

JAN 19 2007

S.B. NO. 197

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## A BILL FOR AN ACT

RELATING TO UNEMPLOYMENT INSURANCE.

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

1           SECTION 1. The legislature finds that current unemployment  
2 insurance laws mandate owners of "mom and pop" small businesses  
3 to pay the monthly premium for unemployment insurance. The  
4 legislature also finds that some of these business owners cannot  
5 collect unemployment compensation when businesses close  
6 "voluntarily". This creates a situation where parties, like  
7 "mom and pop" small business owners, cannot benefit from a  
8 system they pay into. In other words, these business owners  
9 subsidize a system they do not benefit from, an unjust and  
10 unfair situation. Circumstances such as economic hardship due  
11 to statewide economic downturn, with the aftermath of September  
12 11, 2001 being a drastic example, make the "voluntary" decision  
13 to close an involuntary one. Business failures can also occur  
14 when a big box business opens nearby, or due to natural  
15 disasters or acts of government. There are many other  
16 legitimate reasons for the closure of a business. The purpose of  
17 this Act is to allow owner-employees of corporations who own at



1 least fifty per cent of the interest in the corporation or  
2 members of a limited liability company where the member is an  
3 individual owning a distributed interest of at least fifty per  
4 cent in the limited liability company the ability to collect  
5 unemployment compensation that they have paid for when  
6 circumstances force these owner-employees or members to  
7 "voluntarily" close their businesses.

8 SECTION 2. Section 383-29, Hawaii Revised Statutes, is  
9 amended by amending subsection (a) to read as follows:

10 "§383-29 Eligibility for benefits. (a) An unemployed  
11 individual shall be eligible to receive benefits with respect to  
12 any week only if the department finds that:

13 (1) The individual has made a claim for benefits with  
14 respect to that week in accordance with rules the  
15 department may prescribe;

16 (2) The individual has registered for work at, and  
17 thereafter continued to report at, an employment  
18 office in accordance with rules the department may  
19 prescribe, except that the department, by rule, may  
20 waive or alter either or both of the requirements of  
21 this paragraph as to individuals attached to regular  
22 jobs and as to other types of cases or situations with



1           respect to which it finds that compliance with those  
2           requirements would be oppressive, or would be  
3           inconsistent with the purpose of this chapter;  
4           provided that no such rule shall conflict with section  
5           383-21;

6           (3) The individual is able to work and is available for  
7           work; provided that no claimant shall be considered  
8           ineligible with respect to any week of unemployment  
9           for failure to comply with this paragraph if the  
10          failure is due to an illness or disability, as  
11          evidenced by a physician's certificate, which occurs  
12          during an uninterrupted period of unemployment with  
13          respect to which benefits are claimed and no work  
14          which would have been suitable prior to the beginning  
15          of the illness and disability has been offered the  
16          claimant;

17          (A) In the case of an owner-employee who has  
18          ownership of at least fifty per cent in their  
19          corporation or a member of a limited liability  
20          company where the member is an individual owning  
21          a distributed interest of at least fifty per cent  
22          in the limited liability company, a reasonable



1           attempt to revive or restart a failed business,  
2           or to start a new business in an area for which  
3           the claimant owner-employee or member is  
4           reasonably fitted by training and experience  
5           shall meet the requirement of availability for  
6           purposes of collecting benefits. The director  
7           shall adopt rules pursuant to chapter 91  
8           necessary for the purposes of this subsection.

- 9           (4) The individual has been unemployed for a waiting  
10           period of one week within the individual's benefit  
11           year. No week shall be counted as a waiting period:  
12           (A) If benefits have been paid with respect thereto;  
13           (B) Unless the individual was eligible for benefits  
14           with respect thereto as provided in this section  
15           and section 383-30, except for the requirements  
16           of this paragraph;

- 17           (5) In the case of an individual whose benefit year  
18           begins:  
19           (A) On or after January 2, 1966, but prior to October  
20           1, 1989, the individual has had during the  
21           individual's base period a total of fourteen or  
22           more weeks of employment as defined in section



1 383-1 and has been paid wages for insured work  
2 during the individual's base period in an amount  
3 equal to at least thirty times the individual's  
4 weekly benefit amount as determined under section  
5 383-22(b). For the purposes of this  
6 subparagraph, wages for insured work shall  
7 include wages paid for services:

8 (i) Which were not employment, as defined in  
9 section 383-2 or pursuant to an election  
10 under section 383-77 prior to January 1,  
11 1978, at any time during the one-year period  
12 ending December 31, 1975; and

13 (ii) Which are agricultural labor as defined in  
14 section 383-9 except service excluded under  
15 section 383-7(1), or are domestic service  
16 except service excluded under section 383-  
17 7(2); except to the extent that assistance  
18 under Title II of the Emergency Jobs and  
19 Unemployment Assistance Act of 1974 was paid  
20 on the basis of those services;

21 (B) In the case of an individual whose benefit year  
22 begins on [On] and after October 1, 1989, to



1 January 4, 1992, the individual has been employed  
2 as defined in section 383-2 and has been paid  
3 wages for insured work during the individual's  
4 base period in an amount equal to not less than  
5 thirty times the individual's weekly benefit  
6 amount, as determined under section 383-22(b),  
7 and the individual has been paid wages for  
8 insured work during at least two quarters of the  
9 individual's base period; provided that no  
10 otherwise eligible individual who established a  
11 prior benefit year under this chapter or the  
12 unemployment compensation law of any other state,  
13 shall be eligible to receive benefits in a  
14 succeeding benefit year until, during the period  
15 following the beginning of the prior benefit  
16 year, that individual worked in covered  
17 employment for which wages were paid in an amount  
18 equal to at least five times the weekly benefit  
19 amount established for that individual in the  
20 succeeding benefit year; and

21 (C) In the case of an individual whose benefit year  
22 begins after [~~After~~] January 4, 1992, the



1 individual has been employed as defined in  
2 section 383-2 and has been paid wages for such  
3 insured work during the individual's base period  
4 in an amount equal to not less than twenty-six  
5 times the individual's weekly benefit amount, as  
6 determined under section 383-22(b), and the  
7 individual has been paid wages for insured work  
8 during at least two quarters of the individual's  
9 base period; provided that no otherwise eligible  
10 individual who established a prior benefit year  
11 under this chapter or the unemployment  
12 compensation law of any other state, shall be  
13 eligible to receive benefits in a succeeding  
14 benefit year until, during the period following  
15 the beginning of the prior benefit year, that  
16 individual worked in covered employment for which  
17 wages were paid in an amount equal to at least  
18 five times the weekly benefit amount established  
19 for that individual in the succeeding benefit  
20 year.

21 For purposes of this paragraph, wages and weeks of  
22 employment shall be counted for benefit purposes with



1           respect to any benefit year only if the benefit year  
2           begins subsequent to the dates on which the employing  
3           unit by which the wages or other remuneration as  
4           provided in the definition of weeks of employment in  
5           section 383-1 were paid has satisfied the conditions  
6           of section 383-1 with respect to becoming an employer.  
7           Effective for benefit years beginning January 1, 2004,  
8           and thereafter, if an individual fails to establish a  
9           valid claim for unemployment insurance benefits under  
10          this paragraph, the department shall make a  
11          redetermination of entitlement based upon the  
12          alternative base period as defined in section 383-1;  
13          provided further that the individual shall satisfy the  
14          conditions of section 383-29(a)(5) that apply to  
15          claims filed using the base period as defined in  
16          section 383-1 and the establishment of claims using  
17          the alternative base period shall be subject to the  
18          terms and conditions of sections 383-33 and 383-94;  
19          and

- 20          (6) Worker profiling. Effective November 24, 1994, an  
21          individual who has been referred to reemployment  
22          services pursuant to the profiling system under





1 section 383-92.5 participates in those services or in  
2 similar services. The individual may not be required  
3 to participate in reemployment services if the  
4 department determines the individual has completed  
5 those services, or there is justifiable cause for the  
6 claimant's failure to participate in those services.

7 For the purposes of this subsection, employment and wages  
8 used to establish a benefit year shall not thereafter be reused  
9 to establish another benefit year."

10 SECTION 3. Section 383-30, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "**§383-30 Disqualification for benefits.** An individual  
13 shall be disqualified for benefits:

14 (1) Voluntary separation. For any week prior to  
15 October 1, 1989, in which the individual has left work  
16 voluntarily without good cause, and continuing until  
17 the individual has, subsequent to the week in which  
18 the voluntary separation occurred, been employed for  
19 at least five consecutive weeks of employment. For  
20 the purposes of this paragraph, "weeks of employment"  
21 means all those weeks within each of which the  
22 individual has performed services in employment for



1 not less than two days or four hours per week, for one  
2 or more employers, whether or not such employers are  
3 subject to this chapter. For any week beginning on  
4 and after October 1, 1989, in which the individual has  
5 left the individual's work voluntarily without good  
6 cause, and continuing until the individual has,  
7 subsequent to the week in which the voluntary  
8 separation occurred, been paid wages in covered  
9 employment equal to not less than five times the  
10 individual's weekly benefit amount as determined under  
11 section 383-22(b).

12 An owner-employee of a corporation who brings about the  
13 owner-employee's unemployment by divesting  
14 ownership, leasing the business interest,  
15 terminating the business, or by other similar  
16 actions where the owner-employee is the party  
17 initiating termination of the employment  
18 relationship, has voluntarily left employment.  
19 The department shall consider a bona fide  
20 business failure as meeting the good cause  
21 requirement for collecting unemployment benefits  
22 in the case of owner-employees of a corporation



1           who has ownership of at least fifty per cent in  
2           their corporation or a member of a limited  
3           liability company where the member is an  
4           individual owning a distributed interest of at  
5           least fifty per cent in the limited liability  
6           company who initiate termination of the  
7           employment relationship as described in the  
8           immediately preceding sentence. The director  
9           shall adopt rules pursuant to chapter 91  
10           necessary for the purposes of this subsection,  
11           including the definition of "bona fide business  
12           failure".

- 13           (2) Discharge or suspension for misconduct. For any week  
14           prior to October 1, 1989, in which the individual has  
15           been discharged for misconduct connected with work,  
16           and continuing until the individual has, subsequent to  
17           the week in which the discharge occurred, been  
18           employed for at least five consecutive weeks of  
19           employment. For the week in which the individual has  
20           been suspended for misconduct connected with work and  
21           for not less than one or more than four consecutive  
22           weeks of unemployment which immediately follow such



1 week, as determined in each case in accordance with  
2 the seriousness of the misconduct. For the purposes  
3 of this paragraph, "weeks of employment" means all  
4 those weeks within each of which the individual has  
5 performed services in employment for not less than two  
6 days or four hours per week, for one or more  
7 employers, whether or not such employers are subject  
8 to this chapter. For any week beginning on and after  
9 October 1, 1989, in which the individual has been  
10 discharged for misconduct connected with work, and  
11 until the individual has, subsequent to the week in  
12 which the discharge occurred, been paid wages in  
13 covered employment equal to not less than five times  
14 the individual's weekly benefit amount as determined  
15 under section 383-22(b).

16 (3) Failure to apply for work, etc. For any week prior to  
17 October 1, 1989, in which the individual failed,  
18 without good cause, either to apply for available,  
19 suitable work when so directed by the employment  
20 office or any duly authorized representative of the  
21 department of labor and industrial relations, or to  
22 accept suitable work when offered and continuing until



1 the individual has, subsequent to the week in which  
2 the failure occurred, been employed for at least five  
3 consecutive weeks of employment. For the purposes of  
4 this paragraph, "weeks of employment" means all those  
5 weeks within each of which the individual has  
6 performed services in employment for not less than two  
7 days or four hours per week, for one or more  
8 employers, whether or not such employers are subject  
9 to this chapter. For any week beginning on and after  
10 October 1, 1989, in which the individual failed,  
11 without good cause, either to apply for available,  
12 suitable work when so directed by the employment  
13 office or any duly authorized representative of the  
14 department of labor and industrial relations, or to  
15 accept suitable work when offered until the individual  
16 has, subsequent to the week in which the failure  
17 occurred, been paid wages in covered employment equal  
18 to not less than five times the individual's weekly  
19 benefit amount as determined under section 383-22(b).

20 (A) In determining whether or not any work is  
21 suitable for an individual there shall be  
22 considered among other factors and in addition to



1 those enumerated in paragraph (3)(B), the degree  
2 of risk involved to the individual's health,  
3 safety, and morals, the individual's physical  
4 fitness and prior training, the individual's  
5 experience and prior earnings, the length of  
6 unemployment, the individual's prospects for  
7 obtaining work in the individual's customary  
8 occupation, the distance of available work from  
9 the individual's residence, and prospects for  
10 obtaining local work. The same factors so far as  
11 applicable shall be considered in determining the  
12 existence of good cause for an individual's  
13 voluntarily leaving work under paragraph (1).

14 (B) Notwithstanding any other provisions of this  
15 chapter, no work shall be deemed suitable and  
16 benefits shall not be denied under this chapter  
17 to any otherwise eligible individual for refusing  
18 to accept new work under any of the following  
19 conditions:

20 (i) If the position offered is vacant due  
21 directly to a strike, lockout, or other  
22 labor dispute;



1 (ii) If the wages, hours, or other conditions of  
2 the work offered are substantially less  
3 favorable to the individual than those  
4 prevailing for similar work in the locality;

5 (iii) If as a condition of being employed the  
6 individual would be required to join a  
7 company union or to resign from or refrain  
8 from joining any bona fide labor  
9 organization.

10 (4) Labor dispute. For any week with respect to which it  
11 is found that unemployment is due to a stoppage of  
12 work which exists because of a labor dispute at the  
13 factory, establishment, or other premises at which the  
14 individual is or was last employed; provided that this  
15 paragraph shall not apply if it is shown that:

16 (A) The individual is not participating in or  
17 directly interested in the labor dispute which  
18 caused the stoppage of work; and

19 (B) The individual does not belong to a grade or  
20 class of workers of which, immediately before the  
21 commencement of the stoppage, there were members  
22 employed at the premises at which the stoppage



1 occurs, any of whom are participating in or  
2 directly interested in the dispute; provided that  
3 if in any case separate branches of work, which  
4 are commonly conducted as separate businesses in  
5 separate premises, are conducted in separate  
6 departments of the same premises, each such  
7 department shall, for the purpose of this  
8 paragraph, be deemed to be a separate factory,  
9 establishment, or other premises.

- 10 (5) If the department finds that the individual has within  
11 the twenty-four calendar months immediately preceding  
12 any week of unemployment made a false statement or  
13 representation of a material fact knowing it to be  
14 false or knowingly failed to disclose a material fact  
15 to obtain any benefits not due under this chapter, the  
16 individual shall be disqualified for benefits  
17 beginning with the week in which the department makes  
18 the determination and for each consecutive week during  
19 the current and subsequent twenty-four calendar months  
20 immediately following such determination, and such  
21 individual shall not be entitled to any benefit under  
22 this chapter for the duration of such period; provided





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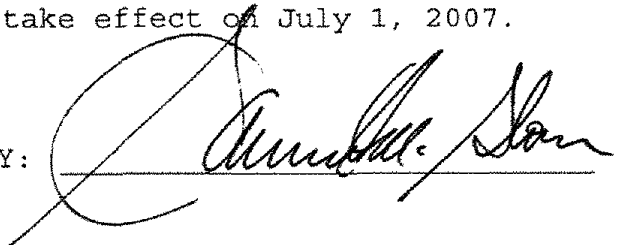
1           that no disqualification shall be imposed if  
2           proceedings have been undertaken against the  
3           individual under section 383-141.  
4       (6) Other unemployment benefits. For any week or part of  
5           a week with respect to which the individual has  
6           received or is seeking unemployment benefits under any  
7           other employment security law, but this paragraph  
8           shall not apply (A) if the appropriate agency finally  
9           determines that the individual is not entitled to  
10          benefits under such other law, or (B) if benefits are  
11          payable to the individual under an act of Congress  
12          which has as its purpose the supplementation of  
13          unemployment benefits under a state law."

14       SECTION 4. New statutory material is underscored.

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

16

INTRODUCED BY:



**SB 197**

**Report Title:**

Unemployment insurance

**Description:**

Provides that an owner-employee of a corporation or a member of a limited liability company owing a distributed interest of at least fifty per cent may collect unemployment benefits in circumstances where "voluntary" closure of a business is necessary. Allows the director to make rules with respect to hardship and work availability.

