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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 six new sections to be appropriately  
3 designated and to read as follows:

4           "**§373L-A Professional employer organization special fund.**

5 There is established in the state treasury a special fund to be  
6 known as the professional employer organization special fund to  
7 be administered by the department to implement and operate the  
8 registration of professional employer organizations established  
9 by this chapter. Moneys collected as fees or fines under  
10 sections 373L-B(b), 373L-C, and 373L-D shall be deposited in the  
11 fund. Interest earned from the balance of the fund shall become  
12 a part of the fund.

13           **§373L-B Notice of judgments, penalties, fines, address.**

14 (a) Each registered professional employer organization shall  
15 provide written notice within thirty days to the department of  
16 any judgment, award, disciplinary sanction, order, or other  
17 determination which adjudges or finds that the organization is  
18 civilly, criminally, or otherwise liable for any personal



1 injury, property damage, or loss caused by the organization's  
2 conduct in the practice of the organization's profession. An  
3 organization shall also give notice of such determinations made  
4 in other jurisdictions.

5 (b) In addition to any other penalties provided by law,  
6 the failure of a professional employer organization to comply  
7 with this section is a violation punishable by a fine  
8 established by the director pursuant to section 373L-E. Any  
9 action taken to impose or collect the fine provided for in this  
10 subsection shall not be considered a criminal action.

11 (c) Each professional employer organization shall file  
12 with the department the organization's current mailing and  
13 business address. A professional employer organization shall  
14 provide written notice to the department of any change of  
15 address within thirty days of the change. Failure of the  
16 professional employer organization to provide the notice shall  
17 absolve the department or director from any duty to provide  
18 notice of any matter required by law to be provided to the  
19 professional employer organization.

20 **§373L-C Denial, suspension, revocation, fine, or denial of**  
21 **renewal of registration.** The director may deny, suspend,  
22 revoke, fine, or deny renewal of registration of any



1 professional employer organization when a professional employer  
2 organization, including its controlling persons:

3 (1) Fails to meet the requirements for registration as  
4 provided in this chapter;

5 (2) Fails to satisfy a civil fine, penalty, or restitution  
6 order arising out of any administrative or enforcement  
7 action brought by any governmental agency for conduct  
8 involving fraud or dishonest dealing;

9 (3) Fails to post a bond in accordance with this chapter;

10 (4) Makes any false statement, representation, or  
11 certification in any document or record required to be  
12 maintained under this chapter;

13 (5) Fails to keep, maintain, and disclose, upon request of  
14 the department the books and records required to be  
15 maintained under this chapter for inspection or audit  
16 for the period of time designated by the director;

17 (6) Fails to timely pay wages, withholding taxes, or any  
18 other payments pursuant to the professional employer  
19 agreement; or

20 (7) Otherwise violates this chapter or any rule adopted or  
21 order of the director issued pursuant to this chapter.



1        **§373L-D Fees and administrative costs.** No applicant for  
2 registration pursuant to this chapter shall be allowed to  
3 register unless the appropriate fees have been paid. The fees  
4 to be established by the director may include an application  
5 fee, initial registration fee, biennial renewal fee, restoration  
6 fee, and other reasonable and necessary fees related to the  
7 department's administrative costs. Unless otherwise provided by  
8 law, the fees shall be deposited into the professional employer  
9 organization special fund. Effective July 1, 2012, the  
10 department of commerce and consumer affairs shall collect fees  
11 pursuant to this chapter as follows:

- 12        (1) Application fee                    \$100;  
13        (2) Initial registration fee \$2,500;  
14        (3) Biennial renewal fee            \$2,500; and  
15        (4) Restoration fee                    \$250;

16 until such time that the director adopts, amends, or repeals the  
17 fees by adopting rules in accordance with chapter 91.

18        **§373L-E Responsibilities and duties of the director.** The  
19 general duties and powers of the director shall include:

- 20        (1) Adopting, amending, and repealing rules in accordance  
21 with chapter 91 to issue, deny, condition, renew, or  
22 deny renewal of registrations;



- 1        (2) Establishing fees and fines;
- 2        (3) Inspecting and auditing the books and records of a
- 3                registrant with the costs to be borne by the
- 4                registrant; and
- 5        (4) Doing all things necessary to carry out the functions,
- 6                powers, and duties of this chapter.

7        **§373L-F Professional employer agreements; mandatory**  
8        **provisions; disclosures.** The director shall establish  
9        provisions and disclosures that shall be included in all  
10        professional employer organization agreements. These mandatory  
11        provisions and disclosures shall include but not be limited to  
12        statements requiring the provision of written copies of certain  
13        documents to client companies and the timely payment of wages,  
14        withholding of taxes, and payment of taxes by professional  
15        employer organizations."

16        SECTION 2. Section 373K-2, Hawaii Revised Statutes, is  
17        amended by amending subsection (a) to read as follows:

18        "(a) Where any client company uses the services of  
19        assigned employees and co-employs assigned employees with a  
20        professional employment organization, the client company and the  
21        professional employment organization, with respect to the  
22        assigned employees, shall not be exempt from the requirements of

1 any federal, state, or county law, including labor or employment  
2 laws, collective bargaining rights, anti-discrimination  
3 provisions, or other laws with respect to the protection and  
4 rights of employees, including chapters 377 and 378, that would  
5 apply to the assigned employees if the assigned employees were  
6 employees of the client company alone, and were not co-employees  
7 of the professional employment organization.

8       These employee rights shall not be abrogated by any  
9 contract or agreement between the client company and the  
10 professional employment organization, or the professional  
11 employment organization and the assigned employee, which  
12 contains terms or conditions that could not be lawfully  
13 contained in a contract or agreement directly between the client  
14 company and the assigned employee in which no professional  
15 employment organization is involved. [~~Notwithstanding any~~  
16 ~~statute, local ordinance, executive order, rule, or regulation~~  
17 ~~to the contrary, where the laws, rights, and protections~~  
18 ~~referred to in this section define or require a determination of~~  
19 ~~the "employer",] For the purposes of chapter 237, the employer  
20 shall be deemed to be the client company and not the  
21 professional employment organization. The department of labor  
22 and industrial relations shall notify the department of taxation~~



1 in writing of any violation of this subsection. Notwithstanding  
2 the provisions of this chapter and chapter 373L relating to co-  
3 employment of professional employer organizations and client  
4 companies, the professional employer organization as the paying  
5 agent pursuant to title 26 United States Code section  
6 3401(d)(1), shall be deemed to be the employer of record who  
7 shall be responsible for all obligations of assigned employees  
8 at the client companies' worksites for purposes of chapters 383,  
9 386, 392, and 393."

10 SECTION 3. Section 373L-1, Hawaii Revised Statutes, is  
11 amended as follows:

12 1. By adding two new definitions to be appropriately  
13 inserted and to read:

14 "Controlling persons" means any individual, firm,  
15 association, or corporation that directly or indirectly has the  
16 power to direct or cause to be directed, the management,  
17 control, or activities of the professional employer  
18 organization.

19 "Department" means the department of labor and industrial  
20 relations."



1           2. By amending the definitions of "client company",  
2 "professional employer organization", and "temporary help  
3 services" to read:

4           "Client company" means any person [~~who enters into a~~  
5 ~~professional employer agreement with a professional employer~~  
6 ~~organization.~~] that contracts with a professional employer  
7 organization and is assigned employees by the professional  
8 employment organization under that contract.

9           "Professional employer organization" or "organization"  
10 means [~~any person that is a party to a professional employer~~  
11 ~~agreement with a client company regardless of whether the person~~  
12 ~~uses the term or conducts business expressly as a "professional~~  
13 ~~employer organization", "PEO", "staff leasing company",~~  
14 ~~"registered staff leasing company", "employee leasing company",~~  
15 ~~"administrative employer", or any other similar name.] a  
16 business entity that offers to co-employ employees that are  
17 assigned to the worksites of its client companies.~~

18           "Temporary help [~~services~~]" means an arrangement by which  
19 [~~a person recruits and hires the person's own employees and:~~

20           (1) ~~Finds other organizations that need the services of~~  
21           ~~these employees;~~





1       ~~(2) Assigns those employees to perform work or services~~  
2       ~~for other organizations to support or supplement the~~  
3       ~~other organizations' workforces or to provide~~  
4       ~~assistance in special work situations, including~~  
5       ~~employee absences, skill shortages, seasonal~~  
6       ~~workloads, or special assignments or projects; and~~  
7       ~~(3) Customarily attempts to reassign the employees to~~  
8       ~~successive placements with other organizations at the~~  
9       ~~end of each assignment.]~~

10       an organization hires its own employees and assigns them to a  
11       client company to support or supplement the client's workforce  
12       in a special situation, including:

- 13       (1) An employee absence;
- 14       (2) A temporary skill shortage;
- 15       (3) A seasonal workload; or
- 16       (4) A special assignment or project."

17       SECTION 4. Section 373L-2, Hawaii Revised Statutes, is  
18       amended to read as follows:

19       "~~+~~**\$373L-2**~~+~~ **Registration required.** (a) Every  
20       professional employer organization shall register with the  
21       director by providing all of the information required by this  
22       section and by rules adopted by the director pursuant to chapter



1 91 prior to entering into any professional employer agreement  
2 with any client company in this State.

3 (b) Registration information required by this section  
4 shall include:

5 (1) The name or names under which the professional  
6 employer organization conducts or will conduct  
7 business;

8 (2) The address of the principal place of business of the  
9 professional employer organization and the address of  
10 each office that the professional employer  
11 organization maintains in this State;

12 (3) The professional employer organization's general  
13 excise tax number;

14 (4) A copy of the certificate of authority to transact  
15 business in this State issued by the director of  
16 commerce and consumer affairs pursuant to title 23 or  
17 title 23A, if applicable;

18 (5) A list, organized by jurisdiction, of each name under  
19 which the professional employer organization has  
20 operated in the preceding five years, including any  
21 alternative names; names of predecessors; and, if  
22 known, names of successor business entities;



- 1           (6) A statement of ownership, which shall include the name  
2           of each person who, individually or acting in concert  
3           with any other person or persons, owns or controls,  
4           directly or indirectly, twenty-five per cent or more  
5           of the equity interests of the professional employer  
6           organization;
- 7           (7) A statement of management, which shall include the  
8           name of any person who serves as president or chief  
9           executive officer or who otherwise has the authority  
10          to act as a senior executive officer of the  
11          professional employer organization;
- 12          (8) Proof of valid workers' compensation coverage in  
13          compliance with all laws of this State;
- 14          (9) Proof of compliance with the Hawaii temporary  
15          disability insurance law;
- 16          (10) Proof of compliance with the Hawaii Prepaid Health  
17          Care Act as regards all employees of the professional  
18          employer organization;
- 19          (11) Proof of compliance with the Hawaii employment  
20          security law, including payment of any applicable  
21          employer liability pursuant to chapter 383; and



1 (12) A financial statement prepared in accordance with  
2 generally accepted accounting principles, audited by  
3 an independent certified public accountant licensed to  
4 practice in the State, and without qualification as to  
5 the going concern status of the professional employer  
6 organization.

7 (c) Registration under this section shall expire on  
8 ~~[December 31 of each odd numbered year.]~~ June 30 of each even-  
9 numbered year. Before ~~[December 31 of each odd numbered year,]~~  
10 June 30 of each even-numbered year, the director or the  
11 director's authorized delegate shall mail a renewal application  
12 for registration to the address on record of the registrant. In  
13 connection with renewal of registration, a professional employer  
14 organization shall provide all of the information required by  
15 subsection (b).

16 Failure to renew a registration shall result in forfeiture  
17 of that registration. Registrations that have been forfeited  
18 may be restored within one year of the forfeiture date upon  
19 payment of renewal and restoration fees. Failure to restore a  
20 forfeited registration within one year shall result in the  
21 automatic termination of the registration. Registrants holding  
22 a registration that has been terminated pursuant to this section



1 shall be required to reapply for a new registration as a new  
2 applicant.

3 ~~[(d) The director shall establish fees and requirements~~  
4 ~~for registration, maintenance of registration, renewal, and~~  
5 ~~restoration of registration for professional employer~~  
6 ~~organizations by rule pursuant to chapter 91.] "~~

7 SECTION 5. Section 373L-3, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 " ~~[+]~~**\$373L-3** ~~[+]~~ **Bond required.** (a) No professional  
10 employer organization shall enter into a professional employment  
11 agreement with a client company in the State unless the  
12 professional employer organization posts a bond ~~[in the amount~~  
13 ~~of \$250,000,]~~ as follows:

14 (1) Professional employer organizations consisting of  
15 fewer than one hundred full-time or part-time  
16 employees shall post a minimum of \$500,000;

17 (2) Professional employer organizations entering into the  
18 industry with no prior experience shall post a minimum  
19 of \$500,000; and

20 (3) All other professional employer organizations shall  
21 post an amount equal to five per cent of the  
22 organization's prior year's total wages, benefits,



1           workers' compensation premiums, and unemployment  
2           compensation contributions;  
3 which is a performance or financial guaranty type bond naming  
4 the director as the obligee and which may be canceled only if  
5 the professional employer organization gives sixty days prior  
6 written notice to the surety or if the surety gives thirty days  
7 prior written notice to the director of cancellation of the  
8 bond. The requirements of this section shall be satisfied by a  
9 single bond. If a professional employer organization has more  
10 than one branch location, the bond shall cover all locations.

11           (b) The bond required by this section shall be issued by a  
12 surety or federally insured lending institution authorized to do  
13 business in the State to indemnify a client company who may  
14 suffer loss as a result of nonperformance by a professional  
15 employer organization.

16           (c) Upon cancellation or expiration of the bond, the  
17 surety or insurer shall remain liable for any claims against the  
18 bond for a period of six months; provided that:

19           (1) The debts were incurred while the bond was in effect;  
20           and



1           (2) The director notifies the surety or insurer, as the  
2           case may be, of any claims within ninety days of  
3           discovery of any claims.

4           (d) The surety or insurer is not required to release any  
5           moneys or collateral to the professional employer organization  
6           during the six months after cancellation of the bond.

7           (e) Failure to have in effect a current bond shall result  
8           in automatic forfeiture of registration pursuant to this chapter  
9           and shall require the professional employer organization to  
10          immediately cease doing business in the State. A professional  
11          employer organization whose registration is forfeited shall  
12          apply as a new applicant for registration in order to resume  
13          business in the State.

14          (f) The director, or any person claiming to have sustained  
15          damage resulting from noncompliance of a professional employer  
16          organization with this chapter, may bring an action on the bond  
17          to recover the damage therefrom. The director may deposit with  
18          a court of competent jurisdiction all or any part of the sum of  
19          the bond."

20           SECTION 6. In codifying the new sections added by section  
21          1 of this Act, the revisor of statutes shall substitute



1 appropriate section numbers for the letters used in designating  
2 the new sections in this Act.

3 SECTION 7. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 8. This Act shall take effect on July 1, 2112.





**Report Title:**

Professional Employment Organizations; Professional Employer Organizations

**Description:**

Adds powers and duties to the Director of Labor and Industrial Relations regarding the registration and regulation of professional employer organizations. Authorizes various penalties for noncompliance with chapter 373L, Hawaii Revised Statutes (HRS). Establishes the Professional Employer Special Fund to manage the registration of professional employer organizations. Amends certain definitions in chapter 373L, HRS, to make them consistent with definitions in chapter 373K, HRS. Effective July 1, 2112. (HB2645 HD1)

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

