

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

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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