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# A BILL FOR AN ACT

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RELATING TO FAMILY LEAVE AND TEMPORARY DISABILITY INSURANCE.

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

SECTION 1. Chapter 392, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§392- Family leave data collection system; establishment. (a) There is established a family leave data collection system to:

(1) Ensure that all employees covered by the benefits of this chapter are informed of their rights under this chapter and their names are entered into the database upon application for benefits;

(2) Collect pertinent data, consistent with state and federal privacy statutes, on the use and potential demand for family leave benefits for both public and private-sector employees, including information on who and under what circumstances employees are using family leave benefits, the nature and duration of



1 family members' needs, and the adequacy of current  
2 family leave benefits;

3 (3) Provide analysis of the data to assist in the  
4 development and implementation of an efficient system  
5 of family leave, for employees in Hawaii; and

6 (4) Provide analysis of data to assist in the future  
7 development of caregiver services for senior citizens  
8 in Hawaii.

9 (b) The department shall work with the University of  
10 Hawaii center on aging to create a web-based data system with  
11 the following capabilities:

12 (1) The capacity for all employees seeking family leave  
13 benefits under this chapter to log into the data  
14 system and enter pertinent data on the circumstances  
15 and need for family leave benefits;

16 (2) The ability to secure confidential information,  
17 consistent with state and federal privacy statutes,  
18 available only in aggregate form for managers and  
19 analysts of the data system;



(3) The ability of the employee to print out a simple form to be submitted to the employer certifying that required data has been entered;

(4) The ability of data managers and analysts to manipulate and query the database to achieve the purpose of this chapter;

(5) A back-up paper system that can be used when computer access or printing is unavailable; and

(6) A user-friendly format that can be translated into multiple languages for employees.

(c) The state auditor shall be provided access to the database and shall prepare annual reports to the legislature, the department, and the University of Hawaii center on aging."

SECTION 2. Chapter 392, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**"FAMILY LEAVE AND TEMPORARY DISABILITY INSURANCE"**

SECTION 3. Section 392-1, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~392-1~~]~~ **Short title.** This chapter shall be known as the "Hawaii Family Leave and Temporary Disability Insurance Law"."



SECTION 4. Section 392-2, Hawaii Revised Statutes, is amended to read as follows:

"~~[+]~~ §392-2 ~~[+]~~ **Findings and purpose.** [A] The legislature finds that Hawaii's working families do not receive adequate caregiving support while a family member suffers from a serious illness or other health condition.

While the federal Family and Medical Leave Act of 1993 and current state law provide for unpaid leave for employees to care for a new child or attend to the needs of a family member with a serious health condition, the majority of Hawaii's workforce cannot afford to take unpaid leave. Only seventeen per cent of workers in the United States have access to paid family leave through their employers. Women, who are often the primary caregivers of infants, children, and elderly parents, are affected disproportionately by the absence of paid family leave.

The legislature also finds that each year, a large portion of the labor force of this State [~~annually~~] is disabled from pursuing gainful employment by reason of nonoccupational sickness or accident, and as a result suffers serious loss of income. In approximately ten per cent of [~~the~~] cases, [~~such~~] the worker's sickness or accident can be expected to cause [~~an~~



1 ~~employee's]~~ a disability [of] that extends more than one ~~[week's~~  
2 ~~duration.]~~ week. More than two-fifths of the employees in  
3 private employment have either no fixed legal protection against  
4 wage loss from disabling nonoccupational sickness or accident,  
5 or ~~[only]~~ protection for only a period of one workweek or less ~~[+~~  
6 ~~more]~~. More than one-third of the workers covered by formal  
7 sick leave plans are not protected against disability extending  
8 beyond two workweeks.

9 Since the hardship for workers and their families mounts  
10 with ~~[the extension of]~~ the duration of ~~[the]~~ a family member's  
11 serious illness or disability [from whatever cause], there is a  
12 need to fill the existing gaps in protection and to provide  
13 benefits to individuals in current employment that will afford  
14 to them reasonable compensation for wage loss caused by a family  
15 member's serious health condition or a disabling nonoccupational  
16 sickness or accident that [where the disability is temporary in  
17 nature and exceeds the period of] causes the worker to lose more  
18 than one workweek. This legislation is designed not to impede  
19 the growth of voluntary plans which afford additional  
20 protection.



1        The purpose of this chapter is to ensure that employees in  
2        Hawaii are provided family caregiving and temporary disability  
3        insurance benefits during times of their own temporary  
4        disability or when they need to provide care for family members  
5        with a serious health condition.

6        This chapter shall be liberally construed in the light of  
7        the stated reasons for its enactment and its declared purpose."

8        SECTION 5. Section 392-3, Hawaii Revised Statutes, is  
9        amended as follows:

10       1. By adding six new definitions to be appropriately  
11       inserted and to read:

12       "Child" means an individual who is a biological, adopted,  
13       step, or foster son or daughter; or legal ward of an individual  
14       in current employment.

15       "Family leave" means the benefits provided by section  
16       392-21(a).

17       "Family member" means an individual who is the spouse,  
18       reciprocal beneficiary, child, parent, sibling, grandparent,  
19       grandparent-in-law, or grandchild of an individual in current  
20       employment.



1       "Parent" means an individual who is a biological, adoptive,  
2 step, or foster father or mother; a father- or mother-in-law; or  
3 a legal guardian of an individual in current employment.

4       "Serious health condition" means a physical or mental  
5 condition of a family member that warrants the participation of  
6 an individual in current employment to care for that family  
7 member during the period of treatment or supervision by a health  
8 care provider, and:

9       (1) Involves inpatient care in a hospital, hospice, or  
10 residential health care facility; or

11       (2) Requires continuing treatment or continuing  
12 supervision by a health care provider pursuant to  
13 section 392-26.

14       "Sibling" means an individual who is a biological, adopted,  
15 step, or foster brother or sister of an individual in current  
16 employment."

17       2. By amending the definitions of "benefit year",  
18 "contributions", and "weekly benefit amount" to read:

19       ""Benefit year" with respect to any individual means the  
20 one-year period beginning with the first day of the first week  
21 of family leave or disability with respect to which the



1 individual first files a valid claim for ~~[temporary disability]~~  
2 benefits~~[-]~~ under this chapter. A subsequent benefit year is  
3 the one-year period following a preceding benefit year,  
4 beginning either with the first:

5 (1) Day of the first week of family leave or disability  
6 with respect to which the individual files a  
7 subsequent claim for ~~[temporary disability]~~  
8 benefits~~[-]~~ under this chapter; or

9 (2) Workday following the expiration of the preceding  
10 benefit year if a serious health condition or  
11 disability for which ~~[temporary disability]~~ benefits  
12 are payable during the last week of the preceding  
13 benefit year continues and the individual is eligible  
14 for further benefit payments.

15 "Contributions" means the amounts of money authorized by  
16 this chapter to be withheld from employees' wages for the  
17 payment of ~~[temporary]~~ family leave or disability benefits.

18 "Weekly benefit amount" means the amount payable under this  
19 chapter for a period of continuous family leave or disability  
20 throughout a calendar week. If the period of family leave or  
21 disability or the initial or terminal portion thereof is shorter





1 than a calendar week, the benefit amount payable for that  
2 portion shall be the weekly benefit amount multiplied by a  
3 factor consisting of a quotient having the number of workdays  
4 lost during the portion of the week for the enumerator and the  
5 number of regular workdays of the employee during a calendar  
6 week for the denominator."

7 SECTION 6. Section 392-6, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "§392-6 Individual in current employment. "Individual in  
10 current employment" means:

11 (1) An individual who performed regular service in  
12 employment [~~immediately or not longer than~~] within two  
13 weeks prior to the onset of family leave or the  
14 sickness or accident causing disability, and who would  
15 have continued in or resumed employment except for  
16 [~~such~~] the family leave or disability.

17 (2) An individual who performed regular service in  
18 employment [~~immediately or not longer than~~] within two  
19 weeks prior to becoming totally disabled from  
20 performing the duties of [~~her~~] employment because of  
21 pregnancy or termination of pregnancy and who would



1           have continued in or resumed such employment except  
2           for such disability."

3           SECTION 7. Chapter 392, part II, Hawaii Revised Statutes,  
4 is amended by amending its title to read as follows:

5           "PART II. FAMILY LEAVE AND TEMPORARY DISABILITY BENEFITS"

6           SECTION 8. Section 392-21, Hawaii Revised Statutes, is  
7 amended to read as follows:

8           "§392-21 Establishment of family leave and temporary  
9 disability benefits. (a) Any individual in current employment  
10 is entitled to family leave benefits in the amount and manner  
11 provided in this chapter, as follows:

12           (1) Upon the birth or adoption of a child by the  
13 individual or the individual's spouse or reciprocal  
14 beneficiary, to care for that new child during the  
15 first year after its birth or adoption, provided that  
16 entitlement to the benefits shall not be duplicative  
17 of disability benefits for termination of pregnancy;  
18 or

19           (2) To care for a family member for a serious health  
20 condition.



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1       ~~[(a)]~~ (b) Any individual in current employment who suffers  
2 disability resulting from accident, sickness, pregnancy,  
3 termination of pregnancy, or organ donation, except accident or  
4 disease connected with or resulting from employment as defined  
5 in section 386-3 or any other applicable workers' compensation  
6 law, shall be entitled to receive temporary disability benefits  
7 in the amount and manner provided in this chapter.

8       ~~[(b)]~~ (c) It is the policy of this chapter that ~~[the]~~ :

9       (1) The computation and distribution of benefit payments  
10 shall correspond to the greatest extent feasible, to  
11 the employee's wage loss due to the employee's period  
12 of family leave or disability; ~~[that an]~~

13       (2) An employee shall not be entitled to family leave or  
14 temporary disability benefits for periods ~~[of~~  
15 ~~disability]~~ during which the employee would not have  
16 earned wages from employment according to the schedule  
17 of operations of the employee's employer, and ~~[that~~  
18 ~~an]~~

19       (3) An employee is entitled to benefits only for periods  
20 of family leave or disability during which, but for



1           the family leave or disability, the employee would  
2           have earned wages from employment.

3           This policy, however, shall not be applied to terminate the  
4   benefits of an employee who is receiving benefits under this  
5   chapter for a family leave or disability that commenced while  
6   the employee was in current employment, nor shall it be applied  
7   to deny benefits under this chapter if a period of family leave  
8   or disability that commenced while the employee was in current  
9   employment continues into a period during which the employee  
10   would earn wages but for the family leave or disability."

11           SECTION 9. Section 392-23, Hawaii Revised Statutes, is  
12   amended to read as follows:

13           "~~[+] §392-23 [1]~~ **Duration of benefit payments.** ~~[Temporary]~~

14   (a) Family leave and temporary disability benefits shall be  
15   payable for any period of family leave or disability following  
16   the expiration of the waiting period required in section 392-24.

17   (b) The duration of benefit payments shall not exceed  
18   ~~[twenty-six]~~ the following:

19   (1) Twenty-six weeks for any period of disability ~~[or]~~  
20   during any benefit year; and



(2) Eight weeks for any period of family leave during any benefit year."

SECTION 10. Section 392-24, Hawaii Revised Statutes, is amended to read as follows:

**"[~~f~~] §392-24 [~~f~~] Waiting period.** No [~~temporary disability~~] benefits shall be payable during the first seven consecutive days of any period of family leave or disability. Consecutive periods of family leave or disability due to the same or related cause and not separated by an interval of more than two weeks shall be considered as a single period of a serious health condition or disability."

SECTION 11. Section 392-26, Hawaii Revised Statutes, is amended to read as follows:

**"§392-26 Care by physician, advanced practice registered nurse, or equivalent required.** (a) An individual shall be ineligible to receive family leave or temporary disability benefits with respect to any period during which the individual's family member or the individual claiming temporary disability is not under the care of a person duly licensed to practice medicine, surgery, dentistry, chiropractic, osteopathy, or naturopathic medicine, or an advanced practice registered



1 nurse, who shall certify, in the form and manner specified by  
2 rule of the director, the family member's serious health  
3 condition or disability of the claimant, the probable duration  
4 of the condition or disability, and such other medical facts  
5 within the person's knowledge as required by rule.

6 (b) This section shall not apply to an individual who,  
7 pursuant to the teachings, faith, or belief of any group,  
8 depends for healing upon prayer or other spiritual means. In  
9 that case the disability, the probable duration thereof, and any  
10 other pertinent facts required to be certified by regulation of  
11 the director shall be certified, in the form and manner  
12 specified by the regulation, by a duly authorized or accredited  
13 practitioner of such group.

14 (c) The proof of a serious health condition or temporary  
15 disability duly certified by a person licensed to practice  
16 medicine, surgery, dentistry, chiropractic, osteopathy, or  
17 naturopathic medicine, or an advanced practice registered nurse,  
18 or an authorized or accredited practitioner of any group that  
19 depends for healing upon prayer or other spiritual means shall  
20 be submitted by the certifying person to the ~~[disabled]~~ employee  
21 within seven working days after the date on which the family



1 member or employee was examined and found with a serious health  
2 condition or disabled[-], as the case may be. If the certifying  
3 person fails to submit the required proof within seven working  
4 days, the director, upon notification by the insurer, may levy a  
5 penalty of \$25 for each delinquent certification where the  
6 certifying person fails to show good cause for the person's  
7 failure to file on time."

8 SECTION 12. Section 392-27, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 **"§392-27 Ineligibility in certain cases.** An individual  
11 shall not be eligible to receive family leave or temporary  
12 disability benefits:

13 (1) For any period of family leave or disability during  
14 which the individual would be disqualified from  
15 receiving benefits under the Hawaii employment  
16 security law by reason of unemployment due to a  
17 stoppage of work existing because of a labor dispute  
18 for the duration of such disqualification.

19 (2) If the director finds that the individual has  
20 knowingly made a false statement or representation of  
21 a fact or knowingly failed to disclose a material fact



1           ~~[in order]~~ to obtain benefits under this chapter to  
2           which the individual is not otherwise entitled. The  
3           ineligibility shall be for a period determined by the  
4           director~~[7]~~ but shall not exceed the period of family  
5           leave or disability with respect to which the false  
6           statement or representation was made or the  
7           nondisclosure occurred.

8           (3) For any period of disability due to wilfully and  
9           intentionally self-inflicted injury or to injury  
10          sustained in the commission of a criminal offense  
11          specified in title 37.

12          (4) For any day of disability during which the employee  
13          performed work for remuneration or profit, except  
14          that, if an employee returning to work suffers a  
15          relapse after performing work for less than a full  
16          day, the employee shall be paid benefits or be given  
17          waiting period credit, provided the employee's wages  
18          for the partial day's work did not equal or exceed the  
19          prorated disability benefits to which the employee is  
20          entitled. The amount of the benefit payable is  
21          derived by subtracting the gross wages received for





1 performing less than a full day's work, from the  
2 prorated [~~disability~~] benefits to which the employee  
3 is entitled.

4 (5) Unless the claim for disability benefits is filed  
5 within ninety days after the commencement of the  
6 period of disability or as soon thereafter as is  
7 reasonably possible.

8 (6) Unless the claim for family leave benefits is filed  
9 within thirty days after the commencement of the  
10 period of a serious health condition or as soon  
11 thereafter as is reasonably possible."

12 SECTION 13. Section 392-28, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "§392-28 Duplication of benefits not permitted. No family  
15 leave or temporary disability benefits shall be payable for any  
16 period of family leave or disability for which the employee is  
17 entitled to receive:

18 (1) Weekly benefits under the Employment Security Law or  
19 similar laws of this State or of any other state or of  
20 the United States, or under any family leave or  
21 temporary disability benefits law of any other state



1 or of the United States except as provided in section  
2 392-66.

3 (2) Weekly disability insurance benefits under 42 United  
4 States Code Annotated [H]section[H] 423.

5 (3) Weekly benefits for total disability under the  
6 Workers' Compensation Law of this State or any other  
7 state or of the United States, except benefits for  
8 permanent partial or permanent total disability  
9 previously incurred. If the claimant does not receive  
10 benefits under such workers' compensation law and the  
11 claimant's entitlement to such benefits is seriously  
12 disputed, the employee, if otherwise eligible, shall  
13 receive temporary disability benefits under this  
14 chapter, but any insurer or employer or the trust fund  
15 for family leave or disability benefits providing such  
16 benefits shall be subrogated, as hereinafter provided,  
17 to the employee's right to benefits under the workers'  
18 compensation law for the period of disability for  
19 which the employee received benefits under this  
20 chapter to the extent of the benefits so received.



(4) Indemnity payments for wage loss under any applicable employers' liability law of this State, or of any other state or of the United States. If an employee has received benefits under this chapter for a period of family leave or disability for which the employee is entitled to such indemnity payments, any insurer or employer or the trust fund for family leave and disability benefits providing such benefits shall be subrogated to the employee's right to such indemnity payments in the amount of the benefits paid under this chapter as hereinafter provided."

SECTION 14. Chapter 392, part III, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**"PART III. PROVISION FOR FAMILY LEAVE AND TEMPORARY DISABILITY INSURANCE BENEFITS"**

SECTION 15. Section 392-41, Hawaii Revised Statutes, is amended to read as follows:

**"§392-41 Provision for payment of benefits.** (a) An employer or an association of employers shall secure family leave and temporary disability benefits for their employees in one or more of the following ways:



- 1           (1) By insuring and keeping insured the payment of family  
2           leave and temporary disability benefits with any  
3           stock, mutual, reciprocal or other insurer authorized  
4           to transact the business of [~~disability~~] insurance for  
5           family leave, temporary disability, or both, in the  
6           State;
- 7           (2) By depositing and maintaining with the state director  
8           of finance, securities, or the bond of a surety  
9           company authorized to transact business in the State,  
10          as are satisfactory to the director securing the  
11          payment by the employer of family leave and temporary  
12          disability benefits according to the terms of this  
13          chapter;
- 14          (3) Upon furnishing satisfactory proof to the director of  
15          the employer's or its solvency and financial ability  
16          to pay the family leave and temporary disability  
17          benefits herein provided, no insurance or security or  
18          surety bond shall be required, and the employer shall  
19          make payments directly to the employer's employees, as  
20          they may become entitled to receive the same under the  
21          terms and conditions of this chapter;



1           (4) By a plan[, or agreement entitling employees to cash  
2           benefits or wages during a period of family leave or  
3           disability[, ~~in existence on the effective date of~~  
4           ~~this chapter~~

5           ~~(A) If the employees of an employer or any class or~~  
6           ~~classes of such employees are entitled to receive~~  
7           ~~disability benefits under a plan or agreement~~  
8           ~~which remains in effect on January 1, 1970, the~~  
9           ~~employer, subject to the requirements of this~~  
10           ~~section, shall be relieved of responsibility for~~  
11           ~~making provision for benefit payments required~~  
12           ~~under this chapter until the earliest date,~~  
13           ~~determined by the director for the purposes of~~  
14           ~~this chapter, upon which the employer has the~~  
15           ~~right to discontinue the plan or agreement or to~~  
16           ~~discontinue the employer's contributions toward~~  
17           ~~the cost of the temporary disability benefits.~~  
18           ~~Any plan or agreement referred to in this~~  
19           ~~subparagraph may be extended, with or without~~  
20           ~~modification, by agreement or collective~~  
21           ~~bargaining between the employer or employers or~~



1           ~~an association of employers and an association of~~  
2           ~~employees, provided the benefits under the plan~~  
3           ~~or agreement, as extended or modified, are found~~  
4           ~~by the director to be at least as favorable as~~  
5           ~~the disability benefits required by this chapter.~~

6       ~~(B) Any other plan or agreement in existence on~~  
7           ~~January 1, 1970, which the employer may, by the~~  
8           ~~employer's sole act, terminate at any time, or~~  
9           ~~with respect to which the employer is not~~  
10          ~~obligated to continue for any period to make~~  
11          ~~contributions, may be accepted by the director as~~  
12          ~~satisfying the obligation to provide for the~~  
13          ~~payment of benefits under this chapter if the~~  
14          ~~plan or agreement provides benefits at least as~~  
15          ~~favorable as the disability benefits required by~~  
16          ~~this chapter and does not require contributions~~  
17          ~~of any employee or of any class or classes of~~  
18          ~~employees in excess of the amount authorized in~~  
19          ~~section 392-43, except by agreement and provided~~  
20          ~~the contribution is reasonably related to the~~  
21          ~~value of the benefits as determined by the~~



1           ~~director. The director may require the employer~~  
2           ~~to enter into an agreement in writing with the~~  
3           ~~director that until the employer shall have filed~~  
4           ~~written notice with the director of the~~  
5           ~~employer's election to terminate such plan or~~  
6           ~~agreement or to discontinue making necessary~~  
7           ~~contributions toward the cost of providing~~  
8           ~~benefits under the plan or agreement, the~~  
9           ~~employer will continue to provide for the payment~~  
10          ~~of the disability benefits under the plan or~~  
11          ~~agreement. Any plan or agreement referred to in~~  
12          ~~this subparagraph may be extended, with or~~  
13          ~~without modification; provided the benefits under~~  
14          ~~the plan or agreement, as extended or modified,~~  
15          ~~are found by the director to be at least as~~  
16          ~~favorable as the disability benefits required by~~  
17          ~~this chapter;]~~ accepted by the director as  
18          satisfying the obligations to provide the payment  
19          of benefits under this chapter; or

- 20           (5) By a new plan or agreement [~~On or after January 1,~~  
21           ~~1970, a new plan or agreement]~~ with an insurer [~~may~~



1           be] accepted by the director as satisfying the  
2           obligation to provide for the payment of benefits  
3           under this chapter ~~[if]~~; provided that the plan or  
4           agreement ~~[provides]~~;

5           (A)   Provides benefits at least as favorable as the  
6                   leave and disability benefits required by this  
7           chapter; ~~[and does]~~

8           (B)   Does not require contributions of any employee or  
9                   of any class or classes of employees in excess of  
10           the amount authorized in section 392-43, except  
11           by agreement; ~~and [provided the]~~

12           (C)   The contribution is reasonably related to the  
13                   value of the benefits as determined by the  
14           director.

15           Any such plan or agreement shall continue until  
16           written notice is filed with the director of intention  
17           to terminate the plan or agreement, and any  
18           modification of the plan or agreement shall be subject  
19           to the written approval of the director.

20           (b)   During any period in which any plan or agreement or  
21           extension or modification thereof authorized under subsection





(a) (4) or (5) provides for payments of benefits under this chapter, the responsibility of the employer and the obligations and benefits of the employees shall be as provided in the plan or agreement or its extension or modification rather than as required under this chapter; provided that[+]

~~(1) The~~ the employer or insurer has agreed in writing with the director to pay the assessments imposed by section 392-67 [~~+~~ and

~~(2) If the benefits provided by the plan or agreement or extension or modification thereof include benefits falling within the definition of "sick leave" as defined in section 398-1, any amount in excess of the minimum statutory equivalent, as determined by the department, may be used for the purposes of chapter 398].~~

(c) If any plan or agreement authorized under subsection (a) (4) or (5) covers less than all of the employees of a covered employer, the requirements of this chapter shall apply with respect to the employer's remaining employees not covered under the plan or agreement.



1           (d) As used in subsection (a) [~~(4) or~~] (5), "benefits at  
2   least as favorable as the leave and disability benefits required  
3   by this chapter" means the family leave or temporary disability  
4   benefits under any plan or agreement, in whole or in part, whose  
5   component parts (waiting period for illness, waiting period for  
6   accident, duration of benefits, and percentage of wage loss  
7   replaced) add in total to cash benefits or wages that are  
8   determined by the director to be at least as favorable as the  
9   leave and disability benefits required by this chapter. The  
10   insurance commissioner shall establish a set of tables showing  
11   the relative value of different types of cash benefits and wages  
12   to assist the director in determining whether the cash benefits  
13   and wages under a plan are at least as favorable as the family  
14   leave and temporary disability benefits required by this  
15   chapter.

16           (e) Any decision of the director rendered pursuant to this  
17   section with respect to the amount of security required,  
18   refusing to permit security to be given or refusing to accept a  
19   plan or agreement as satisfying the obligation to provide for  
20   the payment of benefits under this chapter shall be subject to



1 review on appeal in conformity with the provisions of this  
2 chapter.

3 (f) In order to provide the coverage required by this  
4 chapter for employers otherwise unable to obtain or provide such  
5 coverage, the insurance commissioner may, after consultation  
6 with the insurers licensed to transact the business of family  
7 leave and disability insurance in this State, approve a  
8 reasonable plan or plans for the equitable apportionment among  
9 such insurers of employer applicants for such insurance who are  
10 in good faith entitled to but are unable to procure such  
11 insurance through ordinary methods and, when such a plan has  
12 been approved, all such insurers shall subscribe thereto and  
13 participate therein; provided, however, that the commissioner  
14 shall not, for insurance issued or in connection with any such  
15 plan or plans, require or allow the use of premium rates which  
16 are either inadequate or excessive in relation to the benefits  
17 to be provided. Any employer applying for such insurance or any  
18 insured under such plan and any insurer affected may appeal to  
19 the commissioner from any ruling or decision of the manager or  
20 committee designated to operate such plan. All orders of the



1 commissioner in connection with any such plan shall be subject  
2 to judicial review as provided in chapter 91.

3 (g) All insurers shall, in a form prescribed by the  
4 director, notify employer applicants who are unable to procure  
5 the required insurance through ordinary methods, the  
6 availability of the plan described in [+]subsection[+] (f)  
7 [above]."

8 SECTION 16. Section 392-42, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "**§392-42 Notice of insurance.** If payment of family leave  
11 or disability benefits is provided for in whole or in part by  
12 insurance pursuant to section 392-41(a)(1), (4), or (5), the  
13 employer or insurer shall forthwith file with the director, in a  
14 form prescribed by the director, a notice of the employer's or  
15 insurer's insurance together with a statement of benefits  
16 provided by the policy. If an employer or insurer fails to file  
17 the notice of insurance within thirty days after purchase of  
18 insurance, the director may levy a penalty of not more than  
19 [~~\$10~~] \$50 for each delinquent notice, unless good cause for  
20 failure to file can be shown by the employer or insurer."



SECTION 17. Section 392-43, Hawaii Revised Statutes, is amended to read as follows:

"§392-43 Authority to withhold contributions, rate of contribution, maximum weekly wage base. (a) Subject to the limitation set forth in subsection (b), an employer may deduct and withhold contributions<sup>[7]</sup> from each employee of up to one-half the cost but not more than .5 per cent of the weekly wages earned by the employee in employment, and the employer shall provide for the balance of the cost of providing family leave and temporary disability benefits under this chapter over the amount of contributions of the employer's employees. Unless a different rule is prescribed by regulation of the director, the withholding period shall be equal to the pay period of the respective employee.

(b) Weekly wages for the purposes of this section shall not include:

(1) Wages earned by an employee in employment during any payroll period unless, during the fifty-two weeks immediately preceding such payroll period, the employee has earned wages of at least \$400 and has been in employment for at least fourteen weeks during



1 each of which the employee has received remuneration  
2 in any form for twenty or more hours; and

3 (2) Remuneration in excess of one fifty-second of the  
4 average annual wage in the State as determined for the  
5 preceding year pursuant to section 383-61(b)  
6 multiplied by the factor 1.21, which amount the  
7 director shall cause to be published annually prior to  
8 the first day of January following the determination.

9 (c) The contributions of the employees deducted and  
10 withheld from their wages by their employer shall be held in a  
11 separate fund or be paid to insurance carriers as premiums, for  
12 the purpose of providing benefits required by this chapter.

13 (d) The director shall have authority to prescribe by  
14 regulation the reports and information necessary to determine  
15 the cost of providing [~~temporary disability~~] benefits under this  
16 chapter, especially in the case of employers or employer  
17 associations providing such benefits by means of self-insurance,  
18 and to determine the procedures for the determination of such  
19 cost.

20 (e) An employee from whose wages amounts greater than  
21 those authorized by this chapter have been withheld by the



1 employee's employer shall be entitled to a refund or credit of  
2 the excess as prescribed by regulation of the director.

3 (f) The contributions of employees deducted and withheld  
4 in amounts greater than those authorized by this chapter, shall  
5 be deposited in the trust fund for family leave and disability  
6 benefits if such employees are no longer with the employer and  
7 cannot be located. A refund of the excess shall be paid from  
8 the trust fund for family leave and disability benefits to the  
9 employees when they are located or if such employees remain  
10 unlocated for a period of two years from the date of deposit,  
11 such moneys shall become a part of the trust fund.

12 (g) If an employer fails to provide coverage for the  
13 employer's employees after deducting and withholding  
14 contributions from the employer's employees as prescribed by  
15 this chapter, the employer shall deposit such contributions in  
16 the [+]trust fund for family leave and disability benefits[+]."

17 SECTION 18. Section 392-45, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "§392-45 Subrogation rights if employee entitled to  
20 workers' compensation benefits or indemnity under employers'  
21 liability acts. (a) If an individual has received temporary



1 disability benefits under this chapter during a period of  
2 disability for which benefits for any disability under the  
3 Workers' Compensation Law of this State or of any other state or  
4 of the United States are subsequently awarded or accepted in any  
5 agreement or compromise, the employer, the association of  
6 employers, the insurer, or the trust fund for family leave and  
7 disability benefits, as the case may be, providing such  
8 temporary disability benefits shall be subrogated to the  
9 individual's right to such benefits in the amount of the  
10 benefits paid under this chapter.

11 In the event more than one employer or insurer have  
12 subrogation rights to the employee's workers' compensation  
13 benefits, such benefits shall be divided proportionately among  
14 the employers or insurers according to the amount of benefits  
15 each employer or insurer paid under this chapter. Should the  
16 subrogated amount of either one or both employers or insurers  
17 total less than the amount of benefits that such employers or  
18 insurers paid under this chapter, neither the employee nor the  
19 trust fund for family leave and disability benefits nor any  
20 other source shall be required to make up the difference.





1       To protect its subrogation rights to benefits payable under  
2 the Workers' Compensation Law of this State, the employer, the  
3 association of employers, the insurer, or the trust fund for  
4 family leave and disability benefits, providing temporary  
5 disability benefits shall file a claim with the division of  
6 workers' compensation in the department and notify the insurer  
7 for workers' compensation or the employer, if self-insured, of  
8 its claim and thereupon the employer, the association of  
9 employers, the insurer, or the trust fund for family leave and  
10 disability benefits, providing temporary disability benefits  
11 shall have a lien against the amounts payable as benefits for  
12 disability under the Workers' Compensation Law in the amount of  
13 the benefits paid under this chapter during the period for which  
14 benefits for disability under the Workers' Compensation Law have  
15 been accepted or awarded as payable. The agreement or award  
16 shall include a provision setting forth the existence and amount  
17 of such lien.

18       (b) If an individual has received benefits under this  
19 chapter during a period of family leave or disability for which  
20 the individual is entitled to receive indemnity payments for  
21 wage loss under any applicable employers' liability law of this



1 State or of any other state or of the United States, the  
2 employer, the association of employers, the insurer, or the  
3 trust fund for family leave and disability benefits, providing  
4 [~~temporary disability~~] benefits shall be subrogated to the  
5 individual's right to such indemnity in the amount of the  
6 benefits paid under this chapter and may assert its subrogation  
7 rights in any manner appropriate under such acts or any rule of  
8 law."

9 SECTION 19. Section 392-46, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "§392-46 Subrogation rights against third parties. If any  
12 individual who has received benefits under this chapter is  
13 entitled to recover damages from a third person who is  
14 responsible for the serious health condition, sickness or  
15 accident causing the family leave or disability, the employer,  
16 the association of employers, the insurer, or the trust fund for  
17 family leave and disability benefits, providing [~~disability~~]  
18 benefits shall be subrogated to, and have a lien upon, the  
19 rights of the individual against the third party to the extent  
20 that the damages include wage loss during the period of family



1 leave or disability for which [~~temporary disability~~] benefits  
2 were received in the amount of such benefits.

3       If the individual commences an action against such third  
4 party, the individual shall notify the individual's employer, or  
5 the director if the individual is unemployed, of the action and  
6 the court in which it is pending. The employer, the association  
7 of employers, the insurer, or the trust fund for family leave  
8 and disability benefits, providing family leave or disability  
9 benefits may join as party plaintiff or claim a lien on the  
10 amount of any judgment recovered by the individual in such  
11 action to the extent of its subrogation rights. If the  
12 individual does not commence the action within nine months after  
13 the commencement of the serious health condition, sickness or  
14 the date of the accident causing the family leave or disability,  
15 the employer, the association of employers, the insurer, or the  
16 trust fund for family leave and disability benefits, providing  
17 family leave or temporary disability benefits may commence such  
18 action, but the individual shall be entitled to join the action  
19 and be entitled to any surplus over the amount to which the  
20 employers, the association of employers, the insurer, or the



1 trust fund for family leave and disability benefits is  
2 subrogated."

3 SECTION 20. Section 392-48, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "[~~§~~392-48~~§~~] **The insurance contract.** Every policy of  
6 insurance issued by an insurer of an employer pursuant to this  
7 chapter which covers the liability of the employer for family  
8 leave, temporary disability [~~benefits~~], or both, shall cover the  
9 entire liability of the employer to the employer's employees  
10 covered by the policy or contract, and also shall contain a  
11 provision setting forth the right of the employees to enforce in  
12 their own names either by filing a separate claim or by making  
13 the insurer a party to the original claim, the liability of the  
14 insurer in whole or in part for the payment of [~~the disability~~]  
15 benefits. Payment in whole or in part of family leave or  
16 disability benefits by either the employer or the insurer shall,  
17 to the extent thereof, be a bar to the recovery against the  
18 other of the amount so paid.

19 All insurance policies shall be approved by the insurance  
20 commissioner of the State."



SECTION 21. Chapter 392, part IV, Hawaii Revised Statutes, is amended by amending its title to read as follows:

"PART IV. TRUST FUND FOR FAMILY LEAVE AND DISABILITY BENEFITS"

SECTION 22. Section 392-61, Hawaii Revised Statutes, is amended to read as follows:

"§392-61 Establishment of trust fund for family leave and disability benefits. There is established in the treasury of the State, separate and apart from all public moneys or funds of the State, a trust fund for family leave and disability benefits which shall be administered by the director exclusively for the purposes of this chapter; and for the establishment and maintenance of a family leave data collection system [~~under section 398-9.5.~~] provided by this chapter. All contributions pursuant to this part shall be paid into the fund and all benefits payable under this part shall be paid from the fund.

The fund shall consist of[+]:[+]

(1) All contributions collected pursuant to this part, together with any interest thereon;

(2) All fines and penalties for the fund pursuant to this chapter;

(3) All moneys collected by way of subrogation;



- 1 (4) Interest earned on any moneys in the fund;  
2 (5) Any property or securities acquired through the use of  
3 moneys belonging to the fund;  
4 (6) All earnings of such property and securities; and  
5 (7) All other moneys received for the fund from any  
6 source."

7 SECTION 23. Section 392-65, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "§392-65 ~~[Temporary disability benefits]~~ Benefits to be  
10 paid from the trust fund for family leave and disability  
11 benefits; recovery of [disability] benefits. Temporary  
12 disability benefits shall be paid from the trust fund for family  
13 leave and disability benefits to individuals who become disabled  
14 when unemployed and who subsequently become ineligible for  
15 benefits under chapter 383. Benefits shall also be paid from  
16 this fund to an employee who is entitled to receive family leave  
17 or temporary disability benefits but cannot receive such  
18 benefits because of the bankruptcy of the employee's employer or  
19 because the employee's employer is not in compliance with this  
20 chapter. Benefits paid from the trust fund to such employee may  
21 be recovered from the employee's bankrupt or noncomplying



1 employer. The director shall institute administrative and legal  
2 actions, as provided in section 392-47, to effect recovery of  
3 such benefits."

4 SECTION 24. Section 392-67, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "§392-67 Assessments for the trust fund for family leave  
7 and disability benefits. [~~(a)~~ Each employer shall, from  
8 July 1, 1969, to December 31, 1969, contribute to the  
9 establishment of the trust fund for disability benefits at the  
10 rate of .2 per cent of covered wages as defined in section 392-  
11 43. The employer shall pay such contributions to the director  
12 for a given month on or before the thirtieth day of the next  
13 succeeding month.

14 ~~(b)~~] When the balance of the trust fund for family leave  
15 and disability benefits falls below \$500,000 as of December 31  
16 of any year after 1969, a levy shall be assessed and collected  
17 in the next calendar year from insurers of employers insured  
18 under section 392-41 and from all other employers not insured  
19 under section 392-41.

20 Each year the director shall determine the amount of the  
21 levy to be paid by each insurer or employer and shall give



1 notice of the levy to each such insurer or employer on or before  
2 May 1 of the year in which the levy is assessed. The amount of  
3 the levy shall be paid on or before June 30 following  
4 notification.

5 The amount of the levy against each insurer or employer  
6 shall be determined as the product of the wages paid by the  
7 employer multiplied by a factor which is the ratio of the amount  
8 by which the balance in the [†]trust fund for family leave and  
9 disability benefits[†] was less than \$500,000 on the preceding  
10 December 31 to total covered wages paid by all employers. For  
11 the purposes of this paragraph, "covered wages" means wages paid  
12 by employers during the preceding calendar year but not  
13 including wages paid to any employee in excess of the limit  
14 contained in section 392-43(b)."

15 SECTION 25. Section 392-68, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "[†]§392-68[†] **Failure to pay assessments.** If an employer  
18 or insurer fails to pay the assessment required by section  
19 392-67[~~(a)~~ or ~~section 392-67(b)~~] within thirty days after the  
20 end of the month or quarter for which payment was due, the  
21 director shall levy a penalty of at least \$250 but no more than





1 ten per cent of the assessment due against the employer or  
2 insurer, unless the nonpayment is excused by the director after  
3 a showing by the employer or insurer that the payment of the  
4 assessment could not be made on the date prescribed therefor  
5 owing to conditions over which the employer or insurer had no  
6 control and the employer or insurer forthwith complies."

7 SECTION 26. Sections 392-7, 392-25, 392-27, 392-42,  
8 392-42.5(a), 392-44, 392-44.5, 392-49, 392-51, 392-71,  
9 392-72(b), 392-77, 392-78(d), and 392-86, Hawaii Revised  
10 Statutes, are amended by substituting the phrases "family leave  
11 or disability" or "family leave or temporary disability",  
12 wherever the word "disability" or phrase "temporary disability"  
13 appear, as the context requires.

14 SECTION 27. Sections 392-47, 392-52, 392-62, 392-63,  
15 392-64, 392-67, 392-69, 392-72(a), 392-78(d), and 392-92, Hawaii  
16 Revised Statutes, are amended by substituting the phrase "trust  
17 fund for family leave and disability benefits" wherever the  
18 phrase "trust fund for disability benefits" appears, as the  
19 context requires.

20 SECTION 28. Chapter 398, Hawaii Revised Statutes, is  
21 repealed.



# H.B. NO. 466

1       SECTION 29. This Act does not affect rights and duties  
2 that matured, penalties that were incurred, and proceedings that  
3 were begun before its effective date.

4       SECTION 30. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6       SECTION 31. This Act shall take effect upon its approval.  
7

INTRODUCED BY:



JAN 22 2021



# H.B. NO. 466

**Report Title:**

Family Leave; Temporary Disability Insurance; Insurance Benefits; Employer Based Insurance Program

**Description:**

Provides employees with up to eight weeks of paid family leave during a one-year period paid through an employer based private insurance program currently used to provide for temporary disability benefits. Repeals chapter 398, Hawaii Revised Statutes.

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

