



GOV. MSG. NO. 828

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

May 16, 2007

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

Dear Madam President and Members of the Senate:

This is to inform you that on May 16, 2007, the following bill was signed into law:

HB1379 HD1 SD1 CD1

A BILL FOR AN ACT RELATING TO EMPLOYMENT  
SECURITY LAW.  
(ACT 070)

Sincerely,

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

LINDA LINGLE

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# A BILL FOR AN ACT

RELATING TO EMPLOYMENT SECURITY LAW.

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

1           SECTION 1. The purpose of this Act is to provide the same  
2 type of unemployment insurance exclusion in state law as in  
3 federal law for the exclusion of certain alien agricultural  
4 workers and to conform coverage of Indian tribe workers under  
5 state law to federal law.

6           Under Public Law 94-566, the Unemployment Compensation Act  
7 of 1976, agricultural labor became subject to the federal  
8 unemployment tax, except for nonresident aliens who were  
9 temporarily admitted to the United States to perform contract  
10 agricultural work. Under Public Law 96-84, alien agricultural  
11 labor must be included solely for purposes of determining the  
12 threshold of coverage such as cash wages paid and number of  
13 individuals and weeks worked.

14           Under Public Law 106-554, the Consolidated Appropriations  
15 Act, 2001, American Indian tribes must now be treated similarly  
16 to state and local governments and nonprofit organizations under  
17 federal and state law. The provisions of this bill conform with  
18 the Consolidated Appropriations Act requirements.



1 SECTION 2. Chapter 383, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§383- Treatment of Indian tribes. (a) Benefits  
5 based on service in employment as defined in this section shall  
6 be payable in the same amount, on the same terms, and subject to  
7 the same conditions as benefits payable on the basis of other  
8 service subject to this chapter. The financing of benefits  
9 shall apply in the same manner and under the same terms and  
10 conditions as in section 383-62 for nonprofit organizations  
11 subject to this chapter; except that the provisions of this  
12 section shall apply where there is a conflict.

13 (b) Any Indian tribe or tribal unit (subdivisions,  
14 subsidiaries, or business enterprises wholly owned by the Indian  
15 tribe) subject to this chapter on or after January 1, 2007:

16 (1) Shall pay contributions under the provisions of this  
17 part (with the exception of the provisions in section  
18 383-62(b)) applicable to other employers, unless it  
19 elects to pay to the director for the fund an amount  
20 equal to the amount of benefits that is attributable  
21 to service in the employ of an Indian tribe;



- 1       (2) That elects to make payments in lieu of contributions  
2       shall make this election in the same manner and under  
3       the same conditions as provided in section 383-  
4       62(d)(1). Indian tribes or tribal units shall  
5       determine if reimbursement for benefits paid will be  
6       elected by the tribe as a whole, by individual tribal  
7       units, or by combinations of individual tribal units;  
8       (3) Shall be billed and payments shall be made in  
9       accordance with section 383-62(d)(2), for the full  
10       amount of benefits attributable to service in the  
11       employ of the Indian tribe or tribal unit on the same  
12       schedule as nonprofit organizations that have elected  
13       to make reimbursement payments in lieu of  
14       contributions; and  
15       (4) That elects to become liable for payments in lieu of  
16       contributions shall be required, within thirty days  
17       after the effective date of its election, to deposit  
18       with the department an amount of money as security as  
19       determined by section 383-62(d)(3).  
20       (c) Failure of the Indian tribe or tribal unit to make any  
21       required payment under this chapter within ninety days after  
22       a notice of delinquency was mailed to its last known address or



1 was otherwise delivered to it, shall cause the Indian tribe to  
2 lose the option to make payments in lieu of contributions and  
3 the termination shall continue for the four-consecutive-  
4 calendar-quarter period beginning with the quarter in which the  
5 termination becomes effective.

6 Any Indian tribe that loses the option to make payments in  
7 lieu of contributions due to late payment or nonpayment, shall  
8 have such option reinstated after a period of one year if all  
9 contributions have been timely made; provided no contributions,  
10 payments in lieu of contributions for benefits paid, security  
11 deposit, and penalties or interest remain outstanding.

12 If any Indian tribe or tribal unit fails to make payments  
13 required under this section (including assessed interest and  
14 penalty) within ninety days of a notice of delinquency, the  
15 department shall immediately notify the United States Internal  
16 Revenue Service and the United States Department of Labor.

17 (d) Notices of payment and reporting delinquency to Indian  
18 tribes and tribal units shall include information that failure  
19 to make full payments within the prescribed time shall cause the  
20 Indian tribe to:

21 (1) Be liable for taxes under the Federal Unemployment Tax  
22 Act; and



1       (2) Lose the option to make payments in lieu of  
2               contributions.

3       (e) Except as provided in subsection (f), the amount  
4 payable to the fund by each Indian tribe or tribal unit that is  
5 liable for payments in lieu of contributions shall be determined  
6 in the same manner as provided in section 383-62(e).

7       (f) An Indian tribe or tribal unit shall reimburse the  
8 fund for all extended benefits paid that are attributable to  
9 service in the employ of the Indian tribe or tribal unit unless  
10 the benefits are reimbursed by the federal government.

11       (g) Any two or more Indian tribes or tribal units that  
12 have become liable for payments in lieu of contributions may  
13 file a joint application to the department for the establishment  
14 of a group account for the purpose of sharing the cost of  
15 benefits paid that are attributable to service in the employ of  
16 such employers in the same manner as provided in section  
17 383-62(f).

18       (h) As used in this section:

19       "Employer" includes any Indian tribe for which service in  
20 employment, as defined in section 383-2, is performed.

21       "Employment" means service performed in the employ of an  
22 Indian tribe; provided that the service is excluded from



1 employment as defined in the Federal Unemployment Tax Act solely  
2 by reason of Section 3306(c)(7), of the Federal Unemployment Tax  
3 Act, and is not otherwise excluded from employment under this  
4 chapter. For purposes of this section, the exclusions from  
5 employment under section 383-7, apply to services performed in  
6 the employ of an Indian tribe in the same manner as the  
7 exclusions apply to government and nonprofit entities.

8 "Indian tribe" has the meaning given the term by Section  
9 4(e) of the Indian Self-Determination and Education Assistance  
10 Act (25 U.S.C. Section 450b(e)), and includes any subdivision,  
11 subsidiary, or business enterprises wholly owned by the Indian  
12 tribe."

13 SECTION 3. Section 383-7, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "**§383-7 Excluded service.** "Employment" shall not include  
16 the following service:

17 (1) Agricultural labor as defined in section 383-9 if it  
18 is performed by an individual who is employed by an  
19 employing unit:

20 (A) Which, during each calendar quarter in both the  
21 current and the preceding calendar years, paid  
22 less than \$20,000 in cash remuneration to



1 individuals employed in agricultural labor[+],  
2 including labor performed by an alien referred to  
3 in subparagraph (C); and

4 (B) Which had, in each of the current and the  
5 preceding calendar years:

6 (i) No more than nineteen calendar weeks,  
7 whether consecutive or not, in which  
8 agricultural labor was performed by its  
9 employees[+], including labor performed by  
10 an alien referred to in subparagraph (C); or

11 (ii) No more than nine individuals in its employ  
12 performing agricultural labor in any one  
13 calendar week, whether or not the same  
14 individuals performed the labor in each  
15 week[+], including labor performed by an  
16 alien referred to in subparagraph (C); or

17 (C) If such agricultural labor is performed by an  
18 individual who is an alien admitted to the United  
19 States to perform agricultural labor pursuant to  
20 Sections 214(c) and 101(a)(15)(H) of the  
21 Immigration and Nationality Act;





- 1           (2) Domestic service in a private home, local college  
2           club, or local chapter of a college fraternity or  
3           sorority as set forth in section 3306(c)(2) of the  
4           Internal Revenue Code of 1986, as amended;
- 5           (3) Service not in the course of the employing unit's  
6           trade or business performed in any calendar quarter by  
7           an individual, unless the cash remuneration paid for  
8           the service is \$50 or more and the service is  
9           performed by an individual who is regularly employed  
10          by the employing unit to perform the service. For the  
11          purposes of this paragraph, an individual shall be  
12          deemed to be regularly employed to perform service not  
13          in the course of an employing unit's trade or business  
14          during a calendar quarter only if:
- 15          (A) On each of some twenty-four days during the  
16          quarter the individual performs the service for  
17          some portion of the day; or
- 18          (B) The individual was regularly employed as  
19          determined under subparagraph (A) by the  
20          employing unit in the performance of the service  
21          during the preceding calendar quarter;





1 the laws of the United States) by an  
2 individual who is employed by an employing  
3 unit which had in its employ one or more  
4 individuals performing the service for some  
5 portion of a day in each of twenty calendar  
6 weeks all occurring, whether consecutive or  
7 not, in either the current or the preceding  
8 calendar year; and

9 (iii) Service performed in connection with the  
10 catching or taking of salmon or halibut for  
11 commercial purposes;

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

16 (6) Service performed in the employ of the United States  
17 government or an instrumentality of the United States  
18 exempt under the Constitution of the United States  
19 from the contributions imposed by this chapter, except  
20 that to the extent that the Congress of the United  
21 States permits states to require any instrumentalities  
22 of the United States to make payments into an



1 unemployment fund under a state unemployment  
2 compensation law, all of the provisions of this  
3 chapter shall apply to those instrumentalities, and to  
4 services performed for those instrumentalities, in the  
5 same manner, to the same extent, and on the same terms  
6 as to all other employers, employing units,  
7 individuals, and services; provided that if this State  
8 is not certified for any year by the Secretary of  
9 Labor under section 3304(c) of the federal Internal  
10 Revenue Code, the payments required of those  
11 instrumentalities with respect to that year shall be  
12 refunded by the department of labor and industrial  
13 relations from the fund in the same manner and within  
14 the same period as is provided in section 383-76 with  
15 respect to contributions erroneously collected;

16 (7) Service performed in the employ of any other state, or  
17 any political subdivision thereof, or any  
18 instrumentality of any one or more of the foregoing  
19 which is wholly owned by one or more states or  
20 political subdivisions; and any service performed in  
21 the employ of any instrumentality of one or more other  
22 states or their political subdivisions to the extent



1 that the instrumentality is, with respect to the  
2 service, exempt from the tax imposed by section 3301  
3 of the Internal Revenue Code of 1986, as amended;

4 (8) Service with respect to which unemployment  
5 compensation is payable under an unemployment system  
6 established by an act of Congress;

7 (9) (A) Service performed in any calendar quarter in the  
8 employ of any organization exempt from income tax  
9 under section 501(a) of the federal Internal  
10 Revenue Code (other than an organization  
11 described in section 401(a) or under section 521  
12 of the Code), if:

13 (i) The remuneration for the service is less  
14 than \$50; or

15 (ii) The service is performed by a fully  
16 ordained, commissioned, or licensed minister  
17 of a church in the exercise of the  
18 minister's ministry or by a member of a  
19 religious order in the exercise of duties  
20 required by the order;

21 (B) Service performed in the employ of a school,  
22 college, or university, if the service is



1 performed by a student who is enrolled and is  
2 regularly attending classes at the school,  
3 college, or university; or

4 (C) Service performed by an individual who is  
5 enrolled at a nonprofit or public educational  
6 institution which normally maintains a regular  
7 faculty and curriculum and normally has a  
8 regularly organized body of students in  
9 attendance at the place where its educational  
10 activities are carried on as a student in a full-  
11 time program, taken for credit at such  
12 institution, which combines academic instruction  
13 with work experience, if such service is an  
14 integral part of such program, and such  
15 institution has so certified to the employer,  
16 except that this subparagraph shall not apply to  
17 service performed in a program established for or  
18 on behalf of an employer or group of employers;

19 (10) Service performed in the employ of a foreign  
20 government (including service as a consular or other  
21 officer or employee of a nondiplomatic  
22 representative);



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



1 medical school chartered or approved pursuant to state  
2 law;

3 (13) Service performed by an individual for an employing  
4 unit as an insurance producer, if all service  
5 performed by the individual for the employing unit is  
6 performed for remuneration solely by way of  
7 commission;

8 (14) Service performed by an individual under the age of  
9 eighteen in the delivery or distribution of newspapers  
10 or shopping news, not including delivery or  
11 distribution to any point for subsequent delivery or  
12 distribution;

13 (15) Service covered by an arrangement between the  
14 department and the agency charged with the  
15 administration of any other state or federal  
16 unemployment compensation law pursuant to which all  
17 services performed by an individual for an employing  
18 unit during the period covered by the employing unit's  
19 duly approved election, are deemed to be performed  
20 entirely within the agency's state;

21 (16) Service performed by an individual who, pursuant to  
22 the Federal Economic Opportunity Act of 1964, is not





1 subject to the federal laws relating to unemployment  
2 compensation;

3 (17) Service performed by an individual for an employing  
4 unit as a real estate salesperson, if all service  
5 performed by the individual for the employing unit is  
6 performed for remuneration solely by way of  
7 commission;

8 (18) Service performed by a registered sales representative  
9 for a registered travel agency, when the service  
10 performed by the individual for the travel agent is  
11 performed for remuneration by way of commission;

12 (19) Service performed by a vacuum cleaner salesperson for  
13 an employing unit, if all services performed by the  
14 individual for the employing unit are performed for  
15 remuneration solely by way of commission;

16 (20) Service performed for a family-owned private  
17 corporation organized for profit that employs only  
18 members of the family who each own at least fifty per  
19 cent of the shares issued by the corporation; provided  
20 that:

21 (A) The private corporation elects to be excluded  
22 from coverage under this chapter;

- 1 (B) The election for exclusion shall apply to all
- 2 shareholders and under the same circumstances;
- 3 (C) No more than two members of a family may be
- 4 eligible per entity for exclusion under this
- 5 paragraph;
- 6 (D) The exclusion shall be irrevocable for five
- 7 years;
- 8 (E) The family-owned private corporation presents to
- 9 the department proof that it has paid federal
- 10 unemployment insurance taxes as required by
- 11 federal law; and
- 12 (F) The election to be excluded from coverage shall
- 13 be effective the first day of the calendar
- 14 quarter in which the application and all
- 15 substantiating documents requested by the
- 16 department are filed with the department;
- 17 (21) Service performed by a direct seller as defined in
- 18 section 3508 of the Internal Revenue Code of 1986; and
- 19 (22) Service performed by an election official or election
- 20 worker as defined in section 3309(b)(3)(F) of the
- 21 Internal Revenue Code of 1986, as amended.



1 None of the foregoing exclusions (1) to (22) shall apply to  
2 any service with respect to which a tax is required to be paid  
3 under any federal law imposing a tax against which credit may be  
4 taken for contributions required to be paid into a state  
5 unemployment fund or which as a condition for full tax credit  
6 against the tax imposed by the federal Unemployment Tax Act is  
7 required to be covered under this chapter."

8 SECTION 4. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 5. This Act shall take effect on July 1, 2007.

APPROVED this 16 day of MAY, 2007



GOVERNOR OF THE STATE OF HAWAII

