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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. The legislature finds that Act 225, Session  
2 Laws of Hawaii 2007, established a new chapter on professional  
3 employment organizations that provided a general excise tax  
4 exemption on amounts a client company paid to a professional  
5 employment organization.

6           The legislature further finds that Act 129, Session Laws of  
7 Hawaii 2010, established a new chapter in the Hawaii Revised  
8 Statutes on professional employer organizations which  
9 established registration, audit, and bonding requirements for  
10 professional employer organizations. Although these  
11 requirements went into effect on July 1, 2011, most local small  
12 professional employer organizations have been unable to comply  
13 with surety bonding requirements because of the capital and cost  
14 requirements and incurred or are faced with prohibitive audit  
15 fee costs, which when passed on to their clients make them anti-  
16 competitive with much larger or mainland based companies. Act  
17 129, Session Laws of Hawaii 2010, clearly favors larger  
18 professional employer organizations over smaller professional



1 employer organizations, is anti-small business and anti-  
2 competitive, contains inconsistent definitions of co-employment  
3 arrangements making application of the law confusing and  
4 unenforceable, arbitrarily targets and regulates locally owned  
5 professional employer organizations when other mainland owned or  
6 much larger payroll service bureaus remain unregulated, and  
7 makes it impossible for smaller professional employer  
8 organizations without the financial wherewithal to obtain  
9 bonding from insurance companies and banks.

10 The legislature further finds that professional employer  
11 organizations, like most employers, are already heavily  
12 regulated with civil and criminal tax and department of labor  
13 and industrial relations penalties for failure to comply with  
14 payroll and labor laws and that additional regulatory  
15 enforcement by the department of labor and industrial relations  
16 needs to be simplified.

17 Finally, the legislature finds that other sections of the  
18 Hawaii Revised Statutes need to be amended to make definitions  
19 and enforcement consistent with chapter 373K and to allow  
20 professional employer organizations to become successor  
21 employers of client companies.

22 The purpose of this Act is to:



# H.B. NO. 144

- 1           (1) Repeal chapter 373L, Hawaii Revised Statutes, in its  
2           entirety;
- 3           (2) Simplify and improve the implementation of the  
4           professional employer organization law by amending  
5           chapter 373K, Hawaii Revised Statutes, and clarify and  
6           amend the statutory responsibilities allocated between  
7           a client company and the professional employer  
8           organization;
- 9           (3) Simplify the regulation of professional employer  
10          organizations by providing the director of labor and  
11          industrial relations the ability to notify the  
12          department of taxation in denying the general excise  
13          exemption under section 237-24.75, Hawaii Revised  
14          Statutes, for professional employer organizations that  
15          violate chapter 373K, Hawaii Revised Statutes;
- 16          (4) Amend the definition of "leased employee" for purposes  
17          of enterprise zone coverage for a qualified business  
18          to conform to the definition of chapter 373K, Hawaii  
19          Revised Statutes; and
- 20          (5) Allow professional employer organizations to apply to  
21          be successor employers and have the experience records  
22          of client companies for unemployment insurance



1 contribution purposes be transferred to the  
2 professional employer organizations.

3 SECTION 2. Chapter 373K, Hawaii Revised Statutes, is  
4 amended by adding six new sections to be appropriately  
5 designated and to read as follows:

6 "§373K-A Registration required. (a) Every professional  
7 employer organization shall register with the director by  
8 providing all of the information required by this section and by  
9 rules adopted by the director pursuant to chapter 91 prior to  
10 entering into any professional employer agreement with any  
11 client company in this State.

12 (b) Registration information required by this section  
13 shall include:

14 (1) The name or names under which the professional  
15 employer organization conducts or will conduct  
16 business;

17 (2) The address of the principal place of business of the  
18 professional employer organization and the address of  
19 each office that the professional employer  
20 organization maintains in this State;

21 (3) The professional employer organization's general  
22 excise tax number; and



1       (4) A copy of the certificate of authority to transact  
 2           business in this State issued by the director of  
 3           commerce and consumer affairs pursuant to title 23 or  
 4           title 23A, if applicable.

5       (c) Failure to register or maintain registration shall  
 6       result in a professional employer organization not being in  
 7       compliance with this chapter and shall result in notification to  
 8       the tax department that such professional employer organization  
 9       is not in compliance and shall not be eligible for exemption  
 10       under 237-24.75.

11       (d) The director shall establish fees and requirements for  
 12       registration and maintenance of registration for professional  
 13       employer organizations by rules adopted pursuant to chapter 91.

14       **§373K-B Fees.** Effective July 1, 2013, the director shall  
 15       collect fees pursuant to this chapter as follows:

- |    |                                 |              |
|----|---------------------------------|--------------|
| 16 | <u>(1) Registration fee</u>     | <u>\$250</u> |
| 17 | <u>(2) Biennial renewal fee</u> | <u>\$500</u> |

18       until such time as the director amends the fees by rulemaking in  
 19       accordance with chapter 91.

20       **§373K-C Responsibilities and duties of the director.** The  
 21       general duties and powers of the director shall include but not  
 22       be limited to:



- 1       (1) Adopting, amending, and repealing rules in accordance  
2       with chapter 91 to issue, deny, condition, renew, or  
3       deny renewal of registrations;
- 4       (2) Notifying the department of taxation in writing of any  
5       violation of this chapter by the professional employer  
6       organization and the denial, suspension, revocation,  
7       or denial of the renewal of the registration as a  
8       professional employer organization under chapter 373K  
9       and the loss of the general excise tax exemption as  
10      provided by section 237-24.75; and
- 11      (3) Doing all things necessary to carry out the functions,  
12      powers, and duties of this chapter.

13       §373K-D Professional employer agreements; notification to  
14      department. (a) The professional employer organization shall  
15      provide written notice to the department on a form provided by  
16      the department of the relationship between the professional  
17      employer organization and the client company within thirty  
18      business days of the initiation of the relationship and within  
19      thirty business days of the termination of the relationship.  
20      The department shall keep the notice provided by the  
21      professional employer organization confidential, including the



1 names of the client companies and information that may identify  
2 the client companies.

3 (b) The director, to the extent practicable, may permit  
4 the acceptance of electronic filings in conformance with chapter  
5 489E, including applications, documents, reports, and other  
6 filings required under this chapter. The director may provide  
7 for the acceptance of electronic filings by a professional  
8 employer organization. Nothing in this subsection shall limit  
9 or change the director's authority to register or terminate  
10 registration of a professional employer organization or to  
11 investigate or enforce any provision of this chapter.

12 §373K-E Hearings. Unless otherwise provided by law, in  
13 every case in which the director denies, suspends, revokes, or  
14 denies renewal of registration of a professional employer  
15 organization, the proceeding shall be conducted in accordance  
16 with chapter 91 by the director or an appointed hearings  
17 officer.

18 In all proceedings before it, the director or hearings  
19 officer shall have the same powers respecting administering  
20 oaths, compelling the attendance of witnesses and the production  
21 of documentary evidence, and examining witnesses, as are  
22 possessed by circuit courts. In case of disobedience by any



1 person of any order of the director or hearings officer, or of  
2 any subpoena issued by the director or hearings officer, or the  
3 refusal of any witness to testify to any matter on which the  
4 person may be questioned lawfully, any circuit court judge, on  
5 application by the director or hearings officer, shall compel  
6 obedience as in the case of disobedience of the requirements of  
7 a subpoena issued by a circuit court or a refusal to testify  
8 therein.

9 §373K-F Judicial review by circuit court. Any  
10 professional employer organization aggrieved by a final decision  
11 and order of the director in a contested case, as defined in  
12 chapter 91, is entitled to judicial review thereof by the  
13 circuit court of the circuit in which the professional employer  
14 organization's principal place of business is located. The  
15 review shall be as provided by chapter 91."

16 SECTION 3. Section 209E-2, Hawaii Revised Statutes, is  
17 amended by amending the definition of "leased employee" to read  
18 as follows:

19 ""Leased employee" means [~~an~~] a covered employee under a  
20 professional [~~employment~~] employer organization arrangement or  
21 co-employment arrangement who is assigned to a particular client





1 company [~~on a substantially full-time basis for at least one~~  
2 ~~year.~~] as defined under chapter 373K."

3 SECTION 4. Section 237-24.75, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§237-24.75 Additional exemptions.** In addition to the  
6 amounts exempt under section 237-24, this chapter shall not  
7 apply to:

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

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

14 [+](3) Amounts received[+] by a professional [~~employment~~]  
15 employer organization from a client company equal to  
16 amounts that are disbursed by the professional  
17 [~~employment~~] employer organization for employee wages,  
18 salaries, payroll taxes, insurance premiums, and  
19 benefits, including retirement, vacation, sick leave,  
20 health benefits, and similar employment benefits with  
21 respect to [~~assigned~~] covered employees at a client  
22 company; provided that this exemption shall not apply



1 to a professional [~~employment~~] employer organization  
2 [~~upon failure of the professional employment~~  
3 ~~organization to collect, account for, and pay over any~~  
4 ~~income tax withholding for assigned employees or any~~  
5 ~~federal or state taxes for which the professional~~  
6 ~~employment organization is responsible.~~] if:

7 (A) By or through any contract between a client  
8 company and any professional employer  
9 organization, or otherwise, employees are  
10 excluded from any employee rights or employee  
11 benefits required by law to be provided to  
12 covered employees of the client company by the  
13 professional employer organization;

14 (B) The professional employer organization fails to  
15 pay any tax withholding for covered employees or  
16 any federal or state taxes for which the  
17 professional employer organization is  
18 responsible;

19 (C) The professional employer organization fails to  
20 properly register with the director of labor and  
21 industrial relations or pay fees as required by  
22 chapter 373K; or



1           (D) The professional employer organization is not in  
 2           compliance with chapter 373K and the director of  
 3           labor and industrial relations has notified the  
 4           department of taxation in writing of the denial,  
 5           suspension, revocation, or denial of renewal of  
 6           the registration of the professional employer  
 7           organization.

8           As used in this paragraph, [~~professional employment~~  
 9           ~~organization~~"], professional employer organization,  
 10          "client company", and [~~assigned employee~~] covered  
 11          employee" shall have the meanings provided in section  
 12          373K-1."

13          SECTION 5. Chapter 373K, Hawaii Revised Statutes, is  
 14          amended by amending the title to read as follows:

15                   **"PROFESSIONAL [~~EMPLOYMENT~~] EMPLOYER ORGANIZATIONS"**

16          SECTION 6. Section 373K-1, Hawaii Revised Statutes, is  
 17          amended as follows:

18           1. By adding nine new definitions to be appropriately  
 19          inserted and to read:

20           "Co-employment" means an arrangement by which co-employees  
 21          of a professional employer organization are assigned to work at  
 22          the client company's work site and the assigned employee's



1 assignment is intended to be of a long-term or continuing  
2 nature, rather than for temporary staffing or help services,  
3 wherein the rights, duties, and obligations of an employer that  
4 arise out of an employment relationship have been allocated  
5 between the client company, which is the work site employer, and  
6 the professional employer organization, which is the offsite  
7 employer of record.

8 "Covered employee" means an individual having a co-  
9 employment relationship with a professional employer  
10 organization and a client company, and is an assigned employee  
11 of the client company.

12 "Director" means the director of labor and industrial  
13 relations.

14 "Offsite employer of record" means a professional employer  
15 organization, pursuant to a professional employer agreement,  
16 which is contractually assigned the financial and administrative  
17 duties of a client company, including human resources  
18 administration, payroll and payroll taxes, workers' compensation  
19 and temporary disability coverage, state unemployment, and  
20 prepaid health care coverage of co-employees.

21 "Person" means a natural or legal person.



1       "Professional employer agreement" means a written contract  
2 by and between a client company and a professional employer  
3 organization that provides for the following:

- 4       (1) The co-employment of covered employees; and  
5       (2) The allocation of employer rights and obligations  
6       between the client company and the professional  
7       employer organization with respect to the covered  
8       employees.

9       "Professional employer organization" means any person that  
10 is a party to a professional employer agreement with a client  
11 company regardless of whether the person uses the term or  
12 conducts business expressly as a "professional employer  
13 organization", "PEO", "staff leasing company", "registered staff  
14 leasing company", "employee leasing company", or any other  
15 similar name.

16       "Temporary staffing or help services" means an arrangement  
17 by which a person recruits and hires the person's own employees  
18 and:

- 19       (1) Finds other organizations that need the services of  
20       those employees;  
21       (2) Assigns those employees to perform work or services  
22       for other organizations to support or supplement the



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

8           "Work site employer" means the client company, pursuant to  
9           a professional employer agreement, that retains workplace  
10          management and supervisory control and responsibility of the co-  
11          employees including compliance with labor or employment laws,  
12          collective bargaining rights, anti-discrimination provisions, or  
13          other laws with respect to the protection and rights of  
14          employees and compliance with chapters 377 and 378."

15           2. By amending the definitions of "assigned employee",  
16 "client company", and "professional employment organization  
17 services", to read:

18           ""Assigned employee" means an employee under a professional  
19 [~~employment~~] employer organization arrangement whose work is  
20 performed in the State. The term does not include an employee  
21 hired to support or supplement a client company's workforce as  
22 temporary staffing or help[-] services. "Assigned employee" has



1 the same meaning as the term "leased employee" as defined in  
2 section 414(n) (with respect to employee leasing) of the  
3 Internal Revenue Code of 1986, as amended.

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

8 "Professional [~~employment~~] employer organization services"  
9 means an arrangement by which co-employees of a professional  
10 [~~employment~~] employer organization are assigned to work at the  
11 client company and the assigned employee's assignment is  
12 intended to be of a long-term or continuing nature, rather than  
13 temporary. The term does not include temporary help."

14 SECTION 7. Section 373K-2, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "[+]§373K-2[+] **Professional [~~employment~~] employer**  
17 **organization; employee rights; payroll cost exemption. (a)**

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



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

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





1 deemed the offsite employer of record for purposes of  
2 unemployment insurance, workers' compensation, temporary  
3 disability insurance, and prepaid health care coverage and the  
4 client company shall be deemed the work site employer that  
5 retains workplace management and supervisory control and  
6 responsibility of the co-employees including compliance with  
7 labor or employment laws, collective bargaining rights, anti-  
8 discrimination provisions, or other laws with respect to the  
9 protection and rights of employees and compliance with chapters  
10 377 and 378. The employer shall be deemed to be the client  
11 company and not the professional employment organization. The  
12 department of labor and industrial relations shall notify the  
13 department of taxation in writing of any violation of this  
14 subsection.

15 (b) The client company shall be deemed to have satisfied  
16 its obligations with respect to any assigned employee under any  
17 applicable law, including, without limitation, workers'  
18 compensation laws including chapter 386, employee insurance  
19 coverage laws including chapters 383, 385, 392, and 393, and tax  
20 withholding and reporting laws, if and to the extent that those  
21 obligations are satisfied by the professional [employment]



1 employer organization acting in its capacity as co-employer of  
2 such assigned employee.

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

12 (d) The general excise tax exemption under section  
13 237-24.75 shall not apply to the professional [~~employment~~]  
14 employer organization if:

15 (1) By or through any contract between the client company  
16 and any professional [~~employment~~] employer  
17 organization, or otherwise, employees are excluded  
18 from any employee rights or employee benefits required  
19 by law to be provided to employees [~~of~~] assigned to  
20 the client company by the client company; [~~of~~]

21 (2) The professional [~~employment~~] employer organization  
22 fails to pay any tax withholding for assigned



1 employees or any federal or state taxes for which the  
2 professional [~~employment~~] employer organization is  
3 responsible[~~+~~]; or

4 (3) The professional employer organization fails to comply  
5 with provisions of this chapter."

6 SECTION 8. Section 383-66, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "**§383-66 Contribution rates, how determined.** (a) The  
9 department, for the nine-month period April 1, 1941, to December  
10 31, 1941, and for each calendar year thereafter, except as  
11 otherwise provided in this part, shall classify employers in  
12 accordance with their actual experience in the payment of  
13 contributions and with respect to benefits charged against their  
14 accounts with a view to fixing the contribution rates to reflect  
15 this experience. The department shall determine the  
16 contribution rate of each employer in accordance with the  
17 following requirements:

18 (1) The standard rate of contributions payable by each  
19 employer for any calendar year through 1984 shall be  
20 three per cent. For calendar years 1985 and  
21 thereafter, the standard rate of contributions payable



1 by each employer shall be five and four-tenths per  
2 cent;

- 3 (2) No employer's rate for the calendar year 1942 and for  
4 any calendar year thereafter shall be other than the  
5 maximum rate unless and until the employer's account  
6 has been chargeable with benefits throughout the  
7 thirty-six consecutive calendar month period ending on  
8 December 31 of the preceding calendar year, except  
9 that, for the calendar year 1956 and for each calendar  
10 year thereafter, an employer who has not been subject  
11 to the law for a sufficient period to meet this  
12 requirement may qualify for a rate other than the  
13 maximum rate if the employer's account has been  
14 chargeable throughout a lesser period but in no event  
15 less than the twelve consecutive calendar month period  
16 ending on December 31 of the preceding calendar year.  
17 For the calendar years 1985 through 1991, the  
18 contribution rate for a new or newly covered employer  
19 shall be the sum of the employer's basic contribution  
20 rate of three and six-tenths per cent and the fund  
21 solvency contribution rate determined for that year  
22 pursuant to section 383-68(a), until the employer's



1 account has been chargeable with benefits throughout  
2 the twelve consecutive calendar month period ending on  
3 December 31 of the preceding calendar year; except  
4 that no employer's contribution rate shall be greater  
5 than five and four-tenths per cent and no employer  
6 with a negative reserve ratio shall have a  
7 contribution rate less than the employer's basic  
8 contribution rate. For calendar years 1992 and  
9 thereafter, the contribution rate for a new or newly  
10 covered employer shall be the contribution rate  
11 assigned to any employer with .0000 reserve ratio,  
12 until the employer's account has been chargeable with  
13 benefits throughout the twelve consecutive calendar  
14 month period ending on December 31 of the preceding  
15 calendar year;

16 (3) Any amount credited to this State under section 903 of  
17 the Social Security Act, as amended, which has been  
18 appropriated for expenses of administration, whether  
19 or not withdrawn from the trust fund, shall be  
20 excluded from the fund for the purposes of this  
21 paragraph. Any advance that may be made to this State  
22 under section 1201 of the Social Security Act, whether



1 or not withdrawn from this trust fund, shall be  
2 excluded from the fund for the purposes of this  
3 paragraph. No employer's rate shall be reduced in any  
4 amount that is not allowable as an additional credit,  
5 against the tax levied by the federal Unemployment Tax  
6 Act pursuant to section 3302(b) of the federal  
7 Internal Revenue Code or pursuant to any other federal  
8 statute, successor to section 3302(b), which provides  
9 for the additional credit now provided for in section  
10 3302(b);

- 11 (4) If, when any classification of employers is to be made  
12 (which may be after the commencement of the period for  
13 which the classification is to be made), the  
14 department finds that any employer has failed to file  
15 any report required in connection therewith or has  
16 filed a report that the department finds incorrect or  
17 insufficient, the department shall notify the employer  
18 thereof by mail addressed to the employer's last known  
19 address. Unless the employer files the report or a  
20 corrected or sufficient report, as the case may be,  
21 within fifteen days after the mailing of the notice,  
22 the maximum rate of contributions shall be payable by



1           the employer for the period for which the contribution  
2           rate is to be fixed. Effective January 1, 1987, the  
3           director, for excusable failure, may redetermine the  
4           assignment of the maximum contribution rate in  
5           accordance with this section, provided the employer  
6           files all reports as required by the department and  
7           submits a written request for redetermination before  
8           December 31 of the year for which the contribution  
9           rate is to be fixed;

10           (5) For the purpose of sections 383-63 to 383-69, if after  
11           December 31, 1939, any employing unit in any manner  
12           succeeds to or acquires the organization, trade, or  
13           business, or substantially all the assets thereof  
14           (whether or not the successor or acquiring unit was an  
15           "employing unit", as that term is defined in section  
16           383-1 prior to the acquisition), or after  
17           December 31, 1988 and prior to December 31, 1992,  
18           acquires a clearly identifiable and segregable portion  
19           of the organization, trade, or business of another  
20           that at the time of the acquisition was an employer  
21           subject to this chapter, and the successor continues  
22           or resumes the organization, trade, or business and



1 continues to employ all or nearly all of the  
2 predecessor's employees, or the successor continues or  
3 resumes the clearly identifiable and segregable  
4 portion of the organization, trade, or business and  
5 continues to employ all or nearly all of the employees  
6 of the clearly identifiable and segregable portion, or  
7 after July 1, 2013, if a professional employer  
8 organization contracts with a client company for the  
9 co-employment of assigned employees as defined in  
10 chapter 373K, an application may be made for transfer  
11 of the predecessor's experience record. If the  
12 predecessor employer has submitted all information and  
13 reports required by the department including amended  
14 quarterly wage reports identifying the employees  
15 transferred or retained and executed and filed with  
16 the department before December 31 of the calendar year  
17 following the calendar year in which the acquisition  
18 occurred on a form approved by the department a waiver  
19 relinquishing the rights to all or the clearly  
20 identifiable and segregable portion of the  
21 predecessor's prior experience record with respect to  
22 its separate account, actual contribution payment, and





1 benefit chargeability experience, annual payrolls and  
2 other data for the purpose of obtaining a reduced  
3 rate, and requesting the department to permit the  
4 experience record to inure to the benefit of the  
5 successor employing unit upon request of the successor  
6 employing unit, the experience record for rate  
7 computation purposes of the predecessor shall  
8 thereupon be deemed the experience record of the  
9 successor and the experience record shall be  
10 transferred by the department to the successor  
11 employing unit and shall become the separate account  
12 of the employing unit as of the date of the  
13 acquisition. Benefits chargeable to the predecessor  
14 employer or successor employer in case of an  
15 acquisition of a clearly identifiable and segregable  
16 portion of the organization, trade, or business, after  
17 the date of acquisition on account of employment prior  
18 to the date of the acquisition shall be charged to the  
19 separate account of the successor employing unit. In  
20 case of an acquisition of a clearly identifiable and  
21 segregable portion of the organization, trade, or  
22 business, the experience record that inures to the



1 benefit of the successor employer shall be determined  
2 as follows:

3 (A) Wages, as used in section 383-61, attributable to  
4 the clearly identifiable and segregable portion  
5 shall be for the period beginning with the most  
6 recent three consecutive calendar years  
7 immediately preceding the determination of rates  
8 under sections 383-63 to 383-69 and through the  
9 date of acquisition; and

10 (B) Reserve balance attributable to the clearly  
11 identifiable and segregable portion shall be the  
12 amount determined by dividing the wages, as used  
13 in section 383-61, of the clearly identifiable  
14 and segregable portion in the three calendar  
15 years (or that lesser period as the clearly  
16 identifiable and segregable portion may have been  
17 in operation) immediately preceding the  
18 computation date of the rating period prior to  
19 which the acquisition occurred by the total  
20 taxable payrolls of the predecessor for the  
21 three-year period (or that lesser period as the  
22 clearly identifiable and segregable portion may



1           have been in operation) and multiplying the  
2           quotient by the reserve balance of the  
3           predecessor employer calculated as of the  
4           acquisition date;

5           provided the waiver or waivers required herein are  
6           filed with the department within sixty days after the  
7           date of acquisition, the successor employing unit,  
8           unless already an employer subject to this chapter,  
9           shall be subject from the date of acquisition to the  
10          rate of contribution of the predecessor or of two or  
11          more predecessors if they have the same contribution  
12          rate. If there are two or more predecessors having  
13          different contribution rates, the successor shall be  
14          subject to the rate prescribed for new or newly  
15          covered employers under paragraph (2) until the next  
16          determination of rates under sections 383-63 to  
17          383-69, at which time the experience records of the  
18          predecessors and successor shall be combined and shall  
19          be deemed to be the experience record of a single  
20          employing unit and the successor's rate shall  
21          thereupon be determined upon the basis of the combined  
22          experience. If the successor at the time of the



1 transfer is an employer subject to this chapter, the  
2 rate of contribution to which the successor is then  
3 subject shall remain the same until the next  
4 determination of rates under sections 383-63 to  
5 383-69, at which time the experience records of the  
6 predecessor and successor shall be combined and shall  
7 be deemed to be the experience record of a single  
8 employing unit and the successor's rate shall  
9 thereupon be determined upon the basis of the combined  
10 experience. For the purpose of determination of rates  
11 under sections 383-63 to 383-69 of all successor  
12 employing units, waivers as required herein, if not  
13 previously filed as hereinabove provided, shall be  
14 filed with the department not later than March 1 of  
15 the year for which the rate is determined; provided  
16 that no waiver shall be accepted by the department for  
17 filing unless the employing unit executing the waiver  
18 has filed all reports and paid all contributions  
19 required by this chapter;

- 20 (6) The department may prescribe rules for the  
21 establishment, maintenance, and dissolution of joint  
22 accounts by two or more employers, and, in accordance



1 with the rules and upon application by two or more  
2 employers to establish such an account, or to merge  
3 their several individual accounts in a joint account,  
4 shall maintain the joint account as if it constituted  
5 a single employer's account. The rules shall be  
6 consistent with the federal requirements for  
7 additional credit allowance in section 3303 of the  
8 federal Internal Revenue Code and consistent with this  
9 chapter;

10 (7) Whenever there is an amendment to this chapter which,  
11 if immediately effective, would change an employer's  
12 rate of contributions, the rate of the employer shall  
13 be changed in accordance with the amendment and the  
14 new rate shall apply for the remainder of the calendar  
15 year beginning with the calendar quarter immediately  
16 following the effective date of the amendment  
17 providing for the change, unless otherwise provided by  
18 the amendment;

19 (8) For the purposes of this section, "contribution rate"  
20 shall mean the basic contribution rate as defined in  
21 section 383-68 when applied to calendar year 1978 or  
22 any calendar year thereafter; and



1           (9) For the purposes of this section, the terms "employing  
2           unit", "employer", "predecessor", and "successor"  
3           shall include both the singular and the plural of each  
4           term. Nothing in this section shall prevent two or  
5           more successor employing units, which each succeed to  
6           or acquire a clearly identifiable and segregable  
7           portion of a predecessor employing unit, from gaining  
8           the benefit of the clearly identifiable and segregable  
9           portion of the predecessor's experience record;  
10          provided that the terms of this section are complied with,  
11          nothing herein shall bar a predecessor employer from waiving the  
12          rights to all or the clearly identifiable and segregable portion  
13          of the predecessor's prior experience record in favor of a  
14          successor employer where the successor acquired a clearly  
15          identifiable and segregable portion of the predecessor's  
16          organization, trade, or business after December 31, 1988 and  
17          prior to December 31, 1992.

18           (b) Notwithstanding any other provision of this chapter,  
19          the following shall apply regarding assignment of rates and  
20          transfers of experience:

21           (1) If an employing unit transfers its organization,  
22          trade, or business, or a portion thereof, to another



1            employing unit, or contracts with a professional  
2            employer organization for the co-employment of covered  
3            employees as defined in chapter 373K, and, at the time  
4            of the transfer~~[7]~~ or contract with a professional  
5            employer organization, there is substantially common  
6            ownership, management, ~~[or]~~ control, or co-employment  
7            of the two employing units, both employing units shall  
8            file a notification of the transfer with the  
9            department on a form approved by the department within  
10           thirty days after the date of the transfer. The  
11           department shall transfer the experience records  
12           attributable to the transferred organization, trade,  
13           or business to the employing unit to whom the  
14           organization, trade, or business is transferred. The  
15           rates of both employing units shall be recalculated  
16           and made effective beginning with the calendar year  
17           immediately following the date of the transfer of the  
18           organization, trade, or business;

- 19           (2) If a person is not an employing unit as defined in  
20           section 383-1 at the time it acquires the  
21           organization, trade, or business of another employing  
22           unit, both the person and the employing unit shall



1 file a notification of the acquisition with the  
2 department on a form approved by the department within  
3 thirty days after the date of the acquisition. If the  
4 department determines at the time of the acquisition  
5 or thereafter, based on objective factors that may  
6 include:

7 (A) The cost of acquiring the organization, trade, or  
8 business;

9 (B) Whether the person continued the activity of the  
10 acquired organization, trade, or business;

11 (C) How long the organization, trade, or business was  
12 continued; or

13 (D) Whether a substantial number of new employees  
14 were hired for performance of duties unrelated to  
15 the organization, trade, or business activity  
16 conducted prior to the acquisition, that the  
17 acquisition was solely or primarily for the  
18 purpose of obtaining a lower rate of  
19 contribution, the person shall not be assigned  
20 the lower rate and shall be assigned the  
21 contribution rate for a new or newly covered  
22 employer pursuant to subsection (a)(2) instead;





1           (3) An employing unit or person who is not an employing  
2           unit shall be subject to penalties under paragraph (4)  
3           or (5) if the employing unit or person who is not an  
4           employing unit:

5           (A) Knowingly violates or attempts to violate this  
6           subsection or any other provision of this chapter  
7           related to determining the assignment of a  
8           contribution rate;

9           (B) Makes any false statement or representation or  
10          fails to disclose a material fact to the  
11          department in connection with the transfer or  
12          acquisition of an organization, trade, or  
13          business; or

14          (C) Knowingly advises another employing unit or  
15          person in a way that results in a violation or  
16          attempted violation of this subsection;

17          (4) If the person is an employing unit:

18          (A) The employing unit shall be subject to the  
19          highest rate assignable under this chapter for  
20          the calendar year during which the violation or  
21          attempted violation occurred and for the



1           consecutive three calendar years immediately  
2           following; or  
3           (B) If the employing unit is already at the highest  
4           rate or if the amount of increase in the  
5           employing unit's rate would be less than two per  
6           cent for the calendar year during which the  
7           violation or attempted violation occurred, a  
8           penalty equal to contributions of two per cent of  
9           taxable wages shall be imposed for the calendar  
10          year during which the violation or attempted  
11          violation occurred and the consecutive three  
12          calendar years immediately following. Any  
13          penalty amount collected in excess of the maximum  
14          contributions payable at the highest rate shall  
15          be deposited in the special unemployment  
16          insurance administration fund in accordance with  
17          section 383-127;

18          (5) If the person is not an employing unit, the person  
19          shall be subject to a penalty of not more than \$5,000.  
20          The penalty shall be deposited in the special  
21          unemployment insurance administration fund in  
22          accordance with section 383-127;



- 1           (6) For purposes of this subsection, the following  
2           definitions shall apply:
- 3           (A) "Knowingly" means having actual knowledge of or  
4           acting with deliberate ignorance or reckless  
5           disregard for the requirements or prohibition  
6           involved;
- 7           (B) "Violates or attempts to violate" includes but is  
8           not limited to intent to evade,  
9           misrepresentation, or wilful nondisclosure;
- 10          (C) "Person" shall have the same meaning as defined  
11          in section 7701(a)(1) of the Internal Revenue  
12          Code of 1986, as amended; and
- 13          (D) "Organization, trade, or business" shall include  
14          the employer's workforce;
- 15          (7) In addition to the civil penalties imposed by  
16          paragraphs (4) and (5), any violation of this section  
17          may be prosecuted under sections 383-142 and 383-143.  
18          No existing civil or criminal remedy for any wrongful  
19          action that is a violation of any statute or any rule  
20          of the department or the ordinance of any county shall  
21          be excluded or impaired by this section;



1 (8) The department shall establish procedures to identify  
2 the transfer or acquisition of an employing unit for  
3 the purposes of this section; and

4 (9) This section shall be interpreted and applied in a  
5 manner to meet the minimum requirements contained in  
6 any guidance or regulations issued by the United  
7 States Department of Labor."

8 SECTION 9. Chapter 373L, Hawaii Revised Statutes, is  
9 repealed.

10 SECTION 10. This Act does not affect rights and duties  
11 that matured, penalties that were incurred, and proceedings that  
12 were begun before its effective date.

13 SECTION 11. In codifying the new sections added by section  
14 2 of this Act, the revisor of statutes shall substitute  
15 appropriate section numbers for the letters used in designating  
16 the new sections in this Act.

17 SECTION 12. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

19 SECTION 13. This Act shall take effect upon its approval.  
20

*Abelkulan*

INTRODUCED BY:

*[Signature]*  
*[Signature]*



# H.B. NO. 144

**Report Title:**

Professional Employer Organizations; Registration and Fees;  
Enterprise Zone Coverage; General Excise Tax Exemption; Transfer  
of Experience Record as Successor Employer

**Description:**

Amends definitions and adds registration and fee requirements for professional employer organizations; repeals chapter 373L, Hawaii Revised Statutes; amends the definition of leased employees for enterprise zone coverage of a qualified business; amends the general excise tax exemption for professional employer organizations; allows professional employer organizations to apply for a transfer of a client company's experience record for unemployment insurance contribution purposes.

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

