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A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

1           SECTION 1. The purpose of this Act is to give small  
2 business owners who meet certain requirements the option to not  
3 obtain workers' compensation insurance. This measure adds four  
4 new exclusions to the definition of "employment". These  
5 exclusions are (1) members of a limited liability company with  
6 at least fifty per cent distributional interests, (2) partners  
7 of a partnership, (3) partners of a limited liability  
8 partnership who have a transferable interest of at least fifty  
9 per cent, and (4) sole proprietors.

10           Currently, state law requires individual members of a  
11 limited liability company and partners in a partnership to  
12 obtain workers' compensation coverage.

13           This bill will allow members of limited liability companies  
14 and partners of partnerships and limited liability partnerships,  
15 and sole proprietors the ability to save costs by allowing them  
16 to opt out of obtaining workers' compensation coverage for  
17 themselves.

1 In addition, the reference to excluded services as defined  
2 in section 386-1, Hawaii Revised Statutes, under both the  
3 workers' compensation and temporary disability insurance laws,  
4 will provide consistency in exclusions with statutes of other  
5 department programs.

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

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

15 "Employment" does not include the following service:

16 (1) Service for a religious, charitable, educational, or  
17 nonprofit organization if performed in a voluntary or  
18 unpaid capacity;

19 (2) Service for a religious, charitable, educational, or  
20 nonprofit organization if performed by a recipient of  
21 aid therefrom and the service is incidental to or in  
22 return for the aid received;

- 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, which includes attendant care, and day care  
18          services authorized by the department of human  
19          services under the Social Security Act, as amended,  
20          performed by an individual in the employ of a  
21          recipient of social service payments;

- 1           (7) Service performed without wages for a corporation  
2           without employees by a corporate officer in which the  
3           officer is at least a twenty-five per cent  
4           stockholder;
- 5           (8) Service performed by an individual for a corporation  
6           if the individual owns at least fifty per cent of the  
7           corporation; provided that no employer shall require  
8           an employee to incorporate as a condition of  
9           employment; [~~and~~]
- 10          (9) Service performed by an individual for another person  
11          as a real estate salesperson or as a real estate  
12          broker, if all the service performed by the individual  
13          for the other person is performed for remuneration  
14          solely by way of commission[-];
- 15          (10) Service performed by a member of a limited liability  
16          company for the company if the member is an individual  
17          and has a distributional interest, as defined in  
18          chapter 428, of at least fifty per cent in the  
19          company; provided that no employer shall require an  
20          employee to form a limited liability company as a  
21          condition of employment;

1        (11) Service performed by a partner of a partnership for  
2            the partnership, as defined in chapter 425, if the  
3            partner is an individual; provided that no employer  
4            shall require an employee to become a partner as a  
5            condition of employment;

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

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

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

21        SECTION 3. Statutory material to be repealed is bracketed  
22        and stricken. New statutory material is underscored.

H.B. NO. 1383

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

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INTRODUCED BY: Calvin K. Y. Day

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BY REQUEST

JAN 22 2007

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 per cent 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 members of limited liability companies and 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. In addition, the reference to excluded services as defined in section 386-1, HRS, under both the workers compensation

and temporary disability insurance laws, will provide consistency in exclusions with statutes of other department programs.

Impact on the public: This bill will have cost saving for business owners that organize as LLC's, LLP's, partnerships, and operate as sole proprietorships.

Impact on the department: There will not be a significant impact upon the DLIR.

GENERAL FUNDS:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	LBR-183
OTHER AGENCIES AFFECTED:	None.
EFFECTIVE DATE:	July 1, 2007.