

A Bill for an Act Relating to Temporary Disability Insurance.

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

SECTION 1. Chapter 392, Hawaii Revised Statutes, is amended in the following particulars:

(a) SECTION 392-22, Hawaii Revised Statutes, is amended to read:

**“Section 392-22. 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 \$26, 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 \$26 or more the weekly benefit amount shall be fifty-five per cent of the average weekly wage rounded off if not a multiple of \$1, to the next higher multiple of \$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.”

(b) SECTION 392-26, Hawaii Revised Statutes, is amended to read: **“392-26. 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.

(c) The proof of disability duly certified by a person licensed to practice medicine, surgery or dentistry, or an authorized or accredited practitioner of any group which depends for healing upon prayer or other spiritual means shall be submitted by such certifying person to the disabled employee within seven days after the date on which the employee was examined and found disabled."

(c) SECTION 392-27, Hawaii Revised Statutes, is amended to read:

**"Section 392-27. 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.
- (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, except that, if an employee returning to work suffers a relapse after performing work for less than a full day, he shall be paid benefits or be given waiting period credit, provided his wages for the partial day's work did not equal or exceed the prorated disability benefits to which he is entitled. The amount of the benefit payable is derived by subtracting the gross wages received for performing less than a full day's work, from the prorated disability benefits to which he is entitled."

(d) SECTION 392-41, Hawaii Revised Statutes, is amended to read:  
**"Section 392-41. 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 transact 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 392-43, 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 392-43, 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 392-67.

(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.

(g) All insurers shall in form prescribed by the director notify employer applicants who are unable to procure the required insurance through ordinary methods, the availability of the plan described in (f) above."

(e) SECTION 392-42, Hawaii Revised Statutes, is amended to read:  
**"Section 392-42. Notice of insurance.** If payment of disability benefits is provided for in whole or in part by insurance pursuant to section 392-41, (a) (1), (4), or (5), the employer or insurer 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. If an employer or insurer fails to file the notice of insurance within 30 days after purchase of insurance, the director may levy a penalty of not more than \$10 for each delinquent notice, unless good cause for failure to file can be shown by the employer or insurer."

(f) SECTION 392-43, Hawaii Revised Statutes, is amended to read:  
**"Section 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, from each employee of 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 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 (1) wages earned by an employee in employment during any payroll period unless, during the four completed calendar quarters immediately preceding such payroll period, he has earned wages of at least \$400 and 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 (2) 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, which amount the director shall cause 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.

(f) The contributions of employees deducted and withheld in amounts greater than those authorized by this chapter, shall be deposited in the special fund for disability benefits if such employees are no longer with the employer and cannot be located. A refund of the excess shall be paid from the special fund for disability benefits to the employees when they are located or if such employees remain unlocated for a period of two years from the date of deposit, such monies shall become a part of the special fund.

(g) If an employer fails to provide coverage for his employees after deducting and withholding contributions from his employees as prescribed by this chapter, he shall deposit such contributions in the special disability fund."

(g) SECTION 392-44, Hawaii Revised Statutes, is amended to read:

**"Section 392-44. 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 paid within ten days, exclusive of Saturdays, Sundays and holidays, 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. If an employer or insurer fails to make the first payment of benefits within ten days, exclusive of Saturdays, Sundays and holidays, after the filing of required proof of claim, the director shall, unless good cause can be shown, require the employer or insurer to pay such benefits plus an additional ten per cent of the benefits due and payable to the employee."

(h) SECTION 392-45, Hawaii Revised Statutes, is amended to read:

**"Section 392-45. Subrogation rights if employee entitled to workmen's compensation 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 any 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.

In the event more than one employer or insurer have subrogation rights

to the employee's workmen's compensation benefits, such benefits shall be divided proportionately among the employers or insurers according to the amount of benefits each employer or insurer paid under this chapter. Should the subrogated amount of either one or both employers or insurers total less than the amount of benefits that such employers or insurers paid under this chapter, neither the employee nor the special fund for disability benefits nor any other source shall be required to make up the difference.

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."

(i) SECTION 392-47, Hawaii Revised Statutes, is amended to read:  
**"Section 392-47. Failure to give security for payment of benefits; penalty; injunction.** If an employer fails to comply with section 392-41 he shall be subject to a penalty of not less than \$25 or \$1 for each employee for every day during which such failure continues, whichever sum is greater, to be recovered in an action brought in the discretion of the director and the amount so collected shall be paid into the special fund for disability benefits created by section 392-61. 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 392-41.

Furthermore, if any employer is in default under section 392-41, 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 located 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."

(j) SECTION 392-65, Hawaii Revised Statutes, is amended to read:  
**"Section 392-65. Temporary disability benefits to be paid from the special fund for disability benefits; recovery of disability benefits.** Temporary dis-

ability 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. Benefits paid from the special fund to such employee may be recovered from his bankrupt or non-complying employer. The director shall institute administrative and legal actions as provided in section 392-47 to effect recovery of such benefits.”

(k) CHAPTER 392, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

“**Section 392- . Failure to pay assessments.** If an employer or insurer fails to pay the assessment required by section 392-67(a) or section 392-67(b) within 30 days after the end of the month or quarter for which payment was due, the director shall levy a penalty of at least \$10 but no more than 10% of the assessment due against such employer or insurer, unless the nonpayment is excused by the director after a showing by such employer or insurer that the payment of the assessment could not be made on the date prescribed therefor owing to conditions over which he had no control and such employer or insurer forthwith complies.”

(l) CHAPTER 392, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

“**Section 392- . Request for wage and employment information.** An employer to whom the department has sent a request for wage and employment information for an employee claiming benefits against the special fund for disability benefits, shall complete and file such information within seven days from date the request was sent. If an employer fails to file such information in seven days, the director shall levy a penalty of not more than \$10 for each delinquent request, unless the failure to file such information is excused by the director after a showing by such employer that such filing could not be made on the prescribed date therefor owing to conditions over which he had no control.”

(m) CHAPTER 392, Hawaii Revised Statutes, is amended by adding a new part to read:

## “PART VII. MISCELLANEOUS PROVISIONS

**Section 392- . Limitation of fees.** Any individual claiming benefits in any proceeding before the department or the referee may be represented by counsel or other duly authorized agent; but no such counsel or agent shall either charge or receive for such services more than an amount approved by the department or referee, and such amount shall in no case exceed ten per cent of the total amount of benefits received as a result of such proceeding. Any person who violates this section shall, for each such offense, be fined not less than \$50 nor more than \$500 or imprisoned not more than six months, or both.”

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not

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include the brackets, the bracketed material or the underscoring.\*

**SECTION 3.** This Act shall take effect upon its approval, except section 1(a), which shall take effect on January 1, 1972.

(Approved May 25, 1971.)

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\* Edited accordingly.