

ACT 120

S. B. 137

A Bill for an Act Relating to Employment Security.

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

SECTION 1. Section 383-7, Hawaii Revised Statutes, is amended to read:

“Sec. 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 de-

- scribed 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 nondiplomatic representative);
- (11) Service performed in the employ of an instrumentality wholly owned by a foreign government;
- (A) If the service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and
- (B) If the United States Secretary of State has certified or certifies to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;
- (12) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four 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;

- (17) Service performed by an individual for an employing unit as a real estate salesman, if all such service performed by such individual for such employment unit is performed for remuneration solely by way of commission.

None of the foregoing exclusions (1) to (17) shall apply to any service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this chapter.”

SECTION 2. Section 383-62, Hawaii Revised Statutes, is amended to read:

“**Sec. 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 no-

tify each nonprofit organization of any determination which it may make of such organization's status as an employer and 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 organization (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 the 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 therefor. 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 filed 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 determination 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 non-profit 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.

(g) When a nonprofit organization terminates its self-financing status and elects to pay contributions under this chapter, any remaining amount of positive reserve balance in its self-financing account will be transferred to its contributory reserve account. The department shall determine the contribution rate of such employer in accordance with provisions of section 383-66(2)."

SECTION 3. Section 383-65, Hawaii Revised Statutes, is amended to read:

"Sec. 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 of 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 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 year 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 on a contributory plan. Provisions of section 383-62(b) and 383-62(c)(2)(A) will apply in the reimbursement of benefits which are paid to an individual who, during his base period, was employed by a governmental employer or a nonprofit organization electing payment in lieu of contributions."

SECTION 4. Section 383-168, Hawaii Revised Statutes, is amended to read:

"Sec. 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 occur 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 and additional 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, any week thereafter which begins 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 5. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 6. This Act shall take effect upon its approval.

(Approved May 17, 1973.)

*Edited accordingly.