

A Bill for an Act Relating to Employment Security.

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

SECTION 1. Section 383-168, Hawaii Revised Statutes, is amended to read as follows:

“§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] the first 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 the period consisting of such week and the immediately preceding twelve weeks, 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 the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (seasonally adjusted) for all states was less than 4.5 per cent.
- (4)] (2) (A) There is a "state 'on' indicator" for this State for a week which begins before September 26, 1982, 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)] (i) 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)] (ii) Equaled or exceeded 4 per cent.
- (B) There is a "state 'on' indicator" for this State for a week which begins after September 25, 1982, 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:
- (i) 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
- (ii) Equaled or exceeded 5 per cent.
- [(5)] (3) (A) There is a "state 'off' indicator" for this State for a week which begins before September 26, 1982, 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)] (i) 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)] (ii) Was less than 4 per cent.
- (B) There is a "state 'off' indicator" for this State for a week which begins after September 25, 1982, 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:

- (i) 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
 - (ii) Was less than 5 per cent.
- [(6)] (4) (A) Effective with respect to compensation for weeks of unemployment beginning after December 31, 1977, the determination of whether there has been a state "on" or "off" indicator shall be made under [subsections (4) and (5)] paragraphs (2)(A) and (3)(A) of this section as if [subsection (4)] paragraph (2)(A) did not contain [paragraph (A)] clause (i) thereof and the figure "4" contained in [paragraph (B)] clause (ii) thereof were "5", and as if [subsection (5)] paragraph (3)(A) did not contain [paragraph (A)] clause (i) thereof and the figure "4" contained in [paragraph (B)] clause (ii) thereof were "5"; except that, notwithstanding the other provisions of this [subsection] paragraph to the contrary, any week for which there would otherwise be a state "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a state "off" indicator.
- (B) Effective with respect to compensation for weeks of unemployment beginning after September 25, 1982, the determination of whether there has been a state "on" or "off" indicator shall be made under paragraphs (2)(B) and (3)(B) of this section as if paragraph (2)(B) did not contain clause (i) thereof and the figure "5" contained in clause (ii) thereof were "6"; except that, notwithstanding the other provisions of this paragraph to the contrary, any week for which there would otherwise be a state "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a state "off" indicator.
- [(7)] (5) "Rate of insured unemployment," for purposes of paragraphs [(4)](2) and [(5)](3) of this section, means the percentage derived by dividing:
 - (A) The average weekly number of individuals filing claims for regular compensation 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] secretary of [Labor] 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.
- [(8)] (6) "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 [the] ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits and additional benefits.
- [(9)] (7) "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.

- [(10)] (8) "Additional benefits" means benefits payable to exhautees by reason of conditions of high unemployment or by reason of other special factors under the provisions of any state law, including but not limited to chapter 385.
- [(11)] (9) "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.
- [(12)] (10) "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] secretary of [Labor] 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; provided that this provision shall not be applicable to benefits under the Virgin Islands law beginning on the day after the day on which the United States secretary of labor approves under section 3304(a) of the Internal Revenue Code of 1954 an unemployment compensation law submitted by the Virgin Islands for approval.
- [(13)] (11) "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 2. Section 384-170,¹ Hawaii Revised Statutes, is amended to read as follows:

"§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(12)].] 383-168.
- (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.

- (3) (A) Notwithstanding [the provisions of] paragraph (2) [of this section], an individual shall be ineligible for payment of extended benefits for any week of unemployment in his eligibility period if the department finds that during such period:

- (i) He failed to accept any offer of suitable work or failed to apply for any suitable work (as defined under subparagraph (C)) to which he was referred by the department; or
- (ii) He failed to actively engage in seeking work as prescribed under subparagraph (E).

- (B) Any individual who has been found ineligible for extended benefits by reason of [the provisions in] subparagraph (A) shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he has been employed in each of four subsequent weeks (whether or not consecutive) and has earned remuneration equal to not less than four times the extended weekly benefit amount.

- (C) For purposes of this paragraph, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities; provided that:

- (i) The gross average weekly remuneration payable for the work shall exceed the sum of the individual's extended weekly benefit amount plus the amount, if any, of supplemental unemployment benefits (as defined in section 501(c)(17)(D) of the federal Internal Revenue Code of 1954, as amended) payable to such individual for such week; and
- (ii) The work pays wages equal to the higher of the minimum wages provided by section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or the state or local minimum wage; and
- (iii) No individual shall be denied extended benefits for failure to accept an offer of or referral to any job which meets the definition of suitability described above if the position was not offered to such individual in writing and was not listed with the employment service; or such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in section 383-30(3) to the extent that the criteria of suitability in that section are not

inconsistent with this subparagraph [(C)]; or the individual furnishes satisfactory evidence to the department that the individual's prospects of obtaining work in the individual's customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work in section 383-30(3) without regard to the definition specified in this subparagraph.

- (D) Notwithstanding [the provisions of] this paragraph to the contrary, no work shall be deemed to be suitable work for an individual which does not conform with the labor standard provisions required by section 3304(a)(5) of the federal Internal Revenue Code of 1954, as amended, and set forth under section 383-30(3).
 - (E) For the purposes of subparagraph (A)(ii), an individual shall be treated as actively engaged in seeking work during any week if:
 - (i) The individual has engaged in a systematic and sustained effort to obtain work during such week; and
 - (ii) The individual furnishes tangible evidence that he has engaged in such effort during such week.
 - (F) The employment service shall refer any claimant entitled to extended benefits under this chapter to any suitable work which meets the criteria prescribed in subparagraph (C).
- (4) Notwithstanding paragraph (2), the individual has with respect to a disqualification under section 383-30(2) for suspension for misconduct connected with the individual's work, imposed during the individual's benefit year or an extended benefit period, been employed in each of four weeks (whether or not consecutive) subsequent to such disqualification and has earned remuneration equal to not less than four times the individual extended weekly benefit amount.
- (5) Notwithstanding paragraph (2), an individual shall not be eligible for extended benefits for any week beginning after September 25, 1982, unless, in the base period with respect to which the individual exhausted all rights to regular benefits under this chapter, the individual had a total of at least twenty weeks of employment as defined in section 383-1(19)."

SECTION 3. Section 383-173, Hawaii Revised Statutes, is amended to read as follows:

"§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 a state [and national] "off" [indicators,] indicator, the director shall make an appropriate public announcement."

SECTION 4. Section 383-174, Hawaii Revised Statutes, is amended to read as follows:

"§383-174 Computations. Computations required by [the provisions of] section [383-168(6)] 383-168(4) shall be made by the director, in accordance with regulations prescribed by the United States secretary of labor."

SECTION 5. Chapter 383, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§383- Limitation of extended benefits by trade readjustment allowance. Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual, but for this section, would be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amount as trade readjustment allowance within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits."

SECTION 6. Chapter 383, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§383- Benefits during training. (a) Notwithstanding any other provisions of this chapter, no otherwise eligible individual shall be denied benefits for any week because that individual is in training approved under section 236(a)(1) of the Trade Act of 1974, because an individual left work to enter the training (provided the work left is not suitable employment), or because of the application to any week in training of provisions in this chapter (or any applicable federal unemployment compensation law) relating to availability for work, active search for work, or refusal to accept work.

(b) For purposes of this section, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages for such work at not less than eight² per cent of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974."

SECTION 7. Chapter 383, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§383- Child support intercept of unemployment benefits. (a) An individual filing a new claim for unemployment compensation, at the time of filing such claim, shall disclose whether or not that individual owes child support obligations as defined under subsection (g). If any individual owes child support obligations and is determined to be eligible for unemployment compensation, the department shall notify the state or local child support enforcement agency enforcing the obligation that the individual has been determined to be eligible for unemployment compensation.

(b) The department shall deduct and withhold, from any unemployment compensation payable to an individual who owes child support obligations, one of the following:

- (1) The amount specified by the individual to the department to be deducted and withheld under this subsection, if neither paragraph (2) nor (3) is applicable;

- (2) The amount, if any, determined pursuant to an agreement submitted to the department under section 454(20)(B)(i) of the Social Security Act by the state or local child support enforcement agency, unless paragraph (3) is applicable; or
- (3) Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in section 462(e) of the Social Security Act, properly served upon the department.

(c) Any amount deducted and withheld under subsection (b) shall be paid by the department to the appropriate state or local child support enforcement agency.

(d) Any amount deducted and withheld under subsection (b) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.

(e) For purposes of subsections (a) to (d), the term "unemployment compensation" means any compensation payable under this chapter, chapter 385, and amounts payable by the department pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(f) This section applies only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the department under this section.

(g) As used in this section, the term "child support obligations" includes only obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act and approved by the secretary of health and human services under part D of title IV of the Social Security Act.

(h) As used in this section, the term "state or local child support enforcement agency" means any agency of a state or a political subdivision thereof operating pursuant to a plan described in subsection (g)."

SECTION 8. Section 383-161, Hawaii Revised Statutes, is amended to read as follows:

"§383-161 Waiver of rights void. Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this chapter shall be void[.], except agreements to withhold and deduct benefits for the payment of child support obligations as provided in section 383- . Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this chapter from such employer, shall be void. No employer shall, directly or indirectly, make or require or accept any deduction from wages to finance the employer's contributions required from him, require or accept any waiver of any right hereunder by any individual in his employ, discriminate in regard to the hiring or tenure of work or any term or condition of work of any individual on account of his claiming benefits under this chapter, or in any manner obstruct or impede the filing of claims for benefits. Any employer or officer or agent of any employer who violates this section shall, for each offense, be fined not less than \$100 nor more than \$1,000, or imprisoned not more than six months, or both."

SECTION 9. Section 383-163, Hawaii Revised Statutes, is amended to read as follows:

“§383-163 No assignment of benefits[; exemptions from attachment, etc.]; waiver. No assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be valid[; and such rights] and the right to benefits shall not be [exempt from] subject to levy, execution, attachment, garnishment, or any other remedy [whatsoever provided] for the collection of debt. No waiver of [any exemption provided for in] this section shall be valid[.], except that this section shall not apply to section 383- with respect to the withholding and deduction of benefits for the payment of child support obligations.”

SECTION 10. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 11. This Act shall take effect upon its approval.

(Approved May 4, 1982.)

Notes

1. Probably should read “383-170”.
2. So in original.