

JAN 20 2012

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 ten 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, 373L-D, and 373L-E, 373L-F, and 373L-J shall be
11 deposited in the fund. Interest earned from the balance of the
12 fund shall become a part of the fund.

13 §373L-B Notice of judgments, penalties. (a) Each
14 registered professional employer organization shall provide
15 written notice within thirty days to the department of any
16 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 In addition to any other penalties provided by law, the
6 failure of a professional employer organization to comply with
7 this subsection is a violation punishable by a fine established
8 by the director pursuant to section 373L-E. Any action taken to
9 impose or collect the fine provided for in this subsection shall
10 not be considered a criminal action.

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

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



1 employer organization when a professional employer organization,
2 including its directors, officers, owners, members, managers, or
3 general partners:

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

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

10 (3) Has a pending criminal, administrative, or enforcement
11 proceeding brought against it in any jurisdiction for
12 conduct involving fraud or dishonest dealing, or for any
13 violation of any state's laws or rules;

14 (4) Has had an order or judgment entered against it in the
15 past ten years in any criminal, administrative, or
16 enforcement action for conduct involving fraud or
17 dishonest dealing, or for any violation of any state's
18 laws or rules;

19 (5) Fails to post a bond in accordance with this chapter;

20 (6) Makes any false statement, representation, or
21 certification in any document or record required to be
22 maintained under this chapter;



1 (7) Fails to keep, maintain, and disclose, upon request of
2 the department the books and records required to be
3 maintained under this chapter for inspection or audit
4 for the period of time designated by the director;

5 (8) Fails to timely pay wages, withholding taxes, or any
6 other payments pursuant to the professional employer
7 agreement; or

8 (9) Otherwise violates this chapter, any rule adopted or
9 order of the director issued pursuant to this chapter.

10 **§373L-D Fees and expenses.** No applicant shall be allowed
11 to register pursuant this chapter unless the appropriate fees
12 have been paid. Unless otherwise provided by law, the director
13 shall establish the amount for all fees and expenses by rules
14 adopted pursuant to chapter 91. The fees to be established by
15 the director may include but shall not be limited to an
16 application fee, initial registration fee, biennial renewal fee,
17 restoration fee, and other reasonable and necessary fees related
18 to the department's administrative costs. Unless otherwise
19 provided by law, the fees shall be deposited into the
20 professional employer organization special fund.



1 §373L-E Responsibilities and duties of the director. The
2 general duties and powers of the director shall include but not
3 be limited to:

4 (1) Adopting, amending, and repealing rules in accordance
5 with chapter 91 to issue, deny, condition, renew, or
6 deny renewal of registrations;

7 (2) Establishing fees and fines;

8 (3) Inspecting and auditing the books and records of the
9 registrant with the costs to be borne by the
10 registrant;

11 (4) Ensuring the segregation of accounts through client
12 trust accounts whereby professional employer
13 organization's operating funds are separated from the
14 client company funds; and

15 (5) Establishing grounds for disciplinary action and
16 prohibited practices;

17 (6) Doing all things necessary to carry out the functions,
18 powers, and duties of the chapter.

19 §373L-F Unlicensed activity; penalties. (a) In addition
20 to any other remedy or penalty provided by law, the director may
21 impose fees and fines on businesses providing professional



1 employer organization services in the State without registration
2 or exemption unless registered pursuant to this chapter.

3 (b) All fees and fines collected under this section shall
4 be deposited in the professional employer organization special
5 fund.

6 **§373L-G Professional employer agreements; mandatory**
7 **provisions; disclosures.** The director shall establish
8 provisions and disclosures that shall be included in all
9 professional employer organization agreements. These mandatory
10 provisions and disclosures shall include but not be limited to
11 statements requiring the provision of written copies of certain
12 documents to client companies and the timely payment of wages,
13 withholding of taxes, and payment of taxes by professional
14 employer organizations.

15 **§373L-H Cease and desist orders; grounds for issuance.**

16 (a) Whenever it appears to the director that any person has
17 engaged or is about to engage in any act or practice
18 constituting a violation of any:

19 (1) Provision of this chapter;

20 (2) Rule adopted or order issued pursuant to this chapter;

21 or



1 (3) Condition of an approval of request or application by
2 the director or a written agreement between such
3 person and the director,
4 the director may, in the director's discretion, issue a
5 temporary or permanent cease and desist order to enforce
6 compliance with this chapter, any rule adopted or order issued
7 pursuant to this chapter, or the conditions of such approval or
8 written agreement.

9 The director shall have the discretion to include in the
10 order an assessment of a penalty against any person who violates
11 this chapter or who has knowingly violated a written agreement
12 with, or a rule or order of, the director made pursuant to this
13 chapter.

14 (b) The director may issue a temporary or permanent cease
15 and desist order to any professional employer organization that
16 the director finds or has reasonable cause to believe:

17 (1) Is violating, has violated, or is about to violate
18 this chapter or any rules adopted or order issued
19 pursuant to this chapter;

20 (2) Is violating, has violated, or is about to violate any
21 written condition imposed or order issued by the
22 director the professional employer organization's



1 authority to engage in business, or any condition of a
2 written agreement between the professional employer
3 organization or other person and the director;

4 (3) Is engaging, has engaged, or is about to engage in an
5 illegal, unauthorized, unsafe, or unsound practice; or

6 (4) Is failing to maintain books and records that are
7 sufficiently complete and accurate so as to permit the
8 director to determine the financial condition of the
9 organization named in the order.

10 §373L-I Permanent cease and desist orders; procedure;

11 hearing; enforcement. (a) The notice of charges and proposed
12 permanent cease and desist order shall be in writing and shall
13 be served upon the professional employer organization. The
14 notice of charges shall state the alleged violation or wrongful
15 practice and a summary of the facts in support of such
16 allegation. The notice shall be accompanied by a proposed order
17 that states the director's intent to require discontinuance of
18 such violation or practice and the immediate compliance with all
19 requirements of any applicable agreement, conditions of
20 approval, order, or law. The proposed order may also direct
21 such affirmative action as may be necessary to prevent
22 insolvency or to correct the alleged violation or wrongful



1 practice. The notice of charges shall set forth a time and
2 place for a hearing to determine whether the proposed order
3 shall be issued.

4 (b) Within twenty days after service of a notice of
5 charges, unless an earlier date or later date is set by the
6 director upon request of the affected party, the director shall
7 hold a hearing in accordance with chapter 91. If no appearance
8 is made at the scheduled hearing by the party or its duly
9 authorized representative, the party shall be deemed to have
10 consented to the issuance of the cease and desist order and the
11 director may issue a permanent cease and desist order. Any
12 cease and desist order issued after a hearing held in accordance
13 with this subsection shall become effective after service upon
14 the affected party and shall remain effective until modified or
15 terminated by the director. Any appeal of a permanent cease and
16 desist order shall be made to the circuit court in accordance
17 with chapter 91.

18 (c) In determining or directing action of a professional
19 employer organization necessary to prevent insolvency or correct
20 alleged violations or in issuing cease and desist orders, the
21 director shall consider actions that minimize the disruption or
22 impact to the business of client companies.



1 (d) On or after the effective date of any permanent cease
2 and desist order, the director may apply for enforcement of the
3 order to the circuit court. Such application may also contain a
4 petition for such other relief or remedies as may be appropriate
5 in the circumstances. The application shall be given precedence
6 over other cases pending in court, and shall in every way be
7 expedited.

8 §373-J Failure to comply; penalty; injunction. (a) If a
9 professional employer organization fails to comply with this
10 chapter, the professional employer organization shall be liable
11 for a penalty of not less than \$1,000 or of \$500 for every day
12 during which such failure continues, whichever sum is greater,
13 to be recovered in an action brought by the director in the name
14 of the State, and the amount so collected shall be paid into the
15 professional employer organization special fund. The director
16 may, however, in the director's discretion, for good cause
17 shown, remit all or any part of the penalty in excess of \$1,000
18 to the professional employer organization; provided that the
19 professional employer organization complies with this chapter.
20 With respect to such actions, the attorney general or any county
21 attorney or public prosecutor shall prosecute the same if so
22 requested by the director.



1 (b) If a professional employer organization fails to
2 comply with this chapter for a period of thirty consecutive
3 days, the professional employer organization may be enjoined, by
4 the circuit court of the circuit in which the professional
5 employer organization's principal place of business is located,
6 from carrying on business anywhere in the State so long as the
7 noncompliance continues, and such action for injunction shall be
8 prosecuted by the attorney general or any county attorney if so
9 requested by the director."

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

12 "(a) Where any client company uses the services of
13 assigned employees and co-employs assigned employees with a
14 professional employment organization, the client company and the
15 professional employment organization, with respect to the
16 assigned employees, shall not be exempt from the requirements of
17 any federal, state, or county law, including labor or employment
18 laws, collective bargaining rights, anti-discrimination
19 provisions, or other laws with respect to the protection and
20 rights of employees, including chapters 377 and 378, that would
21 apply to the assigned employees if the assigned employees were



1 employees of the client company alone, and were not co-employees
2 of the professional employment organization.

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

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

21 1. By adding a new definition to be appropriately inserted
22 and to read:



1 "Department" means the department of labor and industrial
2 relations."

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

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

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

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



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

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

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

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

21 " ~~[+]§373L-2[+]~~ **Registration required.** (a) Every
22 professional employer organization shall register with the



1 director by providing all of the information required by this
2 section and by rules adopted by the director pursuant to chapter
3 91 prior to entering into any professional employer agreement
4 with any client company in this State.

5 (b) Registration information required by this section
6 shall include:

- 7 (1) The name or names under which the professional
8 employer organization conducts or will conduct
9 business;
- 10 (2) The address of the principal place of business of the
11 professional employer organization and the address of
12 each office that the professional employer
13 organization maintains in this State;
- 14 (3) The professional employer organization's general
15 excise tax number;
- 16 (4) A copy of the certificate of authority to transact
17 business in this State issued by the director of
18 commerce and consumer affairs pursuant to title 23 or
19 title 23A, if applicable;
- 20 (5) A list, organized by jurisdiction, of each name under
21 which the professional employer organization has
22 operated in the preceding five years, including any



- 1 alternative names; names of predecessors; and, if
2 known, names of successor business entities;
- 3 (6) A statement of ownership, which shall include the name
4 of each person who, individually or acting in concert
5 with any other person or persons, owns or controls,
6 directly or indirectly, twenty-five per cent or more
7 of the equity interests of the professional employer
8 organization;
- 9 (7) A statement of management, which shall include the
10 name of any person who serves as president or chief
11 executive officer or who otherwise has the authority
12 to act as a senior executive officer of the
13 professional employer organization;
- 14 (8) Proof of valid workers' compensation coverage in
15 compliance with all laws of this State;
- 16 (9) Proof of compliance with the Hawaii temporary
17 disability insurance law;
- 18 (10) Proof of compliance with the Hawaii prepaid health
19 care act as regards all employees of the professional
20 employer organization;



- 1 (11) Proof of compliance with the Hawaii employment
2 security law, including payment of any applicable
3 employer liability pursuant to chapter 383; and
- 4 (12) A financial statement prepared in accordance with
5 generally accepted accounting principles, audited by
6 an independent certified public accountant licensed to
7 practice in the State; and without qualification as to
8 the going concern status of the professional employer
9 organization.

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

18 ~~[(d) The director shall establish fees and requirements~~
19 ~~for registration, maintenance of registration, renewal, and~~
20 ~~restoration of registration for professional employer~~
21 ~~organizations by rule pursuant to chapter 91.] "~~



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

3 "[~~†~~]**§373L-3**[~~†~~] **Bond required.** (a) No professional
4 employer organization shall enter into a professional employment
5 agreement with a client company in the State unless the
6 professional employer organization posts a bond [~~in the amount~~
7 ~~of \$250,000,~~] as follows:

- 8 (1) Professional employer organizations consisting of
9 fewer than one hundred full-time or part-time
10 employees shall post a minimum of \$500,000;
11 (2) Professional employer organizations entering into the
12 industry with no prior experience shall post a minimum
13 of \$500,000; and
14 (3) All other professional employer organizations shall
15 post an amount equal to five per cent of the
16 organization's prior year's total wages, benefits,
17 workers' compensation premiums, and unemployment
18 compensation contributions;

19 which is a performance or financial guaranty type bond naming
20 the director as the obligee and which may be canceled only if
21 the professional employer organization gives sixty days prior
22 written notice to the surety or if the surety gives thirty days



1 prior written notice to the director of cancellation of the
2 bond. The requirements of this section shall be satisfied by a
3 single bond. If a professional employer organization has more
4 than one branch location, the bond shall cover all locations.

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

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

13 (1) The debts were incurred while the bond was in effect;
14 and

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

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

21 (e) Failure to have in effect a current bond shall result
22 in automatic forfeiture of registration pursuant to this chapter



1 and shall require the professional employer organization to
2 immediately cease doing business in the State. A professional
3 employer organization whose registration is forfeited shall
4 apply as a new applicant for registration in order to resume
5 business in the State.

6 (f) The director, or any person claiming to have sustained
7 damage resulting from noncompliance of a professional employer
8 organization with this chapter, may bring an action on the bond
9 to recover the damage therefrom. The director may deposit with
10 a court of competent jurisdiction all or any part of the sum of
11 the bond."

12 SECTION 6. The department of commerce and consumer affairs
13 shall collect fees pursuant to chapter 373L as follows:

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

18 until such time that the director of labor and industrial
19 relations establishes fees pursuant to section 373L-D, Hawaii
20 Revised Statutes. The fees collected pursuant to this section
21 shall not prohibit any additional fees required.



1 SECTION 7. In codifying the new sections added by section
 2 1 of this Act, the revisor of statutes shall substitute
 3 appropriate section numbers for the letters used in designating
 4 the new sections in this Act.

5 SECTION 8. Statutory material to be repealed is bracketed
 6 and stricken. New statutory material is underscored.

7 SECTION 9. This Act shall take effect upon its approval.
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S.B. NO. 2424

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, 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.

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

