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## A BILL FOR AN ACT

RELATING TO PROFESSIONAL EMPLOYER ORGANIZATIONS.

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

1           SECTION 1. Chapter 373L, Hawaii Revised Statutes, is  
2 amended by adding two new sections to be appropriately  
3 designated and to read as follows:  
4           "§373L- Professional employer organization; employee  
5 rights; payroll cost exemption. (a) Where any client company  
6 uses the services of covered employees and co-employs covered  
7 employees with a professional employer organization, the client  
8 company and the professional employer organization, with respect  
9 to the covered employees, shall not be exempt from the  
10 requirements of any federal, state, or county law, including  
11 labor or employment laws, collective bargaining rights, anti-  
12 discrimination provisions, or other laws with respect to the  
13 protection and rights of employees, including chapters 377 and  
14 378, that would apply to the covered employees if the covered  
15 employees were employees of the client company alone, and were  
16 not co-employees of the professional employer organization.

17           These employee rights shall not be abrogated by any  
18 contract or agreement between the client company and the



1 professional employer organization, or the professional employer  
2 organization and the covered employee, that contains terms or  
3 conditions that could not be lawfully contained in a contract or  
4 agreement directly between the client company and the covered  
5 employee in which no professional employer organization is  
6 involved. Notwithstanding any statute, local ordinance,  
7 executive order, rule, or regulation to the contrary, where the  
8 laws, rights, and protections referred to in this section define  
9 or require a determination of the "employer", the employer shall  
10 be deemed to be the client company and not the professional  
11 employer organization. The department of labor and industrial  
12 relations shall notify the department of taxation in writing of  
13 any violation of this subsection.

14 (b) The client company shall be deemed to have satisfied  
15 its obligations with respect to any covered employee under any  
16 applicable law, including, without limitation, workers'  
17 compensation laws including chapter 386, employee insurance  
18 coverage laws including chapters 383, 385, 392, and 393, and tax  
19 withholding and reporting laws, if and to the extent that those  
20 obligations are satisfied by the professional employer  
21 organization acting in its capacity as co-employer of the  
22 covered employee.



1        (c) Amounts received by a professional employer  
2 organization from a client company in amounts equal to, and that  
3 are disbursed by, the professional employer organization for  
4 employee wages, salaries, payroll taxes, insurance premiums, and  
5 benefits, including retirement, vacation, sick leave, health  
6 benefits, and similar employment benefits with respect to  
7 covered employees at a client company shall not be subject to  
8 the general excise tax as provided by section 237-24.75.

9        (d) The general excise tax exemption under section  
10 237-24.75 shall not apply to the professional employer  
11 organization if:

12        (1) By or through any contract between the client company  
13 and any professional employer organization, or  
14 otherwise, employees are excluded from any employee  
15 rights or employee benefits required by law to be  
16 provided to employees of the client company by the  
17 client company; or

18        (2) The professional employer organization fails to pay  
19 any tax withholding for assigned employees or any  
20 federal or state taxes for which the professional  
21 employer organization is responsible.



1           §373L-        Professional employer organization special fund.  
2   There is established the professional employer organization  
3   special fund into which shall be deposited the registration fees  
4   collected under section 373L-2 and any interest earned or  
5   accrued on moneys in the special fund. The proceeds of the  
6   special fund shall be used by the director for administering and  
7   enforcing the chapter."

8           SECTION 2. Section 237-24.75, Hawaii Revised Statutes, is  
9   amended to read as follows:

10           "§237-24.75 Additional exemptions. In addition to the  
11   amounts exempt under section 237-24, this chapter shall not  
12   apply to:

13           (1) Amounts received as a beverage container deposit  
14           collected under chapter 342G, part VIII;

15           (2) Amounts received by the operator of the Hawaii  
16           convention center for reimbursement of costs or  
17           advances made pursuant to a contract with the Hawaii  
18           tourism authority under section 201B-7[+]; and[+]

19           +[ (3) Amounts received[+] by a professional [~~employment~~]  
20           employer organization from a client company equal to  
21           amounts that are disbursed by the professional  
22           [~~employment~~] employer organization for employee wages,



1 salaries, payroll taxes, insurance premiums, and  
2 benefits, including retirement, vacation, sick leave,  
3 health benefits, and similar employment benefits with  
4 respect to assigned employees at a client company;  
5 provided that this exemption shall not apply to a  
6 professional [~~employment~~] employer organization upon  
7 failure of the professional [~~employment~~] employer  
8 organization to collect, account for, and pay over any  
9 income tax withholding for [~~assigned~~] covered  
10 employees or any federal or state taxes for which the  
11 professional [~~employment~~] employer organization is  
12 responsible. As used in this paragraph, "professional  
13 [~~employment~~] employer organization", "client company",  
14 and [~~"assigned-employee"~~] "covered employee" shall  
15 have the meanings provided in section [~~373K-1.~~] 373L-  
16 1."

17 SECTION 3. Chapter 373K, Hawaii Revised Statutes, is  
18 repealed.

19 SECTION 4. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.



1 SECTION 5. This Act shall take effect on July 1, 2012.

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INTRODUCED BY: Celinda Day

JAN 23 2012



# H.B. NO. 2346

**Report Title:**

Professional Employer Organizations

**Description:**

Consolidates laws regarding professional employer organizations. Establishes professional employer organization special fund into which registration fees are to be deposited.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

