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# A BILL FOR AN ACT

RELATING TO EMPLOYMENT SECURITY LAW.

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

1           SECTION 1. The purpose of this Act is to provide the same  
2 type of unemployment insurance exclusion in state law as in  
3 federal law for the exclusion of certain alien agricultural  
4 workers and to conform coverage of Indian tribe workers under  
5 state law to federal law.

6           Under Public Law 94-566, of the Unemployment Compensation  
7 Act of 1976, agricultural labor became subject to the federal  
8 unemployment tax, except for nonresident aliens who were  
9 temporarily admitted to the United States to perform contract  
10 agricultural work. Under Public Law 96-84, alien agricultural  
11 labor must be included solely for purposes of determining the  
12 threshold of coverage such as cash wages paid and number of  
13 individuals and weeks worked.

14           Under Public Law 106-554, of the Consolidated  
15 Appropriations Act, 2001, American Indian tribes must now be  
16 treated similarly to state and local governments and nonprofit  
17 organizations under federal and state law. The provisions of



1 this bill conform with the Consolidated Appropriations Act  
2 requirements.

3 SECTION 2. Chapter 383, Hawaii Revised Statutes, is  
4 amended by adding a new section to be appropriately designated  
5 and to read as follows:

6 "§383-62.5 Treatment of Indian tribes. (a) Benefits  
7 based on service in employment as defined in this section shall  
8 be payable in the same amount, on the same terms and subject to  
9 the same conditions as benefits payable on the basis of other  
10 service subject to this chapter. The financing of benefits  
11 shall apply in the same manner and under the same terms and  
12 conditions as in section 383-62 for nonprofit organizations  
13 subject to this chapter; except that the provisions of this  
14 section shall apply where there is a conflict.

15 (b) (1) Any Indian tribe or tribal unit (subdivisions,  
16 subsidiaries, or business enterprises wholly owned by  
17 the Indian tribe) subject to this chapter on or after  
18 January 1, 2007, shall pay contributions under the  
19 provisions of this part (with the exception of the  
20 provisions in section 383-62(b)) applicable to other  
21 employers, unless it elects to pay to the director for  
22 the fund an amount equal to the amount of benefits



1           that is attributable to service in the employ of an  
2           Indian tribe.

3           (2) Any Indian tribe or tribal unit electing to make  
4           payments in lieu of contributions shall make this  
5           election in the same manner and under the same  
6           conditions as provided in section 383-62(d)(1).

7           Indian tribes or tribal units shall determine if  
8           reimbursement for benefits paid will be elected by the  
9           tribe as a whole, by individual tribal units, or by  
10           combinations of individual tribal units.

11           (3) An Indian tribe or tribal unit shall be billed and  
12           payments shall be made in accordance with section 383-  
13           62(d)(2), for the full amount of benefits attributable  
14           to service in the employ of the Indian tribe or tribal  
15           unit on the same schedule as nonprofit organizations  
16           that have elected to make reimbursement payments in  
17           lieu of contributions.

18           (4) Any Indian tribe or tribal unit that elects to become  
19           liable for payments in lieu of contributions shall be  
20           required, within thirty days after the effective date  
21           of its election, to deposit with the department an



1 amount of money as security as determined by section  
2 383-62(d)(3).

3 (c)(1) Failure of the Indian tribe or tribal unit to make any  
4 required payment under this chapter within ninety days  
5 after a notice of delinquency was mailed to its last  
6 known address or was otherwise delivered to it, shall  
7 cause the Indian tribe to lose the option to make  
8 payments in lieu of contributions and the termination  
9 shall continue for the four-consecutive-calendar-  
10 quarter period beginning with the quarter in which the  
11 termination becomes effective.

12 (2) Any Indian tribe that loses the option to make  
13 payments in lieu of contributions due to late payment  
14 or nonpayment, shall have such option reinstated after  
15 a period of one year if all contributions have been  
16 made timely; provided no contributions, payments in  
17 lieu of contributions for benefits paid, security  
18 deposit, and penalties or interest remain outstanding.

19 (3) If any Indian tribe or tribal unit fails to make  
20 payments required under this section (including  
21 assessed of interest and penalty) within ninety days  
22 of a notice of delinquency, the department shall



1 immediately notify the United States Internal Revenue  
2 Service and the United States Department of Labor.

3 (d) Notices of payment and reporting delinquency to Indian  
4 tribes and tribal units shall include information that failure  
5 to make full payments within the prescribed time shall cause the  
6 Indian tribe to:

7 (1) Be liable for taxes under the Federal Unemployment Tax  
8 Act; and

9 (2) Lose the option to make payments in lieu of  
10 contributions.

11 (e) Except as provided in subsection (f) of this section,  
12 the amount payable to the fund by each Indian tribe or tribal  
13 unit that is liable for payments in lieu of contributions shall  
14 be determined in the same manner as provided in section 383-  
15 62(e).

16 (f) An Indian tribe or tribal unit must reimburse the fund  
17 for all extended benefits paid that are attributable to service  
18 in the employ of the Indian tribe or tribal unit unless the  
19 benefits are reimbursed by the federal government.

20 (g) Any two or more Indian tribes or tribal units that  
21 have become liable for payments in lieu of contributions may  
22 file a joint application to the department for the establishment



1 of a group account for the purpose of sharing the cost of  
2 benefits paid that are attributable to service in the employ of  
3 such employers in the same manner as provided in section 383-  
4 62(f)."

5 (h) As used in this section:

6 "Employer" includes any Indian tribe for which service in  
7 employment as defined in section 383-2 is performed.

8 "Employment" means service performed in the employ of an  
9 Indian tribe; provided that the service is excluded from  
10 employment as defined in the Federal Unemployment Tax Act solely  
11 by reason of Section 3306(c)(7), of the Federal Unemployment Tax  
12 Act, and is not otherwise excluded from employment under this  
13 chapter. For purposes of this section, the exclusions from  
14 employment under section 383-7, apply to services performed in  
15 the employ of an Indian tribe in the same manner as the  
16 exclusions apply to government and nonprofit entities.

17 "Indian tribe" has the meaning given the term by Section  
18 4(e) of the Indian Self-Determination and Education Assistance  
19 Act (25 U.S.C. Section 450b(e)), and includes any subdivision,  
20 subsidiary, or business enterprises wholly owned by the Indian  
21 tribe.



1 SECTION 3. 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[+],  
12 (including labor performed by an alien referred  
13 to in subparagraph (C)); and

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

16 (i) No more than nineteen calendar weeks,  
17 whether consecutive or not, in which  
18 agricultural labor was performed by its  
19 employees[+], (including labor performed by  
20 an alien referred to in subparagraph (C));

21 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 week  
5 (including labor performed by an alien  
6 referred to in subparagraph (C)); or

7 (C) If such agricultural labor is performed by an  
8 individual who is an alien admitted to the United  
9 States to perform agricultural labor pursuant to  
10 Sections 214(c) and 101(a)(15)(H) of the  
11 Immigration and Nationality Act;

12 (2) Domestic service in a private home, local college  
13 club, or local chapter of a college fraternity or  
14 sorority as set forth in section 3306(c)(2) of the  
15 Internal Revenue Code of 1986, as amended;

16 (3) Service not in the course of the employing unit's  
17 trade or business performed in any calendar quarter by  
18 an individual, unless the cash remuneration paid for  
19 the service is \$50 or more and the service is  
20 performed by an individual who is regularly employed  
21 by the employing unit to perform the service. For the  
22 purposes of this paragraph, an individual shall be





1 deemed to be regularly employed to perform service not  
2 in the course of an employing unit's trade or business  
3 during a calendar quarter only if:

4 (A) On each of some twenty-four days during the  
5 quarter the individual performs the service for  
6 some portion of the day; or

7 (B) The individual was regularly employed as  
8 determined under subparagraph (A) by the  
9 employing unit in the performance of the service  
10 during the preceding calendar quarter;

11 (4) (A) Service performed on or in connection with a  
12 vessel not an American vessel, if the individual  
13 performing the service is employed on and in  
14 connection with the vessel when outside the  
15 United States;

16 (B) Service performed by an individual in (or as an  
17 officer or member of the crew of a vessel while  
18 it is engaged in) the catching, taking,  
19 harvesting, cultivating, or farming of any kind  
20 of fish, shellfish, crustacea, sponges, seaweeds,  
21 or other aquatic forms of animal and vegetable



1 life, including service performed as an ordinary  
2 incident thereto, except:

3 (i) The service performed in connection with a  
4 vessel of more than ten net tons (determined  
5 in the manner provided for determining the  
6 register tonnage of merchant vessels under  
7 the laws of the United States);

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

20 (iii) Service performed in connection with the  
21 catching or taking of salmon or halibut for  
22 commercial purposes;



- 1 (5) Service performed by an individual in the employ of  
2 the individual's son, daughter, or spouse, and service  
3 performed by a child under the age of twenty-one in  
4 the employ of the child's father or mother;
- 5 (6) Service performed in the employ of the United States  
6 government or an instrumentality of the United States  
7 exempt under the Constitution of the United States  
8 from the contributions imposed by this chapter, except  
9 that to the extent that the Congress of the United  
10 States permits states to require any instrumentalities  
11 of the United States to make payments into an  
12 unemployment fund under a state unemployment  
13 compensation law, all of the provisions of this  
14 chapter shall apply to those instrumentalities, and to  
15 services performed for those instrumentalities, in the  
16 same manner, to the same extent, and on the same terms  
17 as to all other employers, employing units,  
18 individuals, and services; provided that if this State  
19 is not certified for any year by the Secretary of  
20 Labor under section 3304(c) of the federal Internal  
21 Revenue Code, the payments required of those  
22 instrumentalities with respect to that year shall be



1           refunded by the department of labor and industrial  
2           relations from the fund in the same manner and within  
3           the same period as is provided in section 383-76 with  
4           respect to contributions erroneously collected;

5           (7) Service performed in the employ of any other state, or  
6           any political subdivision thereof, or any  
7           instrumentality of any one or more of the foregoing  
8           which is wholly owned by one or more states or  
9           political subdivisions; and any service performed in  
10          the employ of any instrumentality of one or more other  
11          states or their political subdivisions to the extent  
12          that the instrumentality is, with respect to the  
13          service, exempt from the tax imposed by section 3301  
14          of the Internal Revenue Code of 1986, as amended;

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

18          (9) (A) Service performed in any calendar quarter in the  
19               employ of any organization exempt from income tax  
20               under section 501(a) of the federal Internal  
21               Revenue Code (other than an organization

1 described in section 401(a) or under section 521  
2 of the Code), if:

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

5 (ii) The service is performed by a fully  
6 ordained, commissioned, or licensed minister  
7 of a church in the exercise of the  
8 minister's ministry or by a member of a  
9 religious order in the exercise of duties  
10 required by the order;

11 (B) Service performed in the employ of a school,  
12 college, or university, if the service is  
13 performed by a student who is enrolled and is  
14 regularly attending classes at the school,  
15 college, or university; or

16 (C) Service performed by an individual who is  
17 enrolled at a nonprofit or public educational  
18 institution which normally maintains a regular  
19 faculty and curriculum and normally has a  
20 regularly organized body of students in  
21 attendance at the place where its educational  
22 activities are carried on as a student in a full-



1           time program, taken for credit at such  
2           institution, which combines academic instruction  
3           with work experience, if such service is an  
4           integral part of such program, and such  
5           institution has so certified to the employer,  
6           except that this subparagraph shall not apply to  
7           service performed in a program established for or  
8           on behalf of an employer or group of employers;

9       (10) Service performed in the employ of a foreign  
10       government (including service as a consular or other  
11       officer or employee of a nondiplomatic  
12       representative);

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

15           (A) If the service is of a character similar to that  
16           performed in foreign countries by employees of  
17           the United States government or of an  
18           instrumentality thereof; and

19           (B) If the United States Secretary of State has  
20           certified or certifies to the United States  
21           Secretary of the Treasury that the foreign  
22           government, with respect to whose instrumentality



1 exemption is claimed, grants an equivalent  
2 exemption with respect to similar service  
3 performed in the foreign country by employees of  
4 the United States government and of  
5 instrumentalities thereof;

6 (12) Service performed as a student nurse in the employ of  
7 a hospital or a nurses' training school by an  
8 individual who is enrolled and is regularly attending  
9 classes in a nurses' training school chartered or  
10 approved pursuant to state law; and service performed  
11 as an intern in the employ of a hospital by an  
12 individual who has completed a four-year course in a  
13 medical school chartered or approved pursuant to state  
14 law;

15 (13) Service performed by an individual for an employing  
16 unit as an insurance producer, if all service  
17 performed by the individual for the employing unit is  
18 performed for remuneration solely by way of  
19 commission;

20 (14) Service performed by an individual under the age of  
21 eighteen in the delivery or distribution of newspapers  
22 or shopping news, not including delivery or



- 1 distribution to any point for subsequent delivery or  
2 distribution;
- 3 (15) Service covered by an arrangement between the  
4 department and the agency charged with the  
5 administration of any other state or federal  
6 unemployment compensation law pursuant to which all  
7 services performed by an individual for an employing  
8 unit during the period covered by the employing unit's  
9 duly approved election, are deemed to be performed  
10 entirely within the agency's state;
- 11 (16) Service performed by an individual who, pursuant to  
12 the Federal Economic Opportunity Act of 1964, is not  
13 subject to the federal laws relating to unemployment  
14 compensation;
- 15 (17) Service performed by an individual for an employing  
16 unit as a real estate salesperson, if all service  
17 performed by the individual for the employing unit is  
18 performed for remuneration solely by way of  
19 commission;
- 20 (18) Service performed by a registered sales representative  
21 for a registered travel agency, when the service





1 performed by the individual for the travel agent is  
2 performed for remuneration by way of commission;

3 (19) Service performed by a vacuum cleaner salesperson for  
4 an employing unit, if all services performed by the  
5 individual for the employing unit are performed for  
6 remuneration solely by way of commission;

7 (20) Service performed for a family-owned private  
8 corporation organized for profit that employs only  
9 members of the family who each own at least fifty per  
10 cent of the shares issued by the corporation; provided  
11 that:

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

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

16 (C) No more than two members of a family may be  
17 eligible per entity for exclusion under this  
18 paragraph;

19 (D) The exclusion shall be irrevocable for five  
20 years;

21 (E) The family-owned private corporation presents to  
22 the department proof that it has paid federal



1                   unemployment insurance taxes as required by  
2                   federal law; and

3                   (F) The election to be excluded from coverage shall  
4                   be effective the first day of the calendar  
5                   quarter in which the application and all  
6                   substantiating documents requested by the  
7                   department are filed with the department;

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

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

13                  None of the foregoing exclusions (1) to (22) shall apply to  
14 any service with respect to which a tax is required to be paid  
15 under any federal law imposing a tax against which credit may be  
16 taken for contributions required to be paid into a state  
17 unemployment fund or which as a condition for full tax credit  
18 against the tax imposed by the federal Unemployment Tax Act is  
19 required to be covered under this chapter."

20                  SECTION 4. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.

22                  SECTION 5. This Act shall take effect on July 1, 2007.



**Report Title:**

Employment Security Law.

**Description:**

The purpose of this bill is to provide the same type of unemployment insurance (UI) coverage in state law as in federal law for the exclusion of certain alien agricultural workers and to conform coverage of Indian tribe workers under state law to federal law. Effective July 1, 2007. (HB1379 HD1)

