

JAN 23 2009

A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

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

1 SECTION 1. Section 383-7, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "§383-7 Excluded service. (a) "Employment" shall not
4 include:

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) That, 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 to
13 in subparagraph (C); and

14 (B) That 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



1 employees, including labor performed by an
2 alien referred to in subparagraph (C); or
3 (ii) No more than nine individuals in its employ
4 performing agricultural labor in any one
5 calendar week, whether or not the same
6 individuals performed the labor in each
7 week, including labor performed by an alien
8 referred to in subparagraph (C); or
9 (C) If such agricultural labor is performed by an
10 individual who is an alien admitted to the United
11 States to perform agricultural labor pursuant to
12 Sections 214(c) and 101(a)(15)(H) of the
13 Immigration and Nationality Act;
14 (2) Domestic service in a private home, local college
15 club, or local chapter of a college fraternity or
16 sorority as set forth in section 3306(c)(2) of the
17 Internal Revenue Code of 1986, as amended;
18 (3) Service not in the course of the employing unit's
19 trade or business performed in any calendar quarter by
20 an individual, unless the cash remuneration paid for
21 the service is \$50 or more and the service is
22 performed by an individual who is regularly employed



1 by the employing unit to perform the service. For the
2 purposes of this paragraph, an individual shall be
3 deemed to be regularly employed to perform service not
4 in the course of an employing unit's trade or business
5 during a calendar quarter, if:

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

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

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

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



1 or other aquatic forms of animal and vegetable
2 life, including service performed as an ordinary
3 incident thereto, except:

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

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



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



1 Labor under section 3304(c) of the federal Internal
2 Revenue Code, the payments required of those
3 instrumentalities with respect to that year shall be
4 refunded by the department of labor and industrial
5 relations from the fund in the same manner and within
6 the same period as is provided in section 383-76 with
7 respect to contributions erroneously collected;

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

18 (8) Service with respect to which unemployment
19 compensation is payable under an unemployment system
20 established by an act of Congress;

21 (9) (A) Service performed in any calendar quarter in the
22 employ of any organization exempt from income tax



1 under section 501(a) of the federal Internal
2 Revenue Code (other than an organization
3 described in section 401(a) or under section 521
4 of the Internal Revenue Code), if:

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

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

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

18 (C) Service performed by an individual who is
19 enrolled at a nonprofit or public educational
20 institution which normally maintains a regular
21 faculty and curriculum and normally has a
22 regularly organized body of students in



1 attendance at the place where its educational
2 activities are carried on as a student in a full-
3 time program, taken for credit at the
4 institution, which combines academic instruction
5 with work experience, if the service is an
6 integral part of such program, and the
7 institution has so certified to the employer,
8 except that this subparagraph shall not apply to
9 service performed in a program established for or
10 on behalf of an employer or group of employers;

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

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

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

20 (B) If the United States Secretary of State has
21 certified or certifies to the United States
22 Secretary of the Treasury that the foreign



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

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

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

21 (14) Service performed by an individual under the age of
22 eighteen in the delivery or distribution of newspapers



1 or shopping news, not including delivery or
2 distribution to any point for subsequent delivery or
3 distribution;

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

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

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

21 (18) Service performed by a registered sales representative
22 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;
- 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 (23) Service performed by an inmate or any person committed
14 to a penal institution[~~;~~and];
- 15 (24) Domestic in-home and community-based services for
16 persons with developmental disabilities and mental
17 retardation under the medicaid home and
18 community-based services program pursuant to title 42
19 Code of Federal Regulations sections 440.180 and
20 441.300, and title 42 Code of Federal Regulations,
21 part 434, subpart A, as amended, and identified as
22 chore, personal assistance and habilitation,



1 residential habilitation, supported employment,
 2 respite, and skilled nursing services, as the terms
 3 are defined and amended from time to time by the
 4 department of human services, performed by an
 5 individual whose services are contracted by a
 6 recipient of social service payments and who
 7 voluntarily agrees in writing to be an independent
 8 contractor of the recipient of social service payments
 9 unless the individual is an employee and not an
 10 independent contractor of the recipient of social
 11 service payments under the Federal Unemployment Tax
 12 Act [-]; and

13 (25) Service performed by an individual participating in
 14 the work incentives or employment support programs of
 15 the Social Security Administration while receiving
 16 social security benefits."

17 SECTION 2. Section 386-1, Hawaii Revised Statutes, is
 18 amended by amending the definition of "employment" to read as
 19 follows:

20 "Employment" means any service performed by an individual
 21 for another person under any contract of hire or apprenticeship,
 22 express or implied, oral or written, whether lawfully or



1 unlawfully entered into. It includes service of public
2 officials, whether elected or under any appointment or contract
3 of hire express or implied.

4 "Employment" does not include:

5 (1) Service for a religious, charitable, educational, or
6 nonprofit organization if performed in a voluntary or
7 unpaid capacity;

8 (2) Service for a religious, charitable, educational, or
9 nonprofit organization if performed by a recipient of
10 aid therefrom and the service is incidental to or in
11 return for the aid received;

12 (3) Service for a school, college, university, college
13 club, fraternity, or sorority if performed by a
14 student who is enrolled and regularly attending
15 classes and in return for board, lodging, or tuition
16 furnished, in whole or in part;

17 (4) Service performed by a duly ordained, commissioned, or
18 licensed minister, priest, or rabbi of a church in the
19 exercise of the minister's, priest's, or rabbi's
20 ministry or by a member of a religious order in the
21 exercise of nonsecular duties required by the order;



- 1 (5) Service performed by an individual for another person
2 solely for personal, family, or household purposes if
3 the cash remuneration received is less than \$225
4 during the current calendar quarter and during each
5 completed calendar quarter of the preceding twelve-
6 month period;
- 7 (6) Domestic, in-home and community-based services for
8 persons with developmental disabilities and mental
9 retardation under the medicaid home and
10 community-based services program pursuant to title 42
11 Code of Federal Regulations sections 440.180 and
12 441.300, and title 42 Code of Federal Regulations,
13 part 434, subpart A, as amended, and identified as
14 chore, personal assistance and habilitation,
15 residential habilitation, supported employment,
16 respite, and skilled nursing services, as the terms
17 are defined by the department of human services,
18 performed by an individual whose services are
19 contracted by a recipient of social service payments
20 and who voluntarily agrees in writing to be an
21 independent contractor of the recipient of social
22 service payments;



- 1 (7) Service performed without wages for a corporation
2 without employees by a corporate officer in which the
3 officer is at least a twenty-five per cent
4 stockholder;
- 5 (8) Service performed by an individual for a corporation
6 if the individual owns at least fifty per cent of the
7 corporation; provided that no employer shall require
8 an employee to incorporate as a condition of
9 employment; [and]
- 10 (9) Service performed by an individual for another person
11 as a real estate salesperson or as a real estate
12 broker, if all the service performed by the individual
13 for the other person is performed for remuneration
14 solely by way of commission[-]; and
- 15 (10) Service performed by an individual participating in
16 the work incentives or employment support programs of
17 the Social Security Administration while receiving
18 social security benefits.

19 As used in this paragraph "religious, charitable, educational,
20 or nonprofit organization" means a corporation, unincorporated
21 association, community chest, fund, or foundation organized and
22 operated exclusively for religious, charitable, or educational



1 purposes, no part of the net earnings of which inure to the
2 benefit of any private shareholder or individual."

3 SECTION 3. Section 392-5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§392-5 Excluded services. "Employment" as defined in
6 section 392-3 shall not include:

- 7 (1) Domestic service in a private home, local college
8 club, or local chapter of a college fraternity or
9 sorority, performed in any calendar quarter by an
10 individual if the cash remuneration paid by the
11 employer for such service is less than \$225;
- 12 (2) Service not in the course of the employer's trade or
13 business performed in any calendar quarter by an
14 individual, unless the cash remuneration paid for the
15 service is \$50 or more and the service is performed by
16 an individual who is regularly employed by the
17 employer to perform the service. An individual shall
18 be deemed to be regularly employed to perform service
19 not in the course of the employer's trade or business
20 during a calendar quarter only if:



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



1 tonnage of merchant vessels under the laws of the
2 United States);

3 (B) The service performed in connection with a vessel
4 of ten net tons or less (determined in the manner
5 provided for determining the register tonnage of
6 merchant vessels under the laws of the United
7 States) by an individual who is employed by an
8 employer who, for some portion in each of twenty
9 different calendar weeks in either the current or
10 preceding calendar year, had in the employer's
11 employ one or more persons performing the
12 service, whether or not the weeks were
13 consecutive and whether or not the same
14 individuals performed the service in each week;
15 and

16 (C) The service performed in connection with the
17 catching or taking of salmon or halibut for
18 commercial purposes;

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



- 1 (6) Service performed in the employ of the United States
2 government or an instrumentality of the United States
3 exempt under the Constitution of the United States
4 from the contributions imposed by this chapter;
- 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 that is wholly owned by one or more such 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 such
13 service, exempt from the tax imposed by section 3301
14 of the Internal Revenue Code of 1986;
- 15 (8) Service with respect to which temporary disability
16 compensation is payable for sickness under a temporary
17 disability insurance system established by an act of
18 Congress;
- 19 (9) Service performed in any calendar quarter in the
20 employ of any nonprofit organization exempt from
21 income tax under section 501 of the Internal Revenue
22 Code of 1986, if:



- 1 (A) The remuneration for such service is less than
- 2 \$50;
- 3 (B) The service is performed by a student who is
- 4 enrolled and is regularly attending classes at a
- 5 school, college, or university;
- 6 (C) The service is performed by a duly ordained,
- 7 commissioned, or licensed minister or licensed
- 8 minister of a church in the exercise of the
- 9 minister's ministry or by a member of a religious
- 10 order in the exercise of nonsecular duties
- 11 required by the order; or
- 12 (D) The service is performed for a church by an
- 13 employee who fails to meet the eligibility
- 14 requirements of section 392-25;
- 15 (10) Service performed in the employ of a voluntary
- 16 employees' beneficiary association providing for the
- 17 payment of life, sick, accident, or other benefits to
- 18 the members of the association or their dependents,
- 19 if:
- 20 (A) No part of its net earnings inures (other than
- 21 through such payments) to the benefit of any
- 22 private shareholder or individual; and



1 (B) Eighty-five per cent or more of its income
2 consists of amounts collected from members and
3 amounts contributed by the employer of the
4 members for the sole purpose of making such
5 payments and meeting expenses;

6 (11) Service performed in the employ of a voluntary
7 employees' beneficiary association providing for the
8 payment of life, sick, accident, or other benefits to
9 the members of the association or their dependents or
10 their designated beneficiaries, if:

11 (A) Admission to membership in the association is
12 limited to individuals who are officers or
13 employees of the United States government; and

14 (B) No part of the net earnings of the association
15 inures (other than through such payments) to the
16 benefit of any private shareholder or individual;

17 (12) Service performed in the employ of a school, college,
18 or university, not exempt from income tax under
19 section 501 of the Internal Revenue Code of 1986, if
20 the service is performed by a student who is enrolled
21 and is regularly attending classes at the school,
22 college, or university;



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



- 1 medical school chartered or approved pursuant to state
2 law;
- 3 (15) Service performed by an individual for an employer as
4 an insurance producer, if all such service performed
5 by the individual for the employer is performed for
6 remuneration solely by way of commission;
- 7 (16) Service performed by an individual under the age of
8 eighteen in the delivery or distribution of newspapers
9 or shopping news, not including delivery or
10 distribution to any point for subsequent delivery or
11 distribution;
- 12 (17) Service covered by an arrangement between the
13 department and the agency charged with the
14 administration of any other state or federal
15 unemployment compensation law pursuant to which all
16 services performed by an individual for an employer
17 during the period covered by the employer's duly
18 approved election, are deemed to be performed entirely
19 within the agency's state;
- 20 (18) Service performed by an individual who, pursuant to
21 the Federal Economic Opportunity Act of 1964, is not



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



1 (21) Service performed by an individual for an employer as
2 a real estate salesperson or as a real estate broker,
3 if all the service performed by the individual for the
4 employer is performed for remuneration solely by way
5 of commission[-]; or

6 (22) Service performed by an individual participating in
7 the work incentives or employment support programs of
8 the Social Security Administration while receiving
9 social security benefits."

10 SECTION 4. Section 393-5, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§393-5 Excluded services. "Employment" as defined in
13 section 393-3 does not include:

14 (1) Service performed by an individual in the employ of an
15 employer who, by the laws of the United States, is
16 responsible for care and cost in connection with such
17 service;

18 (2) Service performed by an individual in the employ of
19 the individual's spouse, son, or daughter, and service
20 performed by an individual under the age of twenty-one
21 in the employ of the individual's father or mother;



- 1 (3) Service performed in the employ of a voluntary
2 employee's beneficiary association providing for the
3 payment of life, sick, accident, or other benefits to
4 the members of the association or their dependents or
5 their designated beneficiaries, if:
- 6 (A) Admission to membership in the association is
7 limited to individuals who are officers or
8 employees of the United States government; and
- 9 (B) No part of the net earnings of the association
10 inures (other than through such payments) to the
11 benefits of any private shareholder or
12 individual;
- 13 (4) Service performed by an individual for an employer as
14 an insurance agent or as an insurance solicitor if all
15 service performed by the individual for the employer
16 is performed for remuneration by way of commission;
- 17 (5) Service performed by an individual for an employer as
18 a real estate salesperson or as a real estate broker
19 if all service performed by the individual for the
20 employer is performed for remuneration by way of
21 commission;



- 1 (6) Service performed by an individual who, pursuant to
2 the Federal Economic Opportunity Act of 1964, is not
3 subject to the provisions of law relating to federal
4 employment, including unemployment compensation; ~~and~~
- 5 (7) Domestic in-home and community-based services for
6 persons with developmental disabilities and mental
7 retardation under the medicaid home and community-
8 based services program pursuant to title 42 Code of
9 Federal Regulations sections 440.180 and 441.300, and
10 title 42 Code of Federal Regulations, part 434,
11 subpart A, as amended, and identified as chore,
12 personal assistance and habilitation, residential
13 habilitation, supported employment, respite, and
14 skilled nursing services, as the terms are defined and
15 amended from time to time by the department of human
16 services, performed by an individual whose services
17 are contracted by a recipient of social service
18 payments and who voluntarily agrees in writing to be
19 an independent contractor of the recipient of social
20 service payments [-]; and
- 21 (8) Service performed by an individual participating in
22 the work incentives or employment support programs of



Report Title:

Employment; Exemptions

Description:

Exempts from employment-related laws service performed by an individual who participates in a work incentives or employment support program of the Social Security Administration while receiving social security disability benefits. Requires reporting by the department of labor and industrial relations.

