



GOV. MSG. NO. 1260

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 26, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 26, 2012, the following bill was signed into law:

SB2810 SD1 HD1 CD1

RELATING TO EMPLOYMENT EXEMPTION FOR
DOMESTIC SERVICES AUTHORIZED BY THE
DEPARTMENT OF HUMAN SERVICES.

Act 157 (12)

NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor

JUN 26 2012

on _____

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2012
STATE OF HAWAII

ACT 157

S.B. NO. 2810
S.D. 1
H.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO EMPLOYMENT EXEMPTION FOR DOMESTIC SERVICES
AUTHORIZED BY THE DEPARTMENT OF HUMAN SERVICES.

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

1 SECTION 1. Section 386-1, Hawaii Revised Statutes, is
2 amended by amending the definition of "employment" to read as
3 follows:

4 ""Employment" means any service performed by an individual
5 for another person under any contract of hire or apprenticeship,
6 express or implied, oral or written, whether lawfully or
7 unlawfully entered into. It includes service of public
8 officials, whether elected or under any appointment or contract
9 of hire, express or implied.

10 "Employment" does not include:

11 (1) Service for a religious, charitable, educational, or
12 nonprofit organization if performed in a voluntary or
13 unpaid capacity;

14 (2) Service for a religious, charitable, educational, or
15 nonprofit organization if performed by a recipient of
16 aid therefrom and the service is incidental to or in
17 return for the aid received;



- 1 (3) Service for a school, college, university, college
2 club, fraternity, or sorority if performed by a
3 student who is enrolled and regularly attending
4 classes and in return for board, lodging, or tuition
5 furnished, in whole or in part;
- 6 (4) Service performed by a duly ordained, commissioned, or
7 licensed minister, priest, or rabbi of a church in the
8 exercise of the minister's, priest's, or rabbi's
9 ministry or by a member of a religious order in the
10 exercise of nonsecular duties required by the order;
- 11 (5) Service performed by an individual for another person
12 solely for personal, family, or household purposes if
13 the cash remuneration received is less than \$225
14 during the current calendar quarter and during each
15 completed calendar quarter of the preceding twelve-
16 month period;
- 17 (6) Domestic, in-home and community-based services for
18 persons with developmental and intellectual
19 disabilities under the medicaid home and community-
20 based services program pursuant to Title 42 Code of
21 Federal Regulations sections 440.180 and 441.300, and
22 Title 42 Code of Federal Regulations, Part 434,



1 Subpart A, as amended, and identified as chore,
2 personal assistance and habilitation, residential
3 habilitation, supported employment, respite, and
4 skilled nursing services, as the terms are defined by
5 the department of human services, performed by an
6 individual whose services are contracted by a
7 recipient of social service payments and who
8 voluntarily agrees in writing to be an independent
9 contractor of the recipient of social service
10 payments;

11 (7) Domestic services, which include attendant care, and
12 day care services authorized by the department of
13 human services under the Social Security Act, as
14 amended, or when provided through state-funded medical
15 assistance to individuals ineligible for medicaid,
16 when performed by an individual in the employ of a
17 recipient of social service payments. For the
18 purposes of this paragraph only, a "recipient of
19 social service payments" is a person who is an
20 eligible recipient of social services such as
21 attendant care or day care services;



- 1 [~~7~~] (8) Service performed without wages for a corporation
2 without employees by a corporate officer in which the
3 officer is at least a twenty-five per cent
4 stockholder;
- 5 [~~8~~] (9) Service performed by an individual for a
6 corporation if the individual owns at least fifty per
7 cent of the corporation; provided that no employer
8 shall require an employee to incorporate as a
9 condition of employment;
- 10 [~~9~~] (10) Service performed by an individual for another
11 person as a real estate salesperson or as a real
12 estate broker, if all the service performed by the
13 individual for the other person is performed for
14 remuneration solely by way of commission;
- 15 [~~10~~] (11) Service performed by a member of a limited
16 liability company if the member is an individual and
17 has a distributional interest, as defined in section
18 428-101, of not less than fifty per cent in the
19 company; provided that no employer shall require an
20 employee to form a limited liability company as a
21 condition of employment;



1 ~~[(11)]~~ (12) Service performed by a partner of a partnership,
2 as defined in section 425-101, if the partner is an
3 individual; provided that no employer shall require an
4 employee to become a partner or form a partnership as
5 a condition of employment;

6 ~~[(12)]~~ (13) Service performed by a partner of a limited
7 liability partnership if the partner is an individual
8 and has a transferable interest as described in
9 section 425-127 in the partnership of not less than
10 fifty per cent; provided that no employer shall
11 require an employee to form a limited liability
12 partnership as a condition of employment; and

13 ~~[(13)]~~ (14) Service performed by a sole proprietor.

14 As used in this definition, "religious, charitable, educational,
15 or nonprofit organization" means a corporation, unincorporated
16 association, community chest, fund, or foundation organized and
17 operated exclusively for religious, charitable, or educational
18 purposes, no part of the net earnings of which inure to the
19 benefit of any private shareholder or individual."

20 SECTION 2. Section 392-5, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§392-5 Excluded services. "Employment" as defined in
2 section 392-3 shall not include:

3 (1) Domestic service in a private home, local college
4 club, or local chapter of a college fraternity or
5 sorority, performed in any calendar quarter by an
6 individual if the cash remuneration paid by the
7 employer for such service is less than \$225;

8 (2) Service not in the course of the employer's trade or
9 business performed in any calendar quarter by an
10 individual, unless the cash remuneration paid for the
11 service is \$50 or more and the service is performed by
12 an individual who is regularly employed by the
13 employer to perform the service. An individual shall
14 be deemed to be regularly employed to perform service
15 not in the course of the employer's trade or business
16 during a calendar quarter only if:

17 (A) On each of some twenty-four days during the
18 quarter the individual performs the service for
19 some portion of the day; or

20 (B) The individual was regularly employed, as
21 determined under subparagraph (A), by the



1 employer in the performance of the service during
2 the preceding calendar quarter;

3 (3) Service performed on or in connection with a vessel
4 not an American vessel, if the individual performing
5 the service is employed on and in connection with the
6 vessel when outside the United States;

7 (4) Service performed by an individual in (or as an
8 officer or member of the crew of a vessel while it is
9 engaged in) the catching, taking, harvesting,
10 cultivating, or farming of any kind of fish,
11 shellfish, crustacea, sponges, seaweeds, or other
12 aquatic forms of animal and vegetable life, including
13 service performed as an ordinary incident thereto,
14 except:

15 (A) The service performed in connection with a vessel
16 of more than ten net tons (determined in the
17 manner provided for determining the register
18 tonnage of merchant vessels under the laws of the
19 United States);

20 (B) The service performed in connection with a vessel
21 of ten net tons or less (determined in the manner
22 provided for determining the register tonnage of



1 merchant vessels under the laws of the United
2 States) by an individual who is employed by an
3 employer who, for some portion in each of twenty
4 different calendar weeks in either the current or
5 preceding calendar year, had in the employer's
6 employ one or more persons performing the
7 service, whether or not the weeks were
8 consecutive and whether or not the same
9 individuals performed the service in each week;
10 and

11 (C) The service performed in connection with the
12 catching or taking of salmon or halibut for
13 commercial purposes;

14 (5) Service performed by an individual in the employ of
15 the individual's son, daughter, or spouse, and service
16 performed by a child under the age of twenty-one in
17 the employ of the child's father or mother;

18 (6) Service performed in the employ of the United States
19 government or an instrumentality of the United States
20 exempt under the Constitution of the United States
21 from the contributions imposed by this chapter;



- 1 (7) Service performed in the employ of any other state, or
2 any political subdivision thereof, or any
3 instrumentality of any one or more of the foregoing
4 that is wholly owned by one or more such states or
5 political subdivisions; and any service performed in
6 the employ of any instrumentality of one or more other
7 states or their political subdivisions to the extent
8 that the instrumentality is, with respect to such
9 service, exempt from the tax imposed by section 3301
10 of the Internal Revenue Code of 1986;
- 11 (8) Service with respect to which temporary disability
12 compensation is payable for sickness under a temporary
13 disability insurance system established by an act of
14 Congress;
- 15 (9) Service performed in any calendar quarter in the
16 employ of any nonprofit organization exempt from
17 income tax under section 501 of the Internal Revenue
18 Code of 1986, if:
- 19 (A) The remuneration for such service is less than
20 \$50;



1 (B) The service is performed by a student who is
2 enrolled and is regularly attending classes at a
3 school, college, or university;

4 (C) The service is performed by a duly ordained,
5 commissioned, or licensed minister or licensed
6 minister of a church in the exercise of the
7 minister's ministry or by a member of a religious
8 order in the exercise of nonsecular duties
9 required by the order; or

10 (D) The service is performed for a church by an
11 employee who fails to meet the eligibility
12 requirements of section 392-25;

13 (10) Service performed in the employ of a voluntary
14 employees' beneficiary association providing for the
15 payment of life, sick, accident, or other benefits to
16 the members of the association or their dependents,
17 if:

18 (A) No part of its net earnings inures (other than
19 through such payments) to the benefit of any
20 private shareholder or individual; and

21 (B) Eighty-five per cent or more of its income
22 consists of amounts collected from members and



1 amounts contributed by the employer of the
2 members for the sole purpose of making such
3 payments and meeting expenses;

4 (11) Service performed in the employ of a voluntary
5 employee's beneficiary association providing for the
6 payment of life, sick, accident, or other benefits to
7 the members of the association or their dependents or
8 their designated beneficiaries, if:

9 (A) Admission to membership in the association is
10 limited to individuals who are officers or
11 employees of the United States government; and

12 (B) No part of the net earnings of the association
13 inures (other than through such payments) to the
14 benefit of any private shareholder or individual;

15 (12) Service performed in the employ of a school, college,
16 or university, not exempt from income tax under
17 section 501 of the Internal Revenue Code of 1986, if
18 the service is performed by a student who is enrolled
19 and is regularly attending classes at the school,
20 college, or university;

21 (13) Service performed in the employ of any instrumentality
22 wholly owned by a foreign government, if:



- 1 (A) The service is of a character similar to that
2 performed in foreign countries by employees of
3 the United States government or of an
4 instrumentality thereof; and
- 5 (B) The United States Secretary of State has
6 certified or certifies to the United States
7 Secretary of the Treasury that the foreign
8 government, with respect to whose instrumentality
9 exemption is claimed, grants an equivalent
10 exemption with respect to similar service
11 performed in the foreign country by employees of
12 the United States government and of
13 instrumentalities thereof;
- 14 (14) Service performed as a student nurse in the employ of
15 a hospital or a nurses' training school by an
16 individual who is enrolled and is regularly attending
17 classes in a nurses' training school chartered or
18 approved pursuant to state law; and service performed
19 as an intern in the employ of a hospital by an
20 individual who has completed a four years' course in a
21 medical school chartered or approved pursuant to state
22 law;



- 1 (15) Service performed by an individual for an employer as
2 an insurance producer, if all such service performed
3 by the individual for the employer is performed for
4 remuneration solely by way of commission;
- 5 (16) Service performed by an individual under the age of
6 eighteen in the delivery or distribution of newspapers
7 or shopping news, not including delivery or
8 distribution to any point for subsequent delivery or
9 distribution;
- 10 (17) Service covered by an arrangement between the
11 department and the agency charged with the
12 administration of any other state or federal
13 unemployment compensation law pursuant to which all
14 services performed by an individual for an employer
15 during the period covered by the employer's duly
16 approved election, are deemed to be performed entirely
17 within the agency's state;
- 18 (18) Service performed by an individual who, pursuant to
19 the Federal Economic Opportunity Act of 1964, is not
20 subject to the federal laws relating to unemployment
21 compensation;



- 1 (19) Domestic in-home and community-based services for
2 persons with developmental and intellectual
3 disabilities under the medicaid home and community-
4 based services program pursuant to Title 42 Code of
5 Federal Regulations sections 440.180 and 441.300, and
6 Title 42 Code of Federal Regulations, Part 434,
7 Subpart A, as amended, and identified as chore,
8 personal assistance and habilitation, residential
9 habilitation, supported employment, respite, and
10 skilled nursing services, as the terms are defined by
11 the department of human services, performed by an
12 individual whose services are contracted by a
13 recipient of social service payments and who
14 voluntarily agrees in writing to be an independent
15 contractor of the recipient of social service
16 payments;
- 17 (20) Domestic services, which include attendant care, and
18 day care services authorized by the department of
19 human services under the Social Security Act, as
20 amended, or when provided through state-funded medical
21 assistance to individuals ineligible for medicaid,
22 when performed by an individual in the employ of a



1 recipient of social service payments. For the
2 purposes of this paragraph only, a "recipient of
3 social service payments" is a person who is an
4 eligible recipient of social services such as
5 attendant care or day care services;

6 ~~(20)~~ (21) Service performed by a vacuum cleaner
7 salesperson for an employing unit, if all such
8 services performed by the individual for such
9 employing unit are performed for remuneration solely
10 by way of commission; or

11 ~~(21)~~ (22) Service performed by an individual for an
12 employer as a real estate salesperson or as a real
13 estate broker, if all the service performed by the
14 individual for the employer is performed for
15 remuneration solely by way of commission."

16 SECTION 3. Section 393-5, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§393-5 Excluded services.** "Employment" as defined in
19 section 393-3 does not include:

20 (1) Service performed by an individual in the employ of an
21 employer who, by the laws of the United States, is



1 responsible for care and cost in connection with such
2 service;

3 (2) Service performed by an individual in the employ of
4 the individual's spouse, son, or daughter, and service
5 performed by an individual under the age of twenty-one
6 in the employ of the individual's father or mother;

7 (3) Service performed in the employ of a voluntary
8 employee's beneficiary association providing for the
9 payment of life, sick, accident, or other benefits to
10 the members of the association or their dependents or
11 their designated beneficiaries, if:

12 (A) Admission to membership in the association is
13 limited to individuals who are officers or
14 employees of the United States government; and

15 (B) No part of the net earnings of the association
16 inures (other than through such payments) to the
17 benefits of any private shareholder or
18 individual;

19 (4) Service performed by an individual for an employer as
20 an insurance agent or as an insurance solicitor if all
21 service performed by the individual for the employer
22 is performed for remuneration by way of commission;



- 1 (5) Service performed by an individual for an employer as
2 a real estate salesperson or as a real estate broker
3 if all service performed by the individual for the
4 employer is performed for remuneration by way of
5 commission;
- 6 (6) Service performed by an individual who, pursuant to
7 the Federal Economic Opportunity Act of 1964, is not
8 subject to the provisions of law relating to federal
9 employment, including unemployment compensation; [and]
- 10 (7) Domestic in-home and community-based services for
11 persons with developmental and intellectual
12 disabilities under the medicaid home and community-
13 based services program pursuant to Title 42 Code of
14 Federal Regulations sections 440.180 and 441.300, and
15 Title 42 Code of Federal Regulations, Part 434,
16 Subpart A, as amended, and identified as chore,
17 personal assistance and habilitation, residential
18 habilitation, supported employment, respite, and
19 skilled nursing services, as the terms are defined and
20 amended from time to time by the department of human
21 services, performed by an individual whose services
22 are contracted by a recipient of social service

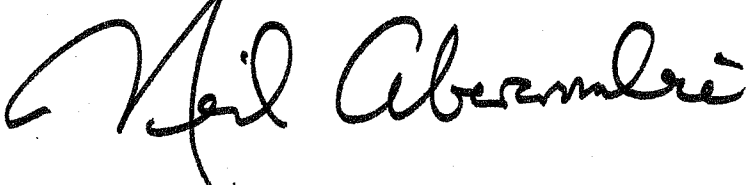


1 payments and who voluntarily agrees in writing to be
 2 an independent contractor of the recipient of social
 3 service payments[-]; and
 4 (8) Domestic services, which include attendant care, and
 5 day care services authorized by the department of
 6 human services under the Social Security Act, as
 7 amended, or when provided through state-funded medical
 8 assistance to individuals ineligible for medicaid,
 9 when performed by an individual in the employ of a
 10 recipient of social service payments. For the
 11 purposes of this paragraph only, a "recipient of
 12 social service payments" is a person who is an
 13 eligible recipient of social services such as
 14 attendant care or day care services."

15 SECTION 4. Statutory material to be repealed is bracketed
 16 and stricken. New statutory material is underscored.

17 SECTION 5. This Act shall take effect upon its approval.

APPROVED this 26 day of JUN, 2012



GOVERNOR OF THE STATE OF HAWAII