

A Bill for an Act Relating to Employment Security.

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

SECTION 1. Section 383-7, Hawaii Revised Statutes, is amended to read:

“Sec. 383-7 Excluded service. ‘Employment’ does not include the following service:

- (1) Agricultural labor as defined in section 383-9 if it is performed by an individual who is employed by an employing unit which had, in each of the current and the preceding calendar years, (A) no more than nineteen calendar weeks, whether consecutive or not, in which agricultural labor was performed by its employees, or (B) no more than nineteen individuals in its employ performing agricultural labor in any one calendar week, whether or not the same individuals performed the labor in each week;
- (2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority performed in any calendar quarter by an individual if the cash remuneration paid by an employing unit for such service is less than \$225;
- (3) Service not in the course of the employing unit’s trade or business performed in any calendar quarter by an individual, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employing unit to perform the service. For the purposes of this paragraph, an individual shall be deemed to be regularly employed to perform service not in the course of an employing unit’s trade or business during a calendar quarter only if (A) on each of some twenty-four days during the quarter the individual performs such service for some portion of the day, or (B) the individual was regularly employed (as determined under clause (A)) by the employing unit in the performance of such service during the preceding calendar quarter;
- (4) (A) Service performed on or in connection with a vessel not an American vessel, if the individual performing the service is employed on and in connection with the vessel when outside the United States;
(B) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed as an ordinary incident thereto, except (i) the service performed in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United

- States), and (ii) the service performed in connection with a vessel of ten net tons or less (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States) by an individual who is employed by an employing unit which had in its employ one or more individuals performing the service for some portion of a day in each of twenty calendar weeks all occurring, whether consecutive or not, in either the current or the preceding calendar year, and (iii) service performed in connection with the catching or taking of salmon or halibut for commercial purposes;
- (5) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;
 - (6) Service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this chapter, except that to the extent that the Congress of the United States permits states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this chapter shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services; provided that if this State is not certified for any year by the Secretary of Labor under section 3304(c) of the federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the department of labor and industrial relations from the fund in the same manner and within the same period as is provided in section 383-76 with respect to contributions erroneously collected;
 - (7) Service performed in the employ of any other state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more such states or political subdivisions; and any service performed in the employ of any instrumentality of one or more other states or their political subdivisions to the extent that the instrumentality is, with respect to such service, exempt from the tax imposed by section 3301 of the Internal Revenue Code of 1954;
 - (8) Service with respect to which unemployment compensation is payable under an unemployment system established by an act of Congress;
 - (9) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the federal Internal Revenue Code (other than an organization described in section 401(a) or under section 521 of such code), if (i) the remuneration for such service is less than \$50, or (ii)

the service is performed by a fully ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

- (B) Service performed in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university;
- (10) Service performed in the employ of a foreign government (including service as a consular or other officer or employee of a nondiplomatic representative);
- (11) Service performed in the employ of an instrumentality wholly owned by a foreign government:
 - (A) If the service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and
 - (B) If the United States Secretary of State has certified or certifies to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;
- (12) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to state law;
- (13) Service performed by an individual for an employing unit as an insurance agent or as an insurance solicitor, if all such service performed by the individual for the employing unit is performed for remuneration solely by way of commission;
- (14) Service performed by an individual under the age of eighteen in the delivery or distribution of newspaper or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;
- (15) Service covered by an arrangement between the department and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by the employing unit's duly approved election, are deemed to be performed entirely within the agency's state;
- (16) Service performed by an individual who, pursuant to the Federal Economic Opportunity Act of 1964, is not subject to the federal laws relating to unemployment compensation;
- (17) Service performed by an individual for an employing unit as a real

estate salesman, if all such service performed by such individual for such employing unit is performed for remuneration solely by way of commission.

None of the foregoing exclusions (1) to (17) shall apply to any service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this chapter.”

SECTION 2. Section 383-168, Hawaii Revised Statutes, is amended to read:

“**Sec. 383-168 Definitions.** As used in this part, unless the context clearly requires otherwise:

- (1) ‘Extended benefit period’ means a period which:
 - (A) Begins with the third week after whichever of the following weeks occurs first:
 - (i) A week for which there is a national ‘on’ indicator, or
 - (ii) A week for which there is a State ‘on’ indicator; and
 - (B) Ends with either of the following weeks, whichever occurs later:
 - (i) The third week after the first week for which there is both a national ‘off’ indicator and a State ‘off’ indicator; or
 - (ii) The thirteenth consecutive week of such period; provided that no extended benefit period may begin by reason of a state ‘on’ indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this State; and provided further that, within the period beginning on July 1, 1971 and ending on December 31, 1971, an extended benefit period may become effective and be terminated in this State solely by reason of a State ‘on’ and a State ‘off’ indicator, respectively.
- (2) There is a ‘national “on” indicator’ for a week if the United States Secretary of Labor determines that for each of the three most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded 4.5 per cent.
- (3) There is a ‘national “off” indicator’ for a week if the United States Secretary of Labor determines that for each of the three most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states was less than 4.5 per cent.
- (4) There is a ‘State “on” indicator’ for this State for a week if the director of labor and industrial relations determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) under this chapter:

- (A) Equaled or exceeded 120 per cent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and
 - (B) Equaled or exceeded 4 per cent.
- (5) There is a 'State "off" indicator' for this State for a week if the director determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) under this chapter:
- (A) Was less than 120 per cent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, or
 - (B) Was less than 4 per cent.
- (6) 'Rate of insured unemployment,' for purposes of paragraph (4) and (5) of this section, means the percentage derived by dividing:
- (A) The average weekly number of individuals filing claims in this State for weeks of unemployment with respect to the most recent thirteen-consecutive week period, as determined by the director on the basis of his reports to the United States Secretary of Labor, by
 - (B) The average monthly employment covered under this chapter for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period.
- (7) 'Regular benefits' means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits and additional benefits.
- (8) 'Extended benefits' means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of this part for weeks of unemployment in his eligibility period.
- (9) 'Additional benefits' means benefits payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors under the provisions of any state law, including but not limited to chapter 385.
- (10) 'Eligibility period' of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any week thereafter which begins in such period;
- (11) 'Exhaustee' means an individual who, with respect to any week of unemployment in his eligibility period:
- (A) Has received, prior to such week, all of the regular benefits that were available to him under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his current benefit year that includes such week;

provided that, for the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to him although, as a result of a pending appeal with respect to wages and/or employment that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits; or

- (B) His benefit year having expired prior to such week, has no, or has insufficient, wages and/or employment on the basis of which he could establish a new benefit year that would include such week; and
 - (C) (i) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965 and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and
(ii) Has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.
- (12) 'State law' means the unemployment insurance law of any state, approved by the United States Secretary of Labor under section 3304 of the Internal Revenue Code of 1954."

SECTION 3. Section 383-172, Hawaii Revised Statutes, is amended to read:

"Sec. 383-172 Total extended benefit amount. The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be fifty per cent of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year; provided that the amount so determined shall be reduced by the total amount of additional benefits paid (or deemed paid) to the individual for weeks of unemployment in the individual's benefit year which began prior to the effective date of the extended benefit period which is current in the week for which the individual first claims extended benefits."

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

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

(Approved June 4, 1974.)

*Edited accordingly.