

JAN 18 2013

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
18 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 life, including service performed as an ordinary
3 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, the payments required of those
3 instrumentalities with respect to that year shall be
4 refunded by the department of labor and industrial
5 relations from the fund in the same manner and within
6 the same period as is provided in section 383-76 with
7 respect to contributions erroneously collected;

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

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

21 (9) (A) Service performed in any calendar quarter in the
22 employ of any organization exempt from income tax



1 under section 501(a) of the federal Internal
2 Revenue Code (other than an organization
3 described in section 401(a) or under section 521
4 of the Internal Revenue Code), if:

5 (i) The remuneration for the service is less
6 than \$50; or

7 (ii) The service is performed by a fully
8 ordained, commissioned, or licensed minister
9 of a church in the exercise of the
10 minister's ministry or by a member of a
11 religious order in the exercise of duties
12 required by the order;

13 (B) Service performed in the employ of a school,
14 college, or university, if the service is
15 performed by a student who is enrolled and is
16 regularly attending classes at the school,
17 college, or university; or

18 (C) Service performed by an individual who is
19 enrolled at a nonprofit or public educational
20 institution which normally maintains a regular
21 faculty and curriculum and normally has a
22 regularly organized body of students in



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

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

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

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

20 (B) If the United States Secretary of State has
21 certified or certifies to the United States
22 Secretary of the Treasury that the foreign



1 government, with respect to whose instrumentality
2 exemption is claimed, grants an equivalent
3 exemption with respect to similar service
4 performed in the foreign country by employees of
5 the United States government and of
6 instrumentalities thereof;

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

16 (13) Service performed by an individual for an employing
17 unit as an insurance producer, if all service
18 performed by the individual for the employing unit is
19 performed for remuneration solely by way of
20 commission;

21 (14) Service performed by an individual under the age of
22 eighteen in the delivery or distribution of newspapers



1 or shopping news, not including delivery or
2 distribution to any point for subsequent delivery or
3 distribution;

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

12 (16) Service performed by an individual who, pursuant to
13 the Federal Economic Opportunity Act of 1964, is not
14 subject to the federal laws relating to unemployment
15 compensation;

16 (17) Service performed by an individual for an employing
17 unit as a real estate salesperson, if all service
18 performed by the individual for the employing unit is
19 performed for remuneration solely by way of
20 commission;

21 (18) Service performed by a registered sales representative
22 for a registered travel agency, when the service



- 1 performed by the individual for the travel agent is
2 performed for remuneration by way of commission;
- 3 (19) Service performed by a vacuum cleaner salesperson for
4 an employing unit, if all services performed by the
5 individual for the employing unit are performed for
6 remuneration solely by way of commission;
- 7 (20) Service performed for a family-owned private
8 corporation organized for profit that employs only
9 members of the family who each own at least fifty per
10 cent of the shares issued by the corporation; provided
11 that:
- 12 (A) The private corporation elects to be excluded
13 from coverage under this chapter;
- 14 (B) The election for exclusion shall apply to all
15 shareholders and under the same circumstances;
- 16 (C) No more than two members of a family may be
17 eligible per entity for exclusion under this
18 paragraph;
- 19 (D) The exclusion shall be irrevocable for five
20 years;
- 21 (E) The family-owned private corporation presents to
22 the department proof that it has paid federal



1 unemployment insurance taxes as required by
2 federal law; and

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

8 (21) Service performed by a direct seller as defined in
9 section 3508 of the Internal Revenue Code of 1986;

10 (22) Service performed by an election official or election
11 worker as defined in section 3309(b)(3)(F) of the
12 Internal Revenue Code of 1986, as amended;

13 (23) Service performed by an inmate or any person committed
14 to a penal institution[~~;~~and]

15 (24) Domestic in-home and community-based services for
16 persons with developmental and intellectual
17 disabilities under the medicaid home and
18 community-based services program pursuant to Title 42
19 Code of Federal Regulations sections 440.180 and
20 441.300, and Title 42 Code of Federal Regulations,
21 Part 434, Subpart A, as amended, and identified as
22 chore, personal assistance and habilitation,



1 residential habilitation, supported employment,
2 respite, and skilled nursing services, as the terms
3 are defined and amended from time to time by the
4 department of human services, performed by an
5 individual whose services are contracted by a
6 recipient of social service payments and who
7 voluntarily agrees in writing to be an independent
8 contractor of the recipient of social service payments
9 unless the individual is an employee and not an
10 independent contractor of the recipient of social
11 service payments under the Federal Unemployment Tax
12 Act.

13 (25) Service performed in the employ of a governmental
14 entity referred to in paragraph (7) of section 3306(c)
15 of the Internal Revenue Code of 1986, as amended, if
16 such service is performed by an individual in the
17 exercise of his duties as:

18 (A) An elected official, or a person appointed to
19 serve out the term of an elected official who has
20 vacated the position, and whose term has not yet
21 expired;



- 1 (B) A member of a legislative body of the State or a
2 political subdivision thereof;
- 3 (C) A member of the judiciary;
- 4 (D) A member of the National Guard or Air National
5 Guard;
- 6 (E) An employee serving on a temporary basis in case
7 of fire, storm, earthquake, flood, or similar
8 emergency; or
- 9 (F) An advisory position or a policymaking position
10 the performance of the duties of which ordinarily
11 does not require more than eight hours per week.

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

19 SECTION 2. New statutory material is underscored.

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

21

22



S.B. NO. 283

INTRODUCED BY:

[Handwritten Signature]



S.B. NO. 283

Report Title:

Unemployment; Definition of Employment; Excluded Services

Description:

Provides for the exemption of specific services from the definition of 'employment' for the purposes of unemployment compensation.

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