

JAN 22 2007

S.B. NO. 1469

A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

1 SECTION 1. The purpose of this Act is to give small
2 business owners who meet certain requirements the option to not
3 obtain workers' compensation insurance. This measure adds four
4 new exclusions to the definition of "employment". These
5 exclusions are (1) members of a limited liability company with
6 at least fifty per cent distributional interests, (2) partners
7 of a partnership, (3) partners of a limited liability
8 partnership who have a transferable interest of at least fifty
9 per cent, and (4) sole proprietors.

10 Currently, state law requires individual members of a
11 limited liability company and partners in a partnership to
12 obtain workers' compensation coverage.

13 This bill will allow members of limited liability companies
14 and partners of partnerships and limited liability partnerships,
15 and sole proprietors the ability to save costs by allowing them
16 to opt out of obtaining workers' compensation coverage for
17 themselves.

1 In addition, the reference to excluded services as defined
2 in section 386-1, Hawaii Revised Statutes, under both the
3 workers' compensation and temporary disability insurance laws,
4 will provide consistency in exclusions with statutes of other
5 department programs.

6 SECTION 2. Section 386-1, Hawaii Revised Statutes, is
7 amended by amending the definition of "employment" to read as
8 follows:

9 "Employment" means any service performed by an individual
10 for another person under any contract of hire or apprenticeship,
11 express or implied, oral or written, whether lawfully or
12 unlawfully entered into. It includes service of public
13 officials, whether elected or under any appointment or contract
14 of hire express or implied.

15 "Employment" does not include the following service:

16 (1) Service for a religious, charitable, educational, or
17 nonprofit organization if performed in a voluntary or
18 unpaid capacity;

19 (2) Service for a religious, charitable, educational, or
20 nonprofit organization if performed by a recipient of
21 aid therefrom and the service is incidental to or in
22 return for the aid received;

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- 1 (3) Service for a school, college, university, college
2 club, fraternity, or sorority if performed by a
3 student who is enrolled and regularly attending
4 classes and in return for board, lodging, or tuition
5 furnished, in whole or in part;
- 6 (4) Service performed by a duly ordained, commissioned, or
7 licensed minister, priest, or rabbi of a church in the
8 exercise of the minister's, priest's, or rabbi's
9 ministry or by a member of a religious order in the
10 exercise of nonsecular duties required by the order;
- 11 (5) Service performed by an individual for another person
12 solely for personal, family, or household purposes if
13 the cash remuneration received is less than \$225
14 during the current calendar quarter and during each
15 completed calendar quarter of the preceding twelve-
16 month period;
- 17 (6) Domestic, which includes attendant care, and day care
18 services authorized by the department of human
19 services under the Social Security Act, as amended,
20 performed by an individual in the employ of a
21 recipient of social service payments;

- 1 (7) Service performed without wages for a corporation
2 without employees by a corporate officer in which the
3 officer is at least a twenty-five per cent
4 stockholder;
- 5 (8) Service performed by an individual for a corporation
6 if the individual owns at least fifty per cent of the
7 corporation; provided that no employer shall require
8 an employee to incorporate as a condition of
9 employment; [and]
- 10 (9) Service performed by an individual for another person
11 as a real estate salesperson or as a real estate
12 broker, if all the service performed by the individual
13 for the other person is performed for remuneration
14 solely by way of commission[-];
- 15 (10) Service performed by a member of a limited liability
16 company for the company if the member is an individual
17 and has a distributional interest, as defined in
18 chapter 428, of at least fifty per cent in the
19 company; provided that no employer shall require an
20 employee to form a limited liability company as a
21 condition of employment;

1 (11) Service performed by a partner of a partnership for
2 the partnership, as defined in chapter 425, if the
3 partner is an individual; provided that no employer
4 shall require an employee to become a partner as a
5 condition of employment;

6 (12) Service performed by a partner of a limited liability
7 partnership, if the partner is an individual and has a
8 transferable interest, as defined in section 425-127
9 in the partnership of at least fifty per cent;
10 provided that no employer shall require an employee to
11 form a limited liability partnership as a condition of
12 employment; and

13 (13) Service performed by a sole proprietor for the sole
14 proprietorship.

15 As used in this paragraph, "religious, charitable,
16 educational, or nonprofit organization" means a corporation,
17 unincorporated association, community chest, fund, or foundation
18 organized and operated exclusively for religious, charitable, or
19 educational purposes, no part of the net earnings of which inure
20 to the benefit of any private shareholder or individual.

21 SECTION 3. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.

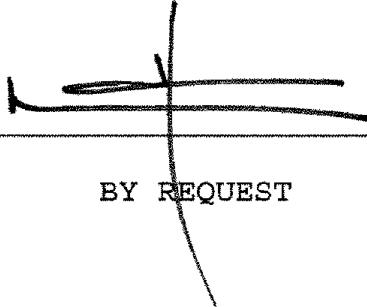
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1 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

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BY REQUEST

SB 1469

JUSTIFICATION SHEET

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO WORKERS' COMPENSATION.

PURPOSE: To give small business owners who meet certain exclusions the option to not obtain workers' compensation insurance. This measure adds four new exclusions to the definition of "employment." These exclusions are: (1) members with at least a fifty per cent distributional interest of a limited liability company; (2) partners of a partnership; (3) partners of a limited liability partnership with a transferable interest of at least fifty percent; and (4) sole proprietors.

MEANS: Amend Section 386-1, Hawaii Revised Statutes.

JUSTIFICATION: Currently, state law does not exclude from the definition of employment the services provided by certain members of a limited liability company and partners in a partnership. Thus, workers' compensation insurance is required to cover such employment.

This bill will allow members of limited liability companies and partners of partnerships the ability to save costs by allowing them to opt out of obtaining workers' compensation coverage for themselves.

This bill also clarifies the existing practice of not requiring sole proprietors to obtain workers' compensation coverage for themselves. In addition, the reference to excluded services as defined in section 386-1, HRS, under both the workers compensation

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and temporary disability insurance laws, will provide consistency in exclusions with statutes of other department programs.

Impact on the public: This bill will have cost saving for business owners that organize as LLC's, LLP's, partnerships, and operate as sole proprietorships.

Impact on the department: There will not be a significant impact upon the DLIR.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: LBR-183

OTHER AGENCIES AFFECTED: None.

EFFECTIVE DATE: July 1, 2007.