

JAN 25 2006

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# A BILL FOR AN ACT

RELATING TO CONTINUED TEMPORARY TOTAL DISABILITY BENEFITS TO  
INJURED EMPLOYEES.

**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



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

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

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



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

21           An employer or insurance carrier who fails to comply with  
22 this section shall pay not more than \$2,500 into the special



1 compensation fund upon the order of the director, in addition to  
2 other penalties prescribed in section 386-92.

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



1           accepted and binding upon the parties. In any case  
2           where a hearing is held on the preliminary findings,  
3           any person aggrieved by the director's decision and  
4           order may appeal under section 386-87.

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

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

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



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

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

13          SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: Olivia Kanno  
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**Report Title:**  
Work Comp; TTD

**SB. NO. 3035**

**Description:**  
Prevents the termination of temporary total disability benefits until the director of labor decides to terminate them.

