

HB 1112

RELATING TO TEMPORARY DISABILITY
INSURANCE.

LAB, FIN

HB1112



Submit Testimony

Measure Title: RELATING TO TEMPORARY DISABILITY INSURANCE.

Report Title: Temporary Disability Insurance; Hearing Location; Electronic Service; Electronic Notice

Description: Allows appeals to be filed at the various offices of the department throughout the State. Allows a Temporary Disability Insurance appeal to be heard in a county chosen by the department, or the county in which the claimant resides, or in which the claimant was employed prior to the claimant's disability. Allows the department to send notices of hearing electronically or by first class mail. Clarifies that when the notice of hearing cannot be delivered to a party in the appeal, the notice may be given by online posting on the department's webpage. Allows the parties to a hearing to appear in person, via telephone, or by other communication devices.

Companion: [SB978](#)

Package: Governor

Current Referral: LAB, FIN

Introducer(s): SOUKI (Introduced by request of another party)

<u>Sort by Date</u>		Status Text
1/23/2017	H	Pending introduction.
1/25/2017	H	Pass First Reading
1/27/2017	H	Referred to LAB, FIN, referral sheet 5
2/6/2017	H	Bill scheduled to be heard by LAB on Thursday, 02-09-17 10:00AM in House conference room 309.

S = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment
Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions

H.B. NO. 1112

A BILL FOR AN ACT

RELATING TO TEMPORARY DISABILITY INSURANCE.

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

1 SECTION 1. Section 392-72, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§392-72 Appeals, filing, and hearing. (a) If a person
4 disputes the amount of benefits, paid under part III or part IV,
5 or the denial of benefits, the claimant may file an appeal, in
6 the form and manner prescribed by [~~regulation~~] rule of the
7 director, at the office of the department [~~in the county in~~
8 ~~which the claimant resides or in the county in which the~~
9 ~~claimant was employed prior to the claimant's disability~~],
10 within twenty days after the date of payment of such disputed
11 benefits or the denial thereof. Notice of the appeal shall be
12 served upon the employer or insurer or the trust fund for
13 disability benefits in the form and manner prescribed by
14 [~~regulation~~] rule of the director. Notice of a hearing of an
15 appeal shall be sent by electronic service or by first class
16 mail to the claimant and employer or insurer or trust fund for
17 disability benefits at least fifteen calendar days prior to the
18 hearing. If electronic service or first class mail is attempted

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1 but not made, and the department has been unable to ascertain
2 the address of the party after reasonable and diligent inquiry,
3 the notice of hearing may be given to the party by online
4 posting on the department's webpage. The online posting shall
5 appear at least fifteen calendar days prior to the date of the
6 hearing. The online posting shall be removed from the webpage
7 no less than five business days after the date of the hearing.

8 (b) The appeal ~~[shall]~~ may be heard in ~~[the]~~ any county
9 ~~[in which the appeal is filed, provided that the director may by~~
10 ~~regulation provide for good cause for the holding of a hearing~~
11 ~~in another county]~~, and parties may appear at the hearing in
12 person, by telephone, or by other communication devices approved
13 by the department, or by a combination of the preceding. The
14 parties shall be provided with notice of the hearing and shall
15 be provided with the opportunity to object to the hearing being
16 held in a county other than the county in which the claimant
17 resides or in which the claimant was employed prior to the
18 claimant's disability. If a party objects, the hearing shall be
19 heard in the county in which the claimant resides or in which
20 the claimant was employed prior to the claimant's disability.
21 Failure to object to the hearing within the time specified in
22 the notice shall be deemed consent by the parties to the

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1 hearing. The department may provide for the taking of
2 depositions. Unless the appeal is withdrawn with the permission
3 of the referee, the referee after affording the parties
4 reasonable opportunity for a fair hearing shall make findings
5 and conclusions and on the basis thereof affirm, modify, or deny
6 the disputed benefits. In the event a party fails to appear at
7 the hearing, the referee shall issue a decision based on the
8 available information. All parties shall be promptly notified
9 of the decision of the referee and shall be furnished with a
10 copy of the decision and the findings and conclusions in support
11 thereof and the decision shall be final and shall be binding
12 unless a proceeding for judicial review is initiated pursuant to
13 section 392-75; provided that within the time provided for
14 taking an appeal and prior to the filing of a notice of appeal,
15 the referee may reopen the matter, upon application of the
16 director or any party, or upon the referee's own motion, and
17 thereupon may take further evidence or may modify the referee's
18 decision, findings, or conclusions. In the event the matter is
19 reopened, the referee shall render a further decision in the
20 matter, either reaffirming or modifying the referee's original
21 decision, and notice shall be given thereof in the manner
22 hereinbefore provided. The time to initiate judicial review

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1 shall run from the notice of such further decision if the matter
2 has been reopened."

3 SECTION 2. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 3. This Act shall take effect upon its approval.

6
7
8

INTRODUCED BY:  _____

BY REQUEST

JAN 23 2017

H.B. NO. 1112

Report Title:

Temporary Disability Insurance; Hearing Location; Electronic Service; Electronic Notice

Description:

Allows appeals to be filed at the various offices of the department throughout the State. Allows a Temporary Disability Insurance appeal to be heard in a county chosen by the department, or the county in which the claimant resides, or in which the claimant was employed prior to the claimant's disability. Allows the department to send notices of hearing electronically or by first class mail. Clarifies that when the notice of hearing cannot be delivered to a party in the appeal, the notice may be given by online posting on the department's webpage. Allows the parties to a hearing to appear in person, via telephone, or by other communication devices.

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

JUSTIFICATION SHEET

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO TEMPORARY
DISABILITY INSURANCE.

PURPOSE: To allow Temporary Disability Insurance
appeals to be filed at the various offices
of the department throughout the State.

To allow an appeal to be heard in a county
chosen by the department, or in which the
claimant resides, or in which the claimant
was employed prior to the claimant's
disability.

To allow the department to send notices of
hearing electronically or by first class
mail.

To clarify the appeal process when the
notice of hearing cannot be delivered to a
party in the appeal, in which case the
notice may be given by online posting on the
department's webpage.

To allow hearings to be held in person, via
telephone, or by other communication
devices.

To allow a decision to be issued based on
available information if a party to the
hearing fails to appear at the hearing.

MEANS: Amend section 392-72, Hawaii Revised
Statutes (HRS).

JUSTIFICATION: This proposal will give the department greater
flexibility in the methods used to send notices
of hearings and in the conduct of hearings.
The department will be able to send notices of
hearing electronically or by first class mail,
rather than by registered or certified mail
with return receipt requested as currently

required by chapter 91, HRS. Section 91-9.5(a), HRS, requires that written notice of hearing be given to all parties by registered or certified mail with return receipt requested, and section 91-9.5(b), HRS, requires the department to publish the notice of hearing at least once in two successive weeks in a newspaper of general circulation when the mailed notice of hearing is refused or is undeliverable. The department will be able to hold appeal hearings in a county chosen by the department, or the county in which the claimant resides, or in which the claimant was employed prior to the claimant's disability. The department will also gain the ability to conduct hearings via telephone or other communication devices.

The online posting provision in the measure mirrors a similar provision in section 371-4, HRS, which allows the Labor and Industrial Relations Appeals Board to post notices electronically if service by first class mail is not made.

Impact on the public: This measure will provide alternative methods of receiving the notices of hearing and will reduce delays in hearing scheduling.

Impact on the department and other agencies: This proposal allows for electronic communication, thereby reducing postage and publication costs as well as the time required by department staff to process appeals.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: LBR183.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.

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Late testimony



STATE OF HAWAII
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February 9, 2017

To: The Honorable Aaron Ling Johanson, Chair,
The Honorable Daniel Holt, Vice Chair, and
Members of the House Committee on Labor & Public Employment

Date: Thursday, February 9, 2017
Time: 10:00 a.m.
Place: Conference Room 309, State Capitol

From: Linda Chu Takayama, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 1112 Relating to Temporary Disability Insurance

I. OVERVIEW OF PROPOSED LEGISLATION

This proposal seeks to amend chapter 392, Hawaii Revised Statutes (HRS), by allowing greater flexibility as to where an appeal may be filed, where an appeal may be heard, providing for electronic service of hearing notice, including when a notice cannot be delivered to a party in an appeal, and allows the parties to a hearing to appear in person, via telephone, or other communication devices.

The department strongly supports the measure.

II. CURRENT LAW

Chapter 392, HRS, requires that a temporary disability insurance (TDI) appeal be filed at the office of the department in the county where the employee resides or in the county where the employee was employed prior to the disability. The appeal must be heard in the county where the appeal was filed.

The hearing process currently follows the procedures required under chapter 91, HRS, in regards to how hearing notices are delivered. Chapter 91, HRS, requires notices to be sent to all parties by registered or certified mail with return receipt requested and requires the department to publish the notice of hearing in a newspaper of general circulation when the notice of hearing is refused or is undeliverable.

III. COMMENTS ON THE HOUSE BILL

The department strongly supports the proposal for the following reasons:

- Claimants will be allowed to file appeals at the office of the department most convenient for the claimant instead of being restricted (“shall”) to the county in which the appeal is filed.
- Similarly, instead of limiting the hearing location to the county office where the claimant was employed or resided at the time of the disability, the department will be able to hold a hearing in another county if the need arises. For example, the claimant may be permanently or temporarily living in another county for medical treatment or other reasons.
- DLIR will be able to send notices of hearing electronically or by first class mail, rather than by registered or certified mail with return receipt requested as currently required by chapter 91, HRS. This will expedite the notice process, as well as reduce postage costs.
- When the notice of hearing cannot be delivered to a party in the appeal, the notice will be given by online posting on the department’s webpage. The online posting provision in the measure mirrors a similar provision in section 371-4, HRS, which allows the Labor and Industrial Relations Appeals Board to post notices electronically if service by first class mail is not made. DLIR staff does not recollect a party attending a hearing after publishing pursuant to chapter 91.
- Allows an appeal to be heard in a county chosen by the department, or in which the claimant resides, or in which the claimant was employed prior to the claimant’s disability. If any party objects to the location of the hearing when it is not where the claimant resides or was employed prior to the disability, then the hearing “shall be heard in the county in which the claimant resides or in which the claimant was employed prior to the claimant’s disability.”
- By allowing hearings to be held not only in person but also via telephone or by other communication devices, the department can accommodate parties that are not located on the same island and reduce travel time and costs for the parties.
- The proposal clarifies that a decision can be issued based on available information if a party to the hearing fails to appear at the hearing, which will help reduce the backlog of untimely appeals in which one of the parties usually fails to appear and benefits are not awarded .