

A Bill for an Act Relating to Workers' Compensation.

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

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

“(b) Temporary total disability. Where a work injury causes total disability not determined to be permanent in character, the employer, for the duration of the disability but not including the first two days thereof shall pay the injured employee a weekly benefit at the rate of sixty-six and two-thirds per cent of his average weekly wages, subject to the limitations on weekly benefit rates prescribed in subsection (a), or if his average weekly wages are less than the minimum weekly benefit rate prescribed in subsection (a), at the rate of one hundred per cent of his average weekly wages. In case the total disability exceeds five days, the compensation shall be allowed from the date of disability.

The employer shall pay temporary total disability benefits promptly as they accrue to the person entitled thereto without waiting for a decision from the director, unless such right is controverted by the employer in his initial report of industrial injury. The first payment of benefits shall become due and shall be paid no later than on the tenth day after the employer has been notified of the occurrence of the total disability and thereafter the benefits due shall be paid weekly except as otherwise authorized pursuant to section 386-53.

The payment of such benefits shall only be terminated upon order of the director or if the employee is able to resume work or if the employee has filed a false claim. When the employer is of the opinion that temporary total disability benefits should be terminated because the injured employee is able to resume work or because he has filed a false claim, the employer shall notify the employee and the director in writing of an intent to terminate such benefits at least two weeks prior to the date when

the last payment is to be made. The notice shall give the reason for stopping payment and shall inform the employee that he may make a written request to the director for a hearing if he disagrees with the employer. Upon receipt of the request from the employee, the director shall conduct a hearing as expeditiously as possible and render a prompt decision.

An employer or insurance carrier who fails to comply with this section shall pay \$250 into the special compensation fund upon the order of the director, in addition to other penalties prescribed in section 386-92."

SECTION 2. Section 386-52, Hawaii Revised Statutes, is amended by amending subsection (a) to read:

"(a) Any payments made by the employer to the injured employee during his disability or to his dependents which by the terms of this chapter were not payable when made shall be deducted from the amount payable as compensation subject to the approval of the director; provided that:

- (1) The employer notifies the injured employee and the director in writing of any such credit request stating the reasons for such credit and informing the injured employee that he has the right to file a written request for a hearing to submit any evidence to dispute such a credit;
- (2) The deduction shall be made by shortening the period during which the compensation must be paid, or by reducing the total amount for which the employer is liable and not the amount of weekly benefits;
- (3) If overpayment cannot be credited, the director shall order the claimant to reimburse the employer. Failure to reimburse the employer shall entitle the employer to file for enforcement of such a decision in accordance with section 386-91."

SECTION 3. Section 386-91, Hawaii Revised Statutes, is amended to read:

"Sec. 386-91 Enforcement of decisions awarding compensation; judgment rendered thereon. (a) Any party in interest or the director may file in the circuit court in the jurisdiction of which the injury occurred, a certified copy of (1) a decision of the director of labor and industrial relations awarding compensation from which no appeal has been taken within the time allowed therefor; or (2) a decision of the director awarding compensation, from which decision an appeal has been taken but as to which decision no order has been made by the director or the appellate board or the court that the appeal therefrom shall operate as a supersedeas or stay; or (3) a decision of the appellate board awarding compensation, from which no appeal has been taken within the time allowed therefor; or (4) a decision of the appellate board awarding compensation, from which an appeal has been taken but as to which decision no order has been made by the appellate board or the court that the appeal therefrom shall operate as a supersedeas or stay. The court shall render a judgment in accordance with such decision and notify the parties thereof. The judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though the judgment had been rendered in an action duly heard and determined by the court, except that there shall be no appeal therefrom.

(b) In all cases where an appeal from the decision concerned has been taken within the time provided therefor, but where no order has been made by the director or the appellate board or the court that the appeal shall operate as a supersedeas or stay,

the decree or judgment of the circuit court shall provide that the decree or judgment shall become void if the decision or award of the director or appellate board, as the case may be, is finally set aside.

(c) In addition to the enforcement remedies set forth in subsection (a) above, the director or employee as part of the proceedings set out therein may ask the court to fine the employer from one per cent to five per cent of the judgment, which fine shall be payable to the employee:

- (1) When the employer does not take an appeal from the decision of the director within the time allowed therefor and does not commence making payments within ten days after such appeal period has expired, or
- (2) When the employer does take an appeal from the decision of the director within the time allowed therefor and the employer does not request from the appellate board a supersedeas or stay of the decision and the employer does not commence making payments within ten days after such appeal period has expired, or
- (3) When the employer does take an appeal from the decision of the director within the time allowed therefor and the appellate board denies the employer's request for supersedeas or stay and the employer does not commence making payments within ten days after such a denial by the appellate board.

(d) In addition to the enforcement remedies set forth in subsection (a) above, the employer as part of the proceedings set out therein may ask the court to fine the employee from one per cent to five per cent of the judgment, which fine shall be payable to the employer:

- (1) When the employee does not take an appeal from the decision of the director within the time allowed therefor and does not commence making payments within thirty days after such appeal period has expired, or
- (2) When the employee does take an appeal from the decision of the director within the time allowed therefor and the employee does not request from the appellate board a supersedeas or stay of the decision and the employee does not commence making payments within thirty days after such appeal period has expired, or
- (3) When the employee does take an appeal from the decision of the director within the time allowed therefor and the appellate board denies the employee's request for supersedeas or stay and the employee does not commence making payments within thirty days after such a denial by the appellate board."

SECTION 4. Section 386-92, Hawaii Revised Statutes, is amended to read:

"Sec. 386-92 Default in payments of compensation, penalty. If any compensation payable under the terms of a final decision or judgment is not paid by a self-insured employer or an insurance carrier within thirty-one days after it becomes due, as provided by such final decision or judgment, or if any temporary total disability benefits are not paid by such employer or carrier within ten days, exclusive of Saturdays, Sundays, and holidays, after being notified of the disability, and where the right to such benefits are not controverted in the employer's initial report of industrial injury or where temporary total disability benefits are terminated in viola-

tion of section 386-31, there shall be added to the unpaid compensation an amount equal to ten per cent thereof payable at the same time as, but in addition to, the compensation, unless the nonpayment is excused by the director after a showing by the employer or insurance carrier that the payment of compensation could not be made on the date prescribed therefor owing to the conditions over which he had no control.”

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored. *

SECTION 6. This Act shall take effect upon its approval.

(Approved May 16, 1979.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.