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# 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.



**Report Title:**

Employment Exemption

**Description:**

Amends the definition of "employment" in sections 386-1, 392-5, and 303-5, Hawaii Revised Statutes, to exempt aged and disabled recipients of home and community-based services authorized by the Department of Human Services and recipients of state-funded home and community-based services from having to provide workers' compensation, temporary disability insurance, and prepaid health care. (CD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

