

HB 1207

RELATING TO LABOR.

LAB, FIN

HB1207



Submit Testimony

Measure Title: RELATING TO LABOR.

Report Title: Labor and Industrial Relations; Temporary Disability Insurance; Stop-Work Order

Description: Establishes procedures and penalties related to the issuance of stop-work orders by the Department of Labor and Industrial Relations for employer violations of temporary disability insurance requirements.

Companion:

Package: None

Current Referral: LAB, FIN

Introducer(s): HOLT, JOHANSON

<u>Sort by Date</u>		Status Text
1/24/2017	H	Pending introduction.
1/25/2017	H	Pass First Reading
1/30/2017	H	Referred to LAB, FIN, referral sheet 6
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.

A BILL FOR AN ACT

RELATING TO LABOR.

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

1 SECTION 1. Chapter 392, Hawaii Revised Statutes, is
2 amended by adding two new sections to part III to be
3 appropriately designated and to read as follows:

4 "§392- Failure to observe stop-work order. (a) Any
5 employer who fails to observe a stop-work order issued and
6 served upon the employer pursuant to section 392-47 shall be
7 guilty of a misdemeanor punishable by a fine not exceeding
8 \$10,000, or imprisonment not exceeding sixty days, or both.

9 (b) The employer or management employer representative who
10 directed the violation of the stop-work order shall be held
11 accountable for the violation of the stop-work order.

12 §392- Recovery of attorneys' fees and costs. The court
13 may award reasonable attorneys' fees and costs to the department
14 in an action brought by the department to enforce the provisions
15 of this chapter, including injunctive and other relief to carry
16 out the purpose of sections 392-41 and 392-47. Attorneys' fees
17 and costs recovered pursuant to this section shall be paid into



1 the trust fund for disability benefits established by section
2 392-61."

3 SECTION 2. Chapter 392, Hawaii Revised Statutes, is
4 amended by adding a new section to part V to be appropriately
5 designated and to read as follows:

6 "§392- Litigation expenses and positions to be paid from
7 the trust fund for disability benefits. All litigation
8 expenses, including but not limited to court costs, attorneys'
9 fees, and witness fees incurred by the director's actions to
10 enforce stop-work orders or collect penalties and fines
11 associated with an employer's failure to comply with this
12 chapter may be paid from the trust fund for disability benefits
13 created by section 392-61."

14 SECTION 3. Section 392-91, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "[+]§392-91[+] **Enforcement by the director.** The director
17 shall enforce the provisions of this chapter. The director may
18 appoint [~~such~~] investigators, clerks, interpreters, assistants,
19 [~~and such~~] clerical, stenographic and other help as may be
20 necessary for the proper enforcement of this chapter subject to
21 any civil service act relating to state employees. The salaries



1 of all the foregoing appointees and employees shall be as fixed
2 by law[-] and may be paid from the trust fund for disability
3 benefits created by section 392-61.

4 The director may adopt, amend, or repeal such rules and
5 regulations as the director deems necessary or suitable for the
6 proper enforcement of this chapter."

7 SECTION 4. Section 392-47, Hawaii Revised Statutes, is
8 amended to read as follows:

9 **"§392-47 Failure to give security for payment of benefits;**
10 **penalty; stop-work order; fines; injunction.** (a) If an
11 employer fails to comply with section 392-41, the director or
12 the director's designee shall issue and serve on the employer a
13 stop-work order prohibiting the use of employee labor by the
14 employer until the employer complies with section 392-41. The
15 stop-work order shall become effective immediately upon service
16 on the employer. Any employee affected by the work stoppage
17 shall be paid by the employer for time lost, not exceeding ten
18 days, pending compliance by the employer. The employer may
19 protest the stop-work order by filing with the director a
20 written request for a hearing within twenty days after service
21 of the stop-work order. The hearing shall be held within five



1 days from the date of filing the request. The director shall
2 notify the employer of the time and place of the hearing by
3 certified mail. At the conclusion of the hearing, the stop-work
4 order shall be affirmed or dismissed, and within twenty-four
5 hours of rendering the decision, the director shall issue a
6 written decision to be served on all parties by registered or
7 certified mail.

8 (b) At the time the stop-work order is issued and served
9 pursuant to this section, the director or the director's
10 designee shall levy a penalty requiring the uninsured employer
11 [shall be subject to a penalty of] to pay not less than \$500 or
12 of \$100 for each employee for every day the employer fails to
13 comply with section 392-41, [during which such failure
14 continues,] whichever sum is greater, to be recovered in an
15 action brought in the discretion of the director and the amount
16 so collected shall be paid into the trust fund for disability
17 benefits created by section 392-61.

18 (c) The director may, however, in the director's
19 discretion, for good cause shown, withdraw a stop-work order or
20 remit all or any part of the penalty in excess of \$500; provided
21 that the employer in default complies with section 392-41.



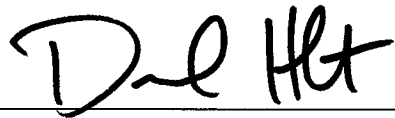
1 Furthermore, if any employer is in default under section
2 392-41, [~~for a period of thirty days,~~] the employer may be
3 enjoined by the circuit court of the circuit in which the
4 employer's principal place of business is located from carrying
5 on the employer's business in any place in the State so long as
6 the default continues, [~~such~~] the action for injunction to be
7 prosecuted by the attorney general or any county attorney if so
8 requested by the director."

9 SECTION 5. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

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

12

INTRODUCED BY:





JAN 24 2017



H.B. NO. 1207

Report Title:

Labor and Industrial Relations; Temporary Disability Insurance;
Stop-Work Order

Description:

Establishes procedures and penalties related to the issuance of stop-work orders by the Department of Labor and Industrial Relations for employer violations of temporary disability insurance requirements.

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





Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Labor & Public Employment
Thursday, February 9, 2017 at 10:00 A.M.
Conference Room 309, State Capitol**

RE: HOUSE BILL 1207 RELATING TO LABOR

Chair Johanson, Vice Chair Holt, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") would like to provide **comments** regarding HB 1207, which establishes procedures and penalties related to the issuance of stop-work orders by the Department of Labor and Industrial Relations for employer violations of temporary disability insurance requirements.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,600+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

We appreciate the intent of the bill to ensure that all companies are on the same playing field in abiding by the laws and rules of the state. At the same time, we have some concerns on the lack of specificity on how investigations would take place, and what is the burden of proof on the department on issuing the stop-work order. A clear due process structure needs to be clarified as the penalties are both monetary and imprisonment. We also would ask that the Director or their designee be given latitude to issue a stop-work order rather than the law mandating them to do so.

Please keep in mind that the Department of Commerce and Consumer Affairs, through its Regulated Industries Complaint Office (RICO) has the ability to cite for unlicensed activity, including non-compliance with workers compensation insurance and order a project to cease and desist. The City and County of Honolulu also has a similar ordinance which allows them to order a project to be stopped if it is based on public health and safety.

Lastly, we have concerns while this bill has genesis in the construction industry; it applies to all business and could adversely affect many other companies and industries.

Thank you for the opportunity to testify.

Hawai'i Construction Alliance

P.O. Box 179441
Honolulu, HI 96817
(808) 348-8885

February 6, 2017

The Honorable Aaron Ling Johanson, Chair
The Honorable Daniel Holt, Vice Chair
and members
House Committee on Labor & Public Employment
415 South Beretania Street
Honolulu, Hawai'i 96813

RE: Strong Support for HB1207, Relating to Labor

Dear Chair Johanson, Vice Chair Holt, and members:

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Laborers' International Union of North America, Local 368; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the basic crafts of Hawai'i's construction industry.

We strongly support HB1207, which would establish procedures and penalties related to the issuance of stop-work orders by the Department of Labor and Industrial Relations for employer violations of temporary disability insurance requirements.

The Hawai'i Construction Alliance has been extremely concerned by the increasing problem of unscrupulous employers not following laws designed to protect the health and safety of Hawai'i workers.

It is far too common for employers in Hawai'i — particularly in the construction industry — to not provide their employees with temporary disability insurance and workers' compensation coverage. Often, this is due to employers fraudulently misclassifying workers as "independent contractors" or willfully neglecting to provide such coverage in an attempt to cut costs and retain profits. This sort of behavior is unacceptable and actively harms Hawai'i workers and families.

Last year, the legislature passed HB2363, which was signed into law as Act 187. This bill, among other things, increased fines for employers who did not offer temporary disability insurance coverage. At the time, we believed that increasing fines would serve as a sufficient deterrent to cause unscrupulous contractors to think twice before flouting the law.

Unfortunately, unscrupulous contractors continue to operate – as was discovered at the recent raids at the Maile Sky Court and Polynesian Plaza construction projects in Waikīkī. Thus, we strongly believe that the Department of Labor and Industrial Relations ought to be given another enforcement tool – the issuance of stop-work orders – to further deter bad actors and to prevent workers who aren't provided temporary disability insurance coverage from being placed into unsafe situations.

Stop-work orders would be a “last-resort” option for DLIR, but we believe that this type of tool will be effective in preventing workers from being made to work without proper coverage. We note that several other states have the ability to issue stop-work orders to employers who do not provide their workers with various types of coverages.

By virtue of these states’ abilities to issue stop-work orders, their workers enjoy more protections and, by extension, safer job sites. We believe Hawai‘i workers deserve the same.

Therefore, we strongly ask for your committee’s favorable action on HB1207.

Mahalo,

A handwritten signature in black ink, reading "Tyler Dos Santos-Tam". The signature is written in a cursive, flowing style.

Tyler Dos Santos-Tam
Executive Director
Hawai‘i Construction Alliance
execdir@hawaiiconstructionalliance.org

SAH - Subcontractors Association of Hawaii

1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-2938

Phone: (808) 537-5619 ✦ Fax: (808) 533-2739

February 9, 2017

Testimony To: House Committee on Labor & Public Employment
Representative Aaron Ling Johanson, Chair

Presented By: Tim Lyons, President

Subject: H.B. 1207 - RELATING TO LABOR.

Chair Johanson and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we do not support this bill as written. The SAH represents the following nine separate and distinct contracting trade organizations.

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

We do however, support the intent of the bill and recognize that there are situations that a stop work order might in fact be needed. We are concerned however with the lack of any criteria or any procedure that would occur prior to the issuance of a stop work order. In other words, after a violation, are there any steps that DLIR must take prior to the issuance of a stop work order or can they immediately go forward to the stop work order?

We are particularly concerned with Section 392-47 (a) regarding the payment of time lost and we are not quite sure how that would be calculated. The work order becomes effective immediately upon service and then the employer has to pay for any time lost not to exceed ten (10) days however, if work schedules for the following week have not yet been made up, how then does anybody know what the time lost will be?

We recognize that the stop work order could be an effective tool in curbing non-compliance with the temporary disability statutes however, we also are fearful that a stop work order that was erroneously issued needs to have a cure process that can happen as quickly as it was issued. Therefore, some type of notification to the employer would seem to need to occur.

Based on the above, we cannot support this bill as it is written although we do believe that it may have some merit if it can be modified.

Thank you.

holt1 - Joyleanne

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 6, 2017 5:27 PM
To: LABtestimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for HB1207 on Feb 9, 2017 10:00AM*

HB1207

Submitted on: 2/6/2017

Testimony for LAB on Feb 9, 2017 10:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

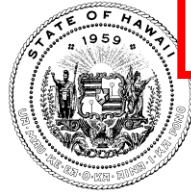
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HB 1207

Late testimony

LATE



LATE

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.labor.hawaii.gov
Phone: (808) 586-8844 / Fax: (808) 586-9099
Email: dliir.director@hawaii.gov

LATE

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. 1207 Relating to Labor

I. OVERVIEW OF PROPOSED LEGISLATION

This proposal seeks to amend the Temporary Disability Insurance (TDI) statutes in chapter 392, Hawaii Revised Statutes (HRS), by adding two new sections relating to stop-work orders to Part III, adding one new section to Part V, and by amending sections 392-47 and 392-91, HRS. The bill also authorizes the DLIR Director to issue and serve stop-work orders to employers not in compliance with section 392-41, HRS, and establishes penalties, enforcement, and protest procedures. The bill allows the courts to award attorney fees and costs related to the enforcement of the chapter to the trust fund for disability benefits, and allows litigation expenses and staff salaries to be paid from the trust fund for disability benefits.

The Department supports the intent of this proposal to help ensure all employers have the required TDI coverage as mandated by law and offers comments below.

II. CURRENT LAW

Section 392-47, HRS, holds the employer liable for penalties for failure to comply with section 392-41, HRS, and allows the Director to seek an injunction against employers who do not have TDI coverage for a period of 30 days.

III. COMMENTS ON THE HOUSE BILL

The Department supports the intent of the bill to help ensure all employers have the required temporary disability insurance coverage as mandated by law. However, as drafted, the proposal contains some problematic aspects relating to the current statute as well as operations. DLIR is willing to work with the parties should the measure continue through the legislative process. This measure was largely drafted using California law. Making the measure compatible with Hawaii's existing law would require amendments.

DLIR would like further information on California's implementation and whether California's implementation of stop-work orders is dependent on other programs and provisions in California's labor code.

Other considerations include:

- A stop-work order issued to an employer without a hearing will raise due process concerns on the part of the employer. The department could develop procedures and administrative rules to further address due process considerations.
- The proposal gives the department only five days to schedule a hearing, notify the parties, and hold the hearing, which is unrealistic and affords no one adequate time to prepare for the hearing. Requiring the Director to orally announce a decision at the end of the hearing then issue a written decision within 24 hours may be an onerous burden. Other concerns include that there is no mention of appeal rights and whether chapter 91 applies to these procedures.
- DLIR notes that if it were required to administer these provisions, as drafted, it would likely need additional staffing and resources.
- The trust fund for disability benefits is a trust fund. Using the trust fund to pay salaries of those who assist in the enforcement of the chapter threatens the status of the trust fund. If the fund is no longer deemed a trust fund, then 5% of the fund will be transferred on an annual basis pursuant to **§36-27 Transfers from special funds for central service expenses**, as well as other issues.
- Using the trust fund to pay related costs such as staff salaries and attorneys' fees and costs also reduces the funds available for the intended purpose of the special fund which are:
 - Paying benefits to qualified disabled claimants who are unemployed and not entitled to Unemployment Insurance benefits
 - Holding unpaid benefits and over-deducted payroll contributions due to employees who cannot currently be found, and

- Paying benefits to qualified claimants when the employers are bankrupt or noncompliant.

The fund was established by a levy on employers in 1969. Since the initial levy, employers have not been assessed another levy to maintain the fund. However, when the fund falls below \$500,000, DLIR must assess each employer or the employer's insurer a levy proportional to the total amount of wages the employer paid in the year to increase the fund balance to \$500,000 pursuant to §392-67. This would not only place a tremendous burden on the department to fill and collect the assessments from the 32,000+ employers, but would also increase employer costs for all employers including those who are compliant, such as the State.

1065 Ahua Street
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Email: info@gcawhawaii.org
Website: www.gcawhawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 9, 2017

TO: HONORABLE AARON JOHANSON, CHAIR HONORABLE DANIEL HOLT,
VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR
AND EMPLOYMENT

SUBJECT: **COMMENTS AND SUGGESTED AMENDMENTS TO H.B. 1207, RELATING
TO LABOR.** Establishes procedures and penalties related to the issuance of stop-
work orders by the Department of Labor and Industrial Relations for employer
violations of temporary disability insurance requirements.

LATE

HEARING

DATE: February 9, 2017
TIME: 10:00 a.m.
PLACE: Conference Room 309

LATE

LATE

Dear Chair Johanson, Vice Chair Holt and Committee Members,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

The GCA has comments regarding H.B. 1207, Relating to Labor because the bill as written does not provide proper due process and respectfully requests that proper safeguards are put in place to protect all parties involved. While GCA appreciates the intent of this legislation and the requirement that all employers comply with the law to provide proper temporary disability insurance to protect the employer, GCA requests that employers are afforded due process if accused of such non-compliance.

H.B. 1207, Relating to Labor proposes to allow the Department of Labor and Industrial Relations (DLIR) the ability to issue and serve on any employer, whether it be in construction or any other industry, an immediate order to stop work due to non-compliance with Section 392-41, compliance with temporary disability insurance benefits. The proposal lacks specifics on how DLIR would investigate such non-compliance or what burdens the DLIR may have to prove prior to issuance of an order to stop work. This bill also indicates that the failure to observe a stop work order is a misdemeanor punishable by sixty days in jail in jail or a fine not exceeding \$10,000, or both. Furthermore, among other things, the Stop Work Order would be immediate upon service and an employee affected shall be paid for time lost not to exceed 10 days.

GCA respectfully requests the Committee consider including procedural due process safeguards for the protection of all parties involved to ensure any attempt to stop work is given full consideration and is supported by factual information. In construction an order to stop work is an

extreme mechanism that should not be taken lightly, given that a construction project's immediate stoppage may put employees and the general public at risk.

For these reasons, we respectfully request the Committee consider adding language that clearly articulates the standard the DLIR must satisfy *before* issuance of an order to stop work; provide an employer adequate notice or advance warning of such an allegation *before* an order to stop work is issued; allow an employer the ability to adequately respond and defend against such allegation *before* a stop work order is issued; and most importantly allow the employer to secure the place of employment for all employees and the public at large *before* issuance of a stop work order.

GCA will continue to work with proponents of this measure to include such safeguards. Thank you for the opportunity to present our views on this matter and for considering our requested language to ensure such enforcement mechanisms include proper safeguards for the employee, employer and the public at large.

LATE

Testimony of
Christopher Delaunay, Government Relations Manager
Pacific Resource Partnership

LATE

LATE

House Committee on Labor & Public Employment
Representative Aaron Ling Johanson, Chair
Representative Daniel Holt, Vice Chair

HB 1207 – Relating to Labor
Thursday, February 9, 2017
10:00 A.M.
State Capitol – Room 309

Aloha Chair Johanson, Vice Chair Holt and members of the Committee:

In an effort to ensure a level playing field for employers who do follow the Temporary Disability Insurance (TDI) law in the State of Hawaii, we **strongly support** HB 1207 and its efforts to authorize the Department of Labor and Industrial Relations Director or the Director's designee to issue a stop-work order prohibiting the continued use of employee labor until the employer complies with the law.

Under existing law, an employer failing to comply with TDI law in the State of Hawaii is liable for a penalty of not less than \$500 or of \$100 for each employee for every day the employer fails to comply with the law. Harsher penalties are needed in order to deter large, medium, and small employers from ignoring Hawaii's TDI law. Unscrupulous employers will continue to work unlawfully, even when fines are issued, because, currently, the benefits of cheating outweigh the risk. A stop-work order is the best remedy for this problem for the following reasons:

- **Failure to stop employers from ignoring TDI law will only reward unscrupulous employers.** Employers who don't abide by Hawaii's TDI law have an unfair advantage over those employers that follow the law. Their services and products will be cheaper than the employer who adheres to the law. As such, a stop-work order will incentivize employers to pay their TDI and make cheating an unprofitable business model in the State of Hawaii.
- **Employers should not be required to pay higher premiums because delinquent employers are not following the law.** Large numbers of employers not paying their fair share of TDI exposes the TDI special fund to greater risks of having to pay TDI to employees who are not covered by their delinquent employers. Inadequate funding in the TDI special fund could drive up the costs of TDI for Hawaii employers.



(Continued From Page 1)

- **Stop-work orders protect the employer and employee.** A stop-work order can stop work before an uninsured employee is injured on the job. This could protect the employer from additional liabilities and protect the employee from uninsured injuries.

It's in the best interest of the State of Hawaii to stop the work of unscrupulous employers who are in violation of Hawaii's TDI law, and who are profiting at the expense of employers and employees who follow the law. We, therefore, respectfully request your support on HB 1207.

About PRP

Pacific Resource Partnership (PRP) is a not-for-profit organization that represents the Hawaii Regional Council of Carpenters, the largest construction union in the state, and more than 240 of Hawaii's top contractors. Through this unique partnership, PRP has become an influential voice for responsible construction and an advocate for creating a stronger, more sustainable Hawaii in a way that promotes a vibrant economy, creates jobs and enhances the quality of life for all residents.