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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 383-1, Hawaii Revised Statutes, is  
2 amended by amending the definition of "employing unit" to read  
3 as follows:

4           "Employing unit" means any individual, sole proprietor, or  
5 type of organization, including the State, any of its political  
6 subdivisions, any instrumentality of the State or its political  
7 subdivisions, any partnership, association, trust, estate,  
8 joint-stock company, insurance company, or corporation, whether  
9 domestic or foreign, or the receiver, trustee in bankruptcy,  
10 trustee, or successor of any of the foregoing, or the legal  
11 representative of a deceased person, which has or subsequent to  
12 January 1, 1937, had one or more individuals performing services  
13 for it within this State.

14           (1) All individuals performing services within this State  
15 for any employing unit which maintains two or more  
16 separate establishments within this State shall be  
17 deemed to be performing services for a single  
18 employing unit for all the purposes of this chapter.



1           (2) Each individual employed to perform or to assist in  
2 performing the work of any person in the service of an  
3 employing unit shall be deemed to be engaged by the  
4 employing unit for all the purposes of this chapter,  
5 whether the individual was hired or paid directly by  
6 the employing unit or by such person, provided the  
7 employing unit had actual or constructive knowledge of  
8 the work."

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

11           "(a) "Employment" shall not 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,  
19 including labor performed by an alien referred to  
20 in subparagraph (C); and

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



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



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

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

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

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

21 (B) Service performed by an individual in (or as an  
22 officer or member of the crew of a vessel while



1           it is engaged in) the catching, taking,  
2           harvesting, cultivating, or farming of any kind  
3           of fish, shellfish, crustacea, sponges, seaweeds,  
4           or other aquatic forms of animal and vegetable  
5           life, including service performed as an ordinary  
6           incident thereto, except:

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

12          (ii) The service performed in connection with a  
13          vessel of ten net tons or less (determined  
14          in the manner provided for determining the  
15          register tonnage of merchant vessels under  
16          the laws of the United States) by an  
17          individual who is employed by an employing  
18          unit [~~which~~] that had in its employ one or  
19          more individuals performing the service for  
20          some portion of a day in each of twenty  
21          calendar weeks all occurring, whether



1 consecutive or not, in either the current or  
2 the preceding calendar year; and

3 (iii) Service performed in connection with the  
4 catching or taking of salmon or halibut for  
5 commercial purposes;

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

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



1 individuals, and services; provided that if this State  
2 is not certified for any year by the Secretary of  
3 Labor under section 3304(c) of the [~~federal~~] Internal  
4 Revenue Code[~~7~~] of 1986, as amended, the payments  
5 required of those instrumentalities with respect to  
6 that year shall be refunded by the department of labor  
7 and industrial relations from the fund in the same  
8 manner and within the same period as is provided in  
9 section 383-76 with respect to contributions  
10 erroneously collected;

- 11 (7) Service performed in the employ of any other state, or  
12 any political subdivision thereof, or any  
13 instrumentality of any one or more of the foregoing  
14 [~~which~~] that is wholly owned by one or more states or  
15 political subdivisions; and any service performed in  
16 the employ of any instrumentality of one or more other  
17 states or their political subdivisions to the extent  
18 that the instrumentality [~~is~~], with respect to the  
19 service, is exempt from the tax imposed by section  
20 3301 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 of 1986, as amended (other than an  
8 organization described in section 401(a) or under  
9 section 521 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~~] that normally maintains a  
4 regular 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 registered sales representative  
5 for a registered travel agency, when the service  
6 performed by the individual for the travel agent is  
7 performed for remuneration by way of 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 by a direct seller as defined in
- 16 section 3508 of the Internal Revenue Code of 1986;
- 17 (22) Service performed by an election official or election
- 18 worker as defined in section 3309(b)(3)(F) of the
- 19 Internal Revenue Code of 1986, as amended;
- 20 (23) Service performed by an inmate or any person committed
- 21 to a penal institution; [and]



- 1           (24) Domestic in-home and community-based services for  
2           persons with developmental disabilities and mental  
3           retardation under the medicaid home and  
4           community-based services program pursuant to Title 42  
5           Code of Federal Regulations sections 440.180 and  
6           441.300, and Title 42 Code of Federal Regulations,  
7           Part 434, Subpart A, as amended, and identified as  
8           chore, personal assistance and habilitation,  
9           residential habilitation, supported employment,  
10          respite, and skilled nursing services, as the terms  
11          are defined and amended from time to time by the  
12          department of human services, performed by an  
13          individual whose services are contracted by a  
14          recipient of social service payments and who  
15          voluntarily agrees in writing to be an independent  
16          contractor of the recipient of social service payments  
17          unless the individual is an employee and not an  
18          independent contractor of the recipient of social  
19          service payments under the Federal Unemployment Tax  
20          Act [-]; and  
21          (25) Service performed by a sole proprietor, regardless of  
22          incorporation, who has no other employees besides the



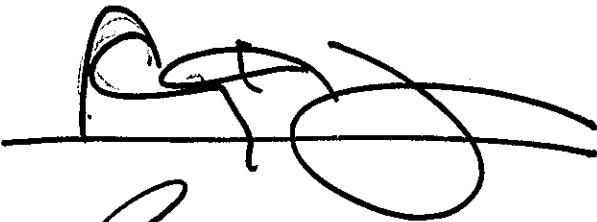
1            sole proprietor; provided that the sole proprietor may  
 2            elect coverage under section 383-77."

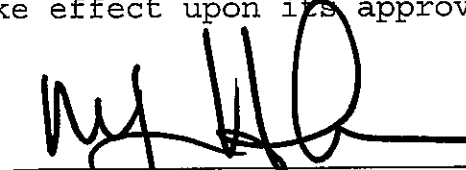
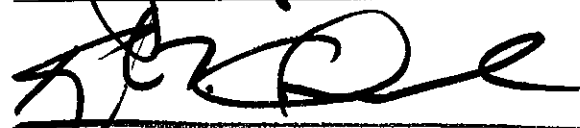
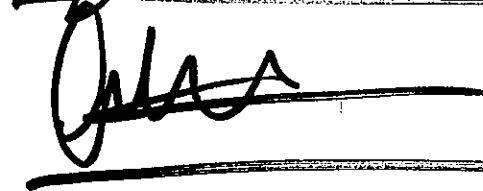
3            SECTION 3. Statutory material to be repealed is bracketed  
 4 and stricken. New statutory material is underscored.



5            SECTION 4. This Act shall take effect upon its approval.


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INTRODUCED BY:

  
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 Kal Rhodes

  
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 J. Culber  
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**Report Title:**

Employment Security; Sole Proprietors

**Description:**

Excludes sole proprietors from the employment security laws, but allows them to elect to be covered.

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

