

JAN 23 2009

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.** (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



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



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

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

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

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

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



1 of fish, shellfish, crustacea, sponges, seaweeds,
2 or other aquatic forms of animal and vegetable
3 life, including service performed as an ordinary
4 incident thereto, except:

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

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

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

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

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

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

20 (C) No more than two members of a family may be
21 eligible per entity for exclusion under this
22 paragraph;



1 (D) The exclusion shall be irrevocable for five
2 years;

3 (E) The family-owned private corporation presents to
4 the department proof that it has paid federal
5 unemployment insurance taxes as required by
6 federal law; and

7 (F) The election to be excluded from coverage shall
8 be effective the first day of the calendar
9 quarter in which the application and all
10 substantiating documents requested by the
11 department are filed with the department;

12 (21) Service performed for a family-owned private
13 corporation organized for profit that employs only
14 members of the family and in which only one family
15 member owns one hundred per cent of the shares issued
16 by the corporation; provided that:

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

19 (B) The election for exclusion shall apply to only the
20 shareholder;

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



1 (D) The family-owned private corporation presents to
2 the department proof that it has paid federal
3 unemployment insurance taxes as required by
4 federal law; and

5 (E) The election to be excluded from coverage shall be
6 effective the first day of the calendar quarter in
7 which the application and all substantiating
8 documents requested by the department are filed
9 with the department;

10 ~~[(+21)]~~ (22) Service performed by a direct seller as defined
11 in section 3508 of the Internal Revenue Code of 1986,
12 as amended;

13 ~~[(+22)]~~ (23) Service performed by an election official or
14 election worker as defined in section 3309(b) (3) (F) of
15 the Internal Revenue Code of 1986, as amended;

16 ~~[(+23)]~~ (24) Service performed by an inmate or any person
17 committed to a penal institution[+]; and[+]

18 ~~[(+24)]~~ (25) Domestic in-home and community-based services for
19 persons with developmental disabilities and mental
20 retardation under the medicaid home and
21 community-based services program pursuant to title 42
22 Code of Federal Regulations sections 440.180 and



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

16 (b) None of the exclusions in subsection (a) shall apply
17 to any service with respect to which a tax is required to be
18 paid under any federal law imposing a tax against which credit
19 may be taken for contributions required to be paid into a state
20 unemployment fund or which as a condition for full tax credit
21 against the tax imposed by the federal Unemployment Tax Act is
22 required to be covered under this chapter."

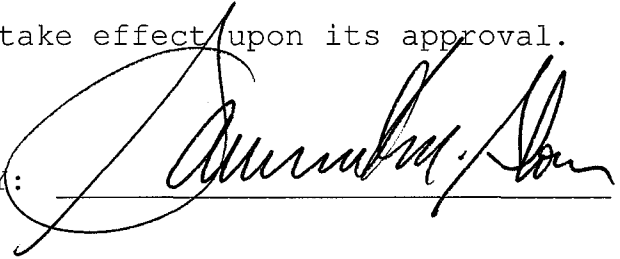


1 SECTION 2. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

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

4

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.

