

JAN 25 2006

A BILL FOR AN ACT

RELATING TO EMPLOYMENT SECURITY.

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

1 SECTION 1. Section 383-7, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§383-7 Excluded service.** "Employment" shall not include
4 the following service:

5 (1) Agricultural labor as defined in section 383-9 if it
6 is performed by an individual who is employed by an
7 employing unit:

8 (A) Which, during each calendar quarter in both the
9 current and the preceding calendar years, paid
10 less than \$20,000 in cash remuneration to
11 individuals employed in agricultural labor; and

12 (B) Which had, in each of the current and the
13 preceding calendar years:

14 (i) No more than nineteen calendar weeks,
15 whether consecutive or not, in which
16 agricultural labor was performed by its
17 employees; or



1 (ii) No more than nine individuals in its employ
2 performing agricultural labor in any one
3 calendar week, whether or not the same
4 individuals performed the labor in each
5 week;

6 (2) Domestic service in a private home, local college
7 club, or local chapter of a college fraternity or
8 sorority as set forth in section 3306(c)(2) of the
9 Internal Revenue Code of 1986, as amended;

10 (3) Service not in the course of the employing unit's
11 trade or business performed in any calendar quarter by
12 an individual, unless the cash remuneration paid for
13 the service is \$50 or more and the service is
14 performed by an individual who is regularly employed
15 by the employing unit to perform the service. For the
16 purposes of this paragraph, an individual shall be
17 deemed to be regularly employed to perform service not
18 in the course of an employing unit's trade or business
19 during a calendar quarter only if:

20 (A) On each of some twenty-four days during the
21 quarter the individual performs the service for
22 some portion of the day; or

1 (B) The individual was regularly employed as
2 determined under subparagraph (A) by the
3 employing unit in the performance of the service
4 during the preceding calendar quarter;

5 (4) (A) Service performed on or in connection with a
6 vessel not an American vessel, if the individual
7 performing the service is employed on and in
8 connection with the vessel when outside the
9 United States;

10 (B) Service performed by an individual in (or as an
11 officer or member of the crew of a vessel while
12 it is engaged in) the catching, taking,
13 harvesting, cultivating, or farming of any kind
14 of fish, shellfish, crustacea, sponges, seaweeds,
15 or other aquatic forms of animal and vegetable
16 life, including service performed as an ordinary
17 incident thereto, except:

18 (i) The service performed in connection with a
19 vessel of more than ten net tons (determined
20 in the manner provided for determining the
21 register tonnage of merchant vessels under
22 the laws of the United States);

1 (ii) The service performed in connection with a
2 vessel of ten net tons or less (determined
3 in the manner provided for determining the
4 register tonnage of merchant vessels under
5 the laws of the United States) by an
6 individual who is employed by an employing
7 unit which had in its employ one or more
8 individuals performing the service for some
9 portion of a day in each of twenty calendar
10 weeks all occurring, whether consecutive or
11 not, in either the current or the preceding
12 calendar year; and

13 (iii) Service performed in connection with the
14 catching or taking of salmon or halibut for
15 commercial purposes;

16 (5) Service performed by an individual in the employ of
17 the individual's son, daughter, or spouse, and service
18 performed by a child under the age of twenty-one in
19 the employ of the child's father or mother;

20 (6) Service performed in the employ of the United States
21 government or an instrumentality of the United States
22 exempt under the Constitution of the United States

1 from the contributions imposed by this chapter, except
2 that to the extent that the Congress of the United
3 States permits states to require any instrumentalities
4 of the United States to make payments into an
5 unemployment fund under a state unemployment
6 compensation law, all of the provisions of this
7 chapter shall apply to those instrumentalities, and to
8 services performed for those instrumentalities, in the
9 same manner, to the same extent, and on the same terms
10 as to all other employers, employing units,
11 individuals, and services; provided that if this State
12 is not certified for any year by the Secretary of
13 Labor under section 3304(c) of the federal Internal
14 Revenue Code, the payments required of those
15 instrumentalities with respect to that year shall be
16 refunded by the department of labor and industrial
17 relations from the fund in the same manner and within
18 the same period as is provided in section 383-76 with
19 respect to contributions erroneously collected;

20 (7) Service performed in the employ of any other state, or
21 any political subdivision thereof, or any
22 instrumentality of any one or more of the foregoing



1 which is wholly owned by one or more states or
2 political subdivisions; and any service performed in
3 the employ of any instrumentality of one or more other
4 states or their political subdivisions to the extent
5 that the instrumentality is, with respect to the
6 service, exempt from the tax imposed by section 3301
7 of the Internal Revenue Code of 1986, as amended;

8 (8) Service with respect to which unemployment
9 compensation is payable under an unemployment system
10 established by an act of Congress;

11 (9) (A) Service performed in any calendar quarter in the
12 employ of any organization exempt from income tax
13 under section 501(a) of the federal Internal
14 Revenue Code (other than an organization
15 described in section 401(a) or under section 521
16 of the Code), if:

17 (i) The remuneration for the service is less
18 than \$50; or

19 (ii) The service is performed by a fully
20 ordained, commissioned, or licensed minister
21 of a church in the exercise of the
22 minister's ministry or by a member of a



1 religious order in the exercise of duties
2 required by the order;

3 (B) Service performed in the employ of a school,
4 college, or university, if the service is
5 performed by a student who is enrolled and is
6 regularly attending classes at the school,
7 college, or university; or

8 (C) Service performed by an individual who is
9 enrolled at a nonprofit or public educational
10 institution which normally maintains a regular
11 faculty and curriculum and normally has a
12 regularly organized body of students in
13 attendance at the place where its educational
14 activities are carried on as a student in a full-
15 time program, taken for credit at such
16 institution, which combines academic instruction
17 with work experience, if such service is an
18 integral part of such program, and such
19 institution has so certified to the employer,
20 except that this subparagraph shall not apply to
21 service performed in a program established for or
22 on behalf of an employer or group of employers;

1 (10) Service performed in the employ of a foreign
2 government (including service as a consular or other
3 officer or employee of a nondiplomatic
4 representative);

5 (11) Service performed in the employ of an instrumentality
6 wholly owned by a foreign government:

7 (A) If the service is of a character similar to that
8 performed in foreign countries by employees of
9 the United States government or of an
10 instrumentality thereof; and

11 (B) If the United States Secretary of State has
12 certified or certifies to the United States
13 Secretary of the Treasury that the foreign
14 government, with respect to whose instrumentality
15 exemption is claimed, grants an equivalent
16 exemption with respect to similar service
17 performed in the foreign country by employees of
18 the United States government and of
19 instrumentalities thereof;

20 (12) Service performed as a student nurse in the employ of
21 a hospital or a nurses' training school by an
22 individual who is enrolled and is regularly attending



1 classes in a nurses' training school chartered or
2 approved pursuant to state law; and service performed
3 as an intern in the employ of a hospital by an
4 individual who has completed a four-year course in a
5 medical school chartered or approved pursuant to state
6 law;

7 (13) Service performed by an individual for an employing
8 unit as an insurance producer, if all service
9 performed by the individual for the employing unit is
10 performed for remuneration solely by way of
11 commission;

12 (14) Service performed by an individual under the age of
13 eighteen in the delivery or distribution of newspapers
14 or shopping news, not including delivery or
15 distribution to any point for subsequent delivery or
16 distribution;

17 (15) Service covered by an arrangement between the
18 department and the agency charged with the
19 administration of any other state or federal
20 unemployment compensation law pursuant to which all
21 services performed by an individual for an employing
22 unit during the period covered by the employing unit's



1 duly approved election, are deemed to be performed
2 entirely within the agency's state;

3 (16) Service performed by an individual who, pursuant to
4 the Federal Economic Opportunity Act of 1964, is not
5 subject to the federal laws relating to unemployment
6 compensation;

7 (17) Service performed by an individual for an employing
8 unit as a real estate salesperson, if all service
9 performed by the individual for the employing unit is
10 performed for remuneration solely by way of
11 commission;

12 (18) Service performed by a registered sales representative
13 for a registered travel agency, when the service
14 performed by the individual for the travel agent is
15 performed for remuneration by way of commission;

16 (19) Service performed by a vacuum cleaner salesperson for
17 an employing unit, if all services performed by the
18 individual for the employing unit are performed for
19 remuneration solely by way of commission;

20 (20) Service performed for a family-owned private
21 corporation organized for profit that employs only
22 members of the family who each own at least fifty per



1 cent of the shares issued by the corporation; provided
2 that:

3 (A) The private corporation elects to be excluded
4 from coverage under this chapter;

5 (B) The election for exclusion shall apply to all
6 shareholders and under the same circumstances;

7 (C) No more than two members of a family may be
8 eligible per entity for exclusion under this
9 paragraph;

10 (D) The exclusion shall be irrevocable for five
11 years;

12 (E) The family-owned private corporation presents to
13 the department proof that it has paid federal
14 unemployment insurance taxes as required by
15 federal law; and

16 (F) The election to be excluded from coverage shall
17 be effective the first day of the calendar
18 quarter in which the application and all
19 substantiating documents requested by the
20 department are filed with the department;

21 (21) Service performed by a direct seller as defined in
22 section 3508 of the Internal Revenue Code of 1986; and



1 (22) Service performed by an election official or election
2 worker as defined in section 3309(b)(3)(F) of the
3 Internal Revenue Code of 1986, as amended.

4 None of the foregoing exclusions (1) to (22) shall apply to
5 any service with respect to which a tax is required to be paid
6 under any federal law imposing a tax against which credit may be
7 taken for contributions required to be paid into a state
8 unemployment fund or which as a condition for full tax credit
9 against the tax imposed by the federal Unemployment Tax Act is
10 required to be covered under this chapter."

11 SECTION 2. Section 383-61, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§383-61 Payment of contributions; wages not included.**

14 (a) Contributions with respect to wages for employment shall
15 accrue and become payable by each employer for each calendar
16 year in which the employer is subject to this chapter. The
17 contributions shall become due and be paid by each employer to
18 the director of labor and industrial relations for the fund in
19 accordance with such rules as the department of labor and
20 industrial relations may prescribe, and shall not be deducted,
21 in whole or in part, from the wages of individuals in the
22 employer's employ.



1 (b) Except as provided in [~~subsections~~] subsection (c)
2 [~~and (d)~~], the term "wages" does not include remuneration paid
3 with respect to employment to an individual by an employer
4 during any calendar year which exceeds the average annual wage,
5 rounded to the nearest hundred dollars, for the four calendar
6 quarter period ending on June 30 of the preceding year.

7 The average annual wage shall be computed as follows: on
8 or before November 30 of each year the total remuneration paid
9 by employers, as reported on contribution reports on or before
10 such date, with respect to all employment during the four
11 consecutive calendar quarters ending on June 30 of such year
12 shall be divided by the average monthly number of individuals
13 performing services in such employment during the same four
14 calendar quarters as reported on such contribution reports and
15 rounded to the nearest hundred dollars.

16 [~~(c) For the calendar year 1991 only, the term "wages"~~
17 ~~does not include remuneration in excess of \$7,000 paid with~~
18 ~~respect to employment to an individual by an employer.~~

19 [~~(d) For calendar year 1988 only, the term "wages" as used~~
20 ~~in this part does not include remuneration paid with respect to~~
21 ~~employment to an individual by an employer during the calendar~~
22 ~~year which exceeds:~~



1 ~~(1) One hundred per cent of the average annual wage if the~~
2 ~~most recently computed ratio of the current reserve~~
3 ~~fund to the adequate reserve fund prior to that~~
4 ~~calendar year is equal to or less than .80; or~~

5 ~~(2) Seventy-five per cent of the average annual wage if~~
6 ~~the most recently computed ratio of the current~~
7 ~~reserve fund to the adequate reserve fund prior to~~
8 ~~that calendar year is greater than .80 but less than~~
9 ~~1.2; or~~

10 ~~(3) Fifty per cent of the average annual wage if the most~~
11 ~~recently computed ratio of the current reserve fund to~~
12 ~~the adequate reserve fund prior to that calendar year~~
13 ~~is equal to or more than 1.2;~~

14 ~~provided that "wages" with respect to which contributions are~~
15 ~~paid are not less than that part of remuneration which is~~
16 ~~subject to tax in accordance with section 3306(b) of the~~
17 ~~Internal Revenue Code of 1986, as amended.]~~

18 (c) For calendar years 2006 and 2007 only, the term
19 "wages" does not include remuneration in excess of \$7,000 paid
20 with respect to employment to an individual by an employer.

21 ~~[-(e)]~~ (d) If an employer during any calendar year acquires
22 substantially all the property used in a trade or business, or



1 in a separate unit of a trade or business, of another employer,
2 and after the acquisition employs an individual who prior to the
3 acquisition was employed by the predecessor, then for the
4 purpose of determining whether remuneration in excess of the
5 average annual wages has been paid to the individual for
6 employment, remuneration paid to the individual by the
7 predecessor during the calendar year shall be considered as
8 having been paid by the successor employer. For the purposes of
9 this subsection, the term "employment" includes services
10 constituting employment under any employment security law of
11 another state or of the federal government.

12 ~~[(f)]~~ (e) Subsections (b) through ~~[(e)]~~ (d)
13 notwithstanding, for the purposes of this part, the term "wages"
14 shall include at least that amount of remuneration paid in a
15 calendar year to an individual by an employer or the employer's
16 predecessor with respect to employment during any calendar year
17 ~~[which]~~ that is subject to a tax under a federal law imposing a
18 tax against which credit may be taken for contributions required
19 to be paid into a state unemployment fund.

20 ~~[(g)]~~ (f) In accordance with section 303(a)(5) of the
21 Social Security Act, as amended, and section 3304(a)(4) of the
22 Internal Revenue Code of 1986, as amended, any contributions



1 overpaid due to a retroactive reduction in the taxable wage base
2 may be credited against the employer's future contributions upon
3 request by the employer; provided that no employer shall be
4 given a cash refund."

5 SECTION 3. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

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

8

INTRODUCED BY:

A handwritten signature in black ink, appearing to read "Robert B. ...", is written over a horizontal line.

Report Title:

Employment Security; Unemployment Insurance; Contributions

Description:

Removes the maximum age restriction on the unemployment insurance contribution exemption for an employer's children who work for their parent. Lowers the maximum taxable wage base to the federal minimum of \$7,000, for calendar years 2006 and 2007.

