

ACT 162

H.B. NO. 1672-86

A Bill for an Act Relating to Unemployment.

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

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

“§383-1 Definitions, generally. As used in this chapter, unless the context clearly requires otherwise:

“American vessel” means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state.

[1] "Base period," with respect to benefit years beginning after June 30, 1951, means the four completed calendar quarters immediately preceding the first day of an individual's benefit year.

[2] "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to [his] the individual's unemployment.

[3] "Benefit year" with respect to any individual means the one-year period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits and thereafter the one-year period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits after the termination of [his] the individual's last preceding benefit year. Any claim for benefits made in accordance with section 383-32 shall be deemed a "valid claim" for the purpose of this paragraph if the individual has satisfied the conditions required under section [383-29(5).] 383-29(a)(5). Nothing in sections 383-29 and 383-30, except [subsection 383-29(5).] section 383-29(a)(5), shall affect the filing of a "valid claim" or the establishment of a "benefit year". For the purposes of this paragraph a week with respect to which an individual files a valid claim shall be deemed to be "in", "within", or "during" that benefit year which includes the greater part of such week.

[4] "Department" means the department of labor and industrial relations.

[5] "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof, as the department may by [regulation] rule prescribe.

[6] "Director" means the director of labor and industrial relations of the State.

[7] "Contributions" means the money payments required by this chapter to be made into the state unemployment compensation fund by any employing unit on account of having individuals in its employ.

"Department" means the department of labor and industrial relations.

"Director" means the director of labor and industrial relations of the

State.

"Employer" means:

(1) Any employing unit which for some portion of a day within the current calendar year has or had in employment one or more individuals; and

(2) For the effective period of its election pursuant to section 383-77, any other employing unit which has elected to become subject to this chapter.

[8] "Employing unit" means any individual or type of organization, including the State, any of its political subdivisions, any instrumentality of the State or its political subdivisions, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or successor of any of the foregoing, or the legal representative of a deceased person, which has or subsequent to January 1, 1937, had one or more individuals performing services for it within this State.

[A] (1) All individuals performing services within this State for any employing unit which maintains two or more separate establishments within this State shall be deemed to be performing services for a single employing unit for all the purposes of this chapter.

[B] (2) Each individual employed to perform or to assist in performing the work of any person in the service of an employing unit shall be

deemed to be engaged by the employing unit for all the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by such person, provided the employing unit had actual or constructive knowledge of the work.

[(9) "Employer" means:

- (A) Any employing unit which for some portion of a day within the current calendar year has or had in employment one or more individuals; and
- (B) For the effective period of its election pursuant to section 383-77, any other employing unit which has elected to become subject to this chapter.

[(10) "Employment office" means a free public employment office or branch thereof operated by the State or any other state as a part of a state-controlled system of public employment offices or by a federal agency charged with the administration of an unemployment compensation program or free public employment offices.

[(11) "Federal Unemployment Tax Act" means chapter 23 of subtitle C of the Internal Revenue Code of 1954.

[(12) "Fund" means the unemployment compensation fund established by this chapter.

[(13) "Insured work" means employment for employers.

"Owner-employee" means a person who has performed services for an employing unit as defined in this section, and who is or has been a shareholder owning twenty-five per cent or more of the corporation's common stock, and director or officer, or both, of a corporation which is or was the employing unit or who exercises a substantial degree of control over the direction of corporate activities.

[(14) "Referee" means the referee for unemployment compensation appeals.

[(15) "State" includes, in addition to] the states of the United States, the District of Columbia, Puerto Rico, and Virgin Islands.

[(16) "Unemployment". An individual shall be deemed "unemployed" in any week during which [he] the individual performs no services and with respect to which no wages are payable to [him,] the individual, or in any week of less than full-time work if the wages payable to [him] the individual with respect to such week are less than [his] the individual's weekly benefit amount. The department shall prescribe [regulations] rules applicable to unemployed individuals making such distinctions in the procedures as to total unemployment, part-total unemployment, partial unemployment, of individuals attached to their regular jobs, and other forms of short-time work, as the department deems necessary. "Week of unemployment" means a week in which an individual is deemed unemployed.

[(17) "Week" means any period of seven consecutive days as the department may by [regulation] rule prescribe.

[(18) "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

[(19) "Weeks of employment" means all those weeks within each of which the individual has performed services in employment for not less than two days or four hours per week for one or more employers subject to this chapter or

with respect to which [he] the individual has received remuneration from one or more employers subject to this chapter in the form of vacation, holiday, or sickness pay or similar remuneration.”

SECTION 2. Section 383-23, Hawaii Revised Statutes, is amended to read as follows:

“§383-23 **Weekly benefit for unemployment.** Each eligible individual who is unemployed, as defined in section [383-1(16),] 383-1, in any week shall be paid with respect to such week a benefit in an amount equal to [his] the individual's weekly benefit amount less that part of the wages (if any) payable to [him] the individual with respect to such week which is in excess of \$2. The benefit, if not a multiple of \$1, shall be computed to the next higher multiple of \$1.”

SECTION 3. Section 383-29, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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] The individual has made a claim for benefits with respect to such week in accordance with such [regulations] rules as the department may prescribe.
- (2) **Registration.** [He] The individual has registered for work at, and thereafter continued to report at, an employment office in accordance with such [regulations] rules as the department may prescribe, except that the department may, by [regulation,] rule, 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] rule shall conflict with section 383-21.
- (3) **Availability.** [He] The individual 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.
- (4) **Waiting period.** [He] The individual has been unemployed for a waiting period of one week within [his] the individual's benefit year. 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.
- (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] the individual has been paid wages for insured work during [his] the individual's 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] the individual's 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] the individual has had during [his] the individual's base period a total of fourteen or more weeks of employment as defined in section [383-1(19)] 383-1 and has been paid wages for insured work during [his] the individual's 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] the individual's weekly benefit amount.
- (C) In the case of an individual whose benefit year begins on or after January 2, 1966, [he] the individual has had during [his] the individual's base period a total of fourteen or more weeks of employment as defined in section [383-1(19)] 383-1 and has been paid wages for insured work during [his] the individual's base period in an amount equal to at least thirty times [his] the individual's weekly benefit amount as determined under section 383-22(b). For the purposes of this subparagraph, wages for insured work shall include wages paid for services:
- (i) Which were not employment, as defined in section 383-2 or pursuant to an election under section 383-77 prior to January 1, 1978, at any time during the one-year period ending December 31, 1975; and
 - (ii) Which are agricultural labor as defined in section 383-9 except such service excluded under section 383-7(1), or are domestic service except such service excluded under section 383-7(2); except to the extent that assistance under title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services.
- (D) For the purposes of this paragraph, 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 the definition of weeks of employment in section [383-1(19)] 383-1 were paid has satisfied the conditions of section [383-1(9)] 383-1 with respect to becoming an employer."

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

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

- (1) **Voluntary separation.** For any week in which [he] the individual has left [his] work voluntarily without good cause, and continuing until [he] the individual has, subsequent to the week in which the voluntary separation occurred, been employed for at least five consecutive weeks of employment. For the purposes of this paragraph, "weeks of employment" means all those weeks within each of which the individual has performed services in employment

for not less than two days or four hours per week, for one or more employers, whether or not such employers are subject to this chapter.

An owner-employee of a corporation who brings about the owner-employee's unemployment by divesting ownership, leasing the business interest, terminating the business, or by other similar actions where the owner-employee is the party initiating termination of the employment relationship, has voluntarily left employment.

- (2) Discharge or suspension for misconduct. For the week in which [he] the individual has been discharged for misconduct connected with [his] work, and continuing until [he] the individual has, subsequent to the week in which the discharge occurred, been employed for at least five consecutive weeks of employment. For the week in which [he] the individual has been suspended for misconduct connected with [his] work and for not less than one or more than four consecutive weeks of unemployment which immediately follow such week, as determined in each case in accordance with the seriousness of the misconduct. For the purposes of this paragraph, "weeks of employment" means all those weeks within each of which the individual has performed services in employment for not less than two days or four hours per week, for one or more employers, whether or not such employers are subject to this chapter.
- (3) Failure to apply for work, etc. For the week in which [he] the individual failed, without good cause, either to apply for available, suitable work when so directed by the employment office or any duly authorized representative of the department of labor and industrial relations, or to accept suitable work when offered [him] and continuing until [he] the individual has, subsequent to the week in which the failure occurred, been employed for at least five consecutive weeks of employment. For the purposes of this paragraph, "weeks of employment" means all those weeks within each of which the individual has performed services in employment for not less than two days or four hours per week, for one or more employers, whether or not such employers are subject to this chapter.
 - (A) In determining whether or not any work is suitable for an individual there shall be considered among other factors and in addition to those enumerated in paragraph (3)(B) of this section, the degree of risk involved to [his] the individual's health, safety, and morals, [his] the individual's physical fitness and prior training, [his] the individual's experience and prior earnings, the length of [his] unemployment, [his] the individual's prospects for obtaining work in [his] the individual's customary occupation, the distance of available work from [his] the individual's residence, and prospects for obtaining local work. The same factors so far as applicable shall be considered in determining the existence of good cause for an individual's voluntarily leaving [his] work under paragraph (1) of this section.
 - (B) Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for

refusing to accept new work under any of the following conditions:

- (i) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
 - (ii) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
 - (iii) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.
- (4) Labor dispute. For any week with respect to which it is found that [his] unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which [he] the individual is or was last employed; provided that this paragraph shall not apply if it is shown that:
- (A) [He] The individual is not participating in or directly interested in the labor dispute which caused the stoppage of work; and
 - (B) [He] The individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or directly interested in the dispute; provided that, if in any case separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department shall, for the purpose of this paragraph, be deemed to be a separate factory, establishment, or other premises.
- (5) If the department finds that [he] the individual has within the twenty-four calendar months immediately preceding any week of [his] unemployment made a false statement or representation of a material fact knowing it to be false or knowingly failed to disclose a material fact to obtain any benefits not due under this chapter, [he] the individual shall be disqualified for benefits beginning with the week in which the department makes the determination and for each consecutive week during the current and subsequent twenty-four calendar months immediately following such determination, and such individual shall not be entitled to any benefit under this chapter for the duration of such period; provided[,] that no disqualification shall be imposed if proceedings have been undertaken against the individual under section 383-141.
- (6) Other unemployment benefits. For any week or part of a week with respect to which [he] the individual has received or is seeking unemployment benefits under any other employment security law, but this paragraph shall not apply (A) if the appropriate agency finally determines that [he] the individual is not entitled to benefits under such other law, or (B) if benefits are payable to [him] the individual under an act of Congress which has as its purpose the supplementation of unemployment benefits under a state law.
- [(7) Deleted.]”

SECTION 5. Section 383-66, Hawaii Revised Statutes, is amended to read as follows:

“§383-66 Contribution rates, how determined. The department [of labor and industrial relations] shall for the nine-month period April 1, 1941 to December 31, 1941 and for each calendar year thereafter, except as otherwise provided in this part, classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts with a view to fixing such contribution rates as will reflect such experience. The department shall determine the contribution rate of each employer in accordance with the following requirements:

- (1) The standard rate of contributions payable by each employer for any calendar year through 1984 shall be three per cent. For the calendar year 1985 and thereafter the standard rate of contributions payable by each employer shall be five and four-tenths per cent.
- (2) No employer's rate for the calendar year 1942 and for any calendar year thereafter shall be other than the maximum rate unless and until [his] the employer's account has been chargeable with benefits throughout the thirty-six consecutive calendar month period ending on December 31 of the preceding calendar year, except that, for the calendar year 1956 and for each calendar year thereafter, an employer who has not been subject to the law for a sufficient period to meet this requirement may qualify for a rate other than the maximum rate if [his] the employer's account has been chargeable throughout a lesser period but in no event less than the twelve consecutive calendar month period ending on December 31 of the preceding calendar year. For the calendar year 1985 and for each calendar year thereafter, the contribution rate for a new or newly covered employer shall be the sum of the employer's basic contribution rate of three and six-tenths per cent and the fund solvency contribution rate determined for such year pursuant to section 383-68(c)(2), until the employer's account has been chargeable with benefits throughout the twelve consecutive calendar month period ending on December 31 of the preceding calendar year; except that no employer's contribution rate shall be greater than five and four-tenths per cent and no employer with a negative reserve ratio shall have a contribution rate less than such employer's basic contribution rate.
- (3) No employer's rate for the calendar year 1965 and for any calendar year thereafter, or remaining calendar quarter thereof, as the case may be, through December 31, 1976 shall be less than the standard rate unless the total assets of the fund as of the end of the previous calendar year, or calendar quarter, were at least \$15,000,000; provided that each employer's rate for any calendar year or any portion thereof, as determined by other applicable provisions of this part shall be increased by one-half per cent, if the total assets of the fund as of the end of the previous calendar year or calendar quarter were at least \$15,000,000 but less than \$20,000,000, but in no event shall an employer's rate exceed the standard rate. Any amount credited to this State under section 903 of the Social Security Act, as amended, which has been appropriated for expenses of administration, whether or not withdrawn from the trust fund, shall be excluded from the fund for the purposes of this paragraph. Any advance that may be made to this State under section 1201 of the Social Security Act, whether or not withdrawn from this trust fund, shall be excluded from the fund for the purposes of this paragraph.

No employer's rate shall be reduced in any amount which is not allowable as an additional credit, against the tax levied by the federal Unemployment Tax Act pursuant to section 3302(b) of the federal Internal Revenue Code or pursuant to any other federal statute, successor to section 3302(b), which provides for the additional credit now provided for in section 3302(b).

- (4) If, when any such classification of employers is to be made (which may be after the commencement of the period for which the classification is to be made), the department finds that any employer has failed to file any report required in connection therewith or has filed a report which the department finds incorrect or insufficient, the department shall notify the employer thereof by registered mail addressed to [his] the employer's last known address. Unless the employer files the report or a corrected or sufficient report, as the case may be, within fifteen days after the mailing of the notice, the maximum rate of contributions shall be payable by such employer for the period for which the contribution rate is to be fixed.
- (5) For the purpose of sections 383-63 to 383-69, if on or after January 1, 1940, any employing unit in any manner succeeds to or acquires the organization, trade, or business, or substantially all the assets thereof (whether or not the successor or acquiring unit was an "employing unit", as that term is defined in section [383-1(8)] 383-1 prior to the acquisition), of another which at the time of such acquisition was an employer subject to this chapter, and such predecessor employer has executed and filed with the department on a form approved by the department a waiver relinquishing all rights to [his] the predecessor employer's prior experience record with respect to [his] the predecessor employer's separate account, actual contribution payment, and benefit chargeability experience, annual payrolls and other data for the purpose of obtaining a reduced rate, and requesting the department to permit such experience record to inure to the benefit of the successor employing unit upon request of the successor employing unit, the experience record for rate computation purposes of the predecessor shall thereupon be deemed the experience record of the successor and the experience record shall be transferred by the department to the successor employing unit and shall become the separate account of the employing unit as of the date of the acquisition and benefits thereafter chargeable to the employer on account of employment prior to the date of the acquisition shall be charged to such separate account. The successor employing unit, unless already an employer subject to this chapter, shall be subject from the date of acquisition to the rate of contribution of the predecessor or of two or more predecessors if they have the same contribution rate, provided the waiver or waivers required herein are filed with the department before sixty days after the date of acquisition. In case there are two or more predecessors having different contribution rates, the successor shall be subject to the rate prescribed for new or newly covered employers under paragraph (2) until the next determination of rates under sections 383-63 to 383-69, at which time the experience records of the predecessors and successor shall be combined and shall be deemed to be the experience record of a

single employing unit and the successor's rate shall thereupon be determined upon the basis of such combined experience. If the successor at the time of the transfer is an employer subject to this chapter, the rate of contribution to which [he] the successor is then subject shall remain the same until the next determination of rates under sections 383-63 to 383-69, at which time the experience records of the predecessor and successor shall be combined and shall be deemed to be the experience record of a single employing unit and the successor's rate shall thereupon be determined upon the basis of such combined experience. For the purpose of determination of rates under sections 383-63 to 383-69 of all successor employing units, waivers as required herein, if not previously filed as hereinabove provided, shall be filed with the department not later than March 1 of the year for which the rate is determined; provided that no such waiver shall be accepted by the department for filing unless the employing unit executing the waiver has filed all reports and paid all contributions required of it by this chapter.

- (6) The department may prescribe rules for the establishment, maintenance, and dissolution of joint accounts by two or more employers, and, in accordance with such rules and upon application by two or more employers to establish such an account, or to merge their several individual accounts in a joint account, shall maintain such joint account as if it constituted a single employer's account. The rules shall be consistent with the federal requirements for additional credit allowance in section 3303 of the federal Internal Revenue Code and consistent with this chapter.
- (7) Whenever there is an amendment to this chapter which, if immediately effective, would change an employer's rate of contributions, the rate of the employer shall be changed in accordance with the amendment and the new rate shall apply for the remainder of the calendar year beginning with the calendar quarter immediately following the effective date of the amendment providing for such change unless otherwise provided by the amendment.
- (8) For the purposes of this section "contribution rate" shall mean the basic contribution rate as defined in section 383-68 when applied to calendar year 1978 or any calendar year thereafter."

SECTION 6. Section 383-170, 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] the individual's eligibility period only if the department finds that with respect to such week:

- (1) [He] The individual is an "exhaustee" as defined in section 383-168.
- (2) [He] The individual 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 paragraph (2), an individual shall be ineligible for payment of extended benefits for any week of unemployment in [his] the individual's eligibility period if the department finds that during such period:

- (i) [He] The individual 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] The individual 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 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] the individual 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; 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 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] the individual 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).] 383-1."

SECTION 7. Section 385-2, Hawaii Revised Statutes, is amended to read as follows:

"§385-2 Definitions, generally. As used in this chapter, unless the context clearly requires otherwise:

- (1) "Director" means the director of labor and industrial relations of the State.
- (2) "Fund" means the additional unemployment compensation fund established by this chapter.
- (3) "Unemployment". An individual shall be deemed "unemployed" in any week during which he performs no services and with respect to which no wages are receivable by him, or in any week of less than full-time work if the wages receivable by him with respect to such week are less than his weekly benefit amount payable under this chapter.
- (4) "Additional unemployment benefits" means the unemployment compensation benefits payable under this chapter.
- (5) "Normal benefits" means the unemployment compensation benefits payable pursuant to chapter 383.
- (6) "Claimant" means an individual:
 - (A) Who has an unexpired benefit year and has exhausted his normal benefits; or
 - (B) Whose benefit year expired, or whose normal benefits were exhausted, within a period of twenty-six consecutive weeks immediately preceding the week in which the proclamation provided for in section 385-1 became effective; or
 - (C) Who was employed during the week in which the governor's proclamation pursuant to section 385-1 became effective, but

who became unemployed and whose total earned wages are insufficient to entitle him to normal benefits; or

- (D) Whose unemployment was proximately caused by the disaster identified by the governor in the proclamation provided for in section 385-1 and was self-employed during the week in which the disaster occurred.
- (7) "Wages" means all remuneration for services from whatever source, including commissions and bonuses, and remuneration from self-employment, and the cash value of all remuneration in any medium other than cash, but not including tips or gratuities paid directly to an individual by a customer of his employer and not accounted for by the individual to his employer. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the director. For the purposes of this chapter "wages" does not include the amount of payment or remuneration set forth in section 383-11.
- (8) "Week" means any period of seven consecutive days as the director may by regulation prescribe.
- (9) "Benefit year" refers to "benefit year" as that term is defined in section 383-1(3).]

"Additional unemployment benefits" means the unemployment compensation benefits payable under this chapter.

"Benefit year" refers to "benefit year" as that term is defined in section 383-1(3).

"Claimant" means an individual:

- (1) Who has an unexpired benefit year and has exhausted normal benefits; or
- (2) Whose benefit year expired, or whose normal benefits were exhausted, within a period of twenty-six consecutive weeks immediately preceding the week in which the proclamation provided for in section 385-1 became effective; or
- (3) Who was employed during the week in which the governor's proclamation pursuant to section 385-1 became effective, but who became unemployed and whose total earned wages are insufficient for normal benefits; or
- (4) Whose unemployment was proximately caused by the disaster identified by the governor in the proclamation provided for in section 385-1 and was self-employed during the week in which the disaster occurred.

"Director" means the director of labor and industrial relations of the State.

"Fund" means the additional unemployment compensation fund established by this chapter.

"Normal benefits" means the unemployment compensation benefits payable pursuant to chapter 383.

"Owner-employee" means a person who has performed services for an employing unit as defined in section 383-1, and who is or has been a shareholder owning twenty-five per cent or more of the corporation's common stock, and director or officer, or both, of a corporation which is or was the employing unit or who exercises a substantial degree of control over the direction of corporate activities.

"Unemployment". An individual shall be deemed "unemployed" in any week during which the individual performs no services and with respect to

which no wages are receivable by the individual, or in any week of less than full-time work if the wages receivable by the individual with respect to such week are less than the individual's weekly benefit amount payable under this chapter.

"Wages" means all remuneration for services from whatever source, including commissions and bonuses, and remuneration from self-employment, and the cash value of all remuneration in any medium other than cash, but not including tips or gratuities paid directly to an individual by the employer's customer and not accounted for by the individual to the employer. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the director. For the purposes of this chapter, "wages" does not include the amount of payment or remuneration set forth in section 383-11.

"Week" means any period of seven consecutive days as the director may by rule prescribe."

SECTION 8. Section 385-7, Hawaii Revised Statutes, is amended to read as follows:

§385-7 Disqualification for additional unemployment benefits. A claimant shall be disqualified for additional unemployment benefits:

- (1) Voluntary separation. For any week in which [he] the claimant has left [his] work voluntarily without good cause and for not more than seven consecutive weeks of unemployment which immediately follow such week, as determined according to the circumstances in each case.

An owner-employee of a corporation who brings about the owner-employee's unemployment by divesting ownership, leasing the business interest, terminating the business, or by other similar actions where the owner-employee is the party initiating termination of the employment relationship, has voluntarily left employment.

- (2) Discharge for misconduct. For the week in which [he] the claimant has been discharged for misconduct connected with [his] work and for not more than seven consecutive weeks of unemployment which immediately follow such week, as determined in each case in accordance with the seriousness of the misconduct.
- (3) Failure to apply for work, etc. If [he] the claimant has failed, without good cause, either to apply for available, suitable work when so directed by the director [of labor and industrial relations] or any duly authorized representative of the director, or to accept suitable work when offered [him.] to the claimant. The disqualification shall continue for the week in which such failure occurred and for not more than seven consecutive weeks of unemployment which immediately follow such week, as determined according to the circumstances of each case.

(A) In determining whether or not any work is suitable for a claimant there shall be considered among other factors and in addition to those enumerated in subparagraph (B) of this paragraph, the degree of risk involved to [his] the claimant's health, safety, and morals, [his] the claimant's physical fitness and prior training, [his] the claimant's experience and prior earnings, the length of [his] unemployment, [his] the claimant's prospects for obtaining work in [his] the claimant's customary occupation, and the distance of available work

- from [his] the claimant's residence and prospects for obtaining local work.
- (B) No work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible claimant for refusing to accept new work under any of the following conditions:
- (i) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
 - (ii) If the wages, hours, or other conditions of the work offered are substantially less favorable to the claimant than those prevailing for similar work in the locality;
 - (iii) If as a condition of being employed the claimant would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.
- (4) Labor dispute. For any week with respect to which it is found that [his] the claimant's unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishments, or other premises at which [he] the claimant is or was last employed; provided that this paragraph shall not apply if it is shown that:
- (A) [He] The claimant is not participating in or directly interested in the labor dispute which caused the stoppage of work; and
 - (B) [He] The claimant does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or directly interested in the dispute;
- provided that, if in any case separate branches of work which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department shall, for the purpose of this paragraph be deemed to be a separate factory, establishment, or other premises.
- (5) Fraud. If the director finds that [he] the claimant has made a false statement or representation knowing it to be false or knowingly fails to disclose a material fact to obtain any additional unemployment benefits under this chapter, in which case [he] the claimant shall be disqualified for the week in which the director makes such determination and for the remainder of the weeks for which he would otherwise be eligible."

SECTION 9. Section 392-66, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The weekly benefits payable to the disabled unemployed shall be the same as the benefits to which the individual would be entitled under chapter 383 [or 384] except for [his] the individual's disability; provided that in a case of a disabled unemployed who is performing some form of less than full-time work as referred to in the definition of unemployment in section [383-1(16)] 383-1 at the time the disability arises, [he] the individual shall receive benefits which [he] the individual would have been entitled to had [he] the individual not been performing less than full-time work; provided[,] further[,] that benefits payable under this section shall not be payable for a period longer than twenty-six weeks from the time the above unemployed commences to receive unemployment benefits payable under chapter 383 [or 384]."

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SECTION 10. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 11. This Act does not affect rights and duties which matured, penalties which were incurred, or proceedings which were begun prior to its effective date.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval.

(Approved May 14, 1986.)