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# A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

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

1           SECTION 1. The legislature finds that individuals who  
2 provide in home care under the State of Hawaii Medicaid DD-MR  
3 Waiver Program, as authorized the Social Security Act, as  
4 amended, should be excluded from "employment" under chapters  
5 383, 386, 392, and 393, Hawaii Revised Statutes. The  
6 legislature finds that if these individuals are not excluded,  
7 then the social service payments must be upwardly adjusted to  
8 include the cost of employee benefits for these individuals.

9           The purpose of this Act is to clarify the existing  
10 exclusions under chapters 386, 392, and 393, and to provide a  
11 new exclusion under chapter 383, Hawaii Revised Statutes.

12           SECTION 2. Section 383-1, Hawaii Revised Statutes, is  
13 amended by adding a new definition to be appropriately inserted  
14 and to read as follows:

15           "Recipient of social service payments" includes:

16           (1) A person who is an eligible recipient of social  
17           services such as attendant care and day care services;

18           and



1       (2) A corporation or private agency that contracts  
2               directly with the department of human services to  
3               provide attendant care and day care authorized under  
4               the Social Security Act, as amended."

5           SECTION 3. Section 386-1, Hawaii Revised Statutes, is  
6 amended by adding a new definition to be appropriately inserted  
7 and to read as follows:

8           "Recipient of social service payments" includes:

9           (1) A person who is an eligible recipient of social  
10           services such as attendant care and day care services;  
11           and

12           (2) A corporation or private agency that contracts  
13           directly with the department of human services to  
14           provide attendant care and day care authorized under  
15           the Social Security Act, as amended."

16           SECTION 4. Section 392-3, Hawaii Revised Statutes, is  
17 amended by adding a new definition to be appropriately inserted  
18 and to read as follows:

19           "Recipient of social service payments" includes:

20           (1) A person who is an eligible recipient of social  
21           services such as attendant care and day care services;  
22           and



1        (2) A corporation or private agency that contracts  
 2                    directly with the department of human services to  
 3                    provide attendant care and day care authorized under  
 4                    the Social Security Act, as amended."

5            SECTION 5. Section 383-7, Hawaii Revised Statutes, is  
 6 amended to read as follows:

7            "§383-7 Excluded service. (a) "Employment" shall not  
 8 include [~~the following service~~]:

9            (1) Agricultural labor as defined in section 383-9 if it  
 10                    is performed by an individual who is employed by an  
 11                    employing unit:

12            (A) [~~which,~~] That, during each calendar quarter in  
 13                    both the current and the preceding calendar  
 14                    years, paid less than \$20,000 in cash  
 15                    remuneration to individuals employed in  
 16                    agricultural labor; and

17            (B) [~~which~~] That had, in each of the current and the  
 18                    preceding calendar years:

19            (i) No more than nineteen calendar weeks,  
 20                    whether consecutive or not, in which  
 21                    agricultural labor was performed by its  
 22                    employees; or



1           (ii) No more than nine individuals in its employ  
2                   performing agricultural labor in any one  
3                   calendar week, whether or not the same  
4                   individuals performed the labor in each  
5                   week;

6           (2) Domestic service in a private home, local college  
7                   club, or local chapter of a college fraternity or  
8                   sorority as set forth in section 3306(c)(2) of the  
9                   Internal Revenue Code of 1986, as amended;

10          (3) Service not in the course of the employing unit's  
11                   trade or business performed in any calendar quarter by  
12                   an individual, unless the cash remuneration paid for  
13                   the service is \$50 or more and the service is  
14                   performed by an individual who is regularly employed  
15                   by the employing unit to perform the service. For the  
16                   purposes of this paragraph, an individual shall be  
17                   deemed to be regularly employed to perform service not  
18                   in the course of an employing unit's trade or business  
19                   during a calendar quarter [~~only~~] if:

20           (A) On each of some twenty-four days during the  
21                   quarter the individual performs the service for  
22                   some portion of the day; or



1 (B) The individual was regularly employed as  
2 determined under subparagraph (A) by the  
3 employing unit in the performance of the service  
4 during the preceding calendar quarter;

5 (4) (A) Service performed on or in connection with a  
6 vessel not an American vessel, if the individual  
7 performing the service is employed on and in  
8 connection with the vessel when outside the  
9 United States;

10 (B) Service performed by an individual in (or as an  
11 officer or member of the crew of a vessel while  
12 it is engaged in) the catching, taking,  
13 harvesting, cultivating, or farming of any kind  
14 of fish, shellfish, crustacea, sponges, seaweeds,  
15 or other aquatic forms of animal and vegetable  
16 life, including service performed as an ordinary  
17 incident thereto, except:

18 (i) The service performed in connection with a  
19 vessel of more than ten net tons (determined  
20 in the manner provided for determining the  
21 register tonnage of merchant vessels under  
22 the laws of the United States);



- 1           (ii) The service performed in connection with a  
2           vessel of ten net tons or less (determined  
3           in the manner provided for determining the  
4           register tonnage of merchant vessels under  
5           the laws of the United States) by an  
6           individual who is employed by an employing  
7           unit which had in its employ one or more  
8           individuals performing the service for some  
9           portion of a day in each of twenty calendar  
10          weeks all occurring, whether consecutive or  
11          not, in either the current or the preceding  
12          calendar year; and
- 13          (iii) Service performed in connection with the  
14          catching or taking of salmon or halibut for  
15          commercial purposes;
- 16          (5) Service performed by an individual in the employ of  
17          the individual's son, daughter, or spouse, and service  
18          performed by a child under the age of twenty-one in  
19          the employ of the child's father or mother;
- 20          (6) Service performed in the employ of the United States  
21          government or an instrumentality of the United States  
22          exempt under the Constitution of the United States



1 from the contributions imposed by this chapter, except  
2 that to the extent that the Congress of the United  
3 States permits states to require any instrumentalities  
4 of the United States to make payments into an  
5 unemployment fund under a state unemployment  
6 compensation law, all of the provisions of this  
7 chapter shall apply to those instrumentalities, and to  
8 services performed for those instrumentalities, in the  
9 same manner, to the same extent, and on the same terms  
10 as to all other employers, employing units,  
11 individuals, and services; provided that if this State  
12 is not certified for any year by the Secretary of  
13 Labor under section 3304(c) of the federal Internal  
14 Revenue Code, the payments required of those  
15 instrumentalities with respect to that year shall be  
16 refunded by the department of labor and industrial  
17 relations from the fund in the same manner and within  
18 the same period as is provided in section 383-76 with  
19 respect to contributions erroneously collected;

20 (7) Service performed in the employ of any other state, or  
21 any political subdivision thereof, or any  
22 instrumentality of any one or more of the foregoing



1           which is wholly owned by one or more states or  
2           political subdivisions; and any service performed in  
3           the employ of any instrumentality of one or more other  
4           states or their political subdivisions to the extent  
5           that the instrumentality is, with respect to the  
6           service, exempt from the tax imposed by section 3301  
7           of the Internal Revenue Code of 1986, as amended;

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

11          (9) (A) Service performed in any calendar quarter in the  
12               employ of any organization exempt from income tax  
13               under section 501(a) of the federal Internal  
14               Revenue Code (other than an organization  
15               described in section 401(a) or under section 521  
16               of the Internal Revenue Code), if:

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

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



1 religious order in the exercise of duties  
2 required by the order;

3 (B) Service performed in the employ of a school,  
4 college, or university, if the service is  
5 performed by a student who is enrolled and is  
6 regularly attending classes at the school,  
7 college, or university; or

8 (C) Service performed by an individual who is  
9 enrolled at a nonprofit or public educational  
10 institution which normally maintains a regular  
11 faculty and curriculum and normally has a  
12 regularly organized body of students in  
13 attendance at the place where its educational  
14 activities are carried on as a student in a full-  
15 time program, taken for credit at ~~such~~ the  
16 institution, which combines academic instruction  
17 with work experience, if ~~such~~ the service is an  
18 integral part of such program, and ~~such~~ the  
19 institution has so certified to the employer,  
20 except that this subparagraph shall not apply to  
21 service performed in a program established for or  
22 on behalf of an employer or group of employers;



- 1       (10) Service performed in the employ of a foreign  
2           government [(-)], including service as a consular or  
3           other officer or employee of a nondiplomatic  
4           representative [(-)];
  
- 5       (11) Service performed in the employ of an instrumentality  
6           wholly owned by a foreign government:
  - 7           (A) If the service is of a character similar to that  
8               performed in foreign countries by employees of  
9               the United States government or of an  
10              instrumentality thereof; and
  - 11           (B) If the United States Secretary of State has  
12               certified or certifies to the United States  
13               Secretary of the Treasury that the foreign  
14               government, with respect to whose instrumentality  
15               exemption is claimed, grants an equivalent  
16               exemption with respect to similar service  
17               performed in the foreign country by employees of  
18               the United States government and of  
19               instrumentalities thereof;
  
- 20       (12) Service performed as a student nurse in the employ of  
21           a hospital or a nurses' training school by an  
22           individual who is enrolled and is regularly attending



1 classes in a nurses' training school chartered or  
2 approved pursuant to state law; and service performed  
3 as an intern in the employ of a hospital by an  
4 individual who has completed a four-year course in a  
5 medical school chartered or approved pursuant to state  
6 law;

7 (13) Service performed by an individual for an employing  
8 unit as an insurance producer, if all service  
9 performed by the individual for the employing unit is  
10 performed for remuneration solely by way of  
11 commission;

12 (14) Service performed by an individual under the age of  
13 eighteen in the delivery or distribution of newspapers  
14 or shopping news, not including delivery or  
15 distribution to any point for subsequent delivery or  
16 distribution;

17 (15) Service covered by an arrangement between the  
18 department and the agency charged with the  
19 administration of any other state or federal  
20 unemployment compensation law pursuant to which all  
21 services performed by an individual for an employing  
22 unit during the period covered by the employing unit's



- 1           duly approved election, are deemed to be performed  
2           entirely within the agency's state;
- 3       (16) Service performed by an individual who, pursuant to  
4           the Federal Economic Opportunity Act of 1964, is not  
5           subject to the federal laws relating to unemployment  
6           compensation;
- 7       (17) Service performed by an individual for an employing  
8           unit as a real estate salesperson, if all service  
9           performed by the individual for the employing unit is  
10          performed for remuneration solely by way of  
11          commission;
- 12       (18) Service performed by a registered sales representative  
13          for a registered travel agency, when the service  
14          performed by the individual for the travel agent is  
15          performed for remuneration by way of commission;
- 16       (19) Service performed by a vacuum cleaner salesperson for  
17          an employing unit, if all services performed by the  
18          individual for the employing unit are performed for  
19          remuneration solely by way of commission;
- 20       (20) Service performed for a family-owned private  
21          corporation organized for profit that employs only  
22          members of the family who each own at least fifty per



1 cent of the shares issued by the corporation; provided  
2 that:

3 (A) The private corporation elects to be excluded  
4 from coverage under this chapter;

5 (B) The election for exclusion shall apply to all  
6 shareholders and under the same circumstances;

7 (C) No more than two members of a family may be  
8 eligible per entity for exclusion under this  
9 paragraph;

10 (D) The exclusion shall be irrevocable for five  
11 years;

12 (E) The family-owned private corporation presents to  
13 the department proof that it has paid federal  
14 unemployment insurance taxes as required by  
15 federal law; and

16 (F) The election to be excluded from coverage shall  
17 be effective the first day of the calendar  
18 quarter in which the application and all  
19 substantiating documents requested by the  
20 department are filed with the department;



1 (21) Service performed by a direct seller as defined in  
2 section 3508 of the Internal Revenue Code of 1986;  
3 [and]

4 (22) Service performed by an election official or election  
5 worker as defined in section 3309(b)(3)(F) of the  
6 Internal Revenue Code of 1986, as amended[-]; and

7 (23) Domestic service, including chore service, residential  
8 habilitation, personal assistance/habilitation,  
9 skilled nursing, respite services, and any other in-  
10 home and community based service as defined by the  
11 department of health and the department of human  
12 services, for persons with developmental disabilities  
13 and mental retardation under the Medicaid Home and  
14 Community-Based Services Program, with the exception  
15 of adult day health services performed by:

16 (A) An individual who is under a contract between the  
17 individual and the recipient of social service  
18 payments and who shall be presumed to be in an  
19 independent contractor relationship unless the  
20 director can demonstrate that the individual is  
21 engaged in a common law employer-employee  
22 relationship with the recipient of social service



1                   payments, provided, however, that the recipient  
2                   of social services payments may elect, in  
3                   writing, to enter into an employee-employer  
4                   relationship with the individual;

5                   (B) A government employee;

6                   (C) A nonprofit organization; or

7                   (D) Indian tribes.

8                   (b) None of the [~~foregoing~~] exclusions [~~(1) to (22)~~] in  
9                   subsection (a) shall apply to any service with respect to which  
10                   a tax is required to be paid under any federal law imposing a  
11                   tax against which credit may be taken for contributions required  
12                   to be paid into a state unemployment fund or which as a  
13                   condition for full tax credit against the tax imposed by the  
14                   federal Unemployment Tax Act is required to be covered under  
15                   this chapter."

16                   SECTION 6. Section 386-1, Hawaii Revised Statutes, is  
17                   amended by amending the definition of "Employment" to read as  
18                   follows:

19                   "Employment" means any service performed by an individual  
20                   for another person under any contract of hire or apprenticeship,  
21                   express or implied, oral or written, whether lawfully or  
22                   unlawfully entered into. It includes service of public



1 officials, whether elected or under any appointment or contract  
2 of hire express or implied.

3 "Employment" does not include the following service:

- 4 (1) Service for a religious, charitable, educational, or  
5 nonprofit organization if performed in a voluntary or  
6 unpaid capacity;
- 7 (2) Service for a religious, charitable, educational, or  
8 nonprofit organization if performed by a recipient of  
9 aid therefrom and the service is incidental to or in  
10 return for the aid received;
- 11 (3) Service for a school, college, university, college  
12 club, fraternity, or sorority if performed by a  
13 student who is enrolled and regularly attending  
14 classes and in return for board, lodging, or tuition  
15 furnished, in whole or in part;
- 16 (4) Service performed by a duly ordained, commissioned, or  
17 licensed minister, priest, or rabbi of a church in the  
18 exercise of the minister's, priest's, or rabbi's  
19 ministry or by a member of a religious order in the  
20 exercise of nonsecular duties required by the order;
- 21 (5) Service performed by an individual for another person  
22 solely for personal, family, or household purposes if



1 the cash remuneration received is less than \$225  
2 during the current calendar quarter and during each  
3 completed calendar quarter of the preceding twelve-  
4 month period;

- 5 (6) Domestic, which includes [~~attendant care, and day care~~  
6 ~~services authorized by the department of human~~  
7 ~~services under the Social Security Act, as amended,~~]  
8 chore service, residential habilitation, personal  
9 assistance/habilitation, skilled nursing, respite  
10 services, and any other in-home and community based  
11 services for persons with developmental disabilities  
12 and mental retardation under the Medicaid Home and  
13 Community-Based Services Program, with the exception  
14 of adult day health services performed by an  
15 individual [in the employ of] whose services are  
16 contracted by a recipient of social service payments;  
17 provided, however, that the recipient of social  
18 service payments may elect, in writing, to enter into  
19 an employer-employee relationship with the individual;
- 20 (7) Service performed without wages for a corporation  
21 without employees by a corporate officer in which the



- 1           officer is at least a twenty-five per cent  
2           stockholder;
- 3           (8) Service performed by an individual for a corporation  
4           if the individual owns at least fifty per cent of the  
5           corporation; provided that no employer shall require  
6           an employee to incorporate as a condition of  
7           employment; and
- 8           (9) Service performed by an individual for another person  
9           as a real estate salesperson or as a real estate  
10          broker, if all the service performed by the individual  
11          for the other person is performed for remuneration  
12          solely by way of commission.

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

19           SECTION 7. Section 392-5, Hawaii Revised Statutes, is  
20 amended to read as follows:

21           "§392-5 Excluded services. "Employment" as defined in  
22 section 392-3 shall not include the following services:



- 1           (1) Domestic service in a private home, local college  
2           club, or local chapter of a college fraternity or  
3           sorority, performed in any calendar quarter by an  
4           individual if the cash remuneration paid by the  
5           employer for such service is less than \$225;
- 6           (2) Service not in the course of the employer's trade or  
7           business performed in any calendar quarter by an  
8           individual, unless the cash remuneration paid for the  
9           service is \$50 or more and the service is performed by  
10          an individual who is regularly employed by the  
11          employer to perform the service. An individual shall  
12          be deemed to be regularly employed to perform service  
13          not in the course of the employer's trade or business  
14          during a calendar quarter only if:
- 15          (A) On each of some twenty-four days during the  
16          quarter the individual performs the service for  
17          some portion of the day; or
- 18          (B) The individual was regularly employed (as  
19          determined under subparagraph (A)) by the  
20          employer in the performance of the service during  
21          the preceding calendar quarter;



1 (3) Service performed on or in connection with a vessel  
2 not an American vessel, if the individual performing  
3 the service is employed on and in connection with the  
4 vessel when outside the United States;

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

13 (A) The service performed in connection with a vessel  
14 of more than ten net tons (determined in the  
15 manner provided for determining the register  
16 tonnage of merchant vessels under the laws of the  
17 United States);

18 (B) The service performed in connection with a vessel  
19 of ten net tons or less (determined in the manner  
20 provided for determining the register tonnage of  
21 merchant vessels under the laws of the United  
22 States) by an individual who is employed by an



1 employer who, for some portion in each of twenty  
2 different calendar weeks in either the current or  
3 preceding calendar year, had in the employer's  
4 employ one or more persons performing the  
5 service, whether or not the weeks were  
6 consecutive and whether or not the same  
7 individuals performed the service in each week;  
8 and

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

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

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

20 (7) Service performed in the employ of any other state, or  
21 any political subdivision thereof, or any  
22 instrumentality of any one or more of the foregoing



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

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

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

16           (A) The remuneration for such service is less than  
17           \$50;

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

21           (C) The service is performed by a duly ordained,  
22           commissioned, or licensed minister or licensed



1 minister of a church in the exercise of the  
2 minister's ministry or by a member of a religious  
3 order in the exercise of nonsecular duties  
4 required by the order; or

5 (D) The service is performed for a church by an  
6 employee who fails to meet the eligibility  
7 requirements of section 392-25;

8 (10) Service performed in the employ of a voluntary  
9 employees' beneficiary association providing for the  
10 payment of life, sick, accident, or other benefits to  
11 the members of the association or their dependents,  
12 if:

13 (A) No part of its net earnings inures (other than  
14 through such payments) to the benefit of any  
15 private shareholder or individual; and

16 (B) Eighty-five per cent or more of its income  
17 consists of amounts collected from members and  
18 amounts contributed by the employer of the  
19 members for the sole purpose of making such  
20 payments and meeting expenses;

21 (11) Service performed in the employ of a voluntary  
22 employees' beneficiary association providing for the



1 payment of life, sick, accident, or other benefits to  
2 the members of the association or their dependents or  
3 their designated beneficiaries, if:

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

7 (B) No part of the net earnings of the association  
8 inures (other than through such payments) to the  
9 benefit of any private shareholder or 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, which includes [~~attendant care, and day care~~  
19 ~~services authorized by the department of human~~  
20 ~~services under the Social Security Act, as amended,]~~  
21 chore service, residential habilitation, personal  
22 assistance/habilitation, skilled nursing, respite



1           services, and any other in-home and community based  
2           services for persons with developmental disabilities  
3           and mental retardation under the Medicaid Home and  
4           Community-Based Services Program, with the exception  
5           of adult day health services performed by an  
6           individual [~~in the employ of~~] whose services are  
7           contracted by a recipient of social service payments;  
8           provided, however, that the recipient of social  
9           service payments may elect, in writing, to enter into  
10           an employer-employee relationship with the individual;

11       (20) Service performed by a vacuum cleaner salesperson for  
12       an employing unit, if all such services performed by  
13       the individual for such employing unit are performed  
14       for remuneration solely by way of commission; or

15       (21) Service performed by an individual for an employer as  
16       a real estate salesperson or as a real estate broker,  
17       if all the service performed by the individual for the  
18       employer is performed for remuneration solely by way  
19       of commission."

20           SECTION 8. Section 393-3, Hawaii Revised Statutes, is  
21   amended to read as follows:



1           **"§393-3 Definitions generally.** As used in this chapter,  
2 unless the context clearly requires otherwise:

3 [~~1~~] "Department" means the department of labor and industrial  
4 relations.

5 [~~2~~] "Director" means the director of labor and industrial  
6 relations.

7 [~~3~~] "Employer" means any individual or type of organization,  
8 including any partnership, association, trust, estate,  
9 joint stock company, insurance company, or corporation,  
10 whether domestic or foreign, a debtor in possession or  
11 receiver or trustee in bankruptcy, or the legal  
12 representative of a deceased person, who has one or more  
13 regular employees in the employer's employment.

14 "Employer" does not include:

15 [~~A~~] (1) The State, any of its political subdivisions, or any  
16 instrumentality of the State or its political  
17 subdivisions;

18 [~~B~~] (2) The United States government or any instrumentality  
19 of the United States;

20 [~~C~~] (3) Any other state or political subdivision thereof or  
21 instrumentality of such state or political subdivision;



1    ~~(D)~~ (4) Any foreign government or instrumentality wholly  
2           owned by a foreign government, if ~~(i) the~~:

3           (A) The service performed in its employ is of a  
4           character similar to that performed in foreign  
5           countries by employees of the United States  
6           government or of an instrumentality thereof~~(7)~~  
7           and ~~(ii) the~~

8           (B) The United States Secretary of State has  
9           certified or certifies to the United States  
10          Secretary of the Treasury that the foreign  
11          government, with respect to whose  
12          instrumentality exemption is claimed, grants  
13          an equivalent exemption with respect to  
14          similar service performed in the foreign  
15          country by employees of the United States  
16          government and of instrumentalities thereof.

17    ~~(4)~~ "Employment" means service, including service in  
18          interstate commerce, performed for wages under any  
19          contract of hire, written or oral, expressed or  
20          implied, with an employer, except as otherwise  
21          provided in sections 393-4 and 393-5.



1 [~~5~~] "Premium" means the amount payable to a prepaid health  
2 care plan contractor as consideration for the  
3 contractor's obligations under a prepaid health care  
4 plan.

5 [~~6~~] "Prepaid health care plan" means any agreement by  
6 which any prepaid health care plan contractor  
7 undertakes in consideration of a stipulated premium:

8 [~~A~~] (1) Either to furnish health care, including  
9 hospitalization, surgery, medical or nursing  
10 care, drugs or other restorative appliances,  
11 subject to, if at all, only a nominal per service  
12 charge; or

13 [~~B~~] (2) To defray or reimburse, in whole or in part,  
14 the expenses of health care.

15 [~~7~~] "Prepaid health care plan contractor" means:

16 [~~A~~] (1) Any medical group or organization which  
17 undertakes under a prepaid health care plan to  
18 provide health care; [~~or~~]

19 [~~B~~] (2) Any nonprofit organization which undertakes  
20 under a prepaid health care plan to defray or  
21 reimburse in whole or in part the expenses of  
22 health care; or



1           ~~[(C)]~~ (3) Any insurer who undertakes under a prepaid  
2                           health care plan to defray or reimburse in whole  
3                           or in part the expenses of health care.

4           "Recipient of social service payments" includes:

5           (1) A person who is an eligible recipient of social  
6                           services such as attendant care and day care services;  
7                           and

8           (2) A corporation or private agency that contracts  
9                           directly with the department of human services to  
10                          provide attendant care and day care authorized under  
11                          the Social Security Act, as amended.

12       ~~[(8)]~~ "Regular employee" means a person employed in the  
13 employment of any one employer for at least twenty hours per  
14 week but does not include a person employed in seasonal  
15 employment. "Seasonal employment" for the purposes of this  
16 paragraph means employment in a seasonal pursuit as defined in  
17 section 387-1 by a seasonal employer during a seasonal period or  
18 seasonal periods for the employer in the seasonal pursuit or  
19 employment by an employer engaged in the cultivating,  
20 harvesting, processing, canning, and warehousing of pineapple  
21 during its seasonal periods. The director by rule and



1 regulation may determine the kind of employment that constitutes  
2 seasonal employment.

3 [~~(9)~~] "Wages" means all remuneration for services from  
4 whatever source, including commissions, bonuses, and tips and  
5 gratuities paid directly to any individual by a customer of the  
6 individual's employer, and the cash value of all remuneration in  
7 any medium other than cash.

8 The director may issue regulations for the reasonable  
9 determination of the cash value of remuneration in any medium  
10 other than cash.

11 If the employee does not account to the employee's employer  
12 for the tips and gratuities received and is engaged in an  
13 occupation in which the employee customarily and regularly  
14 receives more than \$20 a month in tips, the combined amount  
15 received by the employee from the employee's employer and from  
16 tips shall be deemed to be at least equal to the wage required  
17 by chapter 387 or a greater sum as determined by regulation of  
18 the director.

19 "Wages" does not include the amount of any payment  
20 specified in section 383-11 or 392-22 or chapter 386."

21 SECTION 9. Section 393-5, Hawaii Revised Statutes, is  
22 amended to read as follows:



1           "§393-5 Excluded services. "Employment" as defined in  
2 section 393-3 does not include the following services:

3           (1) Service performed by an individual in the employ of an  
4 employer who, by the laws of the United States, is  
5 responsible for care and cost in connection with such  
6 service.

7           (2) Service performed by an individual in the employ of  
8 the individual's spouse, son, or daughter, and service  
9 performed by an individual under the age of twenty-one  
10 in the employ of the individual's father or mother.

11          (3) Service performed in the employ of a voluntary  
12 employee's beneficiary association providing for the  
13 payment of life, sick, accident, or other benefits to  
14 the members of the association or their dependents or  
15 their designated beneficiaries, if

16           (A) Admission to membership in the association is  
17 limited to individuals who are officers or  
18 employees of the United States government, and

19           (B) No part of the net earnings of the association  
20 inures (other than through such payments) to the  
21 benefits of any private shareholder or  
22 individual.



- 1           (4) Service performed by an individual for an employer as  
2           an insurance agent or as an insurance solicitor, if  
3           all such service performed by the individual for the  
4           employer is performed for remuneration solely by way  
5           of commission.
- 6           (5) Service performed by an individual for an employer as  
7           a real estate salesperson or as a real estate broker,  
8           if all such service performed by the individual for  
9           the employer is performed for remuneration solely by  
10          way of commission.
- 11          (6) Service performed by an individual who, pursuant to  
12          the Federal Economic Opportunity Act of 1964, is not  
13          subject to the provisions of law relating to federal  
14          employment, including unemployment compensation.
- 15          (7) Domestic, which includes [~~attendant care, and day care~~  
16          ~~services authorized by the department of human~~  
17          ~~services under the Social Security Act, as amended,~~]  
18          chore service, residential habilitation, personal  
19          assistance/habilitation, skilled nursing, respite  
20          services, and any other in-home and community based  
21          services for persons with developmental disabilities  
22          and mental retardation under the Medicaid Home and



1           Community-Based Services Program, with the exception  
2           of adult day health services performed by an  
3           individual [~~in the employ of~~] whose services are  
4           contracted by a recipient of social service payments;  
5           provided, however, that the recipient of social  
6           service payments may elect, in writing, to enter into  
7           an employer-employee relationship with the  
8           individual."

9           SECTION 10. If any provision of this Act, or the  
10          application thereof to any person or circumstance is contrary to  
11          federal law, that provision or any application thereof to any  
12          person or circumstance shall be invalid; provided that the  
13          invalidity does not affect other provisions or applications of  
14          the Act, which can be given effect without the invalid provision  
15          or application, and to this end the provisions of this Act are  
16          severable.

17          SECTION 11. Statutory material to be repealed is bracketed  
18          and stricken. New statutory material is underscored.

19          SECTION 12. This Act shall take effect on July 1, 2059 and  
20          shall be repealed on June 30, 2061; provided that sections 383-  
21          1, 383-7, 386-1, 392-3, 392-5, 393-3, and 393-5, Hawaii Revised



- 1 Statutes, shall be reenacted in the form in which they read on
- 2 the day before the effective date of this Act.



**REPORT Title:**

Employment; Exemption

**Description:**

Exempts recipients of social service payments from the scope of employment related laws; defines "recipients of social service payments" as it relates to chapters 383, 386, 392, and 393, Hawaii Revised Statutes. Defines services excluded from the definition of employment under UI, TDI, Workers' Compensation, and prepaid health care laws. Repeals act on June 30, 2061.  
(SB1780 HD1)

