

A Bill for an Act Relating to Employment Security.

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

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

**“Section 383-2. Definition of employment.** (a) As used in this chapter, unless the context clearly requires otherwise, ‘employment’, subject to sections 383-3 to 383-9, means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(b) ‘Employment’ includes, but is not limited to, service performed by an employee, as defined in section 3306(i) of the Federal Unemployment Tax Act, including service in interstate commerce.

(c) The term ‘employment’ shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada or the Virgin Islands), after December 31, 1971 in the employ of an American employer or of this State or of any of its instrumentalities or of any of its political subdivisions (other than service which is deemed ‘employment under the provisions of section 383-3 or the parallel provisions of another state’s law) if:

- (1) the employer’s principal place of business in the United States is located in this State; or
- (2) the employer has no place of business in the United States, but
  - (A) the employer is an individual who is a resident of this State; or
  - (B) the employer is a corporation which is organized under the laws of this State; or
  - (C) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this State is greater than the number who are residents of any one other state; or
- (3) none of the criteria of paragraphs (1) and (2) of this subsection is met but the employer has elected coverage in this State or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service under the law of this State.
- (4) an ‘American employer’, for purposes of this subsection, means a person who is
  - (A) an individual who is a resident of the United States; or
  - (B) a partnership if two-thirds or more of the partners are residents of the United States; or
  - (C) a trust, if all of the trustees are residents of the United States; or
  - (D) a corporation organized under the laws of the United States or of any state.
- (5) As used in this subsection, the term ‘United States’ includes the states, the District of Columbia and the Commonwealth of Puerto Rico.

(d) The term 'employment' shall include an individual's service, wherever performed within the United States, the Virgin Islands or Canada, if (a) such service is not covered under the unemployment compensation law of any other state, the Virgin Islands, or Canada, and (b) the place from which the service is directed or controlled is in this State."

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

**Section 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 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 non-diplomatic 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 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.

None of the foregoing exclusions (1) to (16) 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 re-

quired 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 383-9, Hawaii Revised Statutes, is amended to read:

“Section 383-9. **Agricultural labor.** ‘Agricultural labor’ includes all service performed prior to January 1, 1972 which was agricultural labor as defined in this section prior to such date, and remunerated service performed after December 31, 1971:

- (1) On a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of live-stock, bees, poultry, and furbearing animals and wildlife;
- (2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;
- (3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Federal Agricultural Marketing Act, as amended, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;
- (4) (A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed;
- (B) In the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subparagraph (A), but only if such operators produced more than one-half of the commodity with respect to which such service is performed;
- (C) The provisions of subparagraphs (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or
- (5) On a farm operated for profit if such service is not in the course of the employer’s trade or business.

As used in this section, 'farm' includes stock, dairy, poultry, fruit, furbearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards."

SECTION 4. Section 383-29, Hawaii Revised Statutes, is amended to read:

**"Section 383-29. Eligibility for benefits.** (a) An unemployed individual shall be eligible to receive benefits with respect to any week only if the department of labor and industrial relations finds that:

- (1) Claim. He has made a claim for benefits with respect to such week in accordance with such regulations as the department may prescribe.
- (2) Registration. He has registered for work at, and thereafter continued to report at, an employment office in accordance with such regulations as the department may prescribe, except that the department may, by regulation, waive or alter either or both of the requirements of this paragraph as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purpose of this chapter; provided that no such regulation shall conflict with section 383-21.
- (3) Availability. He is able to work and is available for work; provided, that no claimant shall be considered ineligible with respect to any week of unemployment for failure to comply with this paragraph if such failure is due to an illness or disability, as evidenced by a physician's certificate, which occurs during an uninterrupted period of unemployment with respect to which benefits are claimed and no work which would have been suitable prior to the beginning of such illness and disability has been offered the claimant; and provided further, that any claimant who because of marital obligations or approaching marriage, has voluntarily left work for an indefinite period, to engage in the occupation of a homemaker, shall be considered unavailable for work until availability for work is shown by some evidence in addition to registration for work and statement of availability, such as (but not limited to) the fact that conditions which led to leaving work have terminated; or arrangements have been made for the care of the household by others; or conditions require the claimant's contribution to the economic support of the household; or the claimant has had some work or made efforts to secure work.
- (4) Waiting period. He has been unemployed for a waiting period of one week within his benefit year, provided that no individual shall be required to serve a waiting week if the first week of his unemployment occurring within a benefit year is immediately preceded by a week of unemployment in the preceding benefit year for which benefits are payable. Notwithstanding any provisions of this section to the contrary, an individual shall be eligible to receive benefits for the waiting period of one week if he is entitled

to benefits for each of the twelve consecutive weeks following his waiting period. No week shall be counted as a waiting period:

- (A) If benefits have been paid with respect thereto;
  - (B) Unless the individual was eligible for benefits with respect thereto as provided in this section and section 383-30, except for the requirements of this paragraph (4).
- (5) Wages for insured work; weeks of employment.
- (A) In the case of an individual who has established a benefit year prior to January 3, 1965, he has been paid wages for insured work during his base period in an amount equal to at least the amount appearing in column C of the schedule in section 383-22 on the line on which, in column B of the schedule, appears his weekly benefit amount.
  - (B) In the case of an individual who has established a benefit year after January 2, 1965, but prior to January 2, 1966, he has had during his base period a total of fourteen or more weeks of employment as defined in section 383-1(19) and has been paid wages for insured work during his base period in an amount equal to at least the amount appearing in column C of the schedule in section 383-22 on the line on which in column B of the schedule, appears his weekly benefit amount.
  - (C) In the case of an individual whose benefit year begins on or after January 2, 1966, he has had during his base period a total of fourteen or more weeks of employment as defined in section 383-1(19) and has been paid wages for insured work during his base period in an amount equal to at least thirty times his weekly benefit amount as determined under section 383-22(b).
  - (D) For the purposes of this paragraph (5), wages and weeks of employment shall be counted for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the dates on which the employing unit by which such wages or other remuneration as provided in section 383-1(19) were paid has satisfied the conditions of section 383-1(9) with respect to becoming an employer.

(b) Benefits based on service in an instructional, research, or principal administrative capacity in an institution of education shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of education for both such academic years or both such terms.

(c) Notwithstanding any provisions of this chapter to the contrary, a claimant shall not be denied benefits because of his regular attendance at a vocational training or retraining course which the director of labor

and industrial relations has approved and continues from time to time to approve for the claimant. The director may approve such course for a claimant only if:

- (1) Reasonable employment opportunities for which the claimant is fitted by training and experience do not exist in the locality or are severely curtailed;
- (2) The training course relates to an occupation or skill for which there are, or are expected to be in the immediate future, reasonable employment opportunities in the locality;
- (3) The training course is offered by a competent and reliable agency; and
- (4) The claimant has the required qualifications and aptitudes to complete the course successfully."

SECTION 5. Section 383-33, Hawaii Revised Statutes, is amended to read:

**"Section 383-33. Determinations, in general.** A determination upon a claim filed pursuant to section 383-32 shall be made promptly by a representative of the department of labor and industrial relations authorized to make determinations upon claims and shall include a statement as to whether and in what amount the claimant is entitled to benefits in the manner with respect to which the determination is made and, in the event of a denial, shall state the reasons therefor. A determination with respect to the first week of a benefit year shall also include a statement as to whether the claimant has been paid the wages required under section 383-29(a) (5) and, if so, the first day of the benefit year, his weekly benefit amount, and the maximum total amount of benefits payable to him with respect to such benefit year.

If any employer fails to furnish the information necessary to determine whether and in what amount the claimant is entitled to benefits in the manner and within the time specified by this chapter or regulations of the department, the department shall make a determination based upon such information as is available. In the absence of fraud, any redetermination made on the basis of information furnished by the employer after the prescribed period shall be effective only as to benefits paid after the week in which the information was received. In the absence of a showing by the employer satisfying the department that he could not reasonably comply with the department's requirement, any benefits overpaid prior to the effective date of the redetermination as a result of the employer's failure to furnish the information as required shall be charged entirely against the account of the non-complying employer; provided that the overpaid benefits shall not, in any event, be recoverable from the claimant."

SECTION 6. Section 383-61, Hawaii Revised Statutes, is amended to read:

**"Section 383-61. Payment of contributions; wages not included.** (a) Contributions with respect to wages for employment shall accrue and become payable by each employer for each calendar year in which he is subject to this chapter. The contributions shall become due and be paid



by each employer to the director of labor and industrial relations for the fund in accordance with such regulations as the department of labor and industrial relations may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ.

(b) For the purposes of this part, the term 'wages' does not include remuneration paid with respect to employment to an individual by an employer during any calendar year which exceeds ninety per cent of the average annual wage, rounded to the nearest hundred dollars, for the four calendar quarter period ending on June 30 of the preceding year. The average annual wage shall be computed as follows: on or before November 30 of each year the total remuneration paid by employers, as reported on contribution reports on or before such date, with respect to all employment during the four consecutive calendar quarters ending on June 30 of such year shall be divided by the average monthly number of individuals performing services in such employment during the same four calendar quarters as reported on such contribution reports.

(c) If an employer during any calendar year acquires substantially all the property used in a trade or business, or in a separate unit of a trade or business, of another employer, and after the acquisition employs an individual who prior to the acquisition was employed by such predecessor, then for the purpose of determining whether such remuneration in excess of ninety per cent of the average annual wages has been paid for such employment to the individual, remuneration paid to the individual by such predecessor during the calendar year shall be considered as having been paid by the successor employer. For the purposes of this subsection, the term 'employment' includes services constituting employment under any employment security law of another state or of the federal government.

(d) Subsections (b) and (c) of this subsection notwithstanding, for the purposes of this part, the term 'wages' shall include at least that amount of remuneration paid in a calendar year to an individual by an employer or his predecessor with respect to employment during any calendar year which is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a State unemployment fund."

SECTION 7. Section 383-62, Hawaii Revised Statutes, is amended to read:

**"Section 383-62. Rate of contributions; financing benefits paid to government employees and employees of nonprofit organizations.** (a) Each employer shall pay contribution equal to three per cent of wages paid by him during each calendar year with respect to employment, except as otherwise prescribed in this part.

(b) In lieu of contributions required of employers under this chapter, the State and its political subdivisions and instrumentalities (hereinafter referred to as 'governmental employers' or 'governmental employer' as the case may be) shall pay to the director of labor and industrial relations for the fund an amount equivalent to the amount of regular benefits plus one-half the amount of extended benefits paid to individuals based on wages paid by governmental employers. If benefits paid an individual are based

on wages paid by one or more governmental employers and one or more other employers, or on wages paid by two or more governmental employers, the amount payable by a governmental employer to the director for the fund shall be in accordance with the provisions of subsection (d) of this section, governing the allocation of benefit costs among employers liable for payments in lieu of contributions and between such employers and employers liable for contributions. For the purposes of subsection (d), governmental employers are employers liable for payments in lieu of contributions. The amount of payment required from governmental employers shall be ascertained by the department of labor and industrial relations and shall be paid from the general funds of such governmental employers at such time and in such manner as may be prescribed by the department and approved by the comptrollers or auditors of the respective governmental employers, except that to the extent that benefits are paid on the basis of wages paid by governmental employers from special administrative funds, the payment into the unemployment compensation fund shall be made from such special funds.

(c) Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this subsection. For the purpose of this subsection and subsection (f), a nonprofit organization is an organization (or groups of organizations) described in section 501(c) (3) of the United States Internal Revenue Code which is exempt from income tax under section 501(a) of such code.

(1) Liability for contributions and election of reimbursement. Any nonprofit organization which is, or becomes, subject to this chapter on or after January 1, 1972 shall pay contributions under the provisions of this part (with the exception of the provisions in subsection (b) of this section) applicable to other employers unless it elects, in accordance with this paragraph, to pay to the director of labor and industrial relations for the fund an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

(A) Any nonprofit organization which is, or becomes, subject to this chapter on January 1, 1972 may elect to become liable for payments in lieu of contributions for a period of not less than two calendar years beginning with January 1, 1972, provided it files with the department a written notice of its election within the thirty-day period immediately following such date, or within a like period immediately following the date of enactment of this subparagraph, whichever occurs later.

(B) Any nonprofit organization which becomes subject to this chapter after January 1, 1972 may elect to become liable for payment in lieu of contributions for a period beginning with the date on which such subjectivity begins and continuing for not less than two calendar years thereafter by filing a written notice of its election with the department not later

- than thirty days immediately following the date of the determination of such subjectivity.
- (C) Any nonprofit organization which makes an election in accordance with subparagraphs (A) or (B) of this paragraph will continue to be liable for payments in lieu of contributions until it files with the department a written notice terminating its election not later than thirty days prior to the beginning of the calendar year for which such termination shall be effective.
  - (D) Any nonprofit organization which has been paying contributions under this chapter for a period subsequent to January 1, 1972 may change to a reimbursable basis by filing with the department not later than thirty days prior to the beginning of any calendar year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next calendar year.
  - (E) The department may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1971.
  - (F) The department, in accordance with such regulations as the director of labor and industrial relations may prescribe, shall notify each nonprofit organization of any determination which it may make of such organization's status as an employer and of the effective date of any election which such organization makes and of any termination of such election. Such determination shall be conclusive upon such organization unless, within fifteen days after the notice thereof was mailed to its last known address or otherwise delivered to it, such organization files with the department an application for review and redetermination, setting forth the reasons therefor. The department shall promptly review and reconsider its determination and shall thereafter issue a redetermination in any case in which such application has been filed. Any such redetermination shall be conclusive upon the organization unless, within fifteen days after the redetermination was mailed to its last known address or otherwise delivered to it, the organization files written notice of appeal with the department, setting forth the reasons for the appeal. The appeal shall be heard by a referee in accordance with applicable provisions of sections 383-38 and 383-39, and the decision of the referee shall be subject to the provisions of section 383-41.
- (2) Reimbursement payments. Payments in lieu of contributions shall be made in accordance with the provisions of subparagraph (A).
- (A) As determined by the director of labor and industrial relations, the department shall bill each nonprofit organiza-

tion (or group of such organizations) which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during such week, or other prescribed period, that is attributable to service in the employ of such organization.

- (B) Payment of any bill rendered under subparagraph (A) shall be made not later than thirty days after such bill was mailed to the last known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with subparagraph (D).
  - (C) Payments made by any nonprofit organization under the provisions of this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.
  - (D) The amount due specified in any bill from the department shall be conclusive and binding upon a nonprofit organization unless, within fifteen days after the notice thereof was mailed to its last known address or otherwise delivered to it, such organization files with the department an application for review and redetermination, setting forth the reasons therefore. The department shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in which such application has been filed. Any such redetermination shall be conclusive on the organization unless, within fifteen days after the redetermination was mailed to its last known address or otherwise delivered to it, the organization files written notice of appeal with the department, setting forth the reasons for the appeal. The appeal shall be heard by a referee in accordance with applicable provisions of sections 383-38 and 383-39, and the decision of the referee shall be subject to the provisions of section 383-41.
- (3) Provision of security. Any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required, within thirty days after the effective date of its election, to deposit with the department an amount of money as security.
- (A) The amount of the deposit required by this paragraph shall be equal to .2 per cent of the organization's total wages paid for employment during the calendar year immediately preceding the effective date of the election. If the nonprofit organization did not pay wages in each of the four calendar quarters of such calendar year, the amount of the deposit shall be as determined by the department.
  - (B) Any deposit of money in accordance with this paragraph shall be retained by the department in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions

as hereinafter provided. The department may deduct from the money deposited under this paragraph by a nonprofit organization to the extent necessary to satisfy any due and unpaid payments in lieu of contributions. The department shall require the organization within thirty days following any deduction from a money deposit under the provisions of this subparagraph to deposit sufficient additional money to make whole the organization's deposit at the prior level. The department may, at any time, review the adequacy of the deposit made by any organization. If, as a result of such review, the department determines that an adjustment is necessary, it shall require the organization to make additional deposit within thirty days of written notice of its termination or shall return to the organization such portion of the deposit as it no longer considers necessary, whichever action is appropriate. Disposition of income from moneys held in escrow shall be governed by the applicable provisions of the State law.

- (C) If any nonprofit organization fails to make a deposit, or to increase or make whole the amount of a previously made deposit, as provided under this paragraph, the department may terminate such organization's election to make payments in lieu of contributions and such termination shall continue for not less than the four-consecutive-calendar-quarter period beginning with the quarter in which such termination becomes effective; provided, that the department may extend for good cause the applicable deposit or adjustment period by not more than thirty days.

(d) Each employer that is liable for payments in lieu of contributions under this section shall pay to the director of labor and industrial relations for the fund the amount of regular benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of subparagraph (1) or subparagraph (2).

- (1) Proportionate allocation when fewer than all base-period employers are liable for reimbursement. If benefits paid to an individual are based on wages paid by one or more employers that are liable for payments in lieu of contributions and on wages paid by one or more employers that are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

(2) Proportionate allocation when all base-period employers are liable for reimbursement. If benefits paid to an individual are based on wages paid by two or more employers that are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

(e) Two or more employers that have become liable for payments in lieu of contributions, may file a joint application to the department of labor and industrial relations for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purposes of this subsection. Upon its approval of the application, the department shall establish a group account for such employers effective as of the beginning of the calendar quarter in which the department receives the application, and it shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than two years and thereafter until terminated at the discretion of the department or upon application by the group. The director of labor and industrial relations shall prescribe such regulations as he deems necessary with respect to applications for establishment, maintenance and termination of group accounts that are authorized by this paragraph, for addition of new members to, and withdrawal of active members from, such accounts, and for the determination of the amounts that are payable under this paragraph by members of the group and the time and manner of such payments.

(f) Notwithstanding any provisions in subsections (c) and (d), any nonprofit organization that prior to January 1, 1969 paid contributions required by this part, and that pursuant to subsection (c) of this section elects within thirty days after the effective date of such subsection (c) to make payments in lieu of contributions, shall not be required, beginning with the effective date of subsection (c), to make any such payments on account of any regular or extended benefits paid, on the basis of wages paid by such organization, to individuals for weeks of unemployment which begin on or after the effective date of such election until the total amount of such benefits equals the amount of the positive reserve balance in the account of such organization."

SECTION 8. Section 383-65, Hawaii Revised Statutes, is amended to read:

**"Section 383-65. Charges and noncharges for benefits.** (a) Except as otherwise provided in this section, benefits paid to an individual shall be charged against the accounts on his base period employers and the amount of benefits so chargeable against each base period employer's account shall bear the same ratio to the total benefits paid to the individual as the base period wages paid to the individual by the employer bear to the

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total amount of base period wages paid to the individual by all of his base period employers. Benefits paid in benefit years beginning after June 30, 1963 shall be charged to employers' accounts in the calendar years in which the benefits are paid.

(b) Benefits, as hereinafter provided in this subsection, paid to an individual during the benefit year shall not be charged to the account of any of his base period employers from whose employment the individual became separated during the base period or the three-month period immediately preceding the benefit year under one of the following circumstances:

- (1) Left his work voluntarily without good cause, or
- (2) Was discharged for misconduct connected with his work, or
- (3) Left his work voluntarily for good cause not attributable to the employer. Such nonchargeable benefits shall be an amount which shall bear the same ratio to the total benefits paid to the individual as the base period wages paid to the individual during any continuous period of employment ending with a separation in the base period or three-month period under circumstances (1), (2), or (3) enumerated above bear to the total amount of base period wages paid to the individual.

(c) Benefits paid to an individual, who, during his base period, earned wages for part-time employment with an employer, shall not be charged to the account of the employer if he continues to give the individual employment to the same extent while he is receiving benefits as during the base period and the employer establishes such fact to the satisfaction of the director of labor and industrial relations.

(d) Benefits paid to an individual for the period he is enrolled in and is in regular attendance at a vocational training or retraining course approved by the director pursuant to section 383-29 shall not be charged to any of his base period employers.

(e) For the purposes of the arrangements in which the department will participate pursuant to section 383-106(b) only, 'base period' as used in this section shall mean the base period of this or any other state applied to a claim involving the combining of an individual's wages and employment covered under two or more State unemployment compensation laws.

(f) Benefits paid to an individual under the provisions of the extended benefits program, sections 383-168 to 383-174, of this chapter, shall not be charged to the account of any of his base period employers."

SECTION 9. Section 383-105, Hawaii Revised Statutes, is amended to read:

**"Section 383-105. Federal-state cooperation.** (a) In the administration of this chapter, the department of labor and industrial relations shall cooperate with the United States department of labor to the fullest extent consistent with this chapter, and shall take such action, through the adoption of appropriate rules, regulations, administrative methods, and standards, as may be necessary to secure to the State and its citizens

all advantages available under the provisions of the Social Security Act, as amended, that relate to unemployment compensation, the Federal Unemployment Tax Act, the Wagner-Peyser Act, as amended, and the Federal-State Extended Unemployment Compensation Act of 1970.

(b) In the administration of the provisions in sections 383-168 to 383-174 of this chapter, which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, the department of labor and industrial relations shall take such action as may be necessary (1) to ensure that the provisions are so interpreted and applied as to meet the requirements of such Federal Act as interpreted by the United States department of labor, and (2) to secure to the State the full reimbursement of the federal share of extended benefits paid under this chapter that are reimbursable under the Federal Act."

SECTION 10. Section 383-106, Hawaii Revised Statutes, is amended to read:

**"Section 383-106. What reciprocal arrangements authorized.** (a) The department of labor and industrial relations may enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both, whereby:

- (1) Multistate employment. Services performed by an individual for a single employing unit for which services are customarily performed in more than one state shall be deemed to be services performed entirely within any one of the states:
  - (A) In which any part of the individual's services is performed, or
  - (B) In which the individual has his residence, or
  - (C) In which the employing unit maintains a place of business; provided there is in effect, as to such services, an election, approved by the agency charged with the administration of the state's unemployment compensation law, pursuant to which all the services performed by the individual for the employing unit are deemed to be performed entirely within the state;
- (2) Accumulated benefit rights. Potential rights to benefits accumulated under the unemployment compensation laws of one or more states or under one or more such laws of the federal government, or both, may constitute the basis for payment of benefits through a single appropriate agency under terms which the department finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund;
- (3) Insured work. Wages or services, upon the basis of which an individual may become entitled to benefits under an unemployment compensation law of another state or of the federal government, shall be deemed to be wages for insured work for the purpose of determining his rights to benefits under this chapter, and wages for insured work, on the basis of which an individual may become entitled to benefits under this chapter shall be deemed to be wages or services on the basis of which unemployment com-



pensation under such law of another state or of the federal government is payable, but no such arrangement shall be entered into unless it contains provisions for reimbursements to the fund for such of the benefits paid under this chapter upon the basis of such wages or services and provisions for reimbursements from the fund for such of the compensation paid under such other law upon the basis of wages for insured work, as the department finds will be fair and reasonable as to all affected interests; and

- (4) Payment of contributions. Contributions due under this chapter with respect to wages for insured work shall for the purposes of sections 383-61 to 383-75 of this chapter be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal unemployment compensation law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the fund of such contributions and the actual earnings thereon as the department finds will be fair and reasonable as to all affected interests.

(b) The provisions of subsection (a) (2) of this section and of section 383-107 notwithstanding, the department of labor and industrial relations shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under this chapter with his wages and employment covered under the unemployment compensation laws of other states which are approved by the United States secretary of labor in consultation with the State unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which include provisions for:

- (1) applying the base period of a single State law to a claim involving the combining of an individual's wages and employment covered under two or more State unemployment compensation laws, and
- (2) avoiding the duplicate use of wages and employment by reason of such combining."

SECTION 11. Section 383-107, Hawaii Revised Statutes, is amended to read:

**"Section 383-107. Reimbursement payments deemed benefits, when.** Reimbursements paid from the fund pursuant to section 383-106(a) (3) shall be deemed to be benefits for the purpose of sections 383-21 to 383-24, 383-72, 383-76, and 383-121 to 383-124. The department of labor and industrial relations may make to other state or federal agencies and receive from such other state or federal agencies reimbursements from or to the fund, in accordance with arrangements entered into pursuant to section 383-106."

SECTION 12. Section 383-123, Hawaii Revised Statutes, is amended to read:

**"Section 383-123 Withdrawals; administrative use.** (a) Withdrawals Moneys requisitioned from the State's account in the unemployment trust fund shall be used exclusively for the payment of benefits and for refund:

pursuant to section 383-76 and section 383-7(6), except that moneys credited to this State's account pursuant to section 903 of the Social Security Act, as amended, shall be used exclusively as provided in subsection (b) of this section. The director of finance shall from time to time, with the approval of the department of labor and industrial relations in accordance with the regulations prescribed by the comptroller of the State, requisition from the unemployment trust fund such amounts, not exceeding the amount standing to this State's account therein, as it deems necessary for the payment of such benefits and refunds for a reasonable future period. Upon receipt thereof the moneys shall be deposited in the benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of moneys in their custody. All benefits and refunds shall be paid from the fund upon warrants drawn upon the director of finance by the comptroller of the State supported by the department. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which the sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits and refunds during succeeding periods, or, in the discretion of the department, shall be re-deposited with the secretary of the treasury of the United States, to the credit of this State's account in the unemployment trust fund, as provided in section 383-122.

(b) Administrative use. Moneys credited to the account of this State in the unemployment trust fund by the secretary of the treasury of the United States pursuant to section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this chapter pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which: (1) specifies the purposes for which the moneys are appropriated and the amounts appropriated therefor, (2) limits the period within which the moneys may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law, and (3) limits the amount which may be obligated during a twelve-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which (A) the aggregate of the amounts credited to the account of this State pursuant to section 903 of the Social Security Act, as amended, during the same twelve-month period and the fourteen preceding twelve-month periods exceeds (B) the aggregate of the amounts obligated pursuant to this subsection and charged against the amounts credited to the account of this State during such fifteen twelve-month periods. For the purposes of this subsection, amounts which are obligated for administration or paid out for benefits shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during a twelve-month period specified herein may be charged against any amount credited during such twelve-month period earlier than the fourteenth preceding such period.

Moneys credited to the account of this State pursuant to section 903

of the Social Security Act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses for the administration of this chapter pursuant to this subsection.

Moneys appropriated for the payment of expenses of administration pursuant to this subsection shall be requisitioned as needed for the payment of obligations incurred under the law appropriating the moneys and, upon requisition, shall be deposited in the employment security administration fund from which such payments shall be made. Moneys so deposited shall, until expended, remain a part of the unemployment compensation fund and, if it will not be expended within one week after it is withdrawn from the unemployment trust fund, shall be returned at the earliest practical date to the secretary of the treasury of the United States for credit to this State's account in the unemployment trust fund.

SECTION 13. Sections 383-168 through 174, Hawaii Revised Statutes, are hereby added as follows:

**"Section 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 paragraphs (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.
- (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 an individual under 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, and weeks thereafter which begin 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 383-169. Effect of State law provisions relating to regular benefits on claims for, and the payment of, extended benefits.** Except when the result would be inconsistent with the other provisions of this part, as provided in the regulations of the director, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

**Section 383-170. Eligibility requirements for extended benefits.** An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the department finds that with respect to such week:

- (1) He is an 'exhaustee' as defined in section 383-168(11).
- (2) He has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

**Section 383-171. Weekly extended benefit amount.** The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year. For any individual who was paid benefits during the applicable benefit year in

accordance with more than one weekly benefit amount, the weekly extended benefit amount shall be the average of such weekly benefit amounts.

**Section 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 under the provisions of chapter 385 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 383-173. Beginning and termination of extended benefit period.** Whenever an extended benefit period is to become effective in this State (or in all states) as a result of a state or a national 'on' indicator, or an extended benefit period is to be terminated in this State as a result of state and national 'off' indicators, the director shall make an appropriate public announcement.

**Section 383-174. Computations.** Computations required by the provisions of section 383-168(6) shall be made by the director, in accordance with regulations prescribed by the United States secretary of labor."

SECTION 13. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes may exclude the brackets, the bracketed material, or the underscoring.\*

SECTION 14. This Act shall take effect on January 1, 1972, with the exception of sections 383-168 to 383-174 which shall take effect on July 1, 1971.

(Approved June 7, 1971.)

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\* Edited accordingly.