

S.B. NO. 2802

JAN 24 2018

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 392-26, Hawaii Revised Statutes, is
2 amended by amending its title and subsection (a) to read as
3 follows:

4 "§392-26 Care by physician, advanced practice registered
5 nurse, or equivalent required. (a) An individual shall be
6 ineligible to receive temporary disability benefits with respect
7 to any period during which the individual is not under the care
8 of a person duly licensed to practice medicine, surgery,
9 dentistry, chiropractic, osteopathy, or naturopathic medicine,
10 or an advanced practice registered nurse, who shall certify, in
11 the form and manner specified by [~~regulation~~] rule of the
12 director, the disability of the claimant, the probable duration
13 thereof, and such other medical facts within the person's
14 knowledge as required by [~~regulation.~~] rule."

15 SECTION 2. Section 392-26, Hawaii Revised Statutes, is
16 amended by amending subsection (c) to read as follows:

17 "(c) The proof of disability duly certified by a person
18 licensed to practice medicine, surgery, dentistry, chiropractic,

S.B. NO. 2802

1 osteopathy, or naturopathic medicine, or an advanced practice
2 registered nurse, or an authorized or accredited practitioner of
3 any group which depends for healing upon prayer or other
4 spiritual means shall be submitted by such certifying person to
5 the disabled employee within seven working days after the date
6 on which the employee was examined and found disabled. If the
7 certifying person fails to submit the required proof within
8 seven working days, the director, upon notification by the
9 insurer, may levy a penalty of \$25 for each delinquent
10 certification where the certifying person fails to show good
11 cause for the person's failure to file on time."

12 SECTION 3. Section 392-51, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "[~~f~~]§392-51[~~f~~] **Failure to submit timely wage and**
15 **employment information.** An employer to whom an insurer has sent
16 a request for information on wages, hours, and duration of
17 employment regarding an employee claiming disability benefits
18 shall complete and submit such information within seven days
19 from the date the request was received. If the employer fails
20 to submit such information within seven days, the director upon
21 notification by the insurer shall levy a penalty of [~~\$10~~] \$250

S.B. NO. 2802

1 for each delinquent request where the employer fails to show
2 good cause for failure to file on time."

3 SECTION 4. Section 392-72, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§392-72 Appeals, filing, and hearing. (a) If a person
6 disputes the amount of benefits, paid under part III or part IV,
7 or the denial of benefits, the claimant may file an appeal, in
8 the form and manner prescribed by ~~[regulation]~~ rule of the
9 director, at the office of the department ~~[in the county in~~
10 ~~which the claimant resides or in the county in which the~~
11 ~~claimant was employed prior to the claimant's disability]~~,
12 within twenty days after the date of payment of such disputed
13 benefits or the denial thereof. Notice of the appeal shall be
14 served upon the employer or insurer or the trust fund for
15 disability benefits in the form and manner prescribed by
16 ~~[regulation]~~ rule of the director. Notice of a hearing of an
17 appeal shall be sent by electronic service or by first-class
18 mail to the claimant and insurer or employer or trust fund for
19 disability benefits at least fifteen calendar days prior to the
20 hearing. If notice sent by electronic service or by first-class
21 mail is attempted but not made, and the department has been
22 unable to ascertain the address of the party after reasonable

S.B. NO. 2802

1 and diligent inquiry, the notice of hearing may be given to the
2 party by online posting on the department's webpage. The online
3 posting shall appear at least fifteen calendar days prior to the
4 date of the hearing. The online posting shall be removed from
5 the webpage no less than five business days after the date of
6 the hearing.

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

S.B. NO. 2802

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

S.B. NO. 2802

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

3 SECTION 5. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 6. This Act, upon its approval, shall take effect
6 on January 1, 2019.

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INTRODUCED BY:



9

BY REQUEST

S.B. NO. 2802

Report Title:

Temporary Disability Insurance; Disability Certification;
Submission of Wage and Employment Information; Hearing Location;
Service; Notice

Description:

Permits advanced practice registered nurses to certify an employee's disability. Increases the penalty an employer is assessed for failing to submit timely wage and employment information. Permits filing of an appeal of a decision related to temporary disability insurance at the various offices of the Department of Labor and Industrial Relations throughout the State. 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.

SB. NO. 2802

JUSTIFICATION SHEET

DEPARTMENT: Labor and Industrial Relations

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

PURPOSE: To allow advanced practice registered nurses
(APRNs) to certify an employee's disability.

To increase the employer penalty for not
providing timely wage and employment
information for a Temporary Disability
Insurance (TDI) claim.

To allow TDI appeals to be filed at the
various offices of the department throughout
the State.

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

To allow the department to post hearing
notices on the department's webpage when the
notice of hearing cannot be delivered to a
party in the appeal.

To allow hearings to be held in person, via
telephone, or by other communication
devices, and in a county other than the
county in which the claimant resides or was
last employed.

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 sections 392-26(a) and (c), 392-51,
and 392-72, Hawaii Revised Statutes (HRS).

JUSTIFICATION: This bill will align chapter 392, HRS, with the
intent of the Legislature to allow APRNs to
serve as care providers pursuant to Act 183,
Session Laws of Hawaii 2016.

Increasing the penalty from \$10 to \$250 per delinquent request for employers who do not provide wage and employment information within seven days from an insurance carrier's request will serve as an incentive to employers to provide prompt information, thus allowing employees to receive prompt benefit payments.

The proposal also gives 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, unless otherwise provided by law.

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 successfully made.

Impact on the public: This measure will provide employees with more options to obtain a disability certification especially in areas with limited access to medical doctors. The measure will expedite the TDI claims process and will provide for timely benefits to the claimant. The measure also provides 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 modernizing the permissible methods of communication.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LBR183.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: January 1, 2019.