

JAN 19 2007

A BILL FOR AN ACT

RELATING TO EMPLOYMENT SECURITY.

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

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

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

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

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

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

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



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



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

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

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

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



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

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

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

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



1 from the contributions imposed by this chapter, except
2 that to the extent that the Congress of the United
3 States permits states to require any instrumentalities
4 of the United States to make payments into an
5 unemployment fund under a state unemployment
6 compensation law, all of the provisions of this
7 chapter shall apply to those instrumentalities, and to
8 services performed for those instrumentalities, in the
9 same manner, to the same extent, and on the same terms
10 as to all other employers, employing units,
11 individuals, and services; provided that if this State
12 is not certified for any year by the Secretary of
13 Labor under section 3304(c) of the federal Internal
14 Revenue Code^[7] of 1986, as amended, the payments
15 required of those instrumentalities with respect to
16 that year shall be refunded by the department of labor
17 and industrial relations from the fund in the same
18 manner and within the same period as is provided in
19 section 383-76 with respect to contributions
20 erroneously collected;

21 (7) Service performed in the employ of any other state, or
22 any political subdivision thereof, or any



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

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

12 (9) (A) Service performed in any calendar quarter in the
13 employ of any organization exempt from income tax
14 under section 501(a) of the federal Internal
15 Revenue Code of 1986, as amended (other than an
16 organization described in section 401(a) or under
17 section 521 of the Code), if:

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

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



1 minister's ministry or by a member of a
2 religious order in the exercise of duties
3 required by the order;

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

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



1 service performed in a program established for or
2 on behalf of an employer or group of employers;

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

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

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

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



- 1 (12) Service performed as a student nurse in the employ of
2 a hospital or a nurses' training school by an
3 individual who is enrolled and is regularly attending
4 classes in a nurses' training school chartered or
5 approved pursuant to state law; and service performed
6 as an intern in the employ of a hospital by an
7 individual who has completed a four-year course in a
8 medical school chartered or approved pursuant to state
9 law;
- 10 (13) Service performed by an individual for an employing
11 unit as an insurance producer, if all service
12 performed by the individual for the employing unit is
13 performed for remuneration solely by way of
14 commission;
- 15 (14) Service performed by an individual under the age of
16 eighteen in the delivery or distribution of newspapers
17 or shopping news, not including delivery or
18 distribution to any point for subsequent delivery or
19 distribution;
- 20 (15) Service covered by an arrangement between the
21 department and the agency charged with the
22 administration of any other state or federal



1 unemployment compensation law pursuant to which all
2 services performed by an individual for an employing
3 unit during the period covered by the employing unit's
4 duly approved election, are deemed to be performed
5 entirely within the agency's state;

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

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

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

20 (19) Service performed by a vacuum cleaner salesperson for
21 an employing unit, if all services performed by the



1 individual for the employing unit are performed for
2 remuneration solely by way of commission;

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

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

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

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

15 (D) The exclusion shall be irrevocable for five
16 years;

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

21 (F) The election to be excluded from coverage shall
22 be effective the first day of the calendar



1 quarter in which the application and all
2 substantiating documents requested by the
3 department are filed with the department;

4 (21) Service performed for a family-owned private
5 corporation organized for profit that employs only
6 members of the family and in which only one family
7 member owns one hundred per cent of the shares issued
8 by the corporation; provided that:

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

11 (B) The election for exclusion shall apply to only
12 the shareholder;

13 (C) The exclusion shall be irrevocable for five
14 years;

15 (D) The family-owned private corporation presents to
16 the department proof that it has paid federal
17 unemployment insurance taxes as required by
18 federal law; and

19 (E) The election to be excluded from coverage shall
20 be effective the first day of the calendar
21 quarter in which the application and all



1 substantiating documents requested by the
2 department are filed with the department;

3 [~~21~~] (22) Service performed by a direct seller as defined
4 in section 3508 of the Internal Revenue Code of 1986,
5 as amended; and

6 [~~22~~] (23) Service performed by an election official or
7 election worker as defined in section 3309(b)(3)(F) of
8 the Internal Revenue Code of 1986, as amended.

9 None of the foregoing exclusions (1) to [~~22~~] (23) shall
10 apply to any service with respect to which a tax is required to
11 be paid under any federal law imposing a tax against which
12 credit may be taken for contributions required to be paid into a
13 state unemployment fund or which as a condition for full tax
14 credit against the tax imposed by the federal Unemployment Tax
15 Act is required to be covered under this chapter."

16 SECTION 2. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: 





Report Title:

Unemployment Insurance; Family-owned Corporations

Description:

Provides family-owned corporations with only one stockholder with the option to participate in the State's unemployment insurance program.

