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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 the establishment of  
2 a state shared work plan, or workshare program, will discourage  
3 employers from terminating any one employee and instead  
4 encourage them to merely reduce the working hours of more than  
5 one employee. The workshare program will also enable those  
6 employees whose working hours are reduced to receive partial  
7 unemployment benefits.

8           The legislature further finds that by discouraging  
9 reductions in force, a workshare program will enable employers  
10 to maintain their present levels of production capability,  
11 although at lower levels of activity, and to quickly capitalize  
12 on those levels of capability once the economy rebounds. The  
13 legislature further finds that a workshare program will be  
14 particularly beneficial to small businesses, which account for  
15 roughly twenty-five per cent of all jobs in the State and  
16 generated about forty per cent of all job growth during the last  
17 economic expansion between 2003 and 2007.

18           The purpose of this Act is to do as follows:



- 1 (1) Establish a permanent workshare plan program, which is
- 2 a partial unemployment program under which employers
- 3 volunteer to reduce the working hours of their
- 4 employees as an alternative to terminating them; and
- 5 (2) Repeal the temporary partial unemployment system
- 6 established under Act 170, Session Laws of Hawaii
- 7 2009.

8 Part I.

9 Establishment of WorkShare Program

10 SECTION 2. Chapter 383, Hawaii Revised Statutes, is

11 amended by adding a new part to be appropriately designated and

12 to read as follows:

13 "PART . WORKSHARE PROGRAM

14 §383-A Plan application and approval. (a) Any employer

15 shall be eligible to submit a workshare plan to the director for

16 the director's approval, provided that:

- 17 (1) The employer has at least two but not more than
- 18 twenty-five employees in its employing unit at the
- 19 time of application and before approval; and
- 20 (2) The employer has no other workshare plan concurrently
- 21 in effect at the time of application.



1 (b) An eligible employer wishing to participate in the  
2 workshare program shall submit a signed, written workshare plan  
3 to the director for approval. The director shall give written  
4 approval of a workshare plan provided that the following  
5 requirements are met:

6 (1) The plan shall apply to at least two employees who  
7 normally work thirty to forty hours per week;

8 (2) The plan reduces, by an overall average of at least  
9 twenty per cent but not more than forty per cent, the  
10 normal weekly hours of all employees in an employing  
11 unit who normally work thirty to forty hours a week;

12 (3) Reductions in weekly work hours of individual  
13 employees may vary, provided that the reductions are  
14 otherwise equitable; and

15 (4) The plan provides coverage to employees for at least  
16 eight weeks but not more than fifty-two weeks from the  
17 date of approval by the director.

18 (c) The director shall approve or disapprove the workshare  
19 plan in writing within fifteen days of its receipt. The  
20 director shall notify the employer of the reasons for  
21 disapproval of a plan within ten days of the determination.



1 Determinations of the director shall be final and are not  
2 subject to review by any court or other administrative body.

3 (d) Any employer whose plan is disapproved by the director  
4 shall have the opportunity to submit another plan for  
5 consideration.

6 (e) Once the plan is approved, the employer shall provide  
7 weekly written certifications to the director on forms developed  
8 by the director, that employees have worked all available hours  
9 for the week in which benefits under this part are claimed.

10 **§383-B Plan modifications.** (a) Any employer may request  
11 changes to a workshare plan approved by the director by  
12 submitting a workshare modification application to the director  
13 upon forms developed by the director. Alternatively, the  
14 employer may make individual modifications upon the employee's  
15 weekly claim certifications.

16 (b) No employer may modify a plan approved by the director  
17 through the addition or deletion of employees subject to the  
18 plan unless approved by the director; provided that any employer  
19 whose employing unit expands beyond the maximum limit of twenty-  
20 five employees during the plan period shall be required to file  
21 a new plan with the director; provided further that any employer



1 whose employing unit contracts below the minimum limit of two  
2 employees shall remain subject to the requirements of this part.

3 (c) No employer may modify the overall reduction in hours  
4 without the director's approval. The director may not approve  
5 of such a modification unless the modification is necessary to  
6 prevent any layoffs within the employing unit.

7 (d) No employer may terminate any employee subject to the  
8 protections of the workshare plan without submitting a request  
9 to the director to terminate the employee. The director may  
10 disapprove of the termination of an employee unless for reasons  
11 of hardship or changed circumstances, as determined by the  
12 director through rules. Unless disapproved by director within  
13 thirty days, the request for termination shall be deemed  
14 approved.

15 **§383-C Eligibility of employees; benefit limitation. (a)**

16 An individual is unemployed and eligible to receive workshare  
17 benefits with respect to any week if, in addition to meeting all  
18 other eligibility requirements of this chapter, except as  
19 specifically excepted in subsection (d), the director finds  
20 that:



- 1           (1) The individual was first hired by the employer at  
2           least one year before the plan was submitted for  
3           approval to the director;
- 4           (2) During the week the individual is employed in an  
5           approved plan that was approved prior to the week and  
6           is in effect for the week; and
- 7           (3) During the week the individual's normal weekly hours  
8           of work were reduced, in accordance with an approved  
9           plan, at least twenty per cent but not more than forty  
10          per cent, with a corresponding reduction in wages.
- 11          (b) Workshare benefits shall not be paid to an eligible  
12          individual for more than fifty-two weeks under an approved plan  
13          or modification thereof.
- 14          (c) The total amount of regular benefits and workshare  
15          benefits paid to an individual in a benefit year shall not  
16          exceed the total for the benefit year as provided in section  
17          383-24.
- 18          (d) An otherwise eligible individual shall not be denied  
19          benefits under this section because of the application of any  
20          provision of this chapter relating to availability for work,  
21          active search for work, or refusal to apply for or accept work  
22          from other than the individual's workshare employer.



1           §383-D Method of paying benefits; amount;  
2   disqualification; applicability of law to workshare plans;  
3   rules. (a) An individual who is eligible for workshare  
4   benefits under this part shall be paid, with respect to any week  
5   of unemployment, a weekly workshare benefit amount that shall be  
6   equal to the individual's regular weekly benefit amount  
7   multiplied by the nearest full percentage of reduction of the  
8   individual's regular weekly hours of work, as set forth in the  
9   employer's plan: The benefit payment under this part, if not a  
10   multiple of \$1, shall be rounded to the nearest dollar, and an  
11   even one-half dollar shall be rounded to the next higher  
12   multiple of \$1.

13           (b) No amount of earnings from other employment with  
14   another employer in any week in which the plan is in force shall  
15   be used to reduce the weekly benefit under this part.

16           (c) An individual shall be disqualified for benefits  
17   payable under this part for any week in which paid work is  
18   performed for the workshare employer in excess of the reduced  
19   hours as set forth in the approved plan.

20           (d) Except as otherwise provided by or inconsistent with  
21   this part, this chapter and the rules thereunder shall apply to  
22   this part. The director may adopt such rules as is deemed



1 necessary to make distinctions and requirements to carry out the  
2 purposes of this part.

3       **§383-E Reimbursement to unemployment compensation fund of**  
4 **workshare benefits paid; use of benefit charges.** (a) Any  
5 employer who participates in an approved workshare plan shall  
6 pay into the unemployment compensation fund an amount equivalent  
7 to all workshare benefits paid to employees of the employer  
8 under the plan during any rating period for which the employer's  
9 benefit ratio, expressed as a percentage rounded to the nearest  
10 0.1 per cent, is in excess of the employer's contribution rate  
11 for such rating period.

12       (b) All reimbursement obligations arising under this  
13 section are in addition to and separate from any other  
14 obligation imposed under this chapter. At the end of each  
15 calendar quarter, the director shall determine the amount of  
16 reimbursement due to the fund from each employer participating  
17 in a workshare plan and shall bill each employer for the amount.  
18 The reimbursement shall be subject to the same interest,  
19 penalty, and collection provisions as any other reimbursement of  
20 contributions provided for under this chapter.

21       (c) Notwithstanding any law to the contrary, no benefit  
22 charges that are reimbursable under this section shall be





1 included in an employer's benefit charges for any purpose in any  
2 rating period.

3 (d) For purposes of this section, the term "benefit ratio"  
4 means the quotient obtained by dividing the total benefits  
5 charged to the employer's record for the consecutive calendar  
6 quarters by the total of the employer's taxable payrolls for the  
7 same period.

8 **§383-F Plan renewals.** (a) Any employer who desires to  
9 renew, without any modifications, either a plan that was  
10 approved under section 383-A or a plan whose modifications were  
11 subsequently approved under section 383-B shall submit, within  
12 five days prior to the expiration of the plan, a request for  
13 renewal of the plan to the director upon forms developed by the  
14 director.

15 (b) Any employer who desires to renew, with modifications,  
16 either a plan that was approved under section 383-A or a plan  
17 whose modifications were subsequently approved under section  
18 383-B shall submit, within thirty days prior to the expiration  
19 of the plan, a request for renewal of the plan to the director  
20 upon forms developed by the director. The request shall state  
21 the modifications to be made to the plan.



1 (c) Any request submitted to the director under either  
 2 subsection (a) or (b) shall be deemed approved upon filing,  
 3 unless disapproved by the director in writing prior to the  
 4 expiration of the plan.

5 (d) If no request for renewal is received by the director  
 6 within the time period specified in subsection (a) or (b), the  
 7 director shall deem the plan to have expired on its expiration  
 8 date.

9 **§383-G Inapplicability of part.** This part shall not apply  
 10 to the following:

11 (1) The State, any of its political subdivisions, or any  
 12 instrumentality of the State or its political  
 13 subdivisions in their respective capacities as  
 14 employers; or

15 (2) Seasonal employment or employment that is intermittent  
 16 in nature."

17 Part II.

18 Repeal of Act 170, Session Laws of Hawaii 2009

19 SECTION 3. Section 383-29, Hawaii Revised Statutes, is  
 20 amended by amending subsection (a) to read as follows:



1           "(a) An unemployed individual shall be eligible to receive  
2 benefits with respect to any week only if the department finds  
3 that:

4           (1) The individual has made a claim for benefits with  
5 respect to that week in accordance with rules the  
6 department may prescribe [~~and with section 383-29.7~~  
7 ~~for partially unemployed individuals~~];

8           (2) The individual has registered for work[~~, as defined in~~  
9 ~~section 383-1,~~] at, and thereafter continued to  
10 report[~~]~~ at an employment office in accordance with  
11 rules the department may prescribe, except that the  
12 department, by rule, may waive or alter either or both  
13 of the requirements of this paragraph [~~for partially~~  
14 ~~unemployed individuals pursuant to section 383-29.8,~~]  
15 as to individuals attached to regular jobs, and as to  
16 other types of cases or situations with respect to  
17 which it finds that compliance with those requirements  
18 would be oppressive, or would be inconsistent with the  
19 purpose of this chapter; provided that no rule shall  
20 conflict with section 383-21;

21           (3) The individual is able to work and is available for  
22 work; provided that no claimant shall be considered



1           ineligible with respect to any week of unemployment  
2           for failure to comply with this paragraph if the  
3           failure is due to an illness or disability, as  
4           evidenced by a physician's certificate, which occurs  
5           during an uninterrupted period of unemployment with  
6           respect to which benefits are claimed and no work  
7           which would have been suitable prior to the beginning  
8           of the illness and disability has been offered the  
9           claimant;

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

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



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

- 9 (i) Which were not employment, as defined in  
10 section 383-2, or pursuant to an election  
11 under section 383-77 prior to January 1,  
12 1978, at any time during the one-year period  
13 ending December 31, 1975; and  
14 (ii) Which are agricultural labor, as defined in  
15 section 383-9 except service excluded under  
16 section [+]383-7(a)(1)[+], or are domestic  
17 service except service excluded under  
18 section [+]383-7(a)(2)[+]; except to the  
19 extent that assistance under Title II of the  
20 Emergency Jobs and Unemployment Assistance  
21 Act of 1974 was paid on the basis of those  
22 services;



1 (B) On and after October 1, 1989, to January 4, 1992,  
2 the individual has been employed, as defined in  
3 section 383-2, and has been paid wages for  
4 insured work during the individual's base period  
5 in an amount equal to not less than thirty times  
6 the individual's weekly benefit amount, as  
7 determined under section 383-22(b), and the  
8 individual has been paid wages for insured work  
9 during at least two quarters of the individual's  
10 base period; provided that no otherwise eligible  
11 individual who established a prior benefit year  
12 under this chapter or the unemployment  
13 compensation law of any other state, shall be  
14 eligible to receive benefits in a succeeding  
15 benefit year until, during the period following  
16 the beginning of the prior benefit year, that  
17 individual worked in covered employment for which  
18 wages were paid in an amount equal to at least  
19 five times the weekly benefit amount established  
20 for that individual in the succeeding benefit  
21 year; and



1 (C) After January 4, 1992, the individual has been  
2 employed, as defined in section 383-2, and has  
3 been paid wages for insured work during the  
4 individual's base period in an amount equal to  
5 not less than twenty-six times the individual's  
6 weekly benefit amount, as determined under  
7 section 383-22(b), and the individual has been  
8 paid wages for insured work during at least two  
9 quarters of the individual's base period;  
10 provided that no otherwise eligible individual  
11 who established a prior benefit year under this  
12 chapter or the unemployment compensation law of  
13 any other state, shall be eligible to receive  
14 benefits in a succeeding benefit year until,  
15 during the period following the beginning of the  
16 prior benefit year, that individual worked in  
17 covered employment for which wages were paid in  
18 an amount equal to at least five times the weekly  
19 benefit amount established for that individual in  
20 the succeeding benefit 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,  
8           2004, and thereafter, if an individual fails to  
9           establish a valid claim for unemployment insurance  
10          benefits under this paragraph, the department shall  
11          make a 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) Effective November 24, 1994, an individual who has  
21          been referred to reemployment services pursuant to the  
22          profiling system under section 383-92.5 shall





1           participate in those services or in similar services.  
2           The individual may not be required to participate in  
3           reemployment services if the department determines the  
4           individual has completed those services, or there is  
5           justifiable cause for the claimant's failure to  
6           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 4. Section 383-1, Hawaii Revised Statutes, is  
11          amended by deleting the definitions of "attached to a regular  
12          employer", "full-time hours", "partial unemployment", and  
13          "registered for work".

14          ~~["Attached to a regular employer" means:~~

15          ~~(1) The employee is being offered work each week by the~~  
16          ~~employee's regular employer; or~~

17          ~~(2) If no work is being offered:~~

18          ~~(A) The employer is maintaining the individual on the~~  
19          ~~payroll by paying for a medical insurance plan or~~  
20          ~~by maintaining the employee's sick leave or~~  
21          ~~vacation credits; or~~



1           ~~(B) There is a definite return to work date with the~~  
2           ~~same employer within eight weeks.~~

3           ~~"Full-time hours" or "full-time work" means a forty-hour~~  
4 ~~work week unless regarded otherwise according to the standard~~  
5 ~~practice, custom, or agreement in a particular trade,~~  
6 ~~occupation, or business.~~

7           ~~"Partial unemployment" or "partially unemployed" means the~~  
8 ~~unemployment of any individual who, during a particular week,~~  
9 ~~was still attached to that individual's regular employer, had no~~  
10 ~~earnings or earned less than that individual's weekly benefit~~  
11 ~~amount, and who worked less than or did not work that~~  
12 ~~individual's normal, customary full-time hours for the~~  
13 ~~individual's regular employer because of a lack of full-time~~  
14 ~~work.~~

15           ~~"Registered for work" or "registration for work" means that~~  
16 ~~an individual shall provide information to the employment office~~  
17 ~~to be posted on the department's internet job matching system,~~  
18 ~~including but not limited to the individual's name, job skills,~~  
19 ~~education, training, prior employment history and work duties,~~  
20 ~~preferred working conditions, occupational licenses, and other~~  
21 ~~relevant occupational information to facilitate work search~~  
22 ~~efforts by the individual and increase job referrals by the~~



1 ~~employment office. The information shall be posted with the~~  
2 ~~department's assistance or independently by the individual. The~~  
3 ~~employment office shall provide the necessary information to the~~  
4 ~~unemployment office for purposes of determining that the~~  
5 ~~individual's registration for work requirements has been met." ]~~

6 SECTION 5. Section 383-29.6, Hawaii Revised Statutes, is  
7 repealed.

8 [~~["§383-29.6] Partial unemployment; eligibility. A new~~  
9 ~~claim or an initial additional claim for partial unemployment~~  
10 ~~benefits may be filed as the department prescribes for any week~~  
11 ~~only if the individual:~~

- 12 ~~(1) Is a full-time worker;~~
- 13 ~~(2) Is attached to a regular employer, as defined in~~  
14 ~~section 383-1;~~
- 15 ~~(3) Worked less than or did not work the individual's~~  
16 ~~normal, customary full-time hours, as defined in~~  
17 ~~section 383-1, for that week;~~
- 18 ~~(4) Had no earnings or earned less than the individual's~~  
19 ~~weekly benefit amount for that week; and~~
- 20 ~~(5) Was unemployed due to a lack of full-time work, as~~  
21 ~~defined in section 383-1, for that week." ]~~



1 SECTION 6. Section 383-29.7, Hawaii Revised Statutes, is  
2 repealed.

3 [~~§383-29.7~~] ~~Partial unemployment; claim filing~~  
4 ~~requirements, determinations.~~ (a) ~~Claims for partial~~  
5 ~~unemployment shall be filed according to section 383-32. For~~  
6 ~~partially unemployed individuals, a new claim may be taken~~  
7 ~~within twenty-eight days from the week ending date of the first~~  
8 ~~week of partial unemployment for which the claim is filed;~~  
9 ~~provided that an individual shall not be required to file a~~  
10 ~~claim earlier than two weeks from the date wages are paid for~~  
11 ~~the claim period.~~

12 (b) ~~Continued claim certifications for partial benefits~~  
13 ~~shall be filed as follows:~~

14 (1) ~~An individual may file a continued claim certification~~  
15 ~~for partial unemployment benefits in person, by mail,~~  
16 ~~by telephone, or by using other alternative claim~~  
17 ~~filing procedures as instructed or authorized by the~~  
18 ~~department and in the manner prescribed by the~~  
19 ~~department with respect to each week of the~~  
20 ~~individual's partial unemployment. A continued claim~~  
21 ~~certification shall be filed in the same manner as~~  
22 ~~prescribed in rules of the department for continued~~



1 ~~claim certifications for total or part-total~~  
2 ~~unemployment benefits and not later than twenty-eight~~  
3 ~~days from the end of the week for which the individual~~  
4 ~~claims benefits; provided that an individual shall not~~  
5 ~~be required to file a continued claim certification~~  
6 ~~earlier than two weeks from the date wages are paid~~  
7 ~~for a claim period.~~

8 ~~(2) If, after a week of partial unemployment, eight or~~  
9 ~~fewer consecutive weeks of total unemployment follow~~  
10 ~~the week of partial unemployment, the weeks of total~~  
11 ~~unemployment may be deemed weeks of partial~~  
12 ~~unemployment. However, if total unemployment extends~~  
13 ~~beyond eight consecutive weeks, the individual shall~~  
14 ~~be deemed totally unemployed.~~

15 ~~(3) Notwithstanding paragraph (2), the department may~~  
16 ~~extend partial unemployment beyond eight consecutive~~  
17 ~~weeks of total unemployment under conditions including~~  
18 ~~but not limited to:~~

19 ~~(A) The individual is retained in an employer-~~  
20 ~~employee relationship;~~

21 ~~(B) The individual is under obligation to reserve~~  
22 ~~services for the employer; and~~



1           ~~(C) The individual has a definite or reasonably~~  
2           ~~imminent return to work date." ]~~

3           SECTION 7. Section 383-29.8, Hawaii Revised Statutes, is  
4 repealed.

5           ~~"[~~§383-29.8~~ Partial unemployment; waivers. (a) The~~  
6 registration for work requirements under section 383-29(a) may  
7 be waived for individuals who are partially unemployed, as  
8 defined in section 383-1.

9           ~~(b) An individual may be exempted from the work search~~  
10 requirements as determined by rules of the department, or be  
11 subject to modified work search requirements as authorized by  
12 the department if the individual is waived from the registration  
13 for work requirements, as defined in section 383-1." ]

14           SECTION 8. Section 383-29.9, Hawaii Revised Statutes, is  
15 repealed.

16           ~~"[~~§383-29.9~~ Partial unemployment; reporting~~  
17 requirements. (a) An employer to whom a claimant for partial  
18 unemployment is still attached shall submit verification of  
19 earnings and satisfy all low earnings reporting requirements in  
20 subsection (b) and rules of the department for each week that  
21 the claimant certifies for partial unemployment benefits.

22           ~~(b) Low earnings reports shall be submitted as follows:~~



1       ~~(1) Whenever, during any weekly pay period in an~~  
2       ~~individual's benefit year, an individual has worked~~  
3       ~~less than full-time hours for the regular employer to~~  
4       ~~which the individual is attached, and the individual's~~  
5       ~~earnings are less than the individual's current weekly~~  
6       ~~benefit amount, the individual's employer, upon~~  
7       ~~request by the department shall:~~  
8       ~~(A) Enter the individual's name, social security~~  
9       ~~account number, gross earnings, week ending date,~~  
10       ~~and the reasons for the individual's reduced work~~  
11       ~~week on a form provided or approved by the~~  
12       ~~department and return the form to the~~  
13       ~~unemployment insurance office as instructed~~  
14       ~~within five working days after the notice of an~~  
15       ~~individual's benefit amount has been mailed to~~  
16       ~~the employer as to all prior weeks for which~~  
17       ~~benefits are claimed. Thereafter, during the~~  
18       ~~benefit year, the employer shall report within~~  
19       ~~five working days after the end of each week or~~  
20       ~~weekly pay period for which the low earnings~~  
21       ~~reports are required; or~~







# H.B. NO. 2414

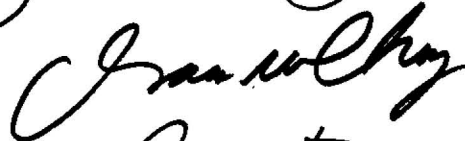
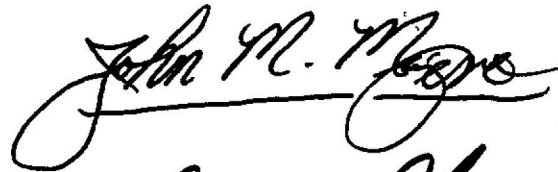
1 appropriate section numbers for the letters used in designating  
2 the new sections in this Act.

3 SECTION 12. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 13. This Act shall take effect upon its approval.

6

INTRODUCED BY:



JAN 22 2010



**Report Title:**

Unemployment Insurance; WorkShare Program

**Description:**

Establishes a WorkShare Program under the unemployment insurance laws under which workers are downsized to part-time status and are able to receive partial unemployment benefits. Repeals Act 170, Session Laws of Hawaii 2009, on partial unemployment.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

