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# A BILL FOR AN ACT

RELATING TO INDEPENDENT CONTRACTORS.

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

1           SECTION 1. The legislature finds that the economy is  
2   changing and an increasing number of individuals are facing  
3   decisions on whether to choose to become entrepreneurs and go  
4   into business for themselves or remain in employment  
5   relationships and maintain the protections afforded by various  
6   labor laws, including Hawaii's employment security law. The  
7   legislature further finds that many of these individuals may not  
8   be aware of the criteria used by the department of labor and  
9   industrial relations when making determinations as to whether an  
10  individual is in an employment relationship or is a bona fide  
11  independent contractor.

12           Accordingly, the purpose of this Act is to provide greater  
13  clarity in Hawaii's employment security law to those individuals  
14  choosing to become entrepreneurs by setting forth three  
15  categories and twelve factors to determine independent  
16  contractor status.



1 SECTION 2. Section 383-6, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "~~§383-6 [Master and servant relationship, not required~~  
4 ~~when.]~~ Employer and employee relationship; status determination.

5 Services performed by an individual for wages or under any  
6 contract of hire shall be deemed to be employment subject to  
7 this chapter irrespective of whether the common law relationship  
8 of ~~[master and servant]~~ employer and employee exists unless and  
9 until it is shown to the satisfaction of the department of labor  
10 and industrial relations that [+

11 ~~(1) The individual has been and will continue to be free~~  
12 ~~from control or direction over the performance of such~~  
13 ~~service, both under the individual's contract of hire~~  
14 ~~and in fact;~~

15 ~~(2) The service is either outside the usual course of the~~  
16 ~~business for which the service is performed or that~~  
17 ~~the service is performed outside of all the places of~~  
18 ~~business of the enterprise for which the service is~~  
19 ~~performed; and~~

20 ~~(3) The individual is customarily engaged in an~~  
21 ~~independently established trade, occupation,~~



1 ~~profession, or business of the same nature as that~~  
2 ~~involved in the contract of service.], in the~~  
3 department's determination, the preponderance of the  
4 following factors has been met:

5 (1) Behavioral control. Facts that show whether the  
6 business has a right to direct and control how the  
7 individual does the task for which the individual is  
8 hired include the type and degree of:

9 (A) Instructions the business gives the individual;  
10 and

11 (B) Training that the business gives the individual;

12 (2) Type of relationship. Facts that show the parties'  
13 type of relationship include:

14 (A) Written contracts describing the relationship the  
15 parties intended to create;

16 (B) Whether the business provides the individual with  
17 employee-type benefits, such as insurance, a  
18 pension plan, vacation pay, or sick pay;

19 (C) The permanency of the relationship; and



- 1            (D) The extent to which services performed by the  
2            individual are a key aspect of the regular  
3            business of the company; and
- 4        (3) Financial control. Facts that show whether the  
5            business has a right to control the business aspects  
6            of the individual's job include:
- 7            (A) Whether the individual has a valid general excise  
8            tax license;
- 9            (B) The extent to which the individual has  
10           unreimbursed business expenses;
- 11           (C) The extent of the individual's investment in the  
12           facilities or tools the individual uses in  
13           performing the contracted services;
- 14           (D) The extent to which the individual makes services  
15           available to the relevant market;
- 16           (E) How the business pays the individual; and
- 17           (F) The extent to which the individual can realize a  
18           profit or loss.

19 The degree of importance of each factor may vary, depending on  
20 the occupation and the individual facts of each case as  
21 determined by the department."



1           SECTION 3. The department of labor and industrial  
2 relations shall submit a report of its findings and  
3 recommendations, including any proposed legislation, to the  
4 legislature no later than twenty days prior to the convening of  
5 the regular session of 2019 on the guidelines developed by the  
6 unemployment insurance coverage committee to assist auditors in  
7 applying section 383-3, Hawaii Revised Statutes, during the  
8 auditor's investigations.

9           SECTION 4. The department of labor and industrial  
10 relations shall submit a report of its findings and  
11 recommendations, including any proposed legislation, to the  
12 legislature no later than twenty days prior to the convening of  
13 each regular session regarding the number of determinations  
14 applying section 383-6, Hawaii Revised Statutes, rendered by the  
15 department of labor and industrial relations' unemployment  
16 insurance division and employment security appeals referee's  
17 office finding both independent contractor and covered  
18 employment status.

19           SECTION 5. This Act does not affect rights and duties that  
20 matured, penalties that were incurred, and proceedings that were  
21 begun before its effective date.



1           SECTION 6. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3           SECTION 7. This Act shall take effect on January 1, 2045.

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**Report Title:**

Employment Security Law; Independent Contractors; Employer and Employee Relationship

**Description:**

Provides three categories and twelve factors for the department of labor and industrial relations to apply to determine independent contractor status. Takes effect 1/1/2045. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

