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A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

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

1 The legislature finds that services rendered by SECTION 1. 2 individuals who provide in home care under the State of Hawaii Medicaid DD-MR Waiver Program, as authorized the Social Security 3 4 Act, as amended, should be excluded from "employment" under 5 chapters 383, 386, 392, and 393, Hawaii Revised Statutes. The 6 legislature finds that if these individuals are not excluded, then the social service payments must be upwardly adjusted to 7 include the cost of employee benefits for these individuals. 8

9 The legislature finds that excluding these individuals from 10 "employment" under chapters 383, 386, 392, and 393, Hawaii 11 Revised Statutes, is consistent with existing law and reflects 12 the past practices under the determinations of the law by the 13 director of the department of labor and industrial relations 14 prior to 2005.

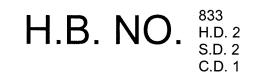
15 The purpose of this Act is to clarify the existing 16 exclusions under chapters 386, 392, and 393, Hawaii Revised 17 Statutes, and to provide a new exclusion under chapter 383,

18 Hawaii Revised Statutes.



1	SECTION 2. Section 383-1, Hawaii Revised Statutes, is				
2	amended by adding a new definition to be appropriately inserted				
3	and to read as follows:				
4	" <u>"Re</u>	cipient of social service payments" includes:			
5	(1)	A person who is an eligible recipient of social			
6		services such as attendant care and day care services;			
7		and			
8	(2)	A corporation or private agency that contracts			
9		directly with the department of human services to			
10		provide attendant care and day care authorized under			
11		the Social Security Act, as amended."			
12	SECT	SECTION 3. Section 386-1, Hawaii Revised Statutes, is			
13	amended by	y adding a new definition to be appropriately inserted			
14	and to rea	ad as follows:			
15	" <u>"Re</u>	cipient of social service payments" includes:			
16	(1)	A person who is an eligible recipient of social			
17		services such as attendant care and day care services;			
18		and			
19	(2)	A corporation or private agency that contracts			
20		directly with the department of human services to			
21		provide attendant care and day care authorized under			
22		the Social Security Act, as amended."			
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1	SECTION 4. Section 392-3, Hawaii Revised Statutes, is				
2	amended by adding a new definition to be appropriately inserted				
3	and to re	ad as follows:			
4	" <u>"Re</u>	cipient of social service payments" includes:			
5	(1)	A person who is an eligible recipient of social			
6		services such as attendant care and day care services;			
7		and			
8	(2)	A corporation or private agency that contracts			
9		directly with the department of human services to			
10		provide attendant care and day care services			
11		authorized under the Social Security Act, as amended."			
12	SECTION 5. Section 393-3, Hawaii Revised Statutes, is				
13	amended b	y adding a new definition to be appropriately inserted			
14	and to re	ad as follows:			
15	" <u>"Re</u>	cipient of social service payments" includes:			
16	(1)	A person who is an eligible recipient of social			
17		services such as attendant care and day care services;			
18		and			
19	(2)	A corporation or private agency that contracts			
20		directly with the department of human services to			
21		provide attendant care and day care authorized under			
22		the Social Security Act, as amended."			
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1	SECTION 6. Section 383-7, Hawaii Revised Statutes, is
2	amended to read as follows:
3	"§383-7 Excluded service. (a) "Employment" shall not
4	include [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) $[Which_r]$ That, during each calendar quarter in
9	both the current and the preceding calendar
10	years, paid less than \$20,000 in cash
11	remuneration to individuals employed in
12	agricultural labor; and
13	(B) $[Which]$ That had, in each of the current and the
14	preceding calendar years:
15	(i) No more than nineteen calendar weeks,
16	whether consecutive or not, in which
17	agricultural labor was performed by its
18	employees; or
19	(ii) No more than nine individuals in its employ
20	performing agricultural labor in any one
21	calendar week, whether or not the same

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1		individuals performed the labor in each
2		week;
3	(2)	Domestic service in a private home, local college
4		club, or local chapter of a college fraternity or
5		sorority as set forth in section 3306(c)(2) of the
6		Internal Revenue Code of 1986, as amended;
7	(3)	Service not in the course of the employing unit's
8		trade or business performed in any calendar quarter by
9		an individual, unless the cash remuneration paid for
10		the service is \$50 or more and the service is
11		performed by an individual who is regularly employed
12		by the employing unit to perform the service. For the
13		purposes of this paragraph, an individual shall be
14		deemed to be regularly employed to perform service not
15		in the course of an employing unit's trade or business
16		during a calendar quarter [only] if:
17		(A) On each of some twenty-four days during the
18		quarter the individual performs the service for
19		some portion of the day; or
20		(B) The individual was regularly employed as
21		determined under subparagraph (A) by the



1 employing unit in the performance of the service 2 during the preceding calendar quarter; 3 (4) Service performed on or in connection with a (A) 4 vessel not an American vessel, if the individual 5 performing the service is employed on and in 6 connection with the vessel when outside the 7 United States; 8 (B) Service performed by an individual in (or as an officer or member of the crew of a vessel while 9 10 it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind 11 12 of fish, shellfish, crustacea, sponges, seaweeds, 13 or other aquatic forms of animal and vegetable life, including service performed as an ordinary 14 15 incident thereto, except: 16 (i) The service performed in connection with a 17 vessel of more than ten net tons (determined 18 in the manner provided for determining the 19 register tonnage of merchant vessels under 20 the laws of the United States); 21 (ii) The service performed in connection with a

vessel of ten net tons or less (determined

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

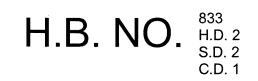
11 (iii) Service performed in connection with the 12 catching or taking of salmon or halibut for 13 commercial purposes;

14 (5) Service performed by an individual in the employ of the individual's son, daughter, or spouse, and service 15 16 performed by a child under the age of twenty-one in 17 the employ of the child's father or mother; 18 (6) Service performed in the employ of the United States 19 government or an instrumentality of the United States 20 exempt under the Constitution of the United States 21 from the contributions imposed by this chapter, except 22 that to the extent that the Congress of the United



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



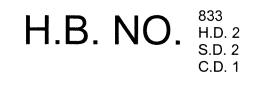


1		the employ of any instrumentality of one or more other
2		states or their political subdivisions to the extent
3		that the instrumentality is, with respect to the
4		service, exempt from the tax imposed by section 3301
5		of the Internal Revenue Code of 1986, as amended;
6	(8)	Service with respect to which unemployment
7		compensation is payable under an unemployment system
8		established by an act of Congress;
9	(9)	(A) Service performed in any calendar quarter in the
10		employ of any organization exempt from income tax
11		under section 501(a) of the federal Internal
12		Revenue Code (other than an organization
13		described in section 401(a) or under section 521
14		of the Internal Revenue Code), if:
15		(i) The remuneration for the service is less
16		than \$50; or
17		(ii) The service is performed by a fully
18		ordained, commissioned, or licensed minister
19		of a church in the exercise of the
20		minister's ministry or by a member of a
21		religious order in the exercise of duties
22		required by the order;



1		(B)	Service performed in the employ of a school,
2			college, or university, if the service is
3			performed by a student who is enrolled and is
4			regularly attending classes at the school,
5			college, or university; or
6		(C)	Service performed by an individual who is
7			enrolled at a nonprofit or public educational
8			institution which normally maintains a regular
9			faculty and curriculum and normally has a
10			regularly organized body of students in
11			attendance at the place where its educational
12			activities are carried on as a student in a full-
13			time program, taken for credit at [such] <u>the</u>
14			institution, which combines academic instruction
15			with work experience, if [such] <u>the</u> service is an
16			integral part of such program, and [such] <u>the</u>
17			institution has so certified to the employer,
18			except that this subparagraph shall not apply to
19			service performed in a program established for or
20			on behalf of an employer or group of employers;
21	(10)	Serv	ice performed in the employ of a foreign
22		gove	rnment [+], including service as a consular or





1		other officer or employee of a nondiplomatic		
2		<pre>representative[+];</pre>		
3	(11)	Service performed in the employ of an instrumentality		
4		wholly owned by a foreign government:		
5		(A) If the service is of a character similar to that		
6		performed in foreign countries by employees of		
7		the United States government or of an		
8		instrumentality thereof; and		
9		(B) If the United States Secretary of State has		
10		certified or certifies to the United States		
11		Secretary of the Treasury that the foreign		
12		government, with respect to whose instrumentality		
13		exemption is claimed, grants an equivalent		
14		exemption with respect to similar service		
15		performed in the foreign country by employees of		
16		the United States government and of		
17		instrumentalities thereof;		
18	(12)	Service performed as a student nurse in the employ of		
19		a hospital or a nurses' training school by an		
20		individual who is enrolled and is regularly attending		
21		classes in a nurses' training school chartered or		
22		approved pursuant to state law; and service performed		
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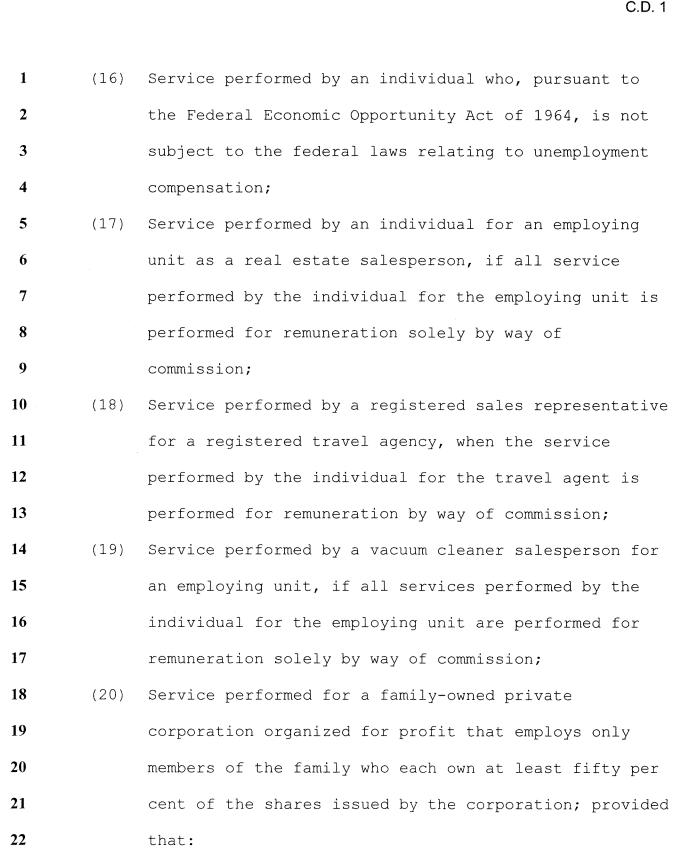
1		as an intern in the employ of a hospital by an
2		individual who has completed a four-year course in a
3		medical school chartered or approved pursuant to state
4		law;
5	(13)	Service performed by an individual for an employing
6		unit as an insurance producer, if all service
7		performed by the individual for the employing unit is
8		performed for remuneration solely by way of
9		commission;
10	(14)	Service performed by an individual under the age of
11		eighteen in the delivery or distribution of newspapers
12		or shopping news, not including delivery or
13		distribution to any point for subsequent delivery or
14		distribution;
15	(15)	Service covered by an arrangement between the
16		department and the agency charged with the
17		administration of any other state or federal
18		unemployment compensation law pursuant to which all
19		services performed by an individual for an employing
20		unit during the period covered by the employing unit's
21		duly approved election, are deemed to be performed
22		entirely within the agency's state;

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1		(A)	The private corporation elects to be excluded
2			from coverage under this chapter;
3		(B)	The election for exclusion shall apply to all
4			shareholders and under the same circumstances;
5		(C)	No more than two members of a family may be
6			eligible per entity for exclusion under this
7			paragraph;
8		(D)	The exclusion shall be irrevocable for five
9			years;
10		(E)	The family-owned private corporation presents to
11			the department proof that it has paid federal
12			unemployment insurance taxes as required by
13			federal law; and
14		(F)	The election to be excluded from coverage shall
15			be effective the first day of the calendar
16			quarter in which the application and all
17			substantiating documents requested by the
18			department are filed with the department;
19	(21)	Serv	ice performed by a direct seller as defined in
20		sect	ion 3508 of the Internal Revenue Code of 1986;
21		[and	•]



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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 $[-]$; and
4	(23)	Domestic in-home and community-based services for
5		persons with developmental disabilities and mental
6		retardation under the medicaid home and
7		community-based services program pursuant to title 42
8		Code of Federal Regulations sections 440.180 and
9		441.300, and title 42 Code of Federal Regulations,
10		part 434, subpart A, as amended, and identified as
11		chore, personal assistance and habilitation,
12		residential habilitation, supported employment,
13		respite, and skilled nursing services, as the terms
14		are defined and amended from time to time by the
15		department of human services, performed by an
16		individual whose services are contracted by a
17		recipient of social service payments and who
18		voluntarily agrees in writing to be an independent
19		contractor of the recipient of social service payments
20		unless the individual is an employee and not an
21		independent contractor of the recipient of social



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1	service payments under the Federal Unemployment Tax
2	Act.
3	(b) None of the [foregoing] exclusions [(1) to (22)] <u>in</u>
4	subsection (a) shall apply to any service with respect to which
5	a tax is required to be paid under any federal law imposing a
6	tax against which credit may be taken for contributions required
7	to be paid into a state unemployment fund or which as a
8	condition for full tax credit against the tax imposed by the
9	federal Unemployment Tax Act is required to be covered under
10	this chapter."
11	SECTION 7. Section 386-1, Hawaii Revised Statutes, is
12	amended by amending the definition of "employment" to read as
13	follows:
14	""Employment" means any service performed by an individual
15	for another person under any contract of hire or apprenticeship,
16	express or implied, oral or written, whether lawfully or
17	unlawfully entered into. It includes service of public
18	officials, whether elected or under any appointment or contract
19	of hire express or implied.
20	"Employment" does not include [the following service]:

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1 (1)Service for a religious, charitable, educational, or 2 nonprofit organization if performed in a voluntary or unpaid capacity; 3 Service for a religious, charitable, educational, or 4 (2)nonprofit organization if performed by a recipient of 5 aid therefrom and the service is incidental to or in 6 return for the aid received; 7 8 (3) Service for a school, college, university, college 9 club, fraternity, or sorority if performed by a 10 student who is enrolled and regularly attending 11 classes and in return for board, lodging, or tuition furnished, in whole or in part; 12 13 (4) Service performed by a duly ordained, commissioned, or licensed minister, priest, or rabbi of a church in the 14 15 exercise of the minister's, priest's, or rabbi's 16 ministry or by a member of a religious order in the 17 exercise of nonsecular duties required by the order; 18 (5) Service performed by an individual for another person 19 solely for personal, family, or household purposes if 20 the cash remuneration received is less than \$225 21 during the current calendar quarter and during each



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1		completed calendar quarter of the preceding twelve-
2		month period;
3	(6)	Domestic, [which includes attendant care, and day care
4		services authorized by the department of human
5		services under the Social Security Act, as amended,]
6		in-home and community-based services for persons with
7		developmental disabilities and mental retardation
8		under the medicaid home and community-based services
9		program pursuant to title 42 Code of Federal
10		Regulations sections 440.180 and 441.300, and title 42
11		Code of Federal Regulations, part 434, subpart A, as
12		amended, and identified as chore, personal assistance
13		and habilitation, residential habilitation, supported
14		employment, respite, and skilled nursing services, as
15		the terms are defined by the department of human
16		services, performed by an individual [in the employ
17		of] whose services are contracted by a recipient of
18		social service payments $[+]$ and who voluntarily agrees
19		in writing to be an independent contractor of the
20		recipient of social service payments;
21	(7)	Service performed without wages for a corporation
22		without employees by a corporate officer in which the



1 officer is at least a twenty-five per cent stockholder; 2 3 (8) Service performed by an individual for a corporation if the individual owns at least fifty per cent of the 4 5 corporation; provided that no employer shall require an employee to incorporate as a condition of 6 7 employment; and (9) Service performed by an individual for another person 8 as a real estate salesperson or as a real estate 9 10 broker, if all the service performed by the individual for the other person is performed for remuneration 11 12 solely by way of commission. 13 As used in this paragraph "religious, charitable, educational, or nonprofit organization" means a corporation, unincorporated 14

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15 association, community chest, fund, or foundation organized and 16 operated exclusively for religious, charitable, or educational 17 purposes, no part of the net earnings of which inure to the 18 benefit of any private shareholder or individual."

19 SECTION 8. Section 392-5, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "§392-5 Excluded services. "Employment" as defined in
22 section 392-3 shall not include [the following services]:



1	(1)	Domestic service in a private home, local college
2		club, or local chapter of a college fraternity or
3		sorority, performed in any calendar quarter by an
4		individual if the cash remuneration paid by the
5		employer for such service is less than \$225;
6	(2)	Service not in the course of the employer's trade or
7		business performed in any calendar quarter by an
8		individual, unless the cash remuneration paid for the
9		service is \$50 or more and the service is performed by
10		an individual who is regularly employed by the
11		employer to perform the service. An individual shall
12		be deemed to be regularly employed to perform service
13		not in the course of the employer's trade or business
14		during a calendar quarter only if:
15		(A) On each of some twenty-four days during the
16		quarter the individual performs the service for
17		some portion of the day; or
18		(B) The individual was regularly employed $[+]_{}$ as
19		determined under subparagraph (A) $[+]$, by the
20		employer in the performance of the service during
21		the preceding calendar quarter;



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1	(3)	Serv	vice performed on or in connection with a vessel
2		not	an American vessel, if the individual performing
3		the	service is employed on and in connection with the
4		vess	sel when outside the United States;
5	(4)	Serv	vice performed by an individual in (or as an
6		offi	cer or member of the crew of a vessel while it is
7		enga	ged in) the catching, taking, harvesting,
8		cult	ivating, or farming of any kind of fish,
9		shel	lfish, crustacea, sponges, seaweeds, or other
10		aqua	tic forms of animal and vegetable life, including
11		serv	vice performed as an ordinary incident thereto,
12		exce	ept:
13		(A)	The service performed in connection with a vessel
14			of more than ten net tons (determined in the
15			manner provided for determining the register
16			tonnage of merchant vessels under the laws of the
17			United States);
18		(B)	The service performed in connection with a vessel
19			of ten net tons or less (determined in the manner
20			provided for determining the register tonnage of
21			merchant vessels under the laws of the United
22			States) by an individual who is employed by an



1		employer who, for some portion in each of twenty
2		different calendar weeks in either the current or
3		preceding calendar year, had in the employer's
4		employ one or more persons performing the
5		service, whether or not the weeks were
6		consecutive and whether or not the same
7		individuals performed the service in each week;
8		and
9		(C) The service performed in connection with the
10		catching or taking of salmon or halibut for
11		commercial purposes;
12	(5)	Service performed by an individual in the employ of
13		the individual's son, daughter, or spouse, and service
14		performed by a child under the age of twenty-one in
15		the employ of the child's father or mother;
16	(6)	Service performed in the employ of the United States
17		government or an instrumentality of the United States
18		exempt under the Constitution of the United States
19		from the contributions imposed by this chapter;
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] <u>that</u> is wholly owned by one or more such
2		states or political subdivisions; and any service
3		performed in the employ of any instrumentality of one
4		or more other states or their political subdivisions
5		to the extent that the instrumentality is, with
6		respect to such service, exempt from the tax imposed
7		by section 3301 of the Internal Revenue Code of 1986;
8	(8)	Service with respect to which temporary disability
9		compensation is payable for sickness under a temporary
10		disability insurance system established by an act of
11		Congress;
12	(9)	Service performed in any calendar quarter in the
13		employ of any nonprofit organization exempt from
14		income tax under section 501 of the Internal Revenue
15		Code of 1986, if:
16		(A) The remuneration for such service is less than
17		\$50;
18		(B) The service is performed by a student who is
19		enrolled and is regularly attending classes at a
20		school, college, or university;
21		(C) The service is performed by a duly ordained,
22		commissioned, or licensed minister or licensed



1			minister of a church in the exercise of the
2			minister's ministry or by a member of a religious
3			order in the exercise of nonsecular duties
4			required by the order; or
5		(D)	The service is performed for a church by an
6			employee who fails to meet the eligibility
7			requirements of section 392-25;
8	(10)	Serv	ice performed in the employ of a voluntary
9		empl	oyees' beneficiary association providing for the
10		paym	ent of life, sick, accident, or other benefits to
11		the	members of the association or their dependents,
12		if:	
13		(A)	No part of its net earnings inures (other than
14			through such payments) to the benefit of any
15			private shareholder or individual; and
16		(B)	Eighty-five per cent or more of its income
17			consists of amounts collected from members and
18			amounts contributed by the employer of the
19			members for the sole purpose of making such
20			payments and meeting expenses;
21	(11)	Serv	ice performed in the employ of a voluntary
22		empl	oyees' beneficiary association providing for the



1		payment of life, sick, accident, or other benefits to
2		the members of the association or their dependents or
3		their designated beneficiaries, if:
4		(A) Admission to membership in the association is
5		limited to individuals who are officers or
6		employees of the United States government; and
7		(B) No part of the net earnings of the association
8		inures (other than through such payments) to the
9		benefit of any private shareholder or individual;
10	(12)	Service performed in the employ of a school, college,
11		or university, not exempt from income tax under
12		section 501 of the Internal Revenue Code of 1986, if
13		the service is performed by a student who is enrolled
14		and is regularly attending classes at the school,
15		college, or university;
16	(13)	Service performed in the employ of any instrumentality
17		wholly owned by a foreign government, if:
18		(A) The service is of a character similar to that
19		performed in foreign countries by employees of
20		the United States government or of an
21		instrumentality thereof; and

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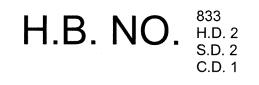
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1		(B) The United States Secretary of State has
2		certified or certifies to the United States
3		Secretary of the Treasury that the foreign
4		government, with respect to whose instrumentality
5		exemption is claimed, grants an equivalent
6		exemption with respect to similar service
7		performed in the foreign country by employees of
8		the United States government and of
9		instrumentalities thereof;
10	(14)	Service performed as a student nurse in the employ of
11		a hospital or a nurses' training school by an
12		individual who is enrolled and is regularly attending
13		classes in a nurses' training school chartered or
14		approved pursuant to state law; and service performed
15		as an intern in the employ of a hospital by an
16		individual who has completed a four years' course in a
17		medical school chartered or approved pursuant to state
18		law;
19	(15)	Service performed by an individual for an employer as
20		an insurance producer, if all such service performed
21		by the individual for the employer is performed for
22		remuneration solely by way of commission;





1	(16)	Service performed by an individual under the age of
2		eighteen in the delivery or distribution of newspapers
3		or shopping news, not including delivery or
4		distribution to any point for subsequent delivery or
5		distribution;
6	(17)	Service covered by an arrangement between the
7		department and the agency charged with the
8		administration of any other state or federal
9		unemployment compensation law pursuant to which all
10		services performed by an individual for an employer
11		during the period covered by the employer's duly
12		approved election, are deemed to be performed entirely
13		within the agency's state;
14	(18)	Service performed by an individual who, pursuant to
15		the Federal Economic Opportunity Act of 1964, is not
16		subject to the federal laws relating to unemployment
17		compensation;
18	(19)	Domestic[, which includes attendant care, and day care
19		services authorized by the department of human
20		services under the Social Security Act, as amended,]
21		in-home and community-based services for persons with
22		developmental disabilities and mental retardation



1		under the medicaid home and community-based services
2		program pursuant to title 42 Code of Federal
3		Regulations sections 440.180 and 441.300, and title 42
4		Code of Federal Regulations, part 434, subpart A, as
5		amended, and identified as chore, personal assistance
6		and habilitation, residential habilitation, supported
7		employment, respite, and skilled nursing services, as
8		the terms are defined by the department of human
9		services, performed by an individual [in the employ
10		of] whose services are contracted by a recipient of
11		social service payments $[+]$ and who voluntarily agrees
12		in writing to be an independent contractor of the
13		recipient of social service payments;
14	(20)	Service performed by a vacuum cleaner salesperson for
15		an employing unit, if all such services performed by
16		the individual for such employing unit are performed
17		for remuneration solely by way of commission; or
18	(21)	Service performed by an individual for an employer as
19		a real estate salesperson or as a real estate broker,
20		if all the service performed by the individual for the
21		employer is performed for remuneration solely by way
22		of commission."



1	SECT	ION 9. Section 393-5, Hawaii Revised Statutes, is
2	amended to	o read as follows:
3	"§39)	3-5 Excluded services. "Employment" as defined in
4	section 3	93-3 does not include [the following services]:
5	(1)	Service performed by an individual in the employ of an
6		employer who, by the laws of the United States, is
7		responsible for care and cost in connection with such
8		service[-];
9	(2)	Service performed by an individual in the employ of
10		the individual's spouse, son, or daughter, and service
11		performed by an individual under the age of twenty-one
12		in the employ of the individual's father or mother $[-]_{j}$
13	(3)	Service performed in the employ of a voluntary
14		employee's beneficiary association providing for the
15		payment of life, sick, accident, or other benefits to
16		the members of the association or their dependents or
17		their designated beneficiaries, if:
18		(A) Admission to membership in the association is
19		limited to individuals who are officers or
20		employees of the United States government[$ au$]; and
21		(B) No part of the net earnings of the association
22		inures (other than through such payments) to the
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1		benefits of any private shareholder or
2		individual[+];
3	(4)	Service performed by an individual for an employer as
4		an insurance agent or as an insurance solicitor[$_{ au}$] if
5		all [such] service performed by the individual for the
6		employer is performed for remuneration [solely] by way
7		of commission[-];
8	(5)	Service performed by an individual for an employer as
9		a real estate salesperson or as a real estate
10		broker[$_{m{ au}}$] if all [such] service performed by the
11		individual for the employer is performed for
12		remuneration [solely] by way of commission[-] <u>;</u>
13	(6)	Service performed by an individual who, pursuant to
14		the Federal Economic Opportunity Act of 1964, is not
15		subject to the provisions of law relating to federal
16		employment, including unemployment compensation[$-$];
17		and
18	(7)	Domestic[, which includes attendant care, and day care
19		services authorized by the department of human
20		services under the Social Security Act, as amended,
21		in-home and community-based services for persons with
22		developmental disabilities and mental retardation

H.D. 2 S.D. 2 C.D. 1

H.B. NO.



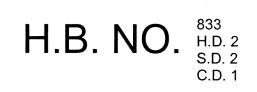
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1		under the medicaid home and community-based services
2		program pursuant to title 42 Code of Federal
3		Regulations sections 440.180 and 441.300, and title 42
4		Code of Federal Regulations, part 434, subpart A, as
5		amended, and identified as chore, personal assistance
6		and habilitation, residential habilitation, supported
7		employment, respite, and skilled nursing services, as
8		the terms are defined and amended from time to time by
9		the department of human services, performed by an
10		individual [in the employ of] whose services are
11		contracted by a recipient of social service
12		payments[\cdot] and who voluntarily agrees in writing to
13	,	be an independent contractor of the recipient of
14		social service payments."
15	SECT	ION 10. The department of labor and industrial

16 relations shall submit a report to the legislature not later 17 than twenty days prior to the convening of the regular session 18 of 2009 on the financial impact and consequences of the 19 exclusions from the employment related laws established under 20 this Act for service providers who provide medicaid home and 21 community-based services for persons with developmental

22 disabilities and mental retardation.

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1	SECTION 11. If any provision of this Act, or the
2	application thereof to any person or circumstance is contrary to
3	federal law, that provision or any application thereof to any
4	person or circumstance shall be invalid; provided that the
5	invalidity does not affect other provisions or applications of
6	the Act, which can be given effect without the invalid provision
7	or application, and to this end the provisions of this Act are
8	severable.
9	SECTION 12. Statutory material to be repealed is bracketed
10	and stricken. New statutory material is underscored.

11 SECTION 13. This Act shall take effect upon its approval.



H.B. NO. 833 H.D. 2 S.D. 2 C.D. 1

Report Title:

Employment; Exemptions

Description:

Exempts recipients of social service payments from the scope of employment related laws; defines "recipients of social service payments" as it relates to chapters 383, 386, 392, and 393, Hawaii Revised Statutes. Requires the Department of Labor and Industrial Relations to report on the financial impact and consequences of the employment exclusions for service providers who provide Medicaid home and community-based services for persons with developmental disabilities and mental retardation. (HB833 CD1)

