



GOV. MSG. NO. 789

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

July 2, 2009

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fifth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on July 2, 2009, the following bill was signed into law:

SB1664 SD2 HD2 CD1

A BILL FOR AN ACT  
RELATING TO EMPLOYMENT SECURITY.  
**ACT 170 (09)**

Sincerely,

A handwritten signature in black ink, appearing to read "L. Lingle".

LINDA LINGLE

Approved by the Governor

on JUL 2 2009

THE SENATE  
TWENTY-FIFTH LEGISLATURE, 2009  
STATE OF HAWAII

**ACT 170**  
**S.B. NO.** 1664  
S.D. 2  
H.D. 2  
C.D. 1

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## A BILL FOR AN ACT

RELATING TO EMPLOYMENT SECURITY.

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

1           SECTION 1. The legislature finds that the recent collapse  
2 of national credit, housing, financial, and other markets has  
3 had severe consequences on the local economy, resulting in  
4 significant losses to employment. The Honolulu Star-Bulletin  
5 reports that in December of 2008, the state unemployment rate  
6 rose to 5.5 per cent - the highest in almost ten years. By  
7 January of 2009, the department of labor and industrial  
8 relations was receiving approximately three thousand new  
9 unemployment claims per week, which is more than double the  
10 number of new claims filed during the same period in 2008.  
11 Unfortunately, the economic outlook remains grim. In March of  
12 2009, the Honolulu Star-Bulletin reported that the unemployment  
13 numbers continue to rise, with Hawaii's unemployment rate  
14 climbing to 6.1 per cent in January of this year - the highest  
15 unemployment numbers in twenty-five years.

16           The legislature finds that the current employment situation  
17 in Hawaii compels immediate action by the State, working in



1 partnership with businesses, to provide an alternative to the  
2 complete layoff of workers, that would mutually benefit  
3 employers and employees. The State currently implements a  
4 partial unemployment program through rules implemented by the  
5 department of labor and industrial relations. Partial  
6 unemployment allows employers to retain their full-time workers  
7 by reducing workers' hours, while allowing the employees to  
8 collect unemployment benefits and maintain certain benefits for  
9 up to four weeks of partial unemployment.

10 The purpose of this Act is:

- 11 (1) To clarify and temporarily codify implementation of  
12 the partial unemployment system; and
- 13 (2) To extend the duration of employees' eligibility for  
14 unemployment benefits under partial unemployment from  
15 four weeks to eight weeks.

16 SECTION 2. Chapter 383, Hawaii Revised Statutes, is  
17 amended by adding four new sections to part II to be  
18 appropriately designated and to read as follows:

19 "§383-A Partial unemployment; eligibility. A new claim or  
20 an initial additional claim for partial unemployment benefits  
21 may be filed as the department prescribes for any week only if  
22 the individual:



- 1        (1) Is a full-time worker;
- 2        (2) Is attached to a regular employer, as defined in
- 3                section 383-1;
- 4        (3) Worked less than or did not work the individual's
- 5                normal, customary full-time hours, as defined in
- 6                section 383-1, for that week;
- 7        (4) Had no earnings or earned less than the individual's
- 8                weekly benefit amount for that week; and
- 9        (5) Was unemployed due to a lack of full-time work, as
- 10                defined in section 383-1, for that week.

11        §383-B Partial unemployment; claim filing requirements,  
12 determinations. (a) Claims for partial unemployment shall be  
13 filed according to section 383-32. For partially unemployed  
14 individuals, a new claim may be taken within twenty-eight days  
15 from the week-ending date of the first week of partial  
16 unemployment for which the claim is filed; provided that an  
17 individual shall not be required to file a claim earlier than  
18 two weeks from the date wages are paid for the claim period.

19        (b) Continued claim certifications for partial benefits  
20 shall be filed as follows:

- 21        (1) An individual may file a continued claim certification
- 22                for partial unemployment benefits in person, by mail,



1 by telephone, or by using other alternative claim  
2 filing procedures as instructed or authorized by the  
3 department and in the manner prescribed by the  
4 department with respect to each week of the  
5 individual's partial unemployment. A continued claim  
6 certification shall be filed in the same manner as  
7 prescribed in rules of the department for continued  
8 claim certifications for total or part-total  
9 unemployment benefits and not later than twenty-eight  
10 days from the end of the week for which the individual  
11 claims benefits; provided that an individual shall not  
12 be required to file a continued claim certification  
13 earlier than two weeks from the date wages are paid  
14 for a claim period.

15 (2) If, after a week of partial unemployment, eight or  
16 fewer consecutive weeks of total unemployment follow  
17 the week of partial unemployment, the weeks of total  
18 unemployment may be deemed weeks of partial  
19 unemployment. However, if total unemployment extends  
20 beyond eight consecutive weeks, the individual shall  
21 be deemed totally unemployed.



1       (3) Notwithstanding paragraph (2), the department may  
2       extend partial unemployment beyond eight consecutive  
3       weeks of total unemployment under conditions including  
4       but not limited to:  
5       (A) The individual is retained in an employer-  
6       employee relationship;  
7       (B) The individual is under obligation to reserve  
8       services for the employer; and  
9       (C) The individual has a definite or reasonably  
10       imminent return to work date.

11       §383-C Partial unemployment; waivers. (a) The  
12       registration for work requirements under section 383-29(a) may  
13       be waived for individuals who are partially unemployed, as  
14       defined in section 383-1.

15       (b) An individual may be exempted from the work search  
16       requirements as determined by rules of the department, or be  
17       subject to modified work search requirements as authorized by  
18       the department if the individual is waived from the registration  
19       for work requirements, as defined in section 383-1.

20       §383-D Partial unemployment; reporting requirements. (a)  
21       An employer to whom a claimant for partial unemployment is still  
22       attached shall submit verification of earnings and satisfy all



1 low earnings reporting requirements in subsection (b) and rules  
2 of the department for each week that the claimant certifies for  
3 partial unemployment benefits.

4 (b) Low earnings reports shall be submitted as follows:

5 (1) Whenever, during any weekly pay period in an  
6 individual's benefit year, an individual has worked  
7 less than full-time hours for the regular employer to  
8 which the individual is attached, and the individual's  
9 earnings are less than the individual's current weekly  
10 benefit amount, the individual's employer, upon  
11 request by the department shall:

12 (A) Enter the individual's name, social security  
13 account number, gross earnings, week-ending date,  
14 and the reasons for the individual's reduced work  
15 week on a form provided or approved by the  
16 department and return the form to the  
17 unemployment insurance office as instructed  
18 within five working days after the notice of an  
19 individual's benefit amount has been mailed to  
20 the employer as to all prior weeks for which  
21 benefits are claimed. Thereafter, during the  
22 benefit year, the employer shall report within



1           five working days after the end of each week or  
2           weekly pay period for which the low earnings  
3           reports are required; or

4           (B) Furnish the individual personally with the  
5           information on a form provided or approved by the  
6           department and the individual shall be  
7           responsible to submit the report to the  
8           unemployment insurance office within five working  
9           days after the end of each week or weekly pay  
10           period or as instructed by the department.

11           (2) If the employer or individual fails to submit the low  
12           earnings report as prescribed in paragraph (1) (A) or  
13           (B) within the time specified by the department, the  
14           department shall determine the individual's  
15           eligibility for any week's benefits claimed based on  
16           the individual's certification of employment and  
17           earnings."

18           SECTION 3. Section 383-1, Hawaii Revised Statutes, is  
19           amended by adding four new definitions to be appropriately  
20           inserted and to read as follows:

21           "Attached to a regular employer" means:





1       (1) The employee is being offered work each week by the  
2       employee's regular employer; or

3       (2) If no work is being offered:

4       (A) The employer is maintaining the individual on the  
5       payroll by paying for a medical insurance plan or  
6       by maintaining the employee's sick leave or  
7       vacation credits; or

8       (B) There is a definite return to work date with the  
9       same employer within eight weeks.

10       "Full-time hours" or "full-time work" means a forty-hour  
11 work week unless regarded otherwise according to the standard  
12 practice, custom, or agreement in a particular trade,  
13 occupation, or business.

14       "Partial unemployment" or "partially unemployed" means the  
15 unemployment of any individual who, during a particular week,  
16 was still attached to that individual's regular employer, had no  
17 earnings or earned less than that individual's weekly benefit  
18 amount, and who worked less than or did not work that  
19 individual's normal, customary full-time hours for the  
20 individual's regular employer because of a lack of full-time  
21 work.



1       "Registered for work" or "registration for work" means that  
2       an individual shall provide information to the employment office  
3       to be posted on the department's internet job-matching system,  
4       including but not limited to the individual's name, job skills,  
5       education, training, prior employment history and work duties,  
6       preferred working conditions, occupational licenses, and other  
7       relevant occupational information to facilitate work search  
8       efforts by the individual and increase job referrals by the  
9       employment office. The information shall be posted with the  
10       department's assistance or independently by the individual. The  
11       employment office shall provide the necessary information to the  
12       unemployment office for purposes of determining that the  
13       individual's registration for work requirements has been met."

14       SECTION 4. Section 383-29, Hawaii Revised Statutes, is  
15       amended by amending subsection (a) to read as follows:

16       "(a) An unemployed individual shall be eligible to receive  
17       benefits with respect to any week only if the department finds  
18       that:

- 19       (1) The individual has made a claim for benefits with
- 20       respect to that week in accordance with rules the
- 21       department may prescribe [7] and with section 383-B for
- 22       partially unemployed individuals;



1           (2) The individual has registered for work [~~at~~], as  
2           defined in section 383-1, and thereafter continued to  
3           report, at [ ] an employment office in accordance with  
4           rules the department may prescribe, except that the  
5           department, by rule, may waive or alter either or both  
6           of the requirements of this paragraph [~~as to~~] for  
7           partially unemployed individuals pursuant to section  
8           383-C, individuals attached to regular jobs, and [~~as~~  
9           ~~to~~] other types of cases or situations with respect to  
10          which it finds that compliance with those requirements  
11          would be oppressive, or would be inconsistent with the  
12          purpose of this chapter; provided that no [~~such~~] rule  
13          shall conflict with section 383-21;

14          (3) The individual is able to work and is available for  
15          work; provided that no claimant shall be considered  
16          ineligible with respect to any week of unemployment  
17          for failure to comply with this paragraph if the  
18          failure is due to an illness or disability, as  
19          evidenced by a physician's certificate, which occurs  
20          during an uninterrupted period of unemployment with  
21          respect to which benefits are claimed and no work  
22          which would have been suitable prior to the beginning



- 1 of the illness and disability has been offered the  
2 claimant;
- 3 (4) The individual has been unemployed for a waiting  
4 period of one week within the individual's benefit  
5 year. No week shall be counted as a waiting period:
- 6 (A) If benefits have been paid with respect thereto;  
7 (B) Unless the individual was eligible for benefits  
8 with respect thereto as provided in this section  
9 and section 383-30, except for the requirements  
10 of this paragraph;
- 11 (5) In the case of an individual whose benefit year  
12 begins:
- 13 (A) On or after January 2, 1966, but prior to  
14 October 1, 1989, the individual has had during  
15 the individual's base period a total of fourteen  
16 or more weeks of employment, as defined in  
17 section 383-1, and has been paid wages for  
18 insured work during the individual's base period  
19 in an amount equal to at least thirty times the  
20 individual's weekly benefit amount as determined  
21 under section 383-22(b). For the purposes of



1 this subparagraph, wages for insured work shall  
2 include wages paid for services:  
3 (i) Which were not employment, as defined in  
4 section 383-2, or pursuant to an election  
5 under section 383-77 prior to January 1,  
6 1978, at any time during the one-year period  
7 ending December 31, 1975; and  
8 (ii) Which are agricultural labor, as defined in  
9 section 383-9 except service excluded under  
10 section 383-7(1), or are domestic service  
11 except service excluded under section  
12 383-7(2); except to the extent that  
13 assistance under Title II of the Emergency  
14 Jobs and Unemployment Assistance Act of 1974  
15 was paid on the basis of those services;  
16 (B) On and after October 1, 1989, to January 4, 1992,  
17 the individual has been employed, as defined in  
18 section 383-2, and has been paid wages for  
19 insured work during the individual's base period  
20 in an amount equal to not less than thirty times  
21 the individual's weekly benefit amount, as  
22 determined under section 383-22(b), and the



1 individual has been paid wages for insured work  
2 during at least two quarters of the individual's  
3 base period; provided that no otherwise eligible  
4 individual who established a prior benefit year  
5 under this chapter or the unemployment  
6 compensation law of any other state, shall be  
7 eligible to receive benefits in a succeeding  
8 benefit year until, during the period following  
9 the beginning of the prior benefit year, that  
10 individual worked in covered employment for which  
11 wages were paid in an amount equal to at least  
12 five times the weekly benefit amount established  
13 for that individual in the succeeding benefit  
14 year; and

- 15 (C) After January 4, 1992, the individual has been  
16 employed, as defined in section 383-2, and has  
17 been paid wages for [such] insured work during  
18 the individual's base period in an amount equal  
19 to not less than twenty-six times the  
20 individual's weekly benefit amount, as determined  
21 under section 383-22(b), and the individual has  
22 been paid wages for insured work during at least



1 two quarters of the individual's base period;  
2 provided that no otherwise eligible individual  
3 who established a prior benefit year under this  
4 chapter or the unemployment compensation law of  
5 any other state, shall be eligible to receive  
6 benefits in a succeeding benefit year until,  
7 during the period following the beginning of the  
8 prior benefit year, that individual worked in  
9 covered employment for which wages were paid in  
10 an amount equal to at least five times the weekly  
11 benefit amount established for that individual in  
12 the succeeding benefit year.

13 For purposes of this paragraph, wages and weeks of  
14 employment shall be counted for benefit purposes with  
15 respect to any benefit year only if the benefit year  
16 begins subsequent to the dates on which the employing  
17 unit by which the wages or other remuneration, as  
18 provided in the definition of weeks of employment in  
19 section 383-1, were paid has satisfied the conditions  
20 of section 383-1 with respect to becoming an employer.

21 Effective for benefit years beginning January 1,  
22 2004, and thereafter, if an individual fails to



1 establish a valid claim for unemployment insurance  
2 benefits under this paragraph, the department shall  
3 make a redetermination of entitlement based upon the  
4 alternative base period, as defined in section 383-1;  
5 provided further that the individual shall satisfy the  
6 conditions of section 383-29(a)(5) that apply to  
7 claims filed using the base period, as defined in  
8 section 383-1, and the establishment of claims using  
9 the alternative base period shall be subject to the  
10 terms and conditions of sections 383-33 and 383-94;  
11 and

12 (6) Effective November 24, 1994, an individual who has  
13 been referred to reemployment services pursuant to the  
14 profiling system under section 383-92.5 [~~participates~~]  
15 shall participate in those services or in similar  
16 services. The individual may not be required to  
17 participate in reemployment services if the department  
18 determines the individual has completed those  
19 services, or there is justifiable cause for the  
20 claimant's failure to participate in those services.





1 For the purposes of this subsection, employment and wages  
2 used to establish a benefit year shall not thereafter be reused  
3 to establish another benefit year."

4 SECTION 5. In codifying the new sections added by section  
5 2 of this Act, the revisor of statutes shall substitute  
6 appropriate section numbers for the letters used in designating  
7 the new sections in this Act.

8 SECTION 6. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 7. This Act shall take effect on July 1, 2009, and  
11 shall be repealed on July 1, 2012; provided that on July 1,  
12 2012, sections 383-1 and 383-29(a), Hawaii Revised Statutes,  
13 shall be reenacted in the same form in which they read on  
14 June 30, 2009.

APPROVED this 2 day of JUL, 2009



GOVERNOR OF THE STATE OF HAWAII