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# A BILL FOR AN ACT

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



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



1 perform light work, if offered, temporary total disability  
2 benefits shall not be discontinued based solely on the inability  
3 to perform or continue to perform light work.

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

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



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

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

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



1 (B) That after termination of temporary total  
2 disability benefits, an injured employee who  
3 resumes work may be entitled to permanent partial  
4 disability benefits, which if awarded, shall be  
5 paid regardless of the earnings or employment  
6 status of the disabled employee at the time.

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

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

19 "§386-95 Reports of injuries, other reports, penalty.

20 Every employer shall keep a record of all injuries, fatal or  
21 otherwise, received by the employer's employees in the course of



1 their employment, when known to the employer or brought to the  
2 employer's attention.

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

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

17       The reports required by this section shall be made on forms  
18 to be obtained from the director pursuant to section 386-71 and  
19 deposit of reports in the United States mail [7] or by electronic  
20 means as approved by the director, addressed to the director,



1 within the time specified shall be deemed compliance with the  
2 requirements of this section.

3 When an injury results in immediate death, the employer  
4 shall within forty-eight hours notify personally or by telephone  
5 a representative of the department in the county where the  
6 injury occurred.

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

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

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

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

20 "§386-96 Reports of physicians, surgeons, and hospitals.

21 (a) Any physician, surgeon, or hospital that has given any



1 treatment or rendered any service to an injured employee shall  
2 make a report of the injury and treatment on forms prescribed by  
3 and to be obtained from the department as follows:

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





1 light, part-time, or restricted work, the attending  
2 physician shall submit a report to the employer within  
3 seven calendar days indicating the date of release to  
4 work or medical stabilization; and

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

8 No physician, surgeon, or hospital that has given any treatment  
9 or rendered any service to an injured employee shall be required  
10 to provide any additional reports not otherwise mandated by this  
11 section.

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

20 (1) An initial or interim report within the time  
21 prescribed in subsection (a) (1) and (2); or



1           (2) A final report that is thirty days late or a  
2           nonsubmission,  
3 the delinquent physician shall be fined not more than [~~\$250.~~  
4 \$500.

5           (c) The director shall furnish to the injured employee a  
6 copy of the final report of the attending physician or surgeon  
7 or, if more than one physician or surgeon should treat or  
8 examine the employee, a copy of the final report of each  
9 physician or surgeon.

10          (d) Within fifteen days after being requested to do so by  
11 the injured employee or the employee's duly authorized  
12 representative, the employer shall furnish the employee or the  
13 employee's duly authorized representative with copies of all  
14 medical reports relating to the employee's injury that are in  
15 the possession of the employer. The copies shall be furnished  
16 at the expense of the employer. The employer shall allow the  
17 employee or the employee's duly authorized representative to  
18 inspect and copy transcripts of depositions of medical  
19 witnesses, relating to the employee's injury, in the possession  
20 of the employer. Any employer who fails to furnish medical  
21 reports or to allow inspection and copying of transcripts of



1 depositions of medical witnesses, as required by this  
2 [~~paragraph~~] subsection, shall be fined in an amount not to  
3 exceed [~~\$1,000.~~] \$5,000.

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

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

11 "**§386-123 Failure to give security for compensation;**  
12 **penalty; injunction.** If an employer fails to comply with  
13 section 386-121, the employer shall be liable for a penalty of  
14 not less than [~~\$250~~] \$500 or of [~~\$10~~] \$100 for each employee for  
15 every day during which such failure continues, whichever sum is  
16 greater, to be recovered in an action brought by the director in  
17 the name of the State, and the amount so collected shall be paid  
18 into the special compensation fund created by section 386-151.  
19 The director may, however, in the director's discretion, for  
20 good cause shown, remit all or any part of the penalty in excess  
21 of [~~\$250,~~] \$500; provided that the employer in default complies



1 with section 386-121. With respect to such actions, the  
2 attorney general or any county attorney or public prosecutor  
3 shall prosecute the same if so requested by the director.

4 In addition, if any employer is in default under section  
5 386-121 for a period of thirty days, the employer may be  
6 enjoined, by the circuit court of the circuit in which the  
7 employer's principal place of business is located, from carrying  
8 on the employer's business anywhere in the State so long as the  
9 default continues, such action for injunction to be prosecuted  
10 by the attorney general or any county attorney if so requested  
11 by the director."

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

14 "§386-129 Employees not to pay for insurance; penalty. No  
15 agreement by an employee to pay any portion of the premium paid  
16 by the employee's employer, or to contribute to a benefit fund  
17 or department maintained by the employer, or to the cost of  
18 mutual or other insurance maintained for or carried for the  
19 purpose of securing compensation as herein required, shall be  
20 valid; and any employer who makes a deduction for that purpose  
21 from the wages or salary of any employee entitled to the



1 benefits of this chapter shall be fined not more than [~~\$2,500-~~]  
2 \$5,000."

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

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

- 7 (1) Domestic service in a private home, local college  
8 club, or local chapter of a college fraternity or  
9 sorority, performed in any calendar quarter by an  
10 individual if the cash remuneration paid by the  
11 employer for such service is less than \$225;
- 12 (2) Service not in the course of the employer's trade or  
13 business performed in any calendar quarter by an  
14 individual, unless the cash remuneration paid for the  
15 service is \$50 or more and the service is performed by  
16 an individual who is regularly employed by the  
17 employer to perform the service. An individual shall  
18 be deemed to be regularly employed to perform service  
19 not in the course of the employer's trade or business  
20 during a calendar quarter only if:



- 1 (A) On each of some twenty-four days during the  
2 quarter the individual performs the service for  
3 some portion of the day; or
- 4 (B) The individual was regularly employed, as  
5 determined under subparagraph (A), by the  
6 employer in the performance of the service during  
7 the preceding calendar quarter;
- 8 (3) Service performed on or in connection with a vessel  
9 not an American vessel, if the individual performing  
10 the service is employed on and in connection with the  
11 vessel when outside the United States;
- 12 (4) Service performed by an individual in (or as an  
13 officer or member of the crew of a vessel while it is  
14 engaged in) the catching, taking, harvesting,  
15 cultivating, or farming of any kind of fish,  
16 shellfish, crustacea, sponges, seaweeds, or other  
17 aquatic forms of animal and vegetable life, including  
18 service performed as an ordinary incident thereto,  
19 except:
- 20 (A) The service performed in connection with a vessel  
21 of more than ten net tons (determined in the



1 manner provided for determining the register  
2 tonnage of merchant vessels under the laws of the  
3 United States);

4 (B) The service performed in connection with a vessel  
5 of ten net tons or less (determined in the manner  
6 provided for determining the register tonnage of  
7 merchant vessels under the laws of the United  
8 States) by an individual who is employed by an  
9 employer who, for some portion in each of twenty  
10 different calendar weeks in either the current or  
11 preceding calendar year, had in the employer's  
12 employ one or more persons performing the  
13 service, whether or not the weeks were  
14 consecutive and whether or not the same  
15 individuals performed the service in each week;  
16 and

17 (C) The service performed in connection with the  
18 catching or taking of salmon or halibut for  
19 commercial purposes;

20 (5) Service performed by an individual in the employ of  
21 the individual's son, daughter, or spouse, and service



- 1 performed by a child under the age of twenty-one in  
2 the employ of the child's father or mother;
- 3 (6) Service performed in the employ of the United States  
4 government or an instrumentality of the United States  
5 exempt under the Constitution of the United States  
6 from the contributions imposed by this chapter;
- 7 (7) Service performed in the employ of any other state, or  
8 any political subdivision thereof, or any  
9 instrumentality of any one or more of the foregoing  
10 that is wholly owned by one or more such states or  
11 political subdivisions; and any service performed in  
12 the employ of any instrumentality of one or more other  
13 states or their political subdivisions to the extent  
14 that the instrumentality is, with respect to such  
15 service, exempt from the tax imposed by section 3301  
16 of the Internal Revenue Code;
- 17 (8) Service with respect to which temporary disability  
18 compensation is payable for sickness under a temporary  
19 disability insurance system established by an act of  
20 Congress;





- 1           (9) Service performed in any calendar quarter in the  
2           employ of any nonprofit organization exempt from  
3           income tax under section 501 of the Internal Revenue  
4           Code, if:
- 5           (A) The remuneration for such service is less than  
6           \$50;
- 7           (B) The service is performed by a student who is  
8           enrolled and is regularly attending classes at a  
9           school, college, or university;
- 10          (C) The service is performed by a duly ordained,  
11          commissioned, or licensed minister or licensed  
12          minister of a church in the exercise of the  
13          minister's ministry or by a member of a religious  
14          order in the exercise of nonsecular duties  
15          required by the order; or
- 16          (D) The service is performed for a church by an  
17          employee who fails to meet the eligibility  
18          requirements of section 392-25;
- 19          (10) Service performed in the employ of a voluntary  
20          employees' beneficiary association providing for the  
21          payment of life, sick, accident, or other benefits to



1 the members of the association or their dependents,

2 if:

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

6 (B) Eighty-five per cent or more of its income  
7 consists of amounts collected from members and  
8 amounts contributed by the employer of the  
9 members for the sole purpose of making such  
10 payments and meeting expenses;

11 (11) Service performed in the employ of a voluntary  
12 employees' beneficiary association providing for the  
13 payment of life, sick, accident, or other benefits to  
14 the members of the association or their dependents or  
15 their designated beneficiaries, if:

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

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



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

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

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

13           (B) The United States Secretary of State has  
14           certified or certifies to the United States  
15           Secretary of the Treasury that the foreign  
16           government, with respect to whose instrumentality  
17           exemption is claimed, grants an equivalent  
18           exemption with respect to similar service  
19           performed in the foreign country by employees of  
20           the United States government and of  
21           instrumentalities thereof;



- 1           (14) Service performed as a student nurse in the employ of  
2           a hospital or a nurses' training school by an  
3           individual who is enrolled and is regularly attending  
4           classes in a nurses' training school chartered or  
5           approved pursuant to state law; and service performed  
6           as an intern in the employ of a hospital by an  
7           individual who has completed a four years' course in a  
8           medical school chartered or approved pursuant to state  
9           law;
- 10          (15) Service performed by an individual for an employer as  
11          an insurance producer, if all such service performed  
12          by the individual for the employer is performed for  
13          remuneration solely by way of commission;
- 14          (16) Service performed by an individual under the age of  
15          eighteen in the delivery or distribution of newspapers  
16          or shopping news, not including delivery or  
17          distribution to any point for subsequent delivery or  
18          distribution;
- 19          (17) Service covered by an arrangement between the  
20          department and the agency charged with the  
21          administration of any other state or federal



1 unemployment compensation law pursuant to which all  
2 services performed by an individual for an employer  
3 during the period covered by the employer's duly  
4 approved election, are deemed to be performed entirely  
5 within the agency's state;

6 (18) Service performed by an individual who, pursuant to  
7 the federal Economic Opportunity Act of 1964, is not  
8 subject to the federal laws relating to unemployment  
9 compensation;

10 (19) Domestic in-home and community-based services for  
11 persons with developmental and intellectual  
12 disabilities under the medicaid home and community-  
13 based services program pursuant to title 42 Code of  
14 Federal Regulations sections 440.180 and 441.300, and  
15 title 42 Code of Federal Regulations, part 434,  
16 subpart A, as amended, or when provided through state  
17 funded medical assistance to individuals ineligible  
18 for medicaid, and identified as chore, personal  
19 assistance and habilitation, residential habilitation,  
20 supported employment, respite, and skilled nursing  
21 services, as the terms are defined by the department



1 of human services, performed by an individual whose  
2 services are contracted by a recipient of social  
3 service payments and who voluntarily agrees in writing  
4 to be an independent contractor of the recipient of  
5 social service payments;

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

17 (21) Service performed by a vacuum cleaner salesperson for  
18 an employing unit, if all such services performed by  
19 the individual for such employing unit are performed  
20 for remuneration solely by way of commission; [~~or~~]



- 1 (22) Service performed by an individual for an employer as  
2 a real estate salesperson or as a real estate broker,  
3 if all the service performed by the individual for the  
4 employer is performed for remuneration solely by way  
5 of commission[-];
- 6 (23) Service performed by an individual for a corporation  
7 if the individual owns at least fifty per cent of the  
8 corporation; provided that no employer shall require  
9 an employee to incorporate as a condition of  
10 employment;
- 11 (24) Service performed by a member of a limited liability  
12 company if the member is an individual and has a  
13 distributional interest, as defined in section 428-  
14 101, of not less than fifty per cent in the company;  
15 provided that no employer shall require an employee to  
16 form a limited liability company as a condition of  
17 employment;
- 18 (25) Service performed by a partner of a partnership, as  
19 defined in section 425-101, if the partner is an  
20 individual; provided that no employer shall require an



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 a 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,





1 for good cause shown, remit all or any part of the penalty in  
2 excess of [~~\$25,~~ \$500; provided that the employer in default  
3 [~~forthwith~~] complies with section 392-41.

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

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

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

17 SECTION 10. This Act shall take effect on July 1, 2016.



**Report Title:**

Temporary Disability Insurance Exclusions; Workers' Compensation Penalties

**Description:**

Excludes employers under certain circumstances 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 of Labor and Industrial Relations 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. (HB2363 CD1)

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

