

JAN 25 2010

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# 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 by amending subsection (a) to read as follows:

3           "(a) "Employment" shall not include:

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

7           (A) That, during each calendar quarter in both the  
8           current and the preceding calendar years, paid  
9           less than \$20,000 in cash remuneration to  
10           individuals employed in agricultural labor,  
11           including labor performed by an alien referred to  
12           in subparagraph (C); and

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

15           (i) No more than nineteen calendar weeks,  
16           whether consecutive or not, in which  
17           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 or plant life, including service performed as an  
3 ordinary 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 [7] of 1986, as amended, the payments  
3 required of those instrumentalities with respect to  
4 that year shall be refunded by the department of labor  
5 and industrial relations from the fund in the same  
6 manner and within the same period as is provided in  
7 section 383-76 with respect to contributions  
8 erroneously collected;

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

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



- 1           (9)   (A)   Service performed in any calendar quarter in the  
2                           employ of any organization exempt from income tax  
3                           under section 501(a) of the federal Internal  
4                           Revenue Code of 1986, as amended (other than an  
5                           organization described in section 401(a) or under  
6                           section 521 of the Internal Revenue Code), if:
- 7                           (i)   The remuneration for the service is less  
8                                        than \$50; or
- 9                           (ii)  The service is performed by a fully  
10                                       ordained, commissioned, or licensed minister  
11                                       of a church in the exercise of the  
12                                       minister's ministry or by a member of a  
13                                       religious order in the exercise of duties  
14                                       required by the order;
- 15           (B)   Service performed in the employ of a school,  
16                           college, or university, if the service is  
17                           performed by a student who is enrolled and is  
18                           regularly attending classes at the school,  
19                           college, or university; or
- 20           (C)   Service performed by an individual who is  
21                           enrolled at a nonprofit or public educational  
22                           institution which normally maintains a regular



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

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

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

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





1 (B) If the United States Secretary of State has  
2 certified or certifies to the United States  
3 Secretary of the Treasury that the foreign  
4 government, with respect to whose instrumentality  
5 exemption is claimed, grants an equivalent  
6 exemption with respect to similar service  
7 performed in the foreign country by employees of  
8 the United States government and of  
9 instrumentalities thereof;

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

19 (13) Service performed by an individual for an employing  
20 unit as an insurance producer, if all service  
21 performed by the individual for the employing unit is



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



1 performed for remuneration solely by way of  
2 commission;

3 (18) Service performed by a registered sales representative  
4 for a registered travel agency, when the service  
5 performed by the individual for the travel agent is  
6 performed for remuneration solely by way of  
7 commission;

8 (19) Service performed by a vacuum cleaner salesperson for  
9 an employing unit, if all services performed by the  
10 individual for the employing unit are performed for  
11 remuneration solely by way of commission;

12 (20) Service performed for a family-owned private  
13 corporation organized for profit that employs only  
14 members of the family who each own at least fifty per  
15 cent of the shares issued by the corporation; provided  
16 that:

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

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



- 1 (C) No more than two members of a family may be
- 2 eligible per entity for exclusion under this
- 3 paragraph;
- 4 (D) The exclusion shall be irrevocable for five
- 5 years;
- 6 (E) The family-owned private corporation presents to
- 7 the department proof that it has paid federal
- 8 unemployment insurance taxes as required by
- 9 federal law; and
- 10 (F) The election to be excluded from coverage shall
- 11 be effective the first day of the calendar
- 12 quarter in which the application and all
- 13 substantiating documents requested by the
- 14 department are filed with the department;
- 15 (21) Service performed for a family-owned private
- 16 corporation organized for profit that employs only
- 17 members of the family and in which only one family
- 18 member owns one hundred per cent of the shares issued
- 19 by the corporation, provided that:
- 20 (A) The private corporation elects to be excluded
- 21 from coverage under this chapter;



- 1           (B) The election for exclusion shall apply to only
- 2           the shareholder;
- 3           (C) The exclusion shall be irrevocable for five
- 4           years;
- 5           (D) The family-owned private corporation presents to
- 6           the department proof that it has paid federal
- 7           unemployment insurance taxes as required by
- 8           federal law; and
- 9           (E) The election to be excluded from coverage shall
- 10           be effective the first day of the calendar
- 11           quarter in which the application and all
- 12           substantiating documents requested by the
- 13           department are filed with the department;
- 14       ~~[(21)]~~ (22) Service performed by a direct seller as defined
- 15           in section 3508 of the Internal Revenue Code of 1986;
- 16       ~~[(22)]~~ (23) Service performed by an election official or
- 17           election worker as defined in section 3309(b)(3)(F) of
- 18           the Internal Revenue Code of 1986, as amended;
- 19       ~~[(23)]~~ (24) Service performed by an inmate or any person
- 20           committed to a penal institution[+]; and[+]
- 21       ~~[(24)]~~ (25) Domestic in-home and community-based services for
- 22           persons with developmental disabilities and mental



1           retardation under the medicaid home and  
2           community-based services program pursuant to title 42  
3           Code of Federal Regulations sections 440.180 and  
4           441.300, and title 42 Code of Federal Regulations,  
5           part 434, subpart A, as amended, and identified as  
6           chore, personal assistance and habilitation,  
7           residential habilitation, supported employment,  
8           respite, and skilled nursing services, as the terms  
9           are defined and amended from time to time by the  
10          department of human services, performed by an  
11          individual whose services are contracted by a  
12          recipient of social service payments and who  
13          voluntarily agrees in writing to be an independent  
14          contractor of the recipient of social service payments  
15          unless the individual is an employee and not an  
16          independent contractor of the recipient of social  
17          service payments under the Federal Unemployment Tax  
18          Act."

19          SECTION 2. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

21          SECTION 3. This Act shall take effect upon its approval.  
22



INTRODUCED BY:

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**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.

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

