

# S.B. NO. 2130

JAN 25 2010

## A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

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

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

10 "Employment" ~~does~~ shall not include~~+~~ the following  
11 service:

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

15 (2) Service for a religious, charitable, educational, or  
16 nonprofit organization if performed by a recipient of  
17 aid therefrom and the service is incidental to or in  
18 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[7] in-home and community-based services for  
18          persons with developmental disabilities and mental  
19          retardation under the medicaid home and community-  
20          based services program pursuant to Title 42 Code of  
21          Federal Regulations Sections 440.180 and 441.300, and  
22          Title 42 Code of Federal Regulations[7] Part 434,

1 Subpart A, as amended, and identified as chore,  
2 personal assistance and habilitation, residential  
3 habilitation, supported employment, respite, and  
4 skilled nursing services, as the terms are defined by  
5 the department of human services, performed by an  
6 individual whose services are contracted by a  
7 recipient of social service payments and who  
8 voluntarily agrees in writing to be an independent  
9 contractor of the recipient of social service  
10 payments;

11 (7) Service performed without wages for a corporation  
12 without employees by a corporate officer in which the  
13 officer is at least a twenty-five per cent  
14 stockholder;

15 (8) Service performed by an individual for a corporation  
16 if the individual owns at least fifty per cent of the  
17 corporation; provided that no employer shall require  
18 an employee to incorporate as a condition of  
19 employment; [and]

20 (9) Service performed by an individual for another person  
21 as a real estate salesperson or as a real estate  
22 broker, if all the service performed by the individual

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1 for the other person is performed for remuneration  
2 solely by way of commission[-];

3 (10) Service performed by a partner of a partnership for  
4 the partnership, as defined in section 425-101, if the  
5 partner is an individual; provided that no employer  
6 shall require an employee to become a partner as a  
7 condition of employment;

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

16 (12) Service performed by a member of a limited liability  
17 company, if the member is an individual and has a  
18 distributional interest as defined in section 428-501  
19 in the limited liability company of at least fifty per  
20 cent; provided that no employer shall require an  
21 employee to form a limited liability company as a  
22 condition of employment; and

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

3        As used in this [~~paragraph,~~] definition, "religious, charitable,  
4        educational, or nonprofit organization" means a corporation,  
5        unincorporated association, community chest, fund, or foundation  
6        organized and operated exclusively for religious, charitable, or  
7        educational purposes, no part of the net earnings of which inure  
8        to the benefit of any private shareholder or individual."

9            SECTION 2. Statutory material to be repealed is bracketed  
10        and stricken. New statutory material is underscored.

11            SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_

  
BY REQUEST

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**Report Title:**

Workers' Compensation Insurance; Exclusions

**Description:**

Gives small business owners who meet certain exclusions the option to not obtain workers' compensation insurance.

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 percent 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 certain members of limited liability companies and certain 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.

Impact on the public: This bill will have cost savings for certain business owners that organize as limited liability

companies, limited liability partnerships, partnerships, and operate as sole proprietorships.

Impact on the department and other agencies:  
There will not be a significant impact upon the department of labor and industrial relations.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: LBR-183

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.