

---

---

# A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

1           SECTION 1. The legislature finds that improper termination  
2 of ongoing temporary total disability benefits is a source of  
3 much disruption and vexation to injured workers and those  
4 medical and vocational providers who seek to restore them to  
5 gainful employment. The legislature finds that premature  
6 termination of such benefits causes both economic and  
7 psychological hardship to the injured worker and interferes with  
8 attempts to help them attain full medical and vocational  
9 recovery. However, the adverse consequences of such cessation  
10 of compensation may be cured simply by requiring prior review of  
11 such action by the director of labor and industrial relations.

12           The purpose of this Act is to implement this procedural  
13 modification and to ameliorate these adverse consequences.

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

16           "(b) Temporary total disability. Where a work injury  
17 causes total disability not determined to be permanent in  
18 character, the employer, for the duration of the disability, but



1 not including the first three calendar days thereof, shall pay  
2 the injured employee a weekly benefit at the rate of sixty-six  
3 and two-thirds per cent of the employee's average weekly wages,  
4 subject to the limitations on weekly benefit rates prescribed in  
5 subsection (a), or if the employee's average weekly wages are  
6 less than the minimum weekly benefit rate prescribed in  
7 subsection (a), at the rate of one hundred per cent of the  
8 employee's average weekly wages.

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

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

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



1 When the employer is of the opinion that temporary total  
2 disability benefits should be terminated because the injured  
3 employee is able to resume work, the employer shall notify the  
4 employee and the director in writing of an intent to terminate  
5 the benefits at least two weeks prior to the date when the last  
6 payment is to be made[-]; provided that if the injured employee  
7 has not actually resumed work, temporary total disability  
8 benefits shall continue to be paid until a decision by the  
9 director terminates the benefits. The notice shall give the  
10 reason for stopping payment and shall inform the employee that  
11 the employee may make a written request to the director for a  
12 hearing if the employee disagrees with the employer. Upon  
13 receipt of the request from the employee, the director shall  
14 conduct a hearing as expeditiously as possible and render a  
15 prompt decision as specified in section 386-86. If the employee  
16 is unable to perform light work, if offered, temporary total  
17 disability benefits shall not be discontinued based solely on  
18 the inability to perform or continue to perform light work.

19 An employer or insurance carrier who fails to comply with  
20 this section shall pay not more than \$2,500 into the special  
21 compensation fund upon the order of the director, in addition to  
22 other penalties prescribed in section 386-92.



1           (1) If the director determines, based upon a review of  
2           medical records and reports and other relevant  
3           documentary evidence, that an injured employee's  
4           medical condition may be stabilized and the employee  
5           is unable to return to the employee's regular job, the  
6           director shall issue a preliminary decision regarding  
7           the claimant's entitlement and limitation to benefits  
8           and rights under Hawaii's workers' compensation laws.  
9           The preliminary decision shall be sent to the affected  
10          employee and the employee's designated representative  
11          and the employer and the employer's designated  
12          representative and shall state that any party  
13          disagreeing with the director's preliminary findings  
14          of medical stabilization and work limitations may  
15          request a hearing within twenty days of the date of  
16          the decision. The director shall be available to  
17          answer any questions during the twenty-day period from  
18          the injured employee and affected employer. If  
19          neither party requests a hearing challenging the  
20          director's finding the determination shall be deemed  
21          accepted and binding upon the parties. In any case  
22          where a hearing is held on the preliminary findings,



1 any person aggrieved by the director's decision and  
2 order may appeal under section 386-87.

3 A preliminary decision of the director shall  
4 inform the injured employee and the employer of the  
5 following responsibilities, benefits, and limitations  
6 on vocational rehabilitation benefits that are  
7 designed to facilitate the injured employee's early  
8 return to suitable gainful employment:

9 (A) That the injured employee may invoke the  
10 employee's rights under section 378-2, 378-32, or  
11 386-142, or all of them, in the event of unlawful  
12 discrimination or other unlawful employment  
13 practice by the employer; and

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

20 (2) If the rehabilitation unit determines that an injured  
21 employee is not a feasible candidate for  
22 rehabilitation and that the employee is unable to



1 resume the employee's regular job, it shall promptly  
2 certify the same to the director. Soon thereafter,  
3 the director shall conduct a hearing to determine  
4 whether the injured employee remains temporarily  
5 totally disabled, or whether the employee is  
6 permanently partially disabled, or permanently totally  
7 disabled."

8 SECTION 3. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 4. This Act shall take effect on July 1, 2050.



**Report Title:**

Work Comp; TTD

**Description:**

Prevents the termination of temporary total disability benefits until the director of labor decides to terminate them. (HB1892 HD1)

HB1892 HD1 HMS 2006-1720

