
A BILL FOR AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION.

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

1 SECTION 1. The purpose of this Act is to extend to massage
2 therapists, chiropractors, and yoga practitioners the same
3 exclusion from the employment security laws that are presently
4 granted to, among others, real estate salespersons, travel
5 agency sales representatives, and vacuum cleaner
6 representatives; provided that their remuneration is based
7 solely upon commissions.

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

10 "**§383-7 Excluded service.** (a) "Employment" shall not
11 include:

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

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



- 1 including labor performed by an alien referred to
2 in subparagraph (C); and
- 3 (B) That had, in each of the current and the
4 preceding calendar years:
- 5 (i) No more than nineteen calendar weeks,
6 whether consecutive or not, in which
7 agricultural labor was performed by its
8 employees, including labor performed by an
9 alien referred to in subparagraph (C); or
- 10 (ii) No more than nine individuals in its employ
11 performing agricultural labor in any one
12 calendar week, whether or not the same
13 individuals performed the labor in each
14 week, including labor performed by an alien
15 referred to in subparagraph (C); or
- 16 (C) If such agricultural labor is performed by an
17 individual who is an alien admitted to the United
18 States to perform agricultural labor pursuant to
19 Sections 214(c) and 101(a)(15)(H) of the
20 Immigration and Nationality Act;
- 21 (2) Domestic service in a private home, local college
22 club, or local chapter of a college fraternity or



1 sorority as set forth in section 3306(c)(2) of the
2 Internal Revenue Code of 1986, as amended;

3 (3) Service not in the course of the employing unit's
4 trade or business performed in any calendar quarter by
5 an individual, unless the cash remuneration paid for
6 the service is \$50 or more and the service is
7 performed by an individual who is regularly employed
8 by the employing unit to perform the service. For the
9 purposes of this paragraph, an individual shall be
10 deemed to be regularly employed to perform service not
11 in the course of an employing unit's trade or business
12 during a calendar quarter if:

13 (A) On each of some twenty-four days during the
14 quarter the individual performs the service for
15 some portion of the day; or

16 (B) The individual was regularly employed as
17 determined under subparagraph (A) by the
18 employing unit in the performance of the service
19 during the preceding calendar quarter;

20 (4) (A) Service performed on or in connection with a
21 vessel not an American vessel, if the individual
22 performing the service is employed on and in



1 connection with the vessel when outside the
2 United States;

3 (B) Service performed by an individual in (or as an
4 officer or member of the crew of a vessel while
5 it is engaged in) the catching, taking,
6 harvesting, cultivating, or farming of any kind
7 of fish, shellfish, crustacea, sponges, seaweeds,
8 or other aquatic forms of animal and vegetable
9 life, including service performed as an ordinary
10 incident thereto, except:

11 (i) The service performed in connection with a
12 vessel of more than ten net tons (determined
13 in the manner provided for determining the
14 register tonnage of merchant vessels under
15 the laws of the United States);

16 (ii) The service performed in connection with a
17 vessel of ten net tons or less (determined
18 in the manner provided for determining the
19 register tonnage of merchant vessels under
20 the laws of the United States) by an
21 individual who is employed by an employing
22 unit which had in its employ one or more



1 individuals performing the service for some
2 portion of a day in each of twenty calendar
3 weeks all occurring, whether consecutive or
4 not, in either the current or the preceding
5 calendar year; and

6 (iii) Service performed in connection with the
7 catching or taking of salmon or halibut for
8 commercial purposes;

9 (5) Service performed by an individual in the employ of
10 the individual's son, daughter, or spouse, and service
11 performed by a child under the age of twenty-one in
12 the employ of the child's father or mother;

13 (6) Service performed in the employ of the United States
14 government or an instrumentality of the United States
15 exempt under the Constitution of the United States
16 from the contributions imposed by this chapter, except
17 that to the extent that the Congress of the United
18 States permits states to require any instrumentalities
19 of the United States to make payments into an
20 unemployment fund under a state unemployment
21 compensation law, all of the provisions of this
22 chapter shall apply to those instrumentalities, and to



1 services performed for those instrumentalities, in the
2 same manner, to the same extent, and on the same terms
3 as to all other employers, employing units,
4 individuals, and services; provided that if this State
5 is not certified for any year by the Secretary of
6 Labor under section 3304(c) of the federal Internal
7 Revenue Code, the payments required of those
8 instrumentalities with respect to that year shall be
9 refunded by the department of labor and industrial
10 relations from the fund in the same manner and within
11 the same period as is provided in section 383-76 with
12 respect to contributions erroneously collected;

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



- 1 (8) Service with respect to which unemployment
2 compensation is payable under an unemployment system
3 established by an act of Congress;
- 4 (9) (A) Service performed in any calendar quarter in the
5 employ of any organization exempt from income tax
6 under section 501(a) of the federal Internal
7 Revenue Code (other than an organization
8 described in section 401(a) or under section 521
9 of the Internal Revenue Code), if:
- 10 (i) The remuneration for the service is less
11 than \$50; or
- 12 (ii) The service is performed by a fully
13 ordained, commissioned, or licensed minister
14 of a church in the exercise of the
15 minister's ministry or by a member of a
16 religious order in the exercise of duties
17 required by the order;
- 18 (B) Service performed in the employ of a school,
19 college, or university, if the service is
20 performed by a student who is enrolled and is
21 regularly attending classes at the school,
22 college, or university; or



- 1 (C) Service performed by an individual who is
2 enrolled at a nonprofit or public educational
3 institution which normally maintains a regular
4 faculty and curriculum and normally has a
5 regularly organized body of students in
6 attendance at the place where its educational
7 activities are carried on as a student in a full-
8 time program, taken for credit at the
9 institution, which combines academic instruction
10 with work experience, if the service is an
11 integral part of such program, and the
12 institution has so certified to the employer,
13 except that this subparagraph shall not apply to
14 service performed in a program established for or
15 on behalf of an employer or group of employers;
- 16 (10) Service performed in the employ of a foreign
17 government, including service as a consular or other
18 officer or employee of a nondiplomatic representative;
- 19 (11) Service performed in the employ of an instrumentality
20 wholly owned by a foreign government:
- 21 (A) If the service is of a character similar to that
22 performed in foreign countries by employees of



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



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

4 (14) Service performed by an individual under the age of
5 eighteen in the delivery or distribution of newspapers
6 or shopping news, not including delivery or
7 distribution to any point for subsequent delivery or
8 distribution;

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

17 (16) Service performed by an individual who, pursuant to
18 the Federal Economic Opportunity Act of 1964, is not
19 subject to the federal laws relating to unemployment
20 compensation;

21 (17) Service performed by an individual for an employing
22 unit as a real estate salesperson, if all service



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

4 (18) Service performed by a licensed massage therapist,
5 licensed chiropractor, or yoga practitioner for a
6 health, beauty, or fitness salon or spa, if all
7 service performed by the licensed massage therapist,
8 licensed chiropractor, or yoga practitioner for the
9 health, beauty, or fitness salon or spa is performed
10 for remuneration solely by way of commission;

11 (19) Service performed by a registered sales representative
12 for a registered travel agency, when the service
13 performed by the individual for the travel agent is
14 performed for remuneration by way of commission;

15 ~~(19)~~ (20) Service performed by a vacuum cleaner
16 salesperson for an employing unit, if all services
17 performed by the individual for the employing unit are
18 performed for remuneration solely by way of
19 commission;

20 ~~(20)~~ (21) Service performed for a family-owned private
21 corporation organized for profit that employs only
22 members of the family who each own at least fifty per



1 cent of the shares issued by the corporation; provided
2 that:

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

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

7 (C) No more than two members of a family may be
8 eligible per entity for exclusion under this
9 paragraph;

10 (D) The exclusion shall be irrevocable for five
11 years;

12 (E) The family-owned private corporation presents to
13 the department proof that it has paid federal
14 unemployment insurance taxes as required by
15 federal law; and

16 (F) The election to be excluded from coverage shall
17 be effective the first day of the calendar
18 quarter in which the application and all
19 substantiating documents requested by the
20 department are filed with the department;

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



1 ~~[(22)]~~ (23) Service performed by an election official or
2 election worker as defined in section 3309(b)(3)(F) of
3 the Internal Revenue Code of 1986, as amended;

4 ~~[(23)]~~ (24) Service performed by an inmate or any person
5 committed to a penal institution~~[+]~~; and~~[+]~~

6 ~~[(24)]~~ (25) Domestic in-home and community-based services
7 for persons with developmental disabilities and mental
8 retardation under the medicaid home and
9 community-based services program pursuant to title 42
10 Code of Federal Regulations sections 440.180 and
11 441.300, and title 42 Code of Federal Regulations,
12 part 434, subpart A, as amended, and identified as
13 chore, personal assistance and habilitation,
14 residential habilitation, supported employment,
15 respite, and skilled nursing services, as the terms
16 are defined and amended from time to time by the
17 department of human services, performed by an
18 individual whose services are contracted by a
19 recipient of social service payments and who
20 voluntarily agrees in writing to be an independent
21 contractor of the recipient of social service payments
22 unless the individual is an employee and not an



1 independent contractor of the recipient of social
2 service payments under the Federal Unemployment Tax
3 Act."

4 SECTION 3. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun before its effective date.

7 SECTION 4. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: Almond S. S. III BY REQUEST
JAN 21 2010



Report Title:

Unemployment Compensation; Excluded Service

Description:

Extends the exclusion of real estate salespersons from the Unemployment Insurance laws to massage therapists, chiropractors, and yoga practitioners at health, beauty, and wellness salons and spas provided that remuneration is based solely upon commissions.

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

