



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

GOV. MSG. NO. 846

July 11, 2006

The Honorable Robert Bunda, President
and Members of the Senate
Twenty-Third State Legislature
State Capitol, Room 003
Honolulu, Hawaii 96813

Dear Mr. President and Members of the Senate:

I am transmitting herewith SB3035 SD1 HD1 CD1, without my approval, and with the statement of objections relating to the measure.

SB3035 SD1 HD1 CD1

A BILL FOR AN ACT RELATING TO
CONTINUED TEMPORARY TOTAL DISABILITY
BENEFITS TO INJURED EMPLOYEES.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

VETO

THE SENATE
TWENTY-THIRD LEGISLATURE, 2006
STATE OF HAWAII

S.B. NO. 3035
S.D. 1
H.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO CONTINUED TEMPORARY TOTAL DISABILITY BENEFITS TO
INJURED EMPLOYEES.

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

1 SECTION 1. The legislature finds that improper termination
2 of ongoing temporary total disability benefits is a source of
3 much disruption and vexation to injured workers and those
4 medical and vocational providers who seek to restore them to
5 gainful employment. The legislature finds that premature
6 termination of such benefits causes both economic and
7 psychological hardship to the injured worker and interferes with
8 attempts to help them attain full medical and vocational
9 recovery. However, the adverse consequences of the cessation of
10 compensation may be cured simply by requiring prior review of
11 the termination action by the director of labor and industrial
12 relations.

13 The purpose of this Act is to revise the procedure for
14 terminating temporary total disability benefits to reduce the
15 adverse consequences for injured workers when these benefits are
16 improperly terminated.



1 discrimination or other unlawful employment
2 practice by the employer; and
3 (B) That after termination of temporary total
4 disability benefits, an injured employee who
5 resumes work may be entitled to permanent partial
6 disability benefits, which if awarded, shall be
7 paid regardless of the earnings or employment
8 status of the disabled employee at the time.

9 (2) If the rehabilitation unit determines that an injured
10 employee is not a feasible candidate for
11 rehabilitation and that the employee is unable to
12 resume the employee's regular job, it shall promptly
13 certify the same to the director. Soon thereafter,
14 the director shall conduct a hearing to determine
15 whether the injured employee remains temporarily
16 totally disabled, or whether the employee is
17 permanently partially disabled, or permanently totally
18 disabled."

19 SECTION 3. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.


21 SECTION 4. This Act shall take effect on January 1, 2007.




THE SENATE OF THE STATE OF HAWAII

Date: May 2, 2006
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2006.



President of the Senate



Clerk of the Senate


**THE HOUSE OF REPRESENTATIVES
OF THE STATE OF HAWAII**

Date: May 2, 2006
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the House of Representatives of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2006.



Speaker, House of Representatives



Clerk, House of Representatives

P R O C L A M A T I O N

WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of the Governor's plan to return with the Governor's objections any bill presented to the Governor less than ten days before adjournment sine die or presented to the Governor after adjournment sine die of the Legislature; and

WHEREAS, Senate Bill No. 3035, entitled "A Bill for an Act Relating to Continued Temporary Total Disability Benefits to Injured Employees," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 3035 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return Senate Bill No. 3035 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu,
State of Hawaii, this 26th
day of June, 2006.



LINDA LINGLE
Governor of Hawaii

EXECUTIVE CHAMBERS

HONOLULU

July 10, 2006

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 3035

Honorable Members
Twenty-Third Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 3035, entitled "A Bill for an Act Relating to Continued Temporary Total Disability Benefits to Injured Employees."

This bill prevents the termination of temporary total disability (TTD) benefits although an injured worker is deemed ready to return to work. Currently, pursuant to section 386-31(b), Hawaii Revised Statutes, an employer/insurance carrier (employer) may terminate TTD benefits if a claimant is able to return to work. The existing law provides that an employer must notify the claimant and the Director of Labor and Industrial Relations of its intent to terminate TTD benefits at least two weeks prior to the date when the last payment is to be made. Section 386-31(b) also requires the notice to inform the claimant that the claimant may make a written request to the Director for a hearing if the claimant disagrees with the employer's decision to terminate TTD benefits.

Upon receipt of the request for hearing, the Director is required to conduct a hearing as expeditiously as possible and render a decision. The current law protects claimants from unwarranted premature termination of TTD benefits by allowing the Director to award a penalty of twenty percent of the unpaid compensation against the employer, payable to the claimant.

This bill is objectionable because it does not recognize that the twenty percent penalty already deters employers from terminating TTD benefits unless there is a valid and good faith basis to do so.

This bill is not clear whether an employer would be entitled to a credit if the employer continues to pay a claimant TTD benefits pursuant to this bill, but a decision of the Director determines that TTD benefits should have been terminated. If a court or other tribunal determines that an employer is not entitled to a credit against permanent disability benefits, the claimant would receive a windfall because the claimant would be allowed to retain the overpaid TTD benefits, which would ultimately raise the costs of workers' compensation. Moreover, even if it is determined that an employer would be entitled to a credit, if the work injury does not result in a permanent disability award, it may be difficult for an employer to collect the overpaid benefits, if any, again resulting in higher workers' compensation costs.

This bill is also objectionable because it provides a process for a claimant, but not an employer, to request a hearing. Pursuant to this bill, an employer cannot terminate TTD benefits unless the claimant has returned to work or the Director orders the termination of benefits. The bill, however, does not provide a specific process for the employer to request a hearing.

This bill also states that the Director must conduct a hearing as expeditiously as possible and render a prompt decision if a claimant requests a hearing, but this requirement does not apply if an employer requests a hearing. Thus, on its face, the bill treats requests from a claimant differently than requests from an employer.

Furthermore, this bill is objectionable because it allows a claimant to choose not to return to work, without penalty, thereby delaying a decision even if the attending physician indicates the claimant is able to return to work. The employer would then be required to continue paying TTD benefits until the Director unilaterally schedules a hearing and issues a decision terminating the benefits. As a result, this bill

STATEMENT OF OBJECTIONS
SENATE BILL NO. 3035
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creates a disincentive for a claimant to return to work because the claimant will suffer no penalty should the claimant refuse to return to work in spite of a doctor's indication that the claimant is able to do so.

Finally, it should be pointed out this bill would take disability determinations out of the hands of the health care profession. This runs counter to good medical and administrative practices and is not in the best interests of the employees themselves and the well-being of the workers compensation system.

For the foregoing reasons, I am returning Senate Bill No. 3035 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "Linda Lingle", written in a cursive style.

LINDA LINGLE
Governor of Hawaii