

JAN 19 2007

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# A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

1 SECTION 1. Chapter 386, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§386- Limited Liability Company, member, sole  
5 proprietor, or partner fee. (a) A member of a limited  
6 liability company, sole proprietor, or partner of a limited  
7 liability partnership who, under section 386-1, paragraphs (10)  
8 and (11) of the definition of employment, initially elects not  
9 to purchase workers' compensation insurance, but subsequently  
10 elects to purchase workers' compensation insurance, shall pay a  
11 fee of \$ , that shall be deposited into the special  
12 compensation fund established by section 386-151.

13 (b) The fee established by this section shall be increased  
14 by an amount of \$ , for each subsequent instance in  
15 which a person elects under section 386-1, paragraphs (10) and  
16 (11) of the definition of employment not to purchase workers'  
17 compensation insurance, then subsequently elects to purchase



1 workers' compensation insurance. The increase in the fee shall  
2 be established by adding \$ \_\_\_\_\_, to the amount of the last  
3 fee paid by the person under this section."

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

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

13 "Employment" does not include the following service:

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

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

21 (3) Service for a school, college, university, college  
22 club, fraternity, or sorority if performed by a



- 1 student who is enrolled and regularly attending  
2 classes and in return for board, lodging, or tuition  
3 furnished, in whole or in part;
- 4 (4) Service performed by a duly ordained, commissioned, or  
5 licensed minister, priest, or rabbi of a church in the  
6 exercise of the minister's, priest's, or rabbi's  
7 ministry or by a member of a religious order in the  
8 exercise of nonsecular duties required by the order;
- 9 (5) Service performed by an individual for another person  
10 solely for personal, family, or household purposes if  
11 the cash remuneration received is less than \$225  
12 during the current calendar quarter and during each  
13 completed calendar quarter of the preceding twelve-  
14 month period;
- 15 (6) Domestic, which includes attendant care, and day care  
16 services authorized by the department of human  
17 services under the Social Security Act, as amended,  
18 performed by an individual in the employ of a  
19 recipient of social service payments;
- 20 (7) Service performed without wages for a corporation  
21 without employees by a corporate officer in which the



1 officer is at least a twenty-five per cent  
2 stockholder;

3 (8) Service performed by an individual for a corporation  
4 if the individual owns at least fifty per cent of the  
5 corporation; provided that no employer shall require  
6 an employee to incorporate as a condition of  
7 employment; [~~and~~]

8 (9) Service performed by an individual for another person  
9 as a real estate salesperson or as a real estate  
10 broker, if all the service performed by the individual  
11 for the other person is performed for remuneration  
12 solely by way of commission[+];

13 (10) Service performed by a member of a limited liability  
14 company if the member is an individual and has a  
15 distributional interest, as defined in section 428-1,  
16 of at least fifty per cent in the company; and

17 (11) Service performed by a sole proprietor or partner of a  
18 partnership, within the meaning of chapter 425, if the  
19 partner is an individual.

20 As used in this [~~paragraph~~] definition, "religious, charitable,  
21 educational, or nonprofit organization" means a corporation,  
22 unincorporated association, community chest, fund, or foundation



1 organized and operated exclusively for religious, charitable, or  
2 educational purposes, no part of the net earnings of which inure  
3 to the benefit of any private shareholder or individual."

4 SECTION 3. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect upon its approval.  
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INTRODUCED BY:

*Ad S. T. H.*  
*J. P. Gish*  
*Rosemary H. Baker*  
*Gay L. Hoan*



**Report Title:**

Workers' Compensation; Limited Liability Companies; Partners;  
Sole Proprietors

**Description:**

Excludes from the definition of "employment" under workers' compensation law: service performed by (1) a sole proprietor or a partner of a partnership, as defined in the partnership law, if the partner is an individual; and (2) a member of a limited liability company if the member is an individual and has a distributional interest as defined under the Uniform Limited Liability Company Act, of at least 50% in the company. Provides for fees to be charged under certain circumstances.

