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**SENATE BILL 1070**

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

**INTRODUCED BY**

**Richard C. Martinez**

**AN ACT**

**RELATING TO INSURANCE; ENACTING THE TEMPORARY DISABILITY  
BENEFITS ACT; PROVIDING FOR TEMPORARY DISABILITY BENEFITS FOR  
NON-WORK-RELATED ILLNESS OR INJURY; ESTABLISHING PRIVATE PLANS  
FOR THE PAYMENT OF TEMPORARY DISABILITY BENEFITS; ESTABLISHING  
A STATE PLAN FOR THE PAYMENT OF TEMPORARY DISABILITY BENEFITS;  
CREATING THE ADVISORY COUNCIL ON TEMPORARY DISABILITY BENEFITS;  
CREATING THE STATE TEMPORARY DISABILITY BENEFITS FUND;  
PROVIDING PENALTIES.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. SHORT TITLE.--This act may be cited as the  
"Temporary Disability Benefits Act".**

**Section 2. DEFINITIONS.--As used in the Temporary  
Disability Benefits Act:**

**A. "average weekly wage" means the amount derived**

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1 by dividing a covered individual's total wages earned from the  
2 individual's most recent covered employer during the base weeks  
3 in the eight calendar weeks immediately preceding the calendar  
4 week in which disability commenced, by the number of base  
5 weeks;

6 B. "base week" means a period of seven consecutive  
7 days starting with the day of disability;

8 C. "council" means the advisory council on  
9 temporary disability benefits;

10 D. "covered employer" means an individual or  
11 organization, including a partnership, association, trust,  
12 estate, joint-stock company, insurance company or corporation,  
13 or the receiver, trustee in bankruptcy, trustee or successor,  
14 or the legal representative of a deceased individual, who is an  
15 employer, except the state, its political subdivisions or an  
16 instrumentality of the state unless the governmental entity  
17 elects to become a covered employer;

18 E. "covered individual" means an individual who is  
19 in employment for which the individual is entitled to  
20 remuneration from a covered employer or who has been out of  
21 employment for less than two weeks;

22 F. "department" means the labor department;

23 G. "day" means a span of time beginning at midnight  
24 of one calendar day and ending at midnight of the next calendar  
25 day;

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1           H. "disability" means an accident or sickness not  
2 arising from or in the course of the individual's employment  
3 or, if so arising, not compensable under the workers'  
4 compensation law and resulting in the individual's temporary  
5 total inability to perform the duties of employment;

6           I. "fund" means the state temporary disability  
7 benefits fund;

8           J. "period of disability" means the entire period  
9 of time during which an individual is continuously and totally  
10 unable to perform the duties of employment, except that two  
11 periods of disability due to the same or related cause or  
12 condition and separated by a period of not more than fourteen  
13 days shall be considered as one continuous period of  
14 disability; provided that the individual has earned wages  
15 during the fourteen-day period with the employer who was the  
16 individual's last employer immediately preceding the first  
17 period of disability;

18           K. "private plan" means a private plan of  
19 disability benefits approved by the department;

20           L. "secretary" means the secretary of labor;

21           M. "state plan" means the state temporary  
22 disability benefits plan;

23           N. "temporary disability benefits" means cash  
24 payments that are payable to a covered individual; and

25           O. "wages" means all compensation payable by

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1 covered employers to covered individuals for personal services,  
2 including commissions and bonuses and the cash value of all  
3 compensation payable in a medium other than cash.

4 Section 3. COMPENSABLE DISABILITY.--Disability shall be  
5 compensable subject to the limitations of the Temporary  
6 Disability Benefits Act.

7 Section 4. NONDUPLICATION OF TEMPORARY DISABILITY  
8 BENEFITS.--

9 A. Temporary disability benefits shall not be paid  
10 under the Temporary Disability Benefits Act for a period in  
11 which such benefits:

12 (1) are paid or payable under unemployment  
13 compensation or similar law, or under a disability or sickness  
14 benefit or similar law of this state, another state or the  
15 federal government; or

16 (2) are paid or payable on account of the  
17 disability of the covered individual under a workers'  
18 compensation law, occupational disease law or similar  
19 legislation of this state, another state or the federal  
20 government, except for benefits for permanent partial or  
21 permanent total disability previously incurred.

22 B. When a covered individual's claim for  
23 compensation for a temporary disability is contested and  
24 therefore delayed and the individual is otherwise eligible for  
25 benefits, the individual shall be paid the benefits provided by

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1 the Temporary Disability Benefits Act until and unless the  
2 individual receives compensation for the temporary disability.

3 Section 5. NOTICE OF UNEMPLOYMENT COMPENSATION--  
4 CONDITIONS.--The department shall provide notice to each  
5 covered individual receiving compensation under the provisions  
6 of the Temporary Disability Benefits Act explaining the  
7 conditions under which the individual may receive unemployment  
8 compensation.

9 Section 6. ESTABLISHMENT OF PRIVATE PLANS.--

10 A. A covered employer may establish a private plan  
11 for the payment of temporary disability benefits in lieu of the  
12 temporary disability benefits of the state plan. Temporary  
13 disability benefits under a private plan may be provided by a  
14 contract of insurance issued by an insurer authorized and  
15 admitted to do business in this state or by an agreement  
16 between the employer and a union or association representing  
17 employees or by a specific undertaking by the employer as a  
18 self-insurer.

19 B. Subject to the insurance laws of this state, a  
20 contract of insurance may be between an insurer and a covered  
21 employer; or may be between the insurer and two or more covered  
22 employers, acting for the purpose through a nominee, designee  
23 or trustee; or may be between the insurer and the union or  
24 association with which the employer has an agreement. The  
25 private plan shall be submitted in detail to the department and

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1 shall be approved by the department to take effect on the first  
2 day of the next calendar quarter, or on an earlier date if  
3 requested by the employer and approved by the department, if  
4 the department finds that:

5 (1) all of the employer's employees are to be  
6 covered under the provisions of the private plan with respect  
7 to a disability commencing after the effective date of such  
8 plan, except as otherwise provided in this section;

9 (2) eligibility requirements for temporary  
10 disability benefits are no more restrictive than as provided in  
11 the Temporary Disability Benefits Act for temporary disability  
12 benefits payable by the state plan;

13 (3) the weekly temporary disability benefits  
14 payable under the private plan for a week of disability are at  
15 least equal to the weekly temporary disability benefit amount  
16 payable by the state plan, taking into consideration the  
17 coverage with respect to concurrent employment by another  
18 employer, and the total number of weeks of disability for which  
19 temporary disability benefits are payable under the private  
20 plan is at least equal to the total number of weeks for which  
21 temporary disability benefits would have been payable by the  
22 state plan;

23 (4) no greater amount is required to be paid  
24 by employees toward the cost of temporary disability benefits  
25 than that prescribed by law as the amount of worker

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1 contribution to the fund for covered individuals under the  
2 state plan;

3 (5) coverage is continued under the private  
4 plan while an employee remains a covered individual, but not  
5 after the employee becomes employed by another employer  
6 following termination of employment to which the private plan  
7 relates; and

8 (6) a majority of the employees to be covered  
9 by the private plan have or shall have agreed to such plan  
10 prior to the effective date, if employees are required to  
11 contribute to the cost of the private plan, as provided in this  
12 section.

13 Section 7. ELECTION BY EMPLOYEES--DEDUCTION OF  
14 CONTRIBUTIONS.--

15 A. If a covered employer requires its employees to  
16 contribute toward the cost of temporary disability benefits  
17 under a private plan, the private plan shall not become  
18 effective unless, prior to the effective date, a majority of  
19 the employees in the class to be covered have agreed thereto by  
20 written election. In such an event, the employer may, during  
21 the continuance of the approved private plan, collect the  
22 required contributions by deduction from the wages paid to  
23 covered individuals under such plan; provided that if an  
24 employer fails to deduct the contributions of any employees at  
25 the time their wages are paid or fails to make a deduction at

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1 the time wages are paid for the next succeeding payroll period,  
2 the employer may not thereafter collect a contribution with  
3 respect to the wages previously paid.

4 B. A covered individual shall not be entitled to  
5 temporary disability benefits from the fund with respect to a  
6 period of disability commencing while the individual is covered  
7 under an approved private plan.

8 Section 8. EXISTING PLANS. --

9 A. If, upon the effective date of the Temporary  
10 Disability Benefits Act, a covered employer has in effect a  
11 plan for the payment of temporary disability benefits to its  
12 employees or has in effect an agreement with a union or  
13 association whereby there is in effect a plan for the payment  
14 of temporary disability benefits to its employees, the plan  
15 shall, regardless of the requirements of the Temporary  
16 Disability Benefits Act, be deemed to be an approved private  
17 plan until the earliest date upon which the employer shall have  
18 the right to modify the temporary disability benefits or  
19 discontinue the plan or discontinue contributions toward the  
20 cost. In this case, the employer shall notify the department  
21 of the circumstances.

22 B. During the continuance of the private plan, the  
23 covered individuals shall not be entitled to any temporary  
24 disability benefits under the state plan with respect to a  
25 period of disability commencing while they are covered under



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1 the private plan.

2 Section 9. TERMINATION OF PRIVATE PLANS. --

3 A. If the department is furnished satisfactory  
4 evidence that a majority of the employees covered by an  
5 approved private plan have made election in writing to  
6 discontinue the private plan, the department shall withdraw its  
7 approval of such plan effective at the end of the next calendar  
8 quarter following that in which the evidence is furnished.  
9 Upon receipt of a petition signed by not less than ten percent  
10 of the employees covered by an approved private plan, the  
11 department shall require the employer upon thirty days written  
12 notice to conduct an election by ballot in writing to determine  
13 whether a majority of the employees covered by the private plan  
14 favor discontinuance; provided that such election shall not be  
15 required more often than once in a twelve-month period.

16 B. Unless sooner permitted, for cause, by the  
17 department, an approved private plan shall not be terminated by  
18 an employer until at least thirty days after written notice of  
19 intention to do so has been given by the employer to the  
20 department and after notices are conspicuously posted so as to  
21 reasonably ensure their being seen, or after individual notices  
22 are given to the employees.

23 C. The department may after notice and hearing  
24 withdraw its approval of an approved private plan if it finds  
25 that there is danger that the temporary disability benefits

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1 accrued or that will accrue will not be paid, that the security  
2 for payment is insufficient or for other good cause shown. An  
3 employer, union or association representing employees shall not  
4 administer or apply the provisions of an approved private plan  
5 to derive profit. The department may withdraw its approval  
6 from a private plan that is administered or applied in  
7 violation of this provision.

8 D. In accordance with the provisions of the private  
9 plan, termination of an approved private plan shall not affect  
10 the payment of temporary disability benefits to disabled  
11 employees whose period of disability commenced prior to the  
12 date of termination. Employees who have ceased to be covered  
13 by an approved private plan because of its termination shall,  
14 subject to the limitations and restrictions of the Temporary  
15 Disability Benefits Act, become eligible for temporary  
16 disability benefits from the fund for disability commencing  
17 after such cessation, and contributions with respect to their  
18 wages shall immediately become payable.

19 Section 10. ADDITIONAL TEMPORARY DISABILITY BENEFITS. --  
20 The Temporary Disability Benefits Act shall not be construed to  
21 prohibit the establishment by a covered employer, without  
22 approval, of a supplementary plan or plans providing for the  
23 payment to employees of temporary disability benefits in  
24 addition to the temporary disability benefits of an approved  
25 private plan or to prohibit the collection or receipt of

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1 additional voluntary contributions from employees toward the  
2 cost of additional temporary disability benefits.

3 Section 11. INDIVIDUALS ENTITLED TO TEMPORARY DISABILITY  
4 BENEFITS. -- A covered individual who, on the date of the  
5 commencement of a period of disability, is not entitled to  
6 temporary disability benefits under an approved private plan  
7 shall be entitled to temporary disability benefits under the  
8 state plan as provided in the Temporary Disability Benefits  
9 Act.

10 Section 12. DURATION OF TEMPORARY DISABILITY BENEFITS. --

11 A. Temporary disability benefits that are not in  
12 excess of a covered individual's maximum benefits shall be  
13 payable with respect to a disability that commences while an  
14 individual is a covered individual under the Temporary  
15 Disability Benefits Act and shall be payable on the eighth  
16 consecutive day of the disability and each day thereafter that  
17 the period of disability continues; and if temporary disability  
18 benefits shall be payable for three consecutive weeks with  
19 respect to a period of disability, then such benefits shall  
20 also be payable with respect to the first seven days.

21 B. The maximum total temporary disability benefits  
22 payable to a covered individual for a period of disability  
23 shall be either twenty-six times the covered individual's  
24 weekly temporary disability benefit amount or one-third of the  
25 covered individual's total wages in the base year, whichever is

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1 less.

2 Section 13. LIMITATION OF TEMPORARY DISABILITY

3 BENEFITS. --Notwithstanding any other provision of the Temporary  
4 Disability Benefits Act, temporary disability benefits shall  
5 not be payable under the state plan to a covered individual:

6 A. for the first seven consecutive days of each  
7 period of disability; except that if temporary disability  
8 benefits shall be payable for three consecutive weeks with  
9 respect to a period of disability, then such benefits shall  
10 also be payable with respect to the first seven days;

11 B. for more than twenty-six weeks with respect to  
12 one period of disability;

13 C. for a period of disability that did not commence  
14 while the individual was a covered individual;

15 D. for a period during which the individual is not  
16 under the care of a legally licensed physician, dentist,  
17 optometrist, podiatrist, practicing psychologist or  
18 chiropractor, who, when requested by the department, shall  
19 certify within the scope of the practitioner's practice the  
20 disability of the individual, the probable duration and, where  
21 applicable, the medical facts within the practitioner's  
22 knowledge;

23 E. for a period of disability due to willfully and  
24 intentionally self-inflicted injury, or to an injury sustained  
25 in the perpetration by the individual of a crime;

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1 F. for a period during which the individual  
2 performs work for remuneration or profit;

3 G. in a weekly amount that, together with  
4 remuneration the individual continues to receive from the  
5 employer, would exceed regular weekly wages immediately prior  
6 to disability; or

7 H. for a period during which an individual would be  
8 disqualified from unemployment compensation benefits.

9 Section 14. WEEKLY AND DAILY TEMPORARY DISABILITY BENEFIT  
10 AMOUNTS. -- With respect to periods of disability, a covered  
11 individual's weekly temporary disability benefit rate shall be  
12 two-thirds of the individual's average weekly wage. The amount  
13 of temporary disability benefits for each day of disability for  
14 which such benefits are payable shall be one-seventh of the  
15 corresponding weekly temporary disability benefit amount.

16 Section 15. ENTITLEMENT FOR TEMPORARY DISABILITY  
17 BENEFITS. -- With respect to periods of disability, a covered  
18 individual shall not be entitled to temporary disability  
19 benefits under the Temporary Disability Benefits Act unless the  
20 individual has, within the fifty-two calendar weeks preceding  
21 the week in which the individual's period of disability  
22 commenced, established at least twenty base weeks or earned not  
23 less than one thousand times the minimum wage in effect on  
24 October 1 of the calendar year preceding the calendar year in  
25 which the disability commences.

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1           Section 16.   STATE DISABILITY TEMPORARY BENEFITS FUND--  
2   CREATED. --

3           A.   The "state disability temporary benefits fund"  
4   is created in the state treasury.

5           B.   The fund shall be administered by the  
6   department.   The state treasurer shall deposit in and credit to  
7   the fund the amount of worker and employer contributions  
8   provided in the Temporary Disability Benefits Act, the entire  
9   amount of interest and earnings from investments of the fund  
10   and all assessments, fines and penalties collected under that  
11   act.   The fund shall pay disability benefits pursuant to the  
12   Temporary Disability Benefits Act and administrative costs  
13   associated with that act.   The state treasurer shall invest the  
14   fund as other state funds are invested.   All balances in the  
15   fund shall remain in the fund and shall not revert to the  
16   general fund.

17           Section 17.   PAYMENT OF TEMPORARY DISABILITY BENEFITS--  
18   FUND-- DECEASED INDIVIDUAL-- MINORS-- REPRESENTATIVE APPOINTED. --

19           A.   Temporary disability benefits payable pursuant  
20   to the Temporary Disability Benefits Act shall be paid out of  
21   the fund.

22           B.   If a claim for temporary disability benefits is  
23   not filed by an otherwise covered individual prior to the  
24   individual's death, the first claim for such benefits may be  
25   filed by the surviving spouse or any other person who may be

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1     legally entitled. Payment of temporary disability benefits  
2     shall be made upon receipt of a completed first claim form  
3     accompanied by an affidavit executed by the person. The  
4     payment by the department of temporary disability benefits upon  
5     receipt of the affidavit shall discharge the obligations of the  
6     department to the extent of the payment. The department shall  
7     prescribe the form of affidavit to be executed.

8             C. In the event an infant or minor under the age of  
9     twenty-one years is entitled to receive a sum in payment for  
10    temporary disability benefits under the Temporary Disability  
11    Benefits Act, the father, mother or natural guardian of the  
12    infant or minor shall be authorized to receive the money to the  
13    same extent as a guardian of the person and property of the  
14    infant or minor duly appointed by the surrogate or the court of  
15    the county in which the infant or minor resides, and the  
16    release or discharge of the father, mother or natural guardian  
17    shall be a full and complete discharge of all claims or demands  
18    of the infant or minor. The department shall prescribe the  
19    form of affidavit and release to be executed by the parties  
20    concerned.

21             D. The secretary is authorized to appoint a  
22    representative to act for an individual who may be entitled to  
23    temporary disability benefits by legally receiving and  
24    disbursing the payments under the direction of the secretary  
25    when it appears that the individual is mentally, legally or

1 physically unable to properly receive or disburse the payments,  
2 or when the individual, after due diligence, cannot be located.

3 Section 18. ADVISORY COUNCIL ON TEMPORARY DISABILITY  
4 BENEFITS-- CREATION. --

5 A. The "advisory council on temporary disability  
6 benefits" is created and shall be composed of one ex-officio  
7 and ten appointed members as follows:

8 (1) the secretary or the secretary's designee;

9 (2) four representatives of labor, who shall  
10 be appointed by the governor;

11 (3) two representatives of employers, who  
12 shall be appointed by the governor;

13 (4) two representatives of the insurance  
14 industry, who shall be appointed by the governor; and

15 (5) two representatives of the medical  
16 profession, who shall be appointed by the governor.

17 B. The council shall select a chair, a vice chair  
18 and other officers as it deems necessary.

19 C. The council shall meet no less than twice  
20 annually and may meet more frequently upon the call of the  
21 chair. A majority of council members then serving constitutes  
22 a quorum for the transaction of council business. The council  
23 shall:

24 (1) study the administration and operation of  
25 the Temporary Disability Benefits Act;

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1                   (2) aid the department in formulating policies  
2 and rules and consult and advise the secretary; and

3                   (3) report to the appropriate interim  
4 legislative committee annually, and at such other times as it  
5 may deem appropriate, its recommendations for legislation or  
6 administration necessary or desirable to improve and perfect  
7 the operation of the Temporary Disability Benefits Act.

8                   D. Council members shall receive per diem and  
9 mileage as provided for nonsalaried public officers in the Per  
10 Diem and Mileage Act and shall receive no other compensation,  
11 perquisite or allowance.

12                   Section 19. RECIPROCAL AGREEMENTS FOR CERTAIN TEMPORARY  
13 DISABILITY BENEFITS. --

14                   A. The secretary is authorized to enter into a  
15 reciprocal agreement with the department of labor of any other  
16 state or other corresponding agency for the purpose of granting  
17 a covered individual residing in this state eligibility for the  
18 award of temporary disability benefits under the Temporary  
19 Disability Benefits Act, based on employment in the other state  
20 and granting a covered individual residing in the other state  
21 eligibility for the award of corresponding temporary disability  
22 benefits under the statutory authority of the other state,  
23 based on employment in this state.

24                   B. If the secretary has entered into a reciprocal  
25 agreement with another state pursuant to Subsection A of this

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1 section, the secretary is authorized to determine the amount of  
2 temporary disability benefits to be paid to an individual, in  
3 accordance with the provisions of the Temporary Disability  
4 Benefits Act, based on the covered individual's employment in  
5 the other state.

6 Section 20. NOTICE AND CLAIM FOR TEMPORARY DISABILITY  
7 BENEFITS. --

8 A. In the event of the disability of an individual  
9 covered under the state plan, the employer shall on the ninth  
10 day of disability issue to the covered individual and the  
11 department printed notices on department forms containing the  
12 name, address and social security number of the individual,  
13 wage information as the department may require to determine the  
14 individual's eligibility for temporary disability benefits, the  
15 name and address of the employer and a printed copy of  
16 department benefit instructions. No later than thirty days  
17 after the commencement of the period of disability for which  
18 the notice is furnished, the covered individual shall furnish  
19 to the department a notice and claim for temporary disability  
20 benefits under the state plan or for disability during  
21 unemployment. Upon the submission of the notices by the  
22 employer and the individual, the department may issue temporary  
23 disability benefit payments for periods not exceeding three  
24 weeks pending the receipt of medical proof. When requested by  
25 the department, the notice and proof shall include

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1 certification of total disability by the attending physician or  
2 a record of hospital confinement. Failure to furnish notice  
3 and proof in the time or manner provided in this section shall  
4 not invalidate or reduce a claim if it is shown to the  
5 satisfaction of the department not to have been reasonably  
6 possible to furnish the notice and proof and that the notice  
7 and proof was furnished as soon as reasonably possible.

8 B. A covered individual claiming temporary  
9 disability benefits under the state plan or for disability  
10 during unemployment shall, when requested by the department,  
11 submit at intervals, but not more than once a week, to an  
12 examination by a legally licensed physician, dentist,  
13 podiatrist, chiropractor or public health nurse designated by  
14 the department. In all cases of physical examination of an  
15 individual, the examination shall be made by a designee of the  
16 department, who shall be the same sex as the individual if  
17 requested by the individual. All examinations by physicians,  
18 dentists, podiatrists, chiropractors or nurses designated by  
19 the department shall be without cost to the individual and  
20 shall be held at a reasonable time and place. Refusal to  
21 submit to a requested examination shall disqualify the  
22 individual from all temporary disability benefits for the  
23 period of disability in question, except as to temporary  
24 disability benefits already paid.

25 C. All medical records of the department, except to

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1 the extent necessary for the proper administration of the  
2 Temporary Disability Benefits Act, shall be confidential and  
3 shall not be published or be open to public inspection, other  
4 than to public employees in the performance of their public  
5 duties, in any manner revealing the identity of the individual  
6 or the nature or cause of disability nor admissible in evidence  
7 in an action or special proceeding other than one arising under  
8 the Temporary Disability Benefits Act.

9 Section 21. REVIEW. --

10 A. If a covered individual claiming temporary  
11 disability benefits under an approved private plan is unable to  
12 agree with the employer or insurer as to the person's temporary  
13 disability benefits, the individual may, within one year after  
14 the beginning of the period for which such benefits are  
15 claimed, file a complaint with the department, which shall  
16 conduct an investigation, including information hearings, as it  
17 deems proper. The complaint shall be filed in writing in a  
18 form satisfactory to the department. The department shall:

- 19 (1) have the authority to make procedural  
20 rules providing for a fair and impartial hearing;
- 21 (2) designate one or more hearing officers,  
22 who shall conduct a hearing on issues left unsettled in the  
23 complaint, upon due notice to the person, the employer and the  
24 insurer, if any, and during which time any party in interest  
25 shall have the right to appear. During the hearing, the

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1 hearing officer shall:

2 (a) not be bound by the rules of  
3 evidence;

4 (b) ensure that the proceedings are  
5 recorded, though they need not be transcribed unless the order  
6 on the disputed claim is to be reviewed; and

7 (c) determine facts and issue an order  
8 disposing of the issues presented, which shall be binding on  
9 the person, the employer and the insurer; and

10 (3) serve the hearing officer's final order,  
11 which shall not be appealable, on interested parties by  
12 registered mail addressed to their last-known addresses.

13 B. The cost of recording and transcribing the  
14 proceedings and of preparation of the entire record required on  
15 review shall constitute a cost of administering the Temporary  
16 Disability Benefits Act.

17 C. Any party in interest aggrieved by action of the  
18 hearing officer may secure judicial review through a proceeding  
19 in lieu of prerogative writ.

20 Section 22. FEES OF ATTORNEY AND MEDICAL WITNESSES. --

21 A. In a proceeding conducted as the result of a  
22 complaint filed with the department as provided in the  
23 Temporary Disability Benefits Act, the hearing officer may:

24 (1) if an award of temporary disability  
25 benefits is made to a covered individual, allow a reasonable

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1 fee, not exceeding twenty percent of the amount of the award,  
2 to the attorney, if any, representing the individual, payable  
3 by the employer or insurer; and

4 (2) allow reasonable appearance fees for  
5 medical witnesses, the payment of which may be assessed against  
6 the individual, the employer or the insurer as the hearing  
7 officer shall determine.

8 B. Except for amounts allowed, it is unlawful for  
9 an attorney or another person to ask for, contract for or  
10 receive, directly or indirectly, a charge for services in  
11 securing or attempting to secure temporary disability benefits  
12 or for a medical witness to make a charge for appearance at a  
13 hearing held pursuant to the Temporary Disability Benefits Act.

14 Section 23. RECORDS AND REPORTS. --

15 A. An employer shall keep true and accurate  
16 employment records containing information as may reasonably be  
17 prescribed by the department. The records shall be open to  
18 inspection by the department or its authorized representative  
19 at any time during ordinary business hours for the purpose of  
20 ascertaining whether an employer is a covered employer and, if  
21 so, whether the employer is complying with the provisions of  
22 the Temporary Disability Benefits Act. Obtained information  
23 shall not be published or open to public inspection, other than  
24 to public employees in the performance of their public duties,  
25 in any manner revealing an employee's or employer's identity,

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underscored material = new  
[bracketed material] = delete

1 but an individual at a hearing before the department or a  
2 hearing officer shall be supplied with information from the  
3 records to the extent necessary for the proper presentation of  
4 a claim.

5 B. Covered employers whose employees are  
6 participating in an approved private plan and an insurer of an  
7 approved private plan shall furnish reports and information and  
8 make available to the department such records as the department  
9 may by rule require for the proper administration of the  
10 Temporary Disability Benefits Act.

11 C. The department shall make available to any  
12 insurer or self-insurer, on request, information from its  
13 records that is necessary for the determination of liability  
14 under an approved private plan.

15 Section 24. PENALTIES. --

16 A. Whoever makes a false statement or  
17 representation knowing it to be false or who knowingly fails to  
18 disclose a material fact to obtain or increase a temporary  
19 disability benefit under the state plan or an approved private  
20 plan or for a disability during unemployment either for the  
21 individual or for another individual, shall be liable for a  
22 fine of twenty dollars (\$20.00) to be paid to the department.  
23 Each false statement or representation or failure to disclose a  
24 material fact shall constitute a separate offense. Upon  
25 refusal to pay the fine, it shall be recovered in a civil

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[bracketed material] = delete

1 action by the department in the name of the state.

2 B. An employer or officer or agent of an employer  
3 or another person who makes a false statement or representation  
4 knowing it to be false or who knowingly fails to disclose a  
5 material fact to prevent or reduce the temporary disability  
6 benefits to a covered individual therefore entitled, or to  
7 avoid becoming or remaining subject to or to avoid or reduce  
8 contribution or other payment required from an employer under  
9 the Temporary Disability Benefits Act or who willfully fails or  
10 refuses to make such contributions or other payment or to  
11 furnish required reports or to produce or permit the inspection  
12 or copying of records as required, shall be liable for a fine  
13 of twenty dollars (\$20.00) to be paid to the department. Upon  
14 refusal to pay the fine, it shall be recovered in a civil  
15 action by the department in the name of the state.

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