 agreement or award shall include a provision setting forth the  
21 existence and amount of [~~such~~] the lien.



1 (b) If an individual has received benefits under this  
2 chapter during a period of family leave or disability for which  
3 the individual is entitled to receive indemnity payments for  
4 wage loss under any applicable employers' liability law of this  
5 State or of any other state or of the United States, the  
6 employer, the association of employers, the insurer, or the  
7 trust fund for family leave and disability benefits, providing  
8 [~~temporary disability~~] benefits shall be subrogated to the  
9 individual's right to [~~such~~] the indemnity in the amount of the  
10 benefits paid under this chapter and may assert its subrogation  
11 rights in any manner appropriate under such acts or any rule of  
12 law."

13 SECTION 18. Section 392-46, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "**§392-46 Subrogation rights against third parties.** If any  
16 individual who has received benefits under this chapter is  
17 entitled to recover damages from a third person who is  
18 responsible for the sickness or accident causing the serious  
19 health condition of a family member or the employee's  
20 disability, the employer, the association of employers, the  
21 insurer, or the trust fund for family leave and disability



1 benefits, providing [~~disability~~] the benefits shall be  
2 subrogated to, and have a lien upon, the rights of the  
3 individual against the third party to the extent that the  
4 damages include wage loss during the period of family leave or  
5 disability for which [~~temporary disability~~] benefits were  
6 received in the amount of [~~such~~] the benefits.

7       If the individual commences an action against [~~such~~] the  
8 third party, the individual shall notify the individual's  
9 employer, or the director if the individual is unemployed, of  
10 the action and the court in which it is pending. The employer,  
11 the association of employers, the insurer, or the trust fund for  
12 family leave and disability benefits, providing family leave  
13 benefits or disability benefits may join as party plaintiff or  
14 claim a lien on the amount of any judgment recovered by the  
15 individual in [~~such~~] the action to the extent of its subrogation  
16 rights. If the individual does not commence the action within  
17 nine months after the commencement of the serious health  
18 condition, sickness or the date of the accident causing the  
19 family leave or disability, the employer, the association of  
20 employers, the insurer, or the trust fund for family leave and  
21 disability benefits, providing family leave benefits or



1 temporary disability benefits may commence [~~such~~] the action,  
2 but the individual shall be entitled to join the action and be  
3 entitled to any surplus over the amount to which the employers,  
4 the association of employers, the insurer, or the trust fund for  
5 family leave and disability benefits is subrogated."

6 SECTION 19. Section 392-48, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "[~~f~~]§392-48[~~t~~] **The insurance contract.** Every policy of  
9 insurance issued by an insurer of an employer pursuant to this  
10 chapter which covers the liability of the employer for family  
11 leave, temporary disability [~~benefits~~], or both, shall cover the  
12 entire liability of the employer to the employer's employees  
13 covered by the policy or contract, and also shall contain a  
14 provision setting forth the right of the employees to enforce in  
15 their own names either by filing a separate claim or by making  
16 the insurer a party to the original claim, the liability of the  
17 insurer in whole or in part for the payment of [~~the disability~~]  
18 benefits. Payment in whole or in part of family leave benefits  
19 or disability benefits by either the employer or the insurer  
20 shall, to the extent thereof, be a bar to the recovery against  
21 the other of the amount so paid.



1 All insurance policies shall be approved by the insurance  
2 commissioner of the State."

3 SECTION 20. Chapter 392, part IV, Hawaii Revised Statutes,  
4 is amended by amending its title to read as follows:

5 "PART IV. TRUST FUND FOR FAMILY LEAVE AND DISABILITY BENEFITS"

6 SECTION 21. Section 392-61, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "§392-61 Establishment of trust fund for family leave and  
9 disability benefits. There is established in the treasury of  
10 the State, separate and apart from all public moneys or funds of  
11 the State, a trust fund for family leave and disability benefits  
12 which shall be administered by the director exclusively for the  
13 purposes of this chapter; and for the establishment and  
14 maintenance of a family leave data collection system [~~under~~  
15 ~~section 398-9.5.~~] provided by this chapter. All contributions  
16 pursuant to this part shall be paid into the fund and all  
17 benefits payable under this part shall be paid from the fund.  
18 The fund shall consist of[+]:[+]

19 (1) All contributions collected pursuant to this part,  
20 together with any interest thereon;



- 1 (2) All fines and penalties for the fund pursuant to this
- 2 chapter;
- 3 (3) All moneys collected by way of subrogation;
- 4 (4) Interest earned on any moneys in the fund;
- 5 (5) Any property or securities acquired through the use of
- 6 moneys belonging to the fund;
- 7 (6) All earnings of [~~such~~] the property and securities;
- 8 and
- 9 (7) All other moneys received for the fund from any
- 10 source."

11 SECTION 22. Section 392-65, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "§392-65 [~~Temporary disability benefits~~] Benefits to be  
14 paid from the trust fund for family leave and disability  
15 benefits; recovery of [disability] benefits. [~~Temporary~~] Family  
16 leave benefits and temporary disability benefits shall be paid  
17 from the trust fund for family leave and disability benefits to  
18 individuals who become disabled when unemployed and who  
19 subsequently become ineligible for benefits under chapter 383.  
20 Benefits shall also be paid from this fund to an employee who is  
21 entitled to receive family leave benefits or temporary



1 disability benefits but cannot receive [such] the benefits  
2 because of the bankruptcy of the employee's employer or because  
3 the employee's employer is not in compliance with this chapter.  
4 Benefits paid from the trust fund to [such] the employee may be  
5 recovered from the employee's bankrupt or noncomplying employer.  
6 The director shall institute administrative and legal actions,  
7 as provided in section 392-47, to effect recovery of [such] the  
8 benefits."

9 SECTION 23. Section 392-67, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "**§392-67 Assessments for the trust fund for family leave**  
12 **and disability benefits.** [~~(a) Each employer shall, from~~  
13 ~~July 1, 1969, to December 31, 1969, contribute to the~~  
14 ~~establishment of the trust fund for disability benefits at the~~  
15 ~~rate of .2 per cent of covered wages as defined in section 392-~~  
16 ~~43. The employer shall pay such contributions to the director~~  
17 ~~for a given month on or before the thirtieth day of the next~~  
18 ~~succeeding month.~~

19 ~~(b)]~~ When the balance of the trust fund for family leave  
20 and disability benefits falls below \$500,000 as of December 31  
21 of any year after 1969, a levy shall be assessed and collected



1 in the next calendar year from insurers of employers insured  
2 under section 392-41 and from all other employers not insured  
3 under section 392-41.

4 Each year the director shall determine the amount of the  
5 levy to be paid by each insurer or employer and shall give  
6 notice of the levy to each [~~such~~] insurer or employer on or  
7 before May 1 of the year in which the levy is assessed. The  
8 amount of the levy shall be paid on or before June 30 following  
9 notification.

10 The amount of the levy against each insurer or employer  
11 shall be determined as the product of the wages paid by the  
12 employer multiplied by a factor which is the ratio of the amount  
13 by which the balance in the [†]trust fund for family leave and  
14 disability benefits[†] was less than \$500,000 on the preceding  
15 December 31 to total covered wages paid by all employers. For  
16 the purposes of this paragraph, "covered wages" means wages paid  
17 by employers during the preceding calendar year but not  
18 including wages paid to any employee in excess of the limit  
19 contained in section 392-43(b)."

20 SECTION 24. Section 392-68, Hawaii Revised Statutes, is  
21 amended to read as follows:



1            "[f] §392-68[f] **Failure to pay assessments.** If an employer  
2 or insurer fails to pay the assessment required by section  
3 392-67 [~~(a) or section 392-67(b)~~] within thirty days after the  
4 end of the month or quarter for which payment was due, the  
5 director shall levy a penalty of at least \$250 but no more than  
6 ten per cent of the assessment due against the employer or  
7 insurer, unless the nonpayment is excused by the director after  
8 a showing by the employer or insurer that the payment of the  
9 assessment could not be made on the date prescribed therefor  
10 owing to conditions over which the employer or insurer had no  
11 control and the employer or insurer forthwith complies."

12            SECTION 25. Section 398A-3, Hawaii Revised Statutes, is  
13 amended by amending subsection (e) to read as follows:

14            "(e) Notwithstanding any other provision to the contrary,  
15 leave provided pursuant to this section shall not be taken  
16 concurrently with any leave taken pursuant to the federal Family  
17 and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.) or  
18 [~~chapter 398-~~] family leave pursuant to chapter 392."

19            SECTION 26. Sections 392-7, 392-25, 392-42.5(a), 392-44,  
20 392-44.5, 392-49, 392-51, 392-71, 392-72(b), 392-77, 392-78(d),  
21 and 392-86, Hawaii Revised Statutes, are amended by substituting



1 the phrases "family leave or disability" or "family leave or  
2 temporary disability", wherever the word "disability" or phrase  
3 "temporary disability" appear, as the context requires.

4 SECTION 27. Sections 392-47, 392-52, 392-62, 392-63,  
5 392-64, 392-65, 392-67, 392-69, 392-72(a), 392-78(d), and  
6 392-92, Hawaii Revised Statutes, are amended by substituting the  
7 phrase "trust fund for family leave and disability benefits"  
8 wherever the phrase "trust fund for disability benefits"  
9 appears, as the context requires.

10 SECTION 28. Chapter 398, Hawaii Revised Statutes, is  
11 repealed.

12 SECTION 29. There is appropriated out of the general  
13 revenues of the State of Hawaii the sum of \$ or so  
14 much thereof as may be necessary for fiscal year 2022-2023 to  
15 fund the personnel and resources to implement the Hawaii family  
16 leave program pursuant to this Act.

17 The sum appropriated shall be expended by the department of  
18 labor and industrial services for the purposes of this Act.

19 SECTION 30. This Act does not affect rights and duties  
20 that matured, penalties that were incurred, and proceedings that  
21 were begun before its effective date.





# S.B. NO. 3316

**Report Title:**

Paid Family Leave; Temporary Disability Insurance; Insurance Benefits; Employer Based Insurance Program; Appropriation

**Description:**

Provides employees with up to eight weeks of paid family leave during the first year after birth of the individual's child, adoption of a child by the individual, or placement of a child with the individual through foster care, and eight weeks of paid family leave to care for the individual's family member with a serious health condition during any benefit year, paid through an employer-based private insurance program currently used to provide for temporary disability benefits. Repeals chapter 398, Hawaii Revised Statutes. Appropriates funds to the Department of Labor and Industrial Relations.

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

