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# A BILL FOR AN ACT

RELATING TO EMPLOYMENT EXEMPTION FOR DOMESTIC SERVICES  
AUTHORIZED BY THE DEPARTMENT OF HUMAN SERVICES.

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

1 SECTION 1. Section 386-1, Hawaii Revised Statutes, is  
2 amended by amending the definition of "employment" to read as  
3 follows:

4 "Employment" means any service performed by an individual  
5 for another person under any contract of hire or apprenticeship,  
6 express or implied, oral or written, whether lawfully or  
7 unlawfully entered into. It includes service of public  
8 officials, whether elected or under any appointment or contract  
9 of hire, express or implied.

10 "Employment" does not include:

11 (1) Service for a religious, charitable, educational, or  
12 nonprofit organization if performed in a voluntary or  
13 unpaid capacity;

14 (2) Service for a religious, charitable, educational, or  
15 nonprofit organization if performed by a recipient of  
16 aid therefrom and the service is incidental to or in  
17 return for the aid received;



- 1 (3) Service for a school, college, university, college .  
2 club, fraternity, or sorority if performed by a  
3 student who is enrolled and regularly attending  
4 classes and in return for board, lodging, or tuition  
5 furnished, in whole or in part;
- 6 (4) Service performed by a duly ordained, commissioned, or  
7 licensed minister, priest, or rabbi of a church in the  
8 exercise of the minister's, priest's, or rabbi's  
9 ministry or by a member of a religious order in the  
10 exercise of nonsecular duties required by the order;
- 11 (5) Service performed by an individual for another person  
12 solely for personal, family, or household purposes if  
13 the cash remuneration received is less than \$225  
14 during the current calendar quarter and during each  
15 completed calendar quarter of the preceding twelve-  
16 month period;
- 17 (6) Domestic, in-home and community-based services for  
18 persons with developmental and intellectual  
19 disabilities under the medicaid home and community-  
20 based services program pursuant to [~~Title~~] title 42  
21 Code of Federal Regulations sections 440.180 and  
22 441.300, and [~~Title~~] title 42 Code of Federal



1 Regulations, [~~Part~~] part 434, [~~Subpart~~] subpart A, as  
2 amended, and identified as chore, personal assistance  
3 and habilitation, residential habilitation, supported  
4 employment, respite, and skilled nursing services, as  
5 the terms are defined by the department of human  
6 services, performed by an individual whose services  
7 are contracted by a recipient of social service  
8 payments and who voluntarily agrees in writing to be  
9 an independent contractor of the recipient of social  
10 service payments;

11 (7) Domestic, which includes attendant care, and day care  
12 services authorized by the department of human  
13 services under the Social Security Act, as amended, or  
14 provided through state-funded medical assistance to  
15 individuals ineligible for medicaid and performed by  
16 an individual in the employ of a recipient of social  
17 service payments. For the purposes of this paragraph  
18 only, a "recipient of social service payments" is a  
19 person who is an eligible recipient of social services  
20 such as attendant care and day care services;

21 ~~(7)~~ (8) Service performed without wages for a corporation  
22 without employees by a corporate officer in which the



1 officer is at least a twenty-five per cent  
2 stockholder;

3 ~~[(8)]~~ (9) Service performed by an individual for a  
4 corporation if the individual owns at least fifty per  
5 cent of the corporation; provided that no employer  
6 shall require an employee to incorporate as a  
7 condition of employment;

8 ~~[(9)]~~ (10) Service performed by an individual for another  
9 person as a real estate salesperson or as a real  
10 estate broker, if all the service performed by the  
11 individual for the other person is performed for  
12 remuneration solely by way of commission;

13 ~~[(10)]~~ (11) Service performed by a member of a limited  
14 liability company if the member is an individual and  
15 has a distributional interest, as defined in section  
16 428-101, of not less than fifty per cent in the  
17 company; provided that no employer shall require an  
18 employee to form a limited liability company as a  
19 condition of employment;

20 ~~[(11)]~~ (12) Service performed by a partner of a partnership,  
21 as defined in section 425-101, if the partner is an  
22 individual; provided that no employer shall require an



1 employee to become a partner or form a partnership as  
2 a condition of employment;

3 [~~(12)~~] (13) Service performed by a partner of a limited  
4 liability partnership if the partner is an individual  
5 and has a transferable interest as described in  
6 section 425-127 in the partnership of not less than  
7 fifty per cent; provided that no employer shall  
8 require an employee to form a limited liability  
9 partnership as a condition of employment; and

10 [~~(13)~~] (14) Service performed by a sole proprietor.

11 As used in this definition, "religious, charitable, educational,  
12 or nonprofit organization" means a corporation, unincorporated  
13 association, community chest, fund, or foundation organized and  
14 operated exclusively for religious, charitable, or educational  
15 purposes, no part of the net earnings of which inure to the  
16 benefit of any private shareholder or individual."

17 SECTION 2. Section 392-5, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "**§392-5 Excluded services.** "Employment" as defined in  
20 section 392-3 shall not include:

21 (1) Domestic service in a private home, local college  
22 club, or local chapter of a college fraternity or



- 1           sorority, performed in any calendar quarter by an  
2           individual if the cash remuneration paid by the  
3           employer for such service is less than \$225;
- 4       (2) Service not in the course of the employer's trade or  
5           business performed in any calendar quarter by an  
6           individual, unless the cash remuneration paid for the  
7           service is \$50 or more and the service is performed by  
8           an individual who is regularly employed by the  
9           employer to perform the service. An individual shall  
10          be deemed to be regularly employed to perform service  
11          not in the course of the employer's trade or business  
12          during a calendar quarter only 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           employer in the performance of the service during  
19           the preceding calendar quarter;
- 20       (3) Service performed on or in connection with a vessel  
21          not an American vessel, if the individual performing



1 the service is employed on and in connection with the  
2 vessel when outside the United States;

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

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

16 (B) The service performed in connection with a vessel  
17 of ten net tons or less [ + ] \_ determined in the  
18 manner provided for determining the register  
19 tonnage of merchant vessels under the laws of the  
20 United States [ + ] \_ by an individual who is  
21 employed by an employer who, for some portion in  
22 each of twenty different calendar weeks in either



1           the current or preceding calendar year, had in  
2           the employer's employ one or more persons  
3           performing the service, whether or not the weeks  
4           were consecutive and whether or not the same  
5           individuals performed the service in each week;  
6           and

7           (C) The service performed in connection with the  
8           catching or taking of salmon or halibut for  
9           commercial purposes;

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

14          (6) Service performed in the employ of the United States  
15          government or an instrumentality of the United States  
16          exempt under the Constitution of the United States  
17          from the contributions imposed by this chapter;

18          (7) Service performed in the employ of any other state, or  
19          any political subdivision thereof, or any  
20          instrumentality of any one or more of the foregoing  
21          that is wholly owned by one or more such states or  
22          political subdivisions; and any service performed in





1 the employ of any instrumentality of one or more other  
2 states or their political subdivisions to the extent  
3 that the instrumentality is, with respect to such  
4 service, exempt from the tax imposed by section 3301  
5 of the Internal Revenue Code of 1986;

6 (8) Service with respect to which temporary disability  
7 compensation is payable for sickness under a temporary  
8 disability insurance system established by an act of  
9 Congress;

10 (9) Service performed in any calendar quarter in the  
11 employ of any nonprofit organization exempt from  
12 income tax under section 501 of the Internal Revenue  
13 Code of 1986, if:

14 (A) The remuneration for such service is less than  
15 \$50;

16 (B) The service is performed by a student who is  
17 enrolled and is regularly attending classes at a  
18 school, college, or university;

19 (C) The service is performed by a duly ordained,  
20 commissioned, or licensed minister or licensed  
21 minister of a church in the exercise of the  
22 minister's ministry or by a member of a religious



- 1                   order in the exercise of nonsecular duties  
2                   required by the order; or
- 3           (D)   The service is performed for a church by an  
4                   employee who fails to meet the eligibility  
5                   requirements of section 392-25;
- 6           (10)   Service performed in the employ of a voluntary  
7                   employees' beneficiary association providing for the  
8                   payment of life, sick, accident, or other benefits to  
9                   the members of the association or their dependents,  
10                  if:
- 11           (A)   No part of its net earnings inures [÷]other than  
12                   through such payments[÷] to the benefit of any  
13                   private shareholder or individual; and
- 14           (B)   Eighty-five per cent or more of its income  
15                   consists of amounts collected from members and  
16                   amounts contributed by the employer of the  
17                   members for the sole purpose of making such  
18                   payments and meeting expenses;
- 19           (11)   Service performed in the employ of a voluntary  
20                   employee's beneficiary association providing for the  
21                   payment of life, sick, accident, or other benefits to



1 the members of the association or their dependents or  
2 their designated beneficiaries, if:

3 (A) Admission to membership in the association is  
4 limited to individuals who are officers or  
5 employees of the United States government; and

6 (B) No part of the net earnings of the association  
7 inures [÷]other than through such payments[÷] to  
8 the benefit of any private shareholder or  
9 individual;

10 (12) Service performed in the employ of a school, college,  
11 or university, not exempt from income tax under  
12 section 501 of the Internal Revenue Code of 1986, if  
13 the service is performed by a student who is enrolled  
14 and is regularly attending classes at the school,  
15 college, or university;

16 (13) Service performed in the employ of any instrumentality  
17 wholly owned by a foreign government, if:

18 (A) 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) 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 (14) 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 years' course in a  
17 medical school chartered or approved pursuant to state  
18 law;

19 (15) Service performed by an individual for an employer as  
20 an insurance producer, if all such service performed  
21 by the individual for the employer is performed for  
22 remuneration solely by way of commission;



- 1           (16) Service performed by an individual under the age of  
2           eighteen in the delivery or distribution of newspapers  
3           or shopping news, not including delivery or  
4           distribution to any point for subsequent delivery or  
5           distribution;
- 6           (17) Service covered by an arrangement between the  
7           department and the agency charged with the  
8           administration of any other state or federal  
9           unemployment compensation law pursuant to which all  
10          services performed by an individual for an employer  
11          during the period covered by the employer's duly  
12          approved election, are deemed to be performed entirely  
13          within the agency's state;
- 14          (18) Service performed by an individual who, pursuant to  
15          the Federal Economic Opportunity Act of 1964, is not  
16          subject to the federal laws relating to unemployment  
17          compensation;
- 18          (19) Domestic in-home and community-based services for  
19          persons with developmental and intellectual  
20          disabilities under the medicaid home and community-  
21          based services program pursuant to [~~title~~] title 42  
22          Code of Federal Regulations sections 440.180 and



1 441.300, and [~~Title~~] title 42 Code of Federal  
2 Regulations, [~~Part~~] part 434, [~~Subpart~~] subpart A, as  
3 amended, and identified as chore, personal assistance  
4 and habilitation, residential habilitation, supported  
5 employment, respite, and skilled nursing services, as  
6 the terms are defined by the department of human  
7 services, performed by an individual whose services  
8 are contracted by a recipient of social service  
9 payments and who voluntarily agrees in writing to be  
10 an independent contractor of the recipient of social  
11 service payments;

12 (20) Domestic, which includes attendant care, and day care  
13 services authorized by the department of human  
14 services under the Social Security Act, as amended, or  
15 provided through state-funded medical assistance to  
16 individuals ineligible for medicaid and performed by  
17 an individual in the employ of a recipient of social  
18 service payments. For the purposes of this paragraph  
19 only, a "recipient of social service payments" is a  
20 person who is an eligible recipient of social services  
21 such as attendant care and day care services;



1       ~~[(+20)]~~ (21) Service performed by a vacuum cleaner  
 2               salesperson for an employing unit, if all such  
 3               services performed by the individual for such  
 4               employing unit are performed for remuneration solely  
 5               by way of commission; or

6       ~~[(+21)]~~ (22) Service performed by an individual for an  
 7               employer as a real estate salesperson or as a real  
 8               estate broker, if all the service performed by the  
 9               individual for the employer is performed for  
 10              remuneration solely by way of commission."

11       SECTION 3. Section 393-5, Hawaii Revised Statutes, is  
 12       amended to read as follows:

13       "**§393-5 Excluded services.** "Employment" as defined in  
 14       section 393-3 does not include:

15       (1) Service performed by an individual in the employ of an  
 16              employer who, by the laws of the United States, is  
 17              responsible for care and cost in connection with such  
 18              service;

19       (2) Service performed by an individual in the employ of  
 20              the individual's spouse, son, or daughter, and service  
 21              performed by an individual under the age of twenty-one  
 22              in the employ of the individual's father or mother;



- 1           (3) Service performed in the employ of a voluntary  
2           employee's beneficiary association providing for the  
3           payment of life, sick, accident, or other benefits to  
4           the members of the association or their dependents or  
5           their designated beneficiaries, if:
- 6           (A) Admission to membership in the association is  
7           limited to individuals who are officers or  
8           employees of the United States government; and
- 9           (B) No part of the net earnings of the association  
10          inures [(-)other than through such payments[(-)] to  
11          the benefits of any private shareholder or  
12          individual;
- 13          (4) Service performed by an individual for an employer as  
14          an insurance agent or as an insurance solicitor if all  
15          service performed by the individual for the employer  
16          is performed for remuneration by way of commission;
- 17          (5) Service performed by an individual for an employer as  
18          a real estate salesperson or as a real estate broker  
19          if all service performed by the individual for the  
20          employer is performed for remuneration by way of  
21          commission;





- 1           (6) Service performed by an individual who, pursuant to  
2           the Federal Economic Opportunity Act of 1964, is not  
3           subject to the provisions of law relating to federal  
4           employment, including unemployment compensation; ~~and~~
- 5           (7) Domestic in-home and community-based services for  
6           persons with developmental and intellectual  
7           disabilities under the medicaid home and community-  
8           based services program pursuant to ~~Title~~ title 42  
9           Code of Federal Regulations sections 440.180 and  
10          441.300, and ~~Title~~ title 42 Code of Federal  
11          Regulations, Part 434, Subpart A, as amended, and  
12          identified as chore, personal assistance and  
13          habilitation, residential habilitation, supported  
14          employment, respite, and skilled nursing services, as  
15          the terms are defined and amended from time to time by  
16          the department of human services, performed by an  
17          individual whose services are contracted by a  
18          recipient of social service payments and who  
19          voluntarily agrees in writing to be an independent  
20          contractor of the recipient of social service  
21          payments~~[-]~~; and



1       (8) Domestic, which includes attendant care, and day care  
2       services authorized by the department of human  
3       services under the Social Security Act, as amended, or  
4       provided through state-funded medical assistance to  
5       individuals ineligible for medicaid and performed by  
6       an individual in the employ of a recipient of social  
7       service payments. For the purposes of this paragraph  
8       only, a "recipient of social service payments" is a  
9       person who is an eligible recipient of social services  
10       such as attendant care and day care services."

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

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



**Report Title:**

Employment Exemption; Domestic Services; DHS

**Description:**

Amends the definition of "employment" in the workers' compensation, temporary disability insurance, and prepaid health care statutes by clarifying the "domestic services" exclusion for services authorized by the Department of Human Services.  
(HB2548 HD1)

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