

JAN 26 2009

A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

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

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

10 "Employment" [~~does~~] shall not include[+] the following
11 service:

- 12 (1) Service for a religious, charitable, educational, or
13 nonprofit organization if performed in a voluntary or
14 unpaid capacity;
- 15 (2) Service for a religious, charitable, educational, or
16 nonprofit organization if performed by a recipient of
17 aid therefrom and the service is incidental to or in
18 return for the aid received;

S.B. NO. 944

- 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[7] in-home and community-based services for
18 persons with developmental disabilities and mental
19 retardation under the medicaid home and community-
20 based services program pursuant to title 42 Code of
21 Federal Regulations[7] part 434, subpart A, as
22 amended, and identified as chore, personal assistance

1 and habilitation, residential habilitation, supported
2 employment, respite, and skilled nursing services, as
3 the terms are defined by the department of human
4 services, performed by an individual whose services
5 are contracted by a recipient of social service
6 payments and who voluntarily agrees in writing to be
7 an independent contractor of the recipient of social
8 service payments;

9 (7) Service performed without wages for a corporation
10 without employees by a corporate officer in which the
11 officer is at least a twenty-five per cent
12 stockholder;

13 (8) Service performed by an individual for a corporation
14 if the individual owns at least fifty per cent of the
15 corporation; provided that no employer shall require
16 an employee to incorporate as a condition of
17 employment; [~~and~~]

18 (9) Service performed by an individual for another person
19 as a real estate salesperson or as a real estate
20 broker, if all the service performed by the individual
21 for the other person is performed for remuneration
22 solely by way of commission[~~-~~];

1 (10) Service performed by a partner of a partnership for
2 the partnership, as defined in section 425-101, 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 (11) Service performed by a partner of a limited liability
7 partnership for the limited liability partnership, if
8 the partner is an individual and has a transferable
9 interest, as defined in section 425-127 in the
10 partnership of at least fifty per cent; provided that
11 no employer shall require an employee to form a
12 limited liability partnership as a condition of
13 employment;

14 (12) Service performed by a member of a limited liability
15 company, if the member is an individual and has a
16 distributional interest as defined in section 428-501
17 in the limited liability company of at least fifty per
18 cent; provided that no employer shall require an
19 employee to form a limited liability company as a
20 condition of employment; and

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

S.B. NO. 944

1 As used in this [~~paragraph,~~] definition, "religious,
2 charitable, educational, or nonprofit organization" means a
3 corporation, unincorporated association, community chest, fund,
4 or foundation organized and operated exclusively for religious,
5 charitable, or educational purposes, no part of the net earnings
6 of which inure to the benefit of any private shareholder or
7 individual."

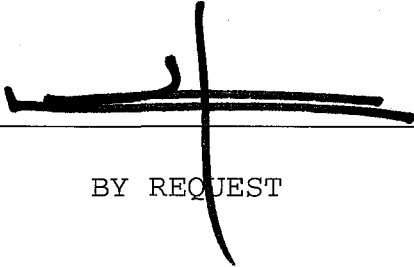
8 SECTION 2. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 3. This Act shall take effect upon its approval.

11

12

INTRODUCED BY: _____



13

BY REQUEST

14

Report Title:

Workers' Compensation; Employment Exclusion

Description:

Excludes services for a limited liability company (LLC) or limited liability partnership (LLP) from the definition of "employment" in the workers' compensation law if the person performing services has a 50 per cent or higher transferable interest in the LLC or LLP.

SB 944

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 percent 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 (HRS).

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 certain members of limited liability companies and certain 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.

Impact on the public: This bill will have cost savings for certain business owners that organize as limited liability

companies, limited liability partnerships, partnerships, and operate as sole proprietorships.

Impact on the department and other agencies:
There will not be a significant impact upon the department of labor and industrial relations.

GENERAL FUNDS:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	LBR-183
OTHER AGENCIES AFFECTED:	None.
EFFECTIVE DATE:	Upon approval.