

JAN 24 2007

A BILL FOR AN ACT

RELATING TO HUMAN SERVICES.

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

1 SECTION 1. The legislature finds that individuals who
2 provide attendant care and day care services authorized by the
3 department of human services under the Social Security Act, as
4 amended, are excluded from "employment" under chapters 386, 392,
5 and 393, Hawaii Revised Statutes.

6 The legislature finds that individuals who provide
7 attendant care and day care services authorized by the
8 department of human services under the Social Security Act, as
9 amended, should be excluded from "employment" for the purposes
10 of chapter 383, Hawaii Revised Statutes. The legislature finds
11 that if these individuals are not excluded, then the social
12 service payments must be upwardly adjusted to include the cost
13 of employee benefits for these individuals.

14 The purpose of this Act is to clarify the already existing
15 exclusions for these social service providers under chapters
16 386, 392, and 393, Hawaii Revised Statutes, without creating any
17 new exclusions.



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 "Recipient of social service payments' means persons,
5 including corporations and private agencies, that contract with
6 the department of human services to provide attendant care and
7 day care authorized under the Social Security Act and who
8 receive social service payments."

9 SECTION 3. Section 383-7, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§383-7 Excluded service.** "Employment" shall not include
12 the following service:

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

16 (A) Which, during each calendar quarter in both the
17 current and the preceding calendar years, paid
18 less than \$20,000 in cash remuneration to
19 individuals employed in agricultural labor; and

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



- 1 (i) No more than nineteen calendar weeks,
2 whether consecutive or not, in which
3 agricultural labor was performed by its
4 employees; or
- 5 (ii) No more than nine individuals in its employ
6 performing agricultural labor in any one
7 calendar week, whether or not the same
8 individuals performed the labor in each
9 week;
- 10 (2) Domestic service in a private home, local college
11 club, or local chapter of a college fraternity or
12 sorority as set forth in section 3306(c)(2) of the
13 Internal Revenue Code of 1986, as amended;
- 14 (3) Service not in the course of the employing unit's
15 trade or business performed in any calendar quarter by
16 an individual, unless the cash remuneration paid for
17 the service is \$50 or more and the service is
18 performed by an individual who is regularly employed
19 by the employing unit to perform the service. For the
20 purposes of this paragraph, an individual shall be
21 deemed to be regularly employed to perform service not



1 in the course of an employing unit's trade or business
2 during a calendar quarter only if:

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

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

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

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



- 1 (i) The service performed in connection with a
- 2 vessel of more than ten net tons (determined
- 3 in the manner provided for determining the
- 4 register tonnage of merchant vessels under
- 5 the laws of the United States);
- 6 (ii) The service performed in connection with a
- 7 vessel of ten net tons or less (determined
- 8 in the manner provided for determining the
- 9 register tonnage of merchant vessels under
- 10 the laws of the United States) by an
- 11 individual who is employed by an employing
- 12 unit which had in its employ one or more
- 13 individuals performing the service for some
- 14 portion of a day in each of twenty calendar
- 15 weeks all occurring, whether consecutive or
- 16 not, in either the current or the preceding
- 17 calendar year; and
- 18 (iii) Service performed in connection with the
- 19 catching or taking of salmon or halibut for
- 20 commercial purposes;
- 21 (5) Service performed by an individual in the employ of
- 22 the individual's son, daughter, or spouse, and service



1 performed by a child under the age of twenty-one in
2 the employ of the child's father or mother;

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



- 1 the same period as is provided in section 383-76 with
2 respect to contributions erroneously collected;
- 3 (7) Service performed in the employ of any other state, or
4 any political subdivision thereof, or any
5 instrumentality of any one or more of the foregoing
6 which is wholly owned by one or more states or
7 political subdivisions; and any service performed in
8 the employ of any instrumentality of one or more other
9 states or their political subdivisions to the extent
10 that the instrumentality is, with respect to the
11 service, exempt from the tax imposed by section 3301
12 of the Internal Revenue Code of 1986, as amended;
- 13 (8) Service with respect to which unemployment
14 compensation is payable under an unemployment system
15 established by an act of Congress;
- 16 (9) (A) Service performed in any calendar quarter in the
17 employ of any organization exempt from income tax
18 under section 501(a) of the federal Internal
19 Revenue Code (other than an organization
20 described in section 401(a) or under section 521
21 of the Code), if:



- 1 (i) The remuneration for the service is less
- 2 than \$50; or
- 3 (ii) The service is performed by a fully
- 4 ordained, commissioned, or licensed minister
- 5 of a church in the exercise of the
- 6 minister's ministry or by a member of a
- 7 religious order in the exercise of duties
- 8 required by the order;
- 9 (B) Service performed in the employ of a school,
- 10 college, or university, if the service is
- 11 performed by a student who is enrolled and is
- 12 regularly attending classes at the school,
- 13 college, or university; or
- 14 (C) Service performed by an individual who is
- 15 enrolled at a nonprofit or public educational
- 16 institution which normally maintains a regular
- 17 faculty and curriculum and normally has a
- 18 regularly organized body of students in
- 19 attendance at the place where its educational
- 20 activities are carried on as a student in a full-
- 21 time program, taken for credit at such
- 22 institution, which combines academic instruction



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

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

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

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

17 (B) If the United States Secretary of State has
18 certified or certifies to the United States
19 Secretary of the Treasury that the foreign
20 government, with respect to whose instrumentality
21 exemption is claimed, grants an equivalent
22 exemption with respect to similar service



1 performed in the foreign country by employees of
2 the United States government and of
3 instrumentalities thereof;

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

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

18 (14) Service performed by an individual under the age of
19 eighteen in the delivery or distribution of newspapers
20 or shopping news, not including delivery or
21 distribution to any point for subsequent delivery or
22 distribution;



1 (15) Service covered by an arrangement between the
2 department and the agency charged with the
3 administration of any other state or federal
4 unemployment compensation law pursuant to which all
5 services performed by an individual for an employing
6 unit during the period covered by the employing unit's
7 duly approved election, are deemed to be performed
8 entirely within the agency's state;

9 (16) Service performed by an individual who, pursuant to
10 the Federal Economic Opportunity Act of 1964, is not
11 subject to the federal laws relating to unemployment
12 compensation;

13 (17) Service performed by an individual for an employing
14 unit as a real estate salesperson, if all service
15 performed by the individual for the employing unit is
16 performed for remuneration solely by way of
17 commission;

18 (18) Service performed by a registered sales representative
19 for a registered travel agency, when the service
20 performed by the individual for the travel agent is
21 performed for remuneration by way of commission;



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

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

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

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

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

17 (D) The exclusion shall be irrevocable for five
18 years;

19 (E) The family-owned private corporation presents to
20 the department proof that it has paid federal
21 unemployment insurance taxes as required by
22 federal law; and



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

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

9 (22) Service performed by an election official or election
10 worker as defined in section 3309(b)(3)(F) of the
11 Internal Revenue Code of 1986, as amended[-]; and

12 (23) Domestic, including attendant care, and day care
13 services authorized by the department of human
14 services under the Social Security Act, as amended,
15 performed by an individual in the employ of a
16 recipient of social service payments.

17 None of the foregoing exclusions (1) to (22) shall apply to
18 any service with respect to which a tax is required to be paid
19 under any federal law imposing a tax against which credit may be
20 taken for contributions required to be paid into a state
21 unemployment fund or which as a condition for full tax credit



1 against the tax imposed by the federal Unemployment Tax Act is
2 required to be covered under this chapter."

3 SECTION 4. Section 386-1, Hawaii Revised Statutes, is
4 amended by adding a new definition to be appropriately inserted
5 and to read as follows:

6 "Recipient of social service payments' means persons,
7 including corporations and private agencies, that contract with
8 the department of human services to provide attendant care and
9 day care authorized under the Social Security Act and who
10 receive social service payments."

11 SECTION 5. Section 386-1, Hawaii Revised Statutes, is
12 amended by amending the definition of "employer" to read as
13 follows:

14 "Employer" means any person having one or more persons in
15 the person's employment. It includes the legal representative
16 of a deceased employer and the State, any county or political
17 subdivision of the State, and any other public entity within the
18 State. It does not include a recipient of social service
19 payments."

20 SECTION 6. Section 392-3, Hawaii Revised Statutes, is
21 amended by adding a new definition to be appropriately inserted
22 and to read as follows:



1 "Recipient of social service payments' means persons,
2 including corporations and private agencies, that contract with
3 the department of human services to provide attendant care and
4 day care authorized under the Social Security Act and who
5 receive social service payments."

6 SECTION 7. Section 392-3, Hawaii Revised Statutes, is
7 amended by amending the definition of "employer" to read as
8 follows:

9 "Employer" means any individual or type of organization,
10 including the State, any of its political subdivisions, any
11 instrumentality of the State or its political subdivisions, any
12 partnership, association, trust, estate, joint stock company,
13 insurance company, or corporation, whether domestic or foreign,
14 or receiver or trustee in bankruptcy, or the legal
15 representative of a deceased person, who has one or more
16 individuals in employment during any day or portion of a day.
17 The term "employer" does not include a recipient of social
18 service payments."

19 SECTION 8. Section 393-3, Hawaii Revised Statutes, is
20 amended by adding a new definition to be appropriately inserted
21 and to read as follows:



1 "Recipient of social service payments' means persons,
2 including corporations and private agencies, that contract with
3 the department of human services to provide attendant care and
4 day care authorized under the Social Security Act and who
5 receive social service payments."

6 SECTION 9. Section 393-3, Hawaii Revised Statutes, is
7 amended by amending the definition of "employer" to read as
8 follows:

9 "(3) "Employer" means any individual or type of
10 organization, including any partnership, association,
11 trust, estate, joint stock company, insurance company,
12 or corporation, whether domestic or foreign, a debtor
13 in possession or receiver or trustee in bankruptcy, or
14 the legal representative of a deceased person, who has
15 one or more regular employees in the employer's
16 employment. "Employer" does not include:

17 (A) The State, any of its political subdivisions, or
18 any instrumentality of the State or its political
19 subdivisions;

20 (B) The United States government or any
21 instrumentality of the United States;



1 (C) Any other state or political subdivision thereof
2 or instrumentality of such state or political
3 subdivision;

4 (D) Any foreign government or instrumentality wholly
5 owned by a foreign government, if (i) the service
6 performed in its employ is of a character similar
7 to that performed in foreign countries by
8 employees of the United States government or of
9 an instrumentality thereof, and (ii) the United
10 States Secretary of State has certified or
11 certifies to the United States Secretary of the
12 Treasury that the foreign government, with
13 respect to whose instrumentality exemption is
14 claimed, grants an equivalent exemption with
15 respect to similar service performed in the
16 foreign country by employees of the United States
17 government and of instrumentalities thereof[-];

18 or

19 (E) A recipient of social service payments."

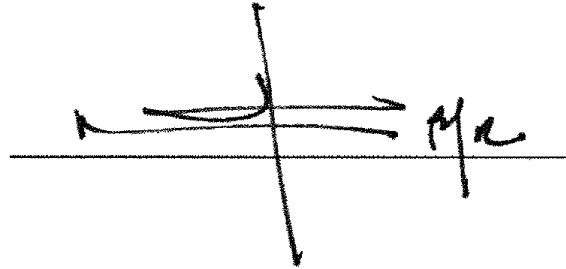
20 SECTION 10. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 11. This Act, upon its approval, shall take effect
2 retroactive to January 1, 2001.

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INTRODUCED BY:

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Report Title:

Attendant Care

Description:

Clarifies status of attendant care and day care services to labor statutes.

