

ACT 223

S.B. NO. 3110

A Bill for an Act Relating to Employment Security.

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

SECTION 1. The legislature finds that public educational institutions, when trying to expand work-based learning opportunities, are constrained by employers' concerns about liability for students in work sites and the impact of certain labor laws relating to unemployment insurance, temporary disability, occupational safety

and health, and workers' compensation. The legislature in its last session partially addressed this concern by enacting Act 231, Session Laws of Hawaii 1995. Hawaii and all other states are presently committed to a major educational reform movement, which involves establishing statewide, comprehensive school-to-work transition systems. It is an enormous undertaking since it involves providing work-based learning opportunities for all students. Hawaii is expected to receive \$10,200,000 of federal funds over a five-year period under the School-to-Work Opportunities Act, P.L. 103-239, to carry out this reform.

The legislature further finds that employers are concerned with costs associated with work-based learning, especially those incurred through federal and state labor laws. Employers are seeking relief from the costs of the unemployment insurance payroll tax on students taking part in work-based learning. The federal government provides such an exemption in section 3306(c)(10)(C) of the Internal Revenue Code of 1986, as amended.

The purpose of this Act is to:

- (1) Encourage greater employer participation in school-to-work activities by providing employers relief from unemployment insurance payroll taxes assessed for students participating in paid work-based learning situations, by amending section 383-7, Hawaii Revised Statutes, to add student interns to the list of those excluded from the payroll tax, thereby providing the same regulatory relief as federal statutes;
- (2) Authorize the department of labor and industrial relations to provide grants and subsidies for employment, education, and training services, exempt from chapter 42D, Hawaii Revised Statutes; and
- (3) Extend the time period for employment and training fund assessments until December 31, 2000.

SECTION 2. Section 383-7, Hawaii Revised Statutes, is amended to read as follows:

“§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:
 - (A) Which, during each calendar quarter in both the current and the preceding calendar years, paid less than \$20,000 in cash remuneration to individuals employed in agricultural labor; and
 - (B) Which had, in each of the current and the preceding calendar years:
 - (i) No more than nineteen calendar weeks, whether consecutive or not, in which agricultural labor was performed by its employees; or
 - (ii) No more than nine 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 to the individual by an employing unit for the service is less than \$225, and if the total cash remuneration paid to all individuals by an employing unit for the service is less than \$1,000 in each calendar quarter in both the current and preceding calendar years;
- (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 the service for some portion of the day; or
 - (B) The individual was regularly employed as determined under subparagraph (A) by the employing unit in the performance of the 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);
 - (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 the individual's son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of the child's 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 apply to those instrumentalities, and to services performed for those 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 those instrumentalities with respect to that 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 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 the 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] the Code), if:
 - (i) The remuneration for the 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 the minister's ministry or by a member of a religious order in the exercise of duties required by the order;
 - (B) Service performed in the employ of a school, college, or university, if the service is performed by a student who is enrolled and is regularly attending classes at the school, college, or university; or
 - (C) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers;
 - (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-year 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 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 newspapers 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 salesperson, if all service performed by the individual for the employing unit is performed for remuneration solely by way of commission;
 - (18) Service performed by a registered sales representative for a registered travel agency, when the service performed by the individual for the travel agent is performed for remuneration by way of commission;
 - (19) Service performed by a vacuum cleaner salesperson for an employing unit, if all services performed by the individual for the employing unit are performed for remuneration solely by way of commission;
 - (20) Service performed for a family-owned private corporation organized for profit that employs only members of the family who each own at least fifty per cent of the shares issued by the corporation, provided that:
 - (A) The private corporation elects to be excluded from coverage under this chapter;
 - (B) The election for exclusion shall apply to all shareholders and under the same circumstances;
 - (C) No more than two members of a family may be eligible per entity for exclusion under this paragraph;
 - (D) The exclusion shall be irrevocable for five years;
 - (E) The family-owned private corporation presents to the department proof that it has paid federal unemployment insurance taxes as required by federal law; and
 - (F) The election to be excluded from coverage shall be effective the first day of the calendar quarter in which the application and all substantiating documents requested by the department are filed with the department;
- and
- (21) Service performed by a direct seller as defined in section 3508 of the Internal Revenue Code of 1986.

None of the foregoing exclusions (1) to (21) 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 3. Section 383-128, Hawaii Revised Statutes, is amended to read as follows:

“**[§383-128] Employment and training fund established.** (a) Effective January 1, 1992, there is established in the state treasury, apart from all other funds in this State, a special fund to be known as the employment and training fund. All assessments collected pursuant to section 383-129 and all other moneys received by the fund from any other source shall be deposited into the employment and training fund.

(b) The moneys in the employment and training fund may be used for funding:

- (1) The operation of the state employment service for which no federal funds have been allocated;
- (2) Business-specific training programs to create a more diversified job base and to carry out the purposes of the new industry training program pursuant to section 394-8;
- (3) Industry or employer-specific training programs where there are critical skill shortages in high growth occupational or industry areas;
- (4) Training and retraining programs to assist workers who have become recently unemployed or likely to be unemployed;
- (5) Programs to assist residents who do not otherwise qualify for federal or state job training programs to overcome employment barriers; and
- (6) Training programs to provide job-specific skills for individuals in need of [such] assistance to improve career employment prospects.

(c) The director may require employers assisted by any of these programs to contribute up to fifty per cent of the cost of such assistance in cash or in-kind contributions.

(d) The department is authorized to provide grants and subsidies to contract for employment, education, and training services from public and private agencies and nonprofit corporations. [These] Grants and subsidies for these services shall be exempt from chapter 42D so funds for these services may be expended in a timely manner to effectuate the purposes of this section. All other disbursements shall be in accordance with chapter 103D.

(e) For purposes of grants and subsidies awarded under subsection (d), any organization requesting a grant or subsidy shall:

- (1) Be licensed and accredited, as applicable, under the laws of the State;
- (2) Have at least one year's experience with the project or in the program area for which the request or proposal is being made; except that the director may grant an exception where the project or program area deals with new industry training; and
- (3) Be, employ, or have under contract persons who are qualified to engage in the program or activity to be funded by the State.

(f) Recipients of grants or subsidies shall be subject to the following conditions:

- (1) Any organization requesting a grant or subsidy shall submit its request together with all the information required by the director on an application form provided by the department;
- (2) The recipient of a grant or subsidy shall not use public funds for purposes of entertainment or perquisites;

- (3) The recipient of a grant or subsidy shall comply with applicable federal, state, and county laws;
- (4) The recipient of a grant or subsidy shall comply with any other requirements the director may prescribe;
- (5) The recipient of a grant or subsidy shall allow the director, the legislative bodies, and the legislative auditor full access to records, reports, files, and other related documents so that the program, management, and fiscal practices of the grant recipient may be monitored and evaluated to assure the proper and effective expenditure of public funds;
- (6) Every grant or subsidy shall be monitored according to rules established by the director to ensure compliance with this section; and
- (7) Any recipient of a grant or subsidy under this section who withholds or omits any material fact or deliberately misrepresents facts to the director or who violates the terms of the recipient's contract shall be in violation of this section and, in addition to any other penalties provided by law, shall be prohibited from applying for a grant or subsidy under this section for a period of five years from the date of termination.

[(e)] (g) The director shall submit a report to the legislature on the status of the employment and training fund, including expenditures and program results, at least twenty days prior to the convening of each regular legislative session.

[(f)] (h) The director of finance shall act as the treasurer and custodian of the employment and training fund, invest those moneys in accordance with applicable laws and rules, and disburse the moneys in the employment and training fund in accordance with directions by the director of labor and industrial relations. All interest earned from investment of moneys in the employment and training fund shall be deposited in the fund. The director of finance shall be liable on the director's official bond for the faithful performance of all duties in connection with the employment and training fund. All sums recovered on the surety bond for losses sustained by the employment and training fund shall be deposited in the fund.

[(g)] (i) Administrative costs for the collection of employment and training fund contributions and for costs related to the establishment and maintenance of the employment and training fund shall be borne by the fund beginning with fiscal year 1992-1993 and thereafter.

[(h)] (j) The director may establish positions and hire necessary personnel to establish and administer the employment and training fund without regard to chapters 76 and 77."

SECTION 4. Section 383-129, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Effective January 1, 1992, through December 31, [1996,] 2000, in addition to contributions determined by section 383-68, every employer, except an employer who has selected an alternative method of financing liability for unemployment compensation benefits pursuant to section 383-62 or an employer who has been assigned a minimum rate of zero per cent or the maximum rate of five and four-tenths per cent in accordance with section 383-68, shall be subject to an employment and training fund assessment at a rate of .05 per cent of taxable wages as specified in section 383-61."

SECTION 5. All rules adopted by the department of labor and industrial relations as of May 4, 1992, to implement sections 383-128 and 383-129, Hawaii Revised Statutes, shall remain in full force and effect until amended or repealed by

the department of labor and industrial relations pursuant to chapter 91, Hawaii Revised Statutes.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 17, 1996.)