

ACT 363

H.B. NO. 1149

A Bill for an Act Relating to Workers' Compensation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that workers' compensation coverage and its related costs are of growing concern to Hawaii's small business community. While it is the policy of the legislature to ensure the broadest coverage possible, it is not proper to require or encourage double payments of premiums when double benefits are not provided. This situation may occur when the same individual is on the payroll and has ownership as an officer or director of more than one corporation.

The stated purpose of workers' compensation is to provide to injured employees certain medical, wage loss protection, and lump sum awards, presumably because they require financial and medical assistance they could not otherwise afford. However, the legislature finds that in the case of owners and officers or directors of corporations, some individuals have arranged for equal or better protection outside of the means available to them under workers' compensation, or they

have in their opinion sufficient resources available to obviate the need for mandated coverage.

It is the purpose of this Act to effectuate these findings.

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

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

"Employment" does not include the following service:

- (1) Service for a religious, charitable, educational, or nonprofit organization if performed in a voluntary or unpaid capacity;
- (2) Service for a religious, charitable, educational, or nonprofit organization if performed by a recipient of aid therefrom and the service is incidental to or in return for the aid received;
- (3) Service for a school, college, university, college club, fraternity, or sorority if performed by a student who is enrolled and regularly attending classes and in return for board, lodging, or tuition furnished, in whole or in part;
- (4) Service performed by a duly ordained, commissioned, or licensed minister, priest, or rabbi of a church in the exercise of the minister's, priest's, or rabbi's ministry or by a member of a religious order in the exercise of nonsecular duties required by the order;
- (5) Service performed by an individual for another person solely for personal, family, or household purposes if the cash remuneration received is less than \$225 during the current calendar quarter and during each completed calendar quarter of the preceding twelve month period;
- (6) Domestic, which includes attendant care, and day care services authorized by the department of human services under the Social Security Act, as amended, performed by an individual in the employ of a recipient of social service payments;
- (7) Service performed without wages for a corporation without employees by a corporate officer in which the officer is at least a twenty-five per cent stockholder; and
- (8) Service performed by an individual for a corporation if the individual owns at least fifty per cent of the corporation; provided that no employer shall require an employee to incorporate as a condition of employment.

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

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 8, 1993.)