

JAN 23 2009

A BILL FOR AN ACT

RELATING TO UNEMPLOYMENT INSURANCE.

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

1 SECTION 1. The legislature finds that current unemployment
2 insurance laws mandate owners of "mom and pop" small businesses
3 to pay the monthly premium for unemployment insurance. The
4 legislature also finds that some of these business owners cannot
5 collect unemployment compensation when businesses close
6 "voluntarily." This creates a situation where parties, like
7 "mom and pop" small business owners, cannot benefit from a
8 system they pay into. In other words, these business owners
9 subsidize a system they do not benefit from, an unjust and
10 unfair situation. Circumstances such as economic hardship due
11 to statewide economic downturn, with the aftermath of September
12 11, 2001, being a drastic example, make the "voluntary" decision
13 to close an involuntary one. Business failures can also occur
14 when a big box business opens nearby, or due to natural
15 disasters or acts of government. There are many other
16 legitimate reasons for the closure of a business. The purpose
17 of this Act is to allow owner-employees of corporations who own



1 at least fifty per cent of the interest in a corporation or
2 members of a limited liability company where the member is an
3 individual owning a distributed interest of at least fifty per
4 cent in the limited liability company the ability to collect
5 unemployment compensation that they have paid for when
6 circumstances force these owner-employees or members to
7 "voluntarily" close their businesses.

8 SECTION 2. Section 383-29, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) An unemployed individual shall be eligible to receive
11 benefits with respect to any week only if the department finds
12 that:

13 (1) The individual has made a claim for benefits with
14 respect to that week in accordance with rules the
15 department may prescribe;

16 (2) The individual has registered for work at, and
17 thereafter continued to report at, an employment
18 office in accordance with rules the department may
19 prescribe, except that the department, by rule, may
20 waive or alter either or both of the requirements of
21 this paragraph as to individuals attached to regular
22 jobs and as to other types of cases or situations with



1 respect to which it finds that compliance with those
2 requirements would be oppressive, or would be
3 inconsistent with the purpose of this chapter;
4 provided that no such rule shall conflict with section
5 383-21;

6 (3) The individual is able to work and is available for
7 work; provided that no claimant shall be considered
8 ineligible with respect to any week of unemployment
9 for failure to comply with this paragraph if the
10 failure is due to an illness or disability, as
11 evidenced by a physician's certificate, which occurs
12 during an uninterrupted period of unemployment with
13 respect to which benefits are claimed and no work
14 which would have been suitable prior to the beginning
15 of the illness and disability has been offered the
16 claimant. In the case of an owner-employee who has
17 ownership of at least fifty per cent in a corporation
18 or a member of a limited liability company where the
19 member is an individual owning a distributed interest
20 of at least fifty per cent in the limited liability
21 company, a reasonable attempt to revive or restart a
22 failed business, or to start a new business in an area



1 for which the claimant owner-employee or member is
2 reasonably fitted by training and experience shall
3 meet the requirement of availability for purposes of
4 collecting benefits. The director shall adopt rules
5 pursuant to chapter 91 necessary for the purposes of
6 this subsection.

7 (4) The individual has been unemployed for a waiting
8 period of one week within the individual's benefit
9 year. No week shall be counted as a waiting period:

10 (A) If benefits have been paid with respect thereto;

11 (B) Unless the individual was eligible for benefits
12 with respect thereto as provided in this section
13 and section 383-30, except for the requirements
14 of this paragraph;

15 (5) In the case of an individual whose benefit year
16 begins:

17 (A) On or after January 2, 1966, but prior to October
18 1, 1989, the individual has had during the
19 individual's base period a total of fourteen or
20 more weeks of employment as defined in section
21 383-1 and has been paid wages for insured work
22 during the individual's base period in an amount



1 equal to at least thirty times the individual's
2 weekly benefit amount as determined under section
3 383-22(b). For the purposes of this
4 subparagraph, wages for insured work shall
5 include wages paid for services:

6 (i) Which were not employment, as defined in
7 section 383-2 or pursuant to an election
8 under section 383-77 prior to January 1,
9 1978, at any time during the one-year period
10 ending December 31, 1975; and

11 (ii) Which are agricultural labor as defined in
12 section 383-9 except service excluded under
13 section 383-7(1), or are domestic service
14 except service excluded under section 383-
15 7(2); except to the extent that assistance
16 under Title II of the Emergency Jobs and
17 Unemployment Assistance Act of 1974 was paid
18 on the basis of those services;

19 (B) On and after October 1, 1989, to January 4, 1992,
20 the individual has been employed as defined in
21 section 383-2 and has been paid wages for insured
22 work during the individual's base period in an



1 amount equal to not less than thirty times the
2 individual's weekly benefit amount, as determined
3 under section 383-22(b), and the individual has
4 been paid wages for insured work during at least
5 two quarters of the individual's base period;
6 provided that no otherwise eligible individual
7 who established a prior benefit year under this
8 chapter or the unemployment compensation law of
9 any other state, shall be eligible to receive
10 benefits in a succeeding benefit year until,
11 during the period following the beginning of the
12 prior benefit year, that individual worked in
13 covered employment for which wages were paid in
14 an amount equal to at least five times the weekly
15 benefit amount established for that individual in
16 the succeeding benefit year; and

17 (C) After January 4, 1992, the individual has been
18 employed as defined in section 383-2 and has been
19 paid wages for such insured work during the
20 individual's base period in an amount equal to
21 not less than twenty-six times the individual's
22 weekly benefit amount, as determined under



1 section 383-22(b), and the individual has been
2 paid wages for insured work during at least two
3 quarters of the individual's base period;
4 provided that no otherwise eligible individual
5 who established a prior benefit year under this
6 chapter or the unemployment compensation law of
7 any other state, shall be eligible to receive
8 benefits in a succeeding benefit year until,
9 during the period following the beginning of the
10 prior benefit year, that individual worked in
11 covered employment for which wages were paid in
12 an amount equal to at least five times the weekly
13 benefit amount established for that individual in
14 the succeeding benefit year.

15 For purposes of this paragraph, wages and weeks of
16 employment shall be counted for benefit purposes with
17 respect to any benefit year only if the benefit year
18 begins subsequent to the dates on which the employing
19 unit by which the wages or other remuneration as
20 provided in the definition of weeks of employment in
21 section 383-1 were paid has satisfied the conditions
22 of section 383-1 with respect to becoming an employer.



1 Effective for benefit years beginning January 1,
2 2004, and thereafter, if an individual fails to
3 establish a valid claim for unemployment insurance
4 benefits under this paragraph, the department shall
5 make a redetermination of entitlement based upon the
6 alternative base period as defined in section 383-1;
7 provided further that the individual shall satisfy the
8 conditions of section 383-29(a)(5) that apply to
9 claims filed using the base period as defined in
10 section 383-1 and the establishment of claims using
11 the alternative base period shall be subject to the
12 terms and conditions of sections 383-33 and 383-94;
13 and

14 (6) Effective November 24, 1994, an individual who has
15 been referred to reemployment services pursuant to the
16 profiling system under section 383-92.5 participates
17 in those services or in similar services. The
18 individual may not be required to participate in
19 reemployment services if the department determines the
20 individual has completed those services, or there is
21 justifiable cause for the claimant's failure to
22 participate in those services.



1 For the purposes of this subsection, employment and wages
2 used to establish a benefit year shall not thereafter be reused
3 to establish another benefit year."

4 SECTION 3. Section 383-30, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§383-30 Disqualification for benefits.** An individual
7 shall be disqualified for benefits:

- 8 (1) Voluntary separation. For any week prior to
9 October 1, 1989, in which the individual has left work
10 voluntarily without good cause, and continuing until
11 the individual has, subsequent to the week in which
12 the voluntary separation occurred, been employed for
13 at least five consecutive weeks of employment. For
14 the purposes of this paragraph, "weeks of employment"
15 means all those weeks within each of which the
16 individual has performed services in employment for
17 not less than two days or four hours per week, for one
18 or more employers, whether or not such employers are
19 subject to this chapter. For any week beginning on
20 and after October 1, 1989, in which the individual has
21 left the individual's work voluntarily without good
22 cause, and continuing until the individual has,



1 subsequent to the week in which the voluntary
2 separation occurred, been paid wages in covered
3 employment equal to not less than five times the
4 individual's weekly benefit amount as determined under
5 section 383-22(b).

6 An owner-employee of a corporation who brings
7 about the owner-employee's unemployment by divesting
8 ownership, leasing the business interest, terminating
9 the business, or by other similar actions where the
10 owner-employee is the party initiating termination of
11 the employment relationship, has voluntarily left
12 employment. The department shall consider a bona fide
13 business failure as meeting the good cause requirement
14 for collecting unemployment benefits in the case of an
15 owner-employee of a corporation who has ownership of
16 at least fifty per cent in a corporation or a member
17 of a limited liability company where the member is an
18 individual owning a distributed interest of at least
19 fifty per cent in the limited liability company who
20 initiates termination of the employment relationship
21 as described in the immediately preceding sentence.
22 The director shall adopt rules pursuant to chapter 91



1 necessary for the purposes of this subsection,
2 including the definition of "bona fide business
3 failure."

4 (2) Discharge or suspension for misconduct. For any week
5 prior to October 1, 1989, in which the individual has
6 been discharged for misconduct connected with work,
7 and continuing until the individual has, subsequent to
8 the week in which the discharge occurred, been
9 employed for at least five consecutive weeks of
10 employment. For the week in which the individual has
11 been suspended for misconduct connected with work and
12 for not less than one or more than four consecutive
13 weeks of unemployment which immediately follow such
14 week, as determined in each case in accordance with
15 the seriousness of the misconduct. For the purposes
16 of this paragraph, "weeks of employment" means all
17 those weeks within each of which the individual has
18 performed services in employment for not less than two
19 days or four hours per week, for one or more
20 employers, whether or not such employers are subject
21 to this chapter. For any week beginning on and after
22 October 1, 1989, in which the individual has been



1 discharged for misconduct connected with work, and
2 until the individual has, subsequent to the week in
3 which the discharge occurred, been paid wages in
4 covered employment equal to not less than five times
5 the individual's weekly benefit amount as determined
6 under section 383-22(b).

7 (3) Failure to apply for work, etc. For any week prior to
8 October 1, 1989, in which the individual failed,
9 without good cause, either to apply for available,
10 suitable work when so directed by the employment
11 office or any duly authorized representative of the
12 department of labor and industrial relations, or to
13 accept suitable work when offered and continuing until
14 the individual has, subsequent to the week in which
15 the failure occurred, been employed for at least five
16 consecutive weeks of employment. For the purposes of
17 this paragraph, "weeks of employment" means all those
18 weeks within each of which the individual has
19 performed services in employment for not less than two
20 days or four hours per week, for one or more
21 employers, whether or not such employers are subject
22 to this chapter. For any week beginning on and after



1 October 1, 1989, in which the individual failed,
2 without good cause, either to apply for available,
3 suitable work when so directed by the employment
4 office or any duly authorized representative of the
5 department of labor and industrial relations, or to
6 accept suitable work when offered until the individual
7 has, subsequent to the week in which the failure
8 occurred, been paid wages in covered employment equal
9 to not less than five times the individual's weekly
10 benefit amount as determined under section 383-22(b).

11 (A) In determining whether or not any work is
12 suitable for an individual there shall be
13 considered among other factors and in addition to
14 those enumerated in paragraph (3)(B), the degree
15 of risk involved to the individual's health,
16 safety, and morals, the individual's physical
17 fitness and prior training, the individual's
18 experience and prior earnings, the length of
19 unemployment, the individual's prospects for
20 obtaining work in the individual's customary
21 occupation, the distance of available work from
22 the individual's residence, and prospects for



1 obtaining local work. The same factors so far as
2 applicable shall be considered in determining the
3 existence of good cause for an individual's
4 voluntarily leaving work under paragraph (1).

5 (B) Notwithstanding any other provisions of this
6 chapter, no work shall be deemed suitable and
7 benefits shall not be denied under this chapter
8 to any otherwise eligible individual for refusing
9 to accept new work under any of the following
10 conditions:

11 (i) If the position offered is vacant due
12 directly to a strike, lockout, or other
13 labor dispute;

14 (ii) If the wages, hours, or other conditions of
15 the work offered are substantially less
16 favorable to the individual than those
17 prevailing for similar work in the locality;

18 (iii) If as a condition of being employed the
19 individual would be required to join a
20 company union or to resign from or refrain
21 from joining any bona fide labor
22 organization.



1 (4) Labor dispute. For any week with respect to which it
2 is found that unemployment is due to a stoppage of
3 work which exists because of a labor dispute at the
4 factory, establishment, or other premises at which the
5 individual is or was last employed; provided that this
6 paragraph shall not apply if it is shown that:

7 (A) The individual is not participating in or
8 directly interested in the labor dispute which
9 caused the stoppage of work; and

10 (B) The individual does not belong to a grade or
11 class of workers of which, immediately before the
12 commencement of the stoppage, there were members
13 employed at the premises at which the stoppage
14 occurs, any of whom are participating in or
15 directly interested in the dispute; provided that
16 if in any case separate branches of work, which
17 are commonly conducted as separate businesses in
18 separate premises, are conducted in separate
19 departments of the same premises, each such
20 department shall, for the purpose of this
21 paragraph, be deemed to be a separate factory,
22 establishment, or other premises.



1 (5) If the department finds that the individual has within
2 the twenty-four calendar months immediately preceding
3 any week of unemployment made a false statement or
4 representation of a material fact knowing it to be
5 false or knowingly failed to disclose a material fact
6 to obtain any benefits not due under this chapter, the
7 individual shall be disqualified for benefits
8 beginning with the week in which the department makes
9 the determination and for each consecutive week during
10 the current and subsequent twenty-four calendar months
11 immediately following such determination, and such
12 individual shall not be entitled to any benefit under
13 this chapter for the duration of such period; provided
14 that no disqualification shall be imposed if
15 proceedings have been undertaken against the
16 individual under section 383-141.

17 (6) Other unemployment benefits. For any week or part of
18 a week with respect to which the individual has
19 received or is seeking unemployment benefits under any
20 other employment security law, but this paragraph
21 shall not apply (A) if the appropriate agency finally
22 determines that the individual is not entitled to

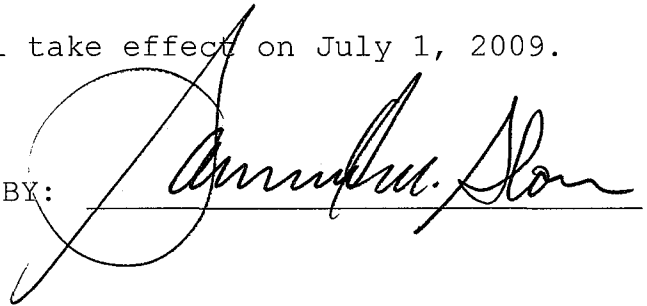
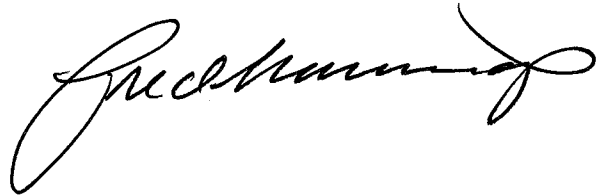


1 benefits under such other law, or (B) if benefits are
2 payable to the individual under an act of Congress
3 which has as its purpose the supplementation of
4 unemployment benefits under a state law."

5 SECTION 4. New statutory material is underscored.

6 SECTION 5. This Act shall take effect on July 1, 2009.

7
INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Annunzio", written over a horizontal line.A handwritten signature in cursive script, appearing to read "Guckman", written below the first signature.

Report Title:

Unemployment Insurance

Description:

Provides that an owner-employee of a corporation or a member of a limited liability company owning a distributed interest of at least fifty per cent may collect unemployment benefits in circumstances where "voluntary" closure of a business is necessary. Requires the director of labor and industrial relations to adopt administrative rules.

