

ACT 137

An Act to Amend Act 74, Session Laws of Hawaii 1957, as Amended Relating to Agricultural Unemployment Compensation.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. The existing sections of the new chapter of the Revised Laws of Hawaii 1955, enacted by section 1 of Act 74, Session Laws of Hawaii 1957, as amended by any law enacted by the Thirtieth Legislature of the Territory of Hawaii, are hereby designated as Title I of Chapter 93A, Revised Laws of Hawaii 1955.

SECTION 2. Act 74, Session Laws of Hawaii 1957, is hereby amended by adding to the new chapter of the Revised Laws of Hawaii 1955, enacted

by section 1 of said Act 74, an additional Title, which shall be designated Title II of Chapter 93A, Revised Laws of Hawaii, and the sections of which shall be appropriately numbered by the Revisor of Statutes, reading as follows:

"TITLE II

Section 201. **Definitions, generally.** As used in this Title II, unless the context clearly requires otherwise:

(a) 'Agricultural Employer' means any employer with respect to whom the director, pursuant to section 93-77, has excluded from employment within the meaning of chapter 93 services performed for him which constitute agricultural labor, as defined in section 93-9.

(b) 'Agricultural labor' means services which is agricultural labor, as defined in section 93-9, and which is also employment within the meaning of chapter 93. If the services performed during more than one-half of any pay period by an individual for the person employing him constitute agricultural labor, all the services of such individual for such period shall be deemed to be agricultural labor; but if the services performed during one-half or more of any such pay period by an individual for the person employing him do not constitute agricultural labor, then none of the services of such individual for such period shall be deemed to be agricultural labor.

(c) 'Pay period' means a period (of not more than thirty-one consecutive days) for which a payment or remuneration is ordinarily made to the individual by the person employing him.

(d) Except as provided in this Title II, or otherwise inconsistent with this Title II, all of the terms used in this Title II shall have the meanings defined in chapter 93.

Sec. 202. Every individual to whom benefits would have been payable pursuant to chapter 93, were it not for the fact that the services with respect to which such benefits would have been payable have been excluded from employment within the meaning of chapter 93 by the operation of section 93-77, shall be paid benefits pursuant to this Title II in such amount that the total amount of the benefits paid pursuant to chapter 93 and this Title II shall be the same as the amount of the benefits which would have been payable pursuant to chapter 93 had such services not been so excluded. This section shall be interpreted and applied so that all of the wages paid to any individual for services which constitute employment within the meaning of chapter 93 and all of the wages paid to such individual for services which constitute agricultural labor within the meaning of this Title II shall be combined for the purpose of determining such total amount of benefits. Payment of such benefits shall be made by the director at such times and in such amounts and subject to such conditions that the benefits paid to the individual pursuant to chapter 93, if any, and pursuant to this Title II, shall at all times be equivalent to the benefits which would have been payable to the individual pursuant to chapter 93 had such services not been so excluded.

Sec. 203. A claim for benefits under chapter 93 shall constitute a claim for benefits under this Title II. For the purpose of determining the benefits (including weekly benefit amount, maximum total benefits in benefit year, benefits of seasonal workers, qualifying wages, eligibility, disqualifications, and all other matters referred to in Part II of chapter 93) which would have been payable pursuant to chapter 93 had there been no exclusion of services

from employment within the meaning of chapter 93 by the operation of section 93-77, except as provided in this Title II or otherwise inconsistent with this Title II all of the provisions of chapter 93 shall be applicable, mutatis mutandis, to all matters covered by this Title II, and are incorporated by reference as fully and effectually to all intents and purposes as if repeated in this Title II.

Sec. 204. (a) Every agricultural employer shall pay to the director the amount of all benefits paid by the director pursuant to this Title II for his account, notwithstanding any termination of the exclusion from employment within the meaning of chapter 93 of services performed for him which constitute agricultural labor. If any employer shall succeed to or acquire the organization, trade or business of an agricultural employer, the successor in interest is hereby required to assume the liability of the predecessor employer with respect to payments by the director for the account of the predecessor employer.

(b) Benefits paid to an individual under this Title II shall be charged to the accounts of his base period agricultural employers and the amount of benefits so chargeable against each base period agricultural employer's account shall bear the same ratio to the total benefits paid to the individual under this Title II as the base period wages paid to the individual by such agricultural employer bear to the total amount of base period wages paid to the individual by all of his base period agricultural employers. For the purposes of this section, the base period of the individual shall be the period used in determining the amount of the benefits which would have been payable to the individual pursuant to chapter 93 had agricultural labor not been excluded from employment, and the base period wages paid to the individual shall include only the wages paid for agricultural labor by agricultural employers.

Sec. 205. There is hereby established in the treasury of the State a special revolving fund, to be known as the agricultural unemployment compensation revolving fund, into which all payments made pursuant to section 204 of this Title II shall be paid. The sum of \$40,000, which is hereby appropriated from the general revenues of the State not otherwise appropriated shall also be paid into said revolving fund.

Sec. 206. (a) There is hereby established in the treasury of the State a special fund, to be known as the agricultural unemployment compensation administration fund, into which there shall be paid all payments specified in this section.

(b) Every agricultural employer subject to this Title II shall pay to the director during the period that he is subject to this Title II, an assessment equal to $1/20$ of 1% of his annual payroll. If, on the basis of the cost of the administration of this Title II during the preceding two calendar quarters, the director shall determine that said fund is insufficient to defray the estimated cost of such administration for the next two calendar quarters, then the rate of said assessment shall be increased to $1/10$ of 1%, effective as of the beginning of the first of said next two calendar quarters, which increased rate shall remain in effect until the director shall determine, on the basis of the cost of administration of this Title II during the preceding two calendar quarters, that such fund is sufficient to defray the estimated cost of such administration for the next four calendar quarters in which case the rate of said assessment shall be reduced to $1/20$ of 1%, effective as of the beginning

of the first of said next four calendar quarters. Assessments shall become due and be paid by each agricultural employer in accordance with such regulations as the director may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in his employ.

(c) For purposes of this section:

(1) 'Annual payroll' means the total amount of wages for agricultural labor paid by an agricultural employer during a calendar year; and

(2) 'Wages' shall not include remuneration in excess of the amount fixed by section 93-60(b) paid with respect to employment (whether agricultural labor or not) to an individual by an agricultural employer during any calendar year.

Sec. 207. Liens, foreclosure. The claim of the director against an agricultural employer for any amount due under this Title II shall be a lien upon the property of such agricultural employer as provided by section 115-37.5 and the powers conferred on the director of taxation by that section are conferred on the director of labor and industrial relations, and the lien may be foreclosed in a court proceeding or by distraint under section 93-70(b).

Sec. 208. Priorities under legal dissolutions or distributions. In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this State, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition or similar proceedings, any payment required of an agricultural employer under this Title II shall be paid in full prior to all other claims except taxes and claims for wages of not more than \$300 to each claimant, earned within six months of the commencement of the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act of 1898, as amended, any payment required of an agricultural employer under this Title II shall be entitled to such priority as is provided in section 64(a) of that act (11 U.S.C. Sec. 104(a), as amended.)"

SECTION 3. Section 93A-38, Revised Laws of Hawaii 1955, as amended, is hereby further amended to read as follows:

"Sec. 93A-38. Nonliability of State. (a) Benefits shall be deemed to be due and payable under this chapter only to the extent provided in this chapter, and to the extent that moneys are available therefor to the credit of a base period agricultural employer's or employers' reserve account or accounts, or to the credit of the revolving fund in case of eligible employees of agricultural employers exempted from payment of contributions, and the board shall not be liable for any amount in excess of such sums.

(b) Neither the board nor any officer or employee of the State shall be liable to any agricultural employer with respect to the payment of any benefit in the absence of gross negligence or intent to defraud such agricultural employer."

SECTION 4. Sections 93A-31 to 93A-34, inclusive, section 93A-38, as amended herein, and section 93A-39 of Title I of said Chapter 93A, shall be applicable to Title II of said Chapter 93A and shall be deemed a part thereof.

SECTION 5. This Act shall not repeal or otherwise affect the provisions of section 93-155, Revised Laws of Hawaii 1955.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 5, 1961.) S.B. 795.