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H. B. NO. 55

A Bill for an Act to Establish the Hawaii Temporary Disability Insurance Law.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
TEMPORARY DISABILITY INSURANCE**

PART I. SHORT TITLE; PURPOSE; DEFINITIONS

Sec. -1. Short title. This chapter shall be known as the Hawaii Temporary Disability Insurance Law.

Sec. -2. Findings and purpose. 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 percent of the cases such sickness or accident can be expected to cause disability of more than one week's duration. More than two-fifths of the employees in private employment have either no fixed legal protection against wage loss from disabling nonoccupational sickness or accident, or only protection for a period of one work week or less; more than one-third of the workers covered by formal sick leave plans are not protected against disability extending beyond two work-weeks. Since the hardship for workers and their families mounts with the extension of the duration of the disability from whatever cause, there is a need to fill the existing gaps in protection and to provide benefits to individuals in current employment that will afford to them reasonable compensation for wage loss caused by disabling non-occupational sickness or accident where the disability is temporary in nature and exceeds the period of one work-week. This legislation is designed not to impede the growth of voluntary plans which afford additional protection.

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

Sec. -3. Definitions generally. As used in this chapter, unless the context clearly requires otherwise:

(1) "Benefit year" with respect to any individual means the one-year period beginning with the first day of the first week of disability with respect to which the individual first files a valid claim for temporary disability benefits. A subsequent benefit year is the one-year period following a preceding benefit year, beginning either (A) with the first day of the first week of disability with respect to which the individual files a subsequent claim for temporary disability benefits, or (B) with the first work-day following the expiration of the preceding benefit year if a disability for which temporary disability benefits are payable during the last week of the preceding benefit year continues and the individual is eligible for further benefit payments.

(2) "Contributions" mean the amounts of money authorized by this chapter to be withheld from employees' wages for the payment of temporary disability benefits.

(3) "Department" means the department of labor and industrial relations.

(4) "Director" means the director of labor and industrial relations.

(5) "Disability" means total inability of an employee to perform the duties of his employment caused by sickness or accident other than a work injury as defined in section 386-3. Disability does not include total inability of an employee to perform the duties of her employment caused by pregnancy. But if pregnancy or the termination of pregnancy produces complications resulting in sickness causing total disability, this is included within the term "disability".

(6) "Employer" means any individual or type of organization, including the State, any of its political subdivisions, any instrumentality of the State or its political subdivisions, any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or receiver or trustee in bankruptcy, or the legal representative of a deceased per-

son, who has one or more individuals in his employment during any day or portion of a day.

(7) "Employment" and "employed" means service, including service in interstate commerce, performed for wages under any contract of hire, written or oral, express or implied, with an employer, except as otherwise provided in section -4 and -5.

(8) "Wages" mean all remuneration for services from whatever source, including commissions and bonuses, and the cash value of all remuneration in any medium other than cash but not including tips or gratuities paid directly to any individual by a customer of his employer and not accounted for by the individual to his employer.

The director may issue regulations for the reasonable determination of the cash value of remuneration in any medium other than cash.

Wages do not include the amount of any payment specified in section 383-11.

(9) "Weekly benefit amount" means the amount payable under this chapter for a period of continuous disability throughout a calendar week. If the period of disability or the initial or terminal portion thereof is shorter than a calendar week, the benefit amount payable for that portion shall be the weekly benefit amount multiplied by a factor consisting of a quotient having the number of work-days lost during the portion of the week for the numerator and the number of regular work-days of the employee during a calendar week for the denominator.

Sec. -4. Place of performance. (a) "Employment" includes an individual's entire service, performed within or both within and without this State if

(1) The service is localized in this State; or

(2) The service is not localized in any state but some of the service is performed in this State and (A) the individual's base of operation, or, if there is no base of operation, the place from which such service is directed or controlled, is in this State; or (B) the individual's base of operation or place from which the service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this State.

(b) The term "employment" also includes all service performed by an officer or member of the crew of an American vessel on or in connection with such vessel; provided that the operating office from which the operations of the vessel operating on navigable waters within or within and without the United States is ordinarily and regularly supervised, managed, directed, and controlled is within this State.

Sec. -5. Excluded services. "Employment" as defined in section -3 does not include the following service:

(1) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, performed in any calendar quarter by an individual if the cash remuneration paid by the employer for such service is less than \$225;

(2) Service not in the course of the employer's trade or business per-

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formed in any calendar quarter by an individual, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. An individual shall be deemed to be regularly employed to perform service not in the course of the employer's trade or business during a calendar quarter only if (A) on each of some twenty-four days during the quarter the individual performs the service for some portion of the day, or (B) the individual was regularly employed (as determined under clause (A)) by the employer in the performance of the service during the preceding calendar quarter;

(3) Service performed on or in connection with a vessel not an American vessel, if the individual performing the service is employed on and in connection with the vessel when outside the United States;

(4) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed as an ordinary incident thereto, except (A) the service performed in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States), and (B) the service performed in connection with a vessel of ten net tons or less (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States) by an individual who is employed by an employer who, for some portion in each of twenty different calendar weeks in either the current or preceding calendar year, had in his employ one or more persons performing the service, whether or not the weeks were consecutive and whether or not the same individuals performed the service in each week, and (C) service performed in connection with the catching or taking of salmon or halibut for commercial purposes;

(5) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(6) Service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this chapter.

(7) Service performed in the employ of any other state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more such states or political subdivisions; and any service performed in the employ of any instrumentality of one or more other states or their political subdivisions to the extent that the instrumentality is, with respect to such service, exempt from the tax imposed by section 3301 of the Internal Revenue Code of 1954;

(8) Service with respect to which temporary disability compensation is payable for sickness under a temporary disability insurance system established by an act of Congress;

(9) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501 of the Internal Revenue Code of 1954, if (A) the remuneration for such service is less than \$50, or (B)

the service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university, or (C) the service is performed by a duly ordained, commissioned, or licensed minister or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of nonsecular duties required by the order;

(10) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of the association or their dependents, if (A) no part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (B) eighty-five percent or more of its income consists of amounts collected from members and amounts contributed by the employer of the members for the sole purpose of making such payments and meeting expenses;

(11) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of the association or their dependents or their designated beneficiaries, if (A) admission to membership in the association is limited to individuals who are officers or employees of the United States government, and (B) no part of the net earnings of the association inures (other than through such payments) to the benefit of any private shareholder or individual;

(12) Service performed in the employ of a school, college, or university, not exempt from income tax under section 501 of the Internal Revenue Code of 1954, if the service is performed by a student who is enrolled and is regularly attending classes at the school, college, or university;

(13) Service performed in the employ of an instrumentality wholly owned by a foreign government, if: (A) the service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and (B) the United States Secretary of State has certified or certifies to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;

(14) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to state law;

(15) Service performed by an individual for an employer as an insurance agent or as an insurance solicitor, if all such service performed by the individual for the employer is performed for remuneration solely by way of commission;

(16) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(17) Service covered by an arrangement between the department and the

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agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employer during the period covered by the employer's duly approved election, are deemed to be performed entirely within the agency's state;

(18) Service performed by an individual who, pursuant to the Federal Economic Opportunity Act of 1964, is not subject to the federal laws relating to unemployment compensation.

Sec. -6. "Individual in current employment". "Individual in current employment" means an individual who performed regular service in employment immediately or not longer than two weeks prior to the onset of the sickness or to the accident causing disability and who would have continued in or resumed employment except for such disability.

Sec. -7. Average weekly wage. The "average weekly wage" for the purpose of computing the weekly benefit amount shall be based upon the wages that the employee would receive from his employer except for his disability. In the case of salaried employees the "average weekly wage" shall be the weekly salary of the employee in the last week prior to the commencement of disability.

PART II. TEMPORARY DISABILITY BENEFITS

Sec. -20. Establishment of temporary disability benefits. (a) Any individual in current employment who suffers disability resulting from accident, or sickness, except accident or disease connected with or resulting from employment as defined in Section 386-3 or any other applicable workmen's compensation law, shall be entitled to receive temporary disability benefits in the amount and manner provided in this chapter.

(b) It is the policy of this chapter that the computation and distribution of benefit payments shall correspond to the greatest extent feasible, to the employee's wage loss due to his disability; that an employee shall not be entitled to temporary disability benefits for periods of disability during which he would not have earned wages from employment according to the schedule of operations of his employer, and that an employee is entitled to benefits only for periods of disability during which, but for the disability, he would have earned wages from employment.

Sec. -21. Weekly benefit amount. Benefits shall be computed as weekly amounts in the manner provided in this section.

(1) If the average weekly wage of the employee is less than \$25, the weekly benefit amount shall be equal to the average weekly wage but not more than \$14.

If the average weekly wage of the employee is \$25 or more the weekly benefit amount shall be fifty-five percent of the average weekly wage rounded off to the nearest \$1.

(2) If the average weekly earnings of the employee exceed an amount equal to one fifty-second of the product obtained by multiplying the amount of the average annual wage in Hawaii, as determined pursuant to section 383-

22(b) by the factor 1.21, such excess shall not be included in the computation of the weekly benefit amount.

(3) Notwithstanding any provision in paragraphs (1) and (2) to the contrary, the weekly benefit amount shall not exceed the maximum weekly benefit specified in section 386-31.

Sec. -22. Duration of benefit payments. Temporary disability benefits shall be payable for any period of disability following the expiration of the waiting period required in section -23.

The duration of benefit payments shall not exceed twenty-six weeks for any period of disability or during any benefit year.

Sec. -23. Waiting period. No temporary disability benefits shall be payable during the first seven consecutive days of any period of disability. Consecutive periods of 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 disability.

Sec. -24. Eligibility for benefits. An individual is eligible to receive temporary disability benefits if he has been in employment for at least fourteen weeks during each of which he has received remuneration in any form for twenty or more hours and earned wages of at least \$400, during the four completed calendar quarters immediately preceding the first day of disability.

Sec. -25. Care by physician or equivalent required. (a) An individual shall be ineligible to receive temporary disability benefits with respect to any period during which he is not under the care of a person duly licensed to practice medicine, surgery, or dentistry, who shall certify, in the form and manner specified by regulation of the director, the disability of the claimant, the probable duration thereof, and such other medical facts within his knowledge as required by regulation.

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

Sec. -26. Ineligibility in certain cases. An individual shall not be eligible to receive temporary disability benefits:

(1) For any period of disability during which he would be disqualified from receiving benefits under the Hawaii Employment Security Law by reason of unemployment due to a stoppage of work existing because of a labor dispute for the duration of such disqualification.

(2) If the director finds that the individual has knowingly made a false statement or representation of a fact or knowingly failed to disclose a material fact in order to obtain benefits under this chapter to which he is not otherwise entitled. The ineligibility shall be for a period determined by the director, but shall not exceed the period of disability with respect to which the false statement or representation was made or the nondisclosure occurred.

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(3) For any period of disability due to wilfully and intentionally self-inflicted injury or to injury sustained in the commission of a criminal offense specified in title 38.

(4) For any day of disability during which the employee performed work for remuneration or profit.

Sec. -27. Duplication of benefits not permitted. No temporary disability benefits shall be payable for any period of disability for which the employee is entitled to receive:

(1) Weekly benefits under the Employment Security Law or similar laws of this State or of any other state or of the United States, or under any temporary disability benefits law of any other state or of the United States except as provided in section -45.

(2) Weekly disability insurance benefits under 42 U.S.C.A. sec. 423.

(3) Weekly benefits for total disability under the Workmen's Compensation Law of this State or any other state or of the United States, except benefits for permanent partial or permanent total disability previously incurred. If the claimant does not receive benefits under such workmen's compensation law and his entitlement to such benefits is seriously disputed, the employee, if otherwise eligible, shall receive temporary disability benefits under this chapter, but any insurer or employer or the special fund for disability benefits providing such benefits shall be subrogated, as hereinafter provided, to the employee's right to benefits under the workmen's compensation law for the period of disability for which he received benefits under this 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 disability for which he is entitled to such indemnity payments, any insurer or employer or the special fund for 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.

Sec. -28. No assignment of benefits; exemptions from attachment, etc. No assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be valid; and such rights to benefits shall be exempt from levy, execution, attachment, garnishment, or any other remedy whatsoever provided for the collection of debt. No waiver of any exemption provided for in this section shall be valid.

PART III. PROVISION FOR TEMPORARY DISABILITY

INSURANCE BENEFITS

Sec. -30. Provision for payment of benefits. (a) An employer or an association of employers shall secure temporary disability benefits to their employees in one or more of the following ways:

(1) By insuring and keeping insured the payment of temporary disability benefits with any stock, mutual, reciprocal or other insurer authorized to trans-

act the business of disability insurance in the State; or

(2) By depositing and maintaining with the state director of finance, securities, or the bond of a surety company authorized to transact business in the State, as are satisfactory to the director securing the payment by the employer of temporary disability benefits according to the terms of this chapter; or

(3) Upon furnishing satisfactory proof to the director of his or its solvency and financial ability to pay the temporary disability benefits herein provided, no insurance or security or surety bond shall be required, and the employer shall make payments directly to his employees, as they may become entitled to receive the same under the terms and conditions of this chapter; or

(4) By a plan, entitling employees to cash benefits or wages during a period of disability, in existence on the effective date of this chapter.

(A) If the employees of an employer or any class or classes of such employees are entitled to receive disability benefits under a plan or agreement which remains in effect on January 1, 1970, the employer, subject to the requirements of this section, shall be relieved of responsibility for making provision for benefit payments required under this chapter until the earliest date, determined by the director for the purposes of this chapter, upon which the employer has the right to discontinue the plan or agreement or to discontinue his contributions toward the cost of the temporary disability benefits. Any such plan or agreement may be extended, with or without modification, by agreement or collective bargaining between an employer or employers or an association of employers and an association of employees, in which event the period for which the employer is relieved of such responsibility shall include the period of extension.

(B) Any other plan or agreement in existence on January 1, 1970 which the employer may, by his sole act, terminate at any time, or with respect to which he is not obligated to continue for any period to make contributions, may be accepted by the director as satisfying the obligation to provide for the payment of benefits under this chapter if the plan or agreement provides benefits at least as favorable as the disability benefits required by this chapter and does not require contributions of any employee or of any class or classes of employees in excess of the amount authorized in section -32, except by agreement and provided the contribution is reasonably related to the value of the benefits as determined by the director. The director may require the employer to enter into an agreement in writing with the director that until the employer shall have filed written notice with the director of his election to terminate such plan or agreement or to discontinue making necessary contributions toward the cost of providing benefits under the plan or agreement, he will continue to provide for the payment of the disability benefits under the plan or agreement. Any plan or agreement referred to in this paragraph may be extended, with or without modification; provided the benefits under the plan or agreement, as extended or modified, are found by the director to be at least as favorable as the disability benefits required by this chapter; or

(5) By a new plan or agreement. On or after January 1, 1970 a new plan or agreement with an insurer may be accepted by the director as satisfying the obligation to provide for the payment of benefits under this chapter if the plan

or agreement provides benefits at least as favorable as the disability benefits required by this chapter and does not require contributions of any employee or of any class or classes of employees in excess of the amount authorized in section -32, except by agreement and provided the contribution is reasonably related to the value of the benefits as determined by the director. Any such plan or agreement shall continue until written notice is filed with the director of intention to terminate the plan or agreement, and any modification of the plan or agreement shall be subject to the written approval of the director.

(b) During any period in which any plan or agreement or 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 the employer or insurer has agreed in writing with the director to pay the assessments imposed by section -46.

(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 his remaining employees not covered under the plan or agreement.

(d) As used in subsection (a)(4) or (5), "benefits at least as favorable as the disability benefits required by this chapter" means the temporary disability benefits under any plan or agreement whose component parts (waiting period for illness, waiting period for accident, duration of benefits, and percentage of wage loss replaced) add in total to cash benefits or wages which are determined by the director to be at least as favorable as the disability benefits required by this chapter. The insurance commissioner shall establish a set of tables showing the relative value of different types of cash benefits and wages to assist the director in determining whether the cash benefits and wages under a plan are at least as favorable as the temporary disability benefits required by this chapter.

(e) Any decision of the director rendered pursuant to this section with respect to the amount of security required, refusing to permit security to be given or refusing to accept a plan or agreement as satisfying the obligation to provide for the payment of benefits under this chapter shall be subject to review on appeal in conformity with the provisions of this chapter.

(f) In order to provide the coverage required by this chapter for employers otherwise unable to obtain or provide such coverage, the insurance commissioner may, after consultation with the insurers licensed to transact the business of disability insurance in this State, approve a reasonable plan or plans for the equitable apportionment among such insurers of employer applicants for such insurance who are in good faith entitled to but are unable to procure such insurance through ordinary methods and, when such a plan has been approved, all such insurers shall subscribe thereto and participate therein; provided, however, that the commissioner shall not, for insurance issued or in connection with any such plan or plans, require or allow the use of premium rates which are either inadequate or excessive in relation to the benefits to be provided. Any employer applying for such insurance or any insured under such

plan and any insurer affected may appeal to the commissioner from any ruling or decision of the manager or committee designated to operate such plan. All orders of the commissioner in connection with any such plan shall be subject to judicial review as provided in chapter 91.

Sec. -31. Notice of insurance. If payment of disability benefits is provided for in whole or in part by insurance pursuant to section -30, (a)(1), (4), or (5), the employer shall forthwith file with the director in form prescribed by the director a notice of his insurance together with a statement of benefits provided by the policy.

Sec. -32. 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, from each employee of one-half the cost but not more than .5 percent of the weekly wages earned by the employee in employment and the employer shall provide for the balance of the cost of providing temporary disability benefits under this chapter over the amount of contributions of his 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 remuneration in excess of one fifty-second of the average annual wage in the State as determined for the preceding year pursuant to section 383-61(b) multiplied by the factor 1.21. The director shall cause this amount to be published annually prior to the first day of January following the determination.

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

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

(e) An employee from whose wages amounts greater than those authorized by this chapter have been withheld by his employer shall be entitled to a refund or credit of the excess as prescribed by regulation of the director.

Sec. -33. Payment of disability benefits. Benefits provided under this chapter shall be paid periodically and promptly and, except as to a contested period of disability, without any decision by the director. The first payment of benefits shall be due on the fourteenth day of disability and benefits for that period shall be paid promptly to the employee after the filing of required proof of claim. Thereafter, benefits shall be due and payable every two weeks. The director may determine that benefits may be paid monthly or semi-monthly if wages were so paid, and may authorize deviation from the foregoing requirements to facilitate prompt payment of benefits.

Sec. -34. Subrogation rights if employee entitled to workmen's com-

pensation benefits or indemnity under employers' liability acts. (a) If an individual has received temporary disability benefits under this chapter during a period of disability for which benefits for total disability under the Workmen's Compensation Law of this State or of any other state or of the United States are subsequently awarded or accepted in any agreement or compromise, the employer, the association of employers, the insurer, or the special fund for disability benefits, as the case may be, providing such temporary disability benefits shall be subrogated to the individual's right to such benefits in the amount of the benefits paid under this chapter.

To protect its subrogation rights to benefits payable under the Workmen's Compensation Law of this State, the employer, the association of employers, the insurer, or the special fund for disability benefits, providing temporary disability benefits shall file a claim with the division of workmen's compensation in the department and notify the insurer for workmen's compensation or the employer, if self-insured, of its claim and thereupon the employer, the association of employers, the insurer, or the special fund for disability benefits, providing temporary disability benefits shall have a lien against the amounts payable as benefits for disability under the Workmen's Compensation Law in the amount of the benefits paid under this chapter during the period for which benefits for disability under the Workmen's Compensation Law have been accepted or awarded as payable. The agreement or award shall include a provision setting forth the existence and amount of such lien.

(b) If an individual has received benefits under this chapter during a period of disability for which he is entitled to receive indemnity payments for wage loss under any applicable employers' liability law of this State or of any other state or of the United States, the employer, the association of employers, the insurer, or the special fund for disability benefits, providing temporary disability benefits shall be subrogated to the individual's right to such indemnity in the amount of the benefits paid under this chapter and may assert its subrogation rights in any manner appropriate under such acts or any rule of law.

Sec. -35. Subrogation rights against third parties. If any individual who has received benefits under this chapter is entitled to recover damages from a third person who is responsible for the sickness or accident causing the disability, the employer, the association of employers, the insurer, or the special fund for disability benefits, providing disability benefits shall be subrogated to, and have a lien upon, the rights of the individual against the third party to the extent that the damages include wage loss during the period of disability for which temporary disability benefits were received in the amount of such benefits.

If the individual commences an action against such third party, the individual shall notify his employer, or the director if the individual is unemployed, of the action and the court in which it is pending. The employer, the association of employers, the insurer, or the special fund for disability benefits, providing disability benefits may join as party plaintiff or claim a lien on the amount of any judgment recovered by the individual in such action to the extent of its subrogation rights. If the individual does not commence the action

within nine months after the commencement of the sickness or the date of the accident causing the disability, the employer, the association of employers, the insurer, or the special fund for disability benefits, providing temporary disability benefits may commence such action, but the individual shall be entitled to join the action and be entitled to any surplus over the amount to which the employers, the association of employers, the insurer, or the special fund for disability benefits is subrogated.

Sec. -36. Failure to give security for payment of benefits; penalty; injunction. If an employer fails to comply with section -30 he shall be liable to a penalty of not less than \$25 or of \$1 for each employee for every day during which such failure continues, whichever sum is greater, to be recovered in an action brought by the director and in the name of the State, and the amount so collected shall be paid into the special fund for disability benefits created by section -40. The director may, however, in his discretion, for good cause shown, remit all or any part of the penalty in excess of \$25, provided the employer in default forthwith complies with section -30. With respect to such actions, the attorney general or any county attorney or public prosecutor shall prosecute the same if so requested by the director.

Furthermore, if any employer is in default under section -30, for a period of thirty days, he may be enjoined by the circuit court of the circuit in which his principal place of business is from carrying on his business any place in the State so long as the default continues, such action for injunction to be prosecuted by the attorney general or any county attorney if so requested by the director.

Sec. -37. The insurance contract. Every policy of insurance issued by an insurer of an employer pursuant to this chapter which covers the liability of the employer for temporary disability benefits shall cover the entire liability of the employer to his employees covered by the policy or contract, and also shall contain a provision setting forth the right of the employees to enforce in their own names either by filing a separate claim or by making the insurer a party to the original claim, the liability of the insurer in whole or in part for the payment of the disability benefits. Payment in whole or in part of disability benefits by either the employer or the insurer shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

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

Sec. -38. Insolvency of employer not to release insurer. Every policy and contract of insurance issued for the purposes of this chapter shall contain a provision to the effect that the insolvency or bankruptcy of the employer and his discharge therein shall not relieve the insurer from the payment of temporary disability benefits during the life of the policy or contract.

Sec. -39. Cancellation of insurance contracts. No policy or contract of insurance issued by a stock company or mutual association against liability arising under this chapter shall be canceled within the time limited in the contract for its expiration until at least ten days after notice of intention to cancel

such contract, on a date specified in the notice, has been filed with and served on the director of labor and industrial relations and the employer.

PART IV. SPECIAL FUND FOR DISABILITY BENEFITS

Sec. -40. Establishment of special fund for disability benefits.

There is established in the treasury of the State, separate and apart from all public moneys or funds of the State, a special fund for disability benefits which shall be administered by the director exclusively for the purposes of 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; (4) interest earned on any moneys in the fund; (5) any property or securities acquired through the use of moneys belonging to the fund; (6) all earnings of such property and securities; and (7) all other moneys received for the fund from any source.

Sec. -41. Management of the fund. The director of finance shall be the treasurer and custodian of the special fund for disability benefits and shall administer the fund in accordance with the directions of the director of labor and industrial relations. All moneys in the fund shall be held in trust for the purposes of this part only and shall not be expended, released, or appropriated or otherwise disposed of for any other purpose. Moneys in the fund may be deposited in any depository bank in which general funds of the State may be deposited but such moneys shall not be commingled with other state funds and shall be maintained in separate accounts on the books of the depository bank. Such moneys shall be secured by the depository bank to the same extent and in the same manner as required by the general depository law of the State; and collateral pledged for this purpose shall be kept separate and distinct from any other collateral pledged to secure other funds of the State. The director of finance shall be liable for the performance of his duties under this section as provided in chapter 37.

Sec. -42. Disbursements from the fund. Expenditures of moneys in the special fund for disability benefits shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All benefits shall be paid from the fund upon warrants drawn upon the director of finance by the comptroller of the State supported by vouchers approved by the director.

Sec. -43. Investment of moneys. With the approval of the department the director of finance may, from time to time, invest such moneys in the special fund for disability benefits as are in excess of the amount deemed necessary for the payment of benefits for a reasonable future period. Such moneys may be invested in bonds of any political or municipal corporation or subdivision of the State, or any of the outstanding bonds of the State, or invested in bonds or interest-bearing notes or obligations of the State (including state director of finance's warrant notes issued pursuant to chapter 40), or of the Uni-

ted States, or those for which the faith and credit of the United States, are pledged for the payment of principal and interest, or in federal land bank bonds or joint stock farm loan bonds. The investments shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The director of finance shall dispose of securities or other properties belonging to the fund only under the direction of the director of labor and industrial relations.

Sec. -44. Temporary disability benefits to be paid from the special fund for disability benefits. Temporary disability benefits shall be paid from the special fund for disability benefits to individuals who become disabled when unemployed and who subsequently become ineligible for benefits under chapter 383 or 384. Benefits shall also be paid from this fund to an employee who is entitled to receive temporary disability benefits but cannot receive such benefits because of the bankruptcy of his employer or because his employer is not in compliance with this chapter.

Sec. -45. Disability while unemployed. (a) An employee whose employment with a covered employer is terminated and who during a period of unemployment within twenty-six weeks immediately following such termination of employment becomes ineligible for benefits claimed under chapter 383 or 384 solely because of disability commencing on or after January 1, 1970, and who on the day the disability commences is not employed and is not then otherwise eligible for benefits under this chapter, shall be entitled to receive disability benefits as hereinafter provided for each week of such disability for which week he would have received unemployment insurance benefits if he were not so disabled.

(b) The weekly benefits payable to the disabled unemployed shall be the same as the benefits to which the individual would be entitled under chapter 383 or 384 except for his disability; provided that benefits payable under this section shall not be payable for a period longer than the remainder of the period of unemployment for which benefits would have been payable under chapter 383 or 384.

(c) The benefits payable under this section shall be paid by the director out of any assets in the fund created by section -40. The payments shall be made through employment offices, as this term is defined and used in chapter 383. The director may require an employee claiming benefits under this section to file proofs of disability and other proofs reasonably necessary for the director to make a determination of eligibility and benefit rights under this section. The director may establish reasonable procedures for determining pro rata benefits payable with respect to disability periods of less than one week. Any employee claiming benefits under this section whose claim is rejected in whole or in part by the director shall be entitled to request review and shall have all the rights with respect to disputed claims provided in this chapter.

Sec. -46. Assessments for the special fund for disability benefits. (a) Each employer shall, from July 1, 1969, to December 31, 1969, contribute to the establishment of the special fund for disability benefits at the rate of .2 per-

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cent of covered wages as defined in section -32. The employer shall pay such contributions to the director for a given month on or before the thirtieth day of the next succeeding month.

(b) When the balance of the special fund for disability benefits falls below \$500,000.00 as of December 31 of any year after 1969, a levy shall be assessed and collected in the next calendar year from insurers of employers insured under section -30 and from all other employers not insured under section -30.

Each year the director shall determine the amount of the levy to be paid by each insurer or employer and shall give notice of the levy to each such insurer or employer on or before May 1 of the year in which the levy is assessed. The amount of the levy shall be paid on or before June 30 following notification.

The amount of the levy against each insurer or employer shall be determined as the product of the wages paid by the employer multiplied by a factor which is the ratio of the amount by which the balance in the special disability benefits fund was less than \$500,000 on the preceding December 31 to total covered wages paid by all employers. For the purposes of this paragraph, "covered wages" means wages paid by employers during the preceding calendar year but not including wages paid to any employee in excess of the limit contained in section -32(b).

PART V. DETERMINATIONS

A. APPEAL PROCEDURE

Sec. -50. Appeal tribunal. Appeals shall be heard by an impartial referee for temporary disability benefits appeals who shall be appointed by the director and who shall serve as the appeal tribunal.

Sec. -51. Appeals, filing and hearing. (a) If a person disputes the amount of benefits, paid under part III or part IV, or the denial of benefits, the claimant may file an appeal, in the form and manner prescribed by regulation of the director, at the office of the department in the county in which the claimant resides or in the county in which the claimant was employed prior to his disability, within ten days after the date of payment of such disputed benefits or the denial thereof. Notice of the appeal shall be served upon the employer or insurer or the special fund for disability benefits in the form and manner prescribed by regulation of the director.

(b) The appeal shall be heard in the county in which the appeal is filed; provided that the director may by regulation provide for good cause for the holding of a hearing in another county and may provide for the taking of depositions. Unless the appeal is withdrawn with the permission of the referee, the referee after affording the parties reasonable opportunity for a fair hearing shall make findings and conclusions and on the basis thereof affirm, modify, or deny the disputed benefits. All parties shall be promptly notified of the decision of the referee and shall be furnished with a copy of the decision and the findings and conclusions in support thereof and the decision shall be final and shall be binding unless a proceeding for judicial review is initiated pursuant to

section -54; provided that, within the time provided for taking an appeal and prior to the filing of a notice of appeal, the referee may reopen the matter, upon application of the director or any party, or upon his own motion, and thereupon may take further evidence or may modify his decision, findings, or conclusions. In the event the matter is reopened, the referee shall render a further decision in the matter, either reaffirming or modifying his original decision, and notice shall be given thereof in the manner hereinbefore provided. The time to initiate judicial review shall run from the notice of such further decision if the matter has been reopened.

Sec. -52. Procedure. The referee shall not be bound by common law or statutory rules of evidence or by technical rules of procedure, but any hearing or appeal before the same shall be conducted in such manner as to ascertain the substantial rights of the parties. No person shall participate on behalf of the director in any case in which that person has a direct or indirect interest. A record shall be kept of all testimony and proceedings in connection with an appeal, but the testimony need not be transcribed unless further review is initiated. Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the department and such fees shall be deemed part of the expenses of administering this chapter.

Sec. -53. Conclusiveness of determinations and decisions. Except insofar as reconsideration is had under section -58, any right, fact, or matter in issue, directly passed upon or necessarily involved in an appeal which has become final, shall be conclusive for all the purposes of this chapter.

Sec. -54. Judicial review. Any party or the director may obtain judicial review of the decision of the referee in the manner provided in chapter 91, by instituting proceedings in the circuit court of the circuit in which the claimant resides or in which the claimant was last employed. The proceedings shall be heard in a summary manner and shall be given precedence over all other civil cases except proceedings arising under the Employment Security Law and the Workmen's Compensation Law of the State. Proceedings for review by the supreme court may be taken and had in the same manner as is provided for a review of a judgment of a circuit court. No bond shall be required as a condition of initiating a proceeding for judicial review or initiating proceedings for review by the supreme court. Upon the final termination of any judicial proceeding, the referee shall enter an order in accordance with the mandate of the court.

Sec. -55. Representation. In any proceeding for judicial review pursuant to section -54, the director may be represented by the attorney general or by any qualified attorney who is employed by the department for such purpose in conformity with section 103-3.

Sec. -56. Payment of benefits. Benefits shall be paid promptly in accordance with the decision. If an application for reconsideration is duly made or if judicial review is duly filed, benefits with respect to weeks of disability not in dispute and benefits payable in any amount not in dispute shall be paid promptly regardless of any reconsideration or appeal.

Sec. -57. Recovery of benefits paid. (a) Any person who has received any amount as benefits under this chapter to which he was not entitled shall be liable for such amount unless the overpayment was received without fault on the part of the recipient and its recovery would be against equity and good conscience. Notice of a reconsideration under section -58 in such cases shall specify that the person is liable to repay the amount of overpaid benefits, the basis of the overpayment, and the week or weeks for which such benefits were paid.

(b) The person liable shall, in the discretion of the referee, either repay such amount or have the amount deducted from any future benefits payable under this chapter within two years after the date of mailing of the notice of reconsideration or the final decision on an appeal from such reconsideration.

(c) In any case in which under this section an individual is liable to repay any amount, the amount shall be payable without interest.

Sec. -58. Reconsideration. (a) At any time within one year from the date of a final decision with respect to wages upon which benefits are computed, the director on his own motion may reopen the decision if he finds that wages of the claimant pertinent to the decision but not considered in connection therewith have been newly discovered or that benefits have been allowed or denied or the amount of benefits have been fixed on the basis of a nondisclosure or misrepresentation of a material fact.

(b) At any time within two years from the end of any week with respect to which a final decision allowing or denying benefits has been made, the director on his own motion may reopen the decision if he finds that the benefits were allowed or denied as a result of nondisclosure or misrepresentation of a material fact.

(c) At any time within one year from the end of any week with respect to which a final decision allowing or denying benefits has been made, the director on his own motion may reopen the decision if he finds that an overpayment, due to reasons other than fraud, has occurred.

(d) In any case in which the director is authorized by this section to reopen any final decision rendered by a referee or court, the director may petition the referee or court to issue a revised decision.

Sec. -59. Appeal pending when reconsideration issued. In the event that an appeal is pending as of the date a reconsideration thereof is issued, the appeal, unless withdrawn, shall be treated as an appeal from the reconsideration.

Sec. -60. Notice of reconsideration. Notice of a reconsideration upon a claim shall be promptly given to the parties by delivery thereof or by mailing the notice to the last known address of each party.

B. DETERMINATIONS RELATING TO WAGE WITHHOLDING

Sec. -61. Disputes between employers and employees relating to withholding of wages. In the case that there is a dispute between the em-

ployee and the employer relating to the withholding of wages as contributions for temporary disability benefits, either party may file with the director a petition for determination of the amount to be withheld.

The matter shall be determined by an officer of the department. If either party is dissatisfied with the determination, he may petition for redetermination and thereupon the petition shall be transferred to the referee.

PART VI. ENFORCEMENT

Sec. -70. Enforcement by the director. The director shall enforce the provisions of this chapter. The director may appoint such assistants and such clerical, stenographic and other help as may be necessary for the proper enforcement of this chapter subject to any civil service act relating to state employees. The salaries of all the foregoing appointees and employees shall be as fixed by law.

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

SECTION 2. This Act shall take effect upon its approval, except that contributions shall be collected starting on January 1, 1970 and that benefits shall become payable for periods of disability commencing on January 1, 1970.

(Approved June 30, 1969.)