H.B. NO. 3168

A BILL FOR AN ACT

RELATING TO UNEMPLOYMENT CONTRIBUTION RATES.

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

SECTION 1. Section 383-66, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Notwithstanding any other provision of this chapter, the following shall apply regarding assignment of rates and transfers of experience:

(1) If an employing unit transfers its organization, trade, or business, or a portion thereof, to another employing unit and, at the time of the transfer, there is substantially common ownership, management, or control of the two employing units, both employing units shall file a notification of the transfer with the department on a form approved by the department within thirty days after the date of the transfer. The department shall transfer the experience records attributable to the transferred organization, trade, or business to the employing unit to whom the organization, trade, or business is transferred. The rates of both employing units shall be recalculated and made effective beginning with the calendar

[~~quarter~~] year immediately following the date of the transfer of the organization, trade, or business;

(2) If a person is not an employing unit as defined in section 383-1 at the time it acquires the organization, trade, or business of another employing unit, both the person and the employing unit shall file a notification of the acquisition with the department on a form approved by the department within thirty days after the date of the acquisition. If the department determines at the time of the acquisition or thereafter, based on objective factors that may include:

(A) The cost of acquiring the organization, trade, or business;

(B) Whether the person continued the activity of the acquired organization, trade, or business;

(C) How long the organization, trade, or business was continued; or

(D) Whether a substantial number of new employees were hired for performance of duties unrelated to the organization, trade, or business activity conducted prior to the acquisition, that the acquisition was solely or primarily for the purpose of obtaining a lower rate of

contribution, the person shall not be assigned the lower rate and shall be assigned the contribution rate for a new or newly covered employer pursuant to subsection (a)(2) instead;

(3) An employing unit or person who is not an employing unit shall be subject to penalties under paragraph (4) or (5) if the employing unit or person who is not an employing unit:

(A) Knowingly violates or attempts to violate this subsection or any other provision of this chapter related to determining the assignment of a contribution rate;

(B) Makes any false statement or representation or fails to disclose a material fact to the department in connection with the transfer or acquisition of an organization, trade, or business; or

(C) Knowingly advises another employing unit or person in a way that results in a violation or attempted violation of this subsection;

(4) If the person is an employing unit:

(A) The employing unit shall be subject to the highest rate assignable under this chapter for the calendar year during which the violation or

1 attempted violation occurred and for the
2 consecutive three calendar years immediately
3 following; or
4 (B) If the employing unit is already at the highest
5 rate or if the amount of increase in the
6 employing unit's rate would be less than two per
7 cent for the calendar year during which the
8 violation or attempted violation occurred, a
9 penalty equal to contributions of two per cent of
10 taxable wages shall be imposed for the calendar
11 year during which the violation or attempted
12 violation occurred and the consecutive three
13 calendar years immediately following. Any
14 penalty amount collected in excess of the maximum
15 contributions payable at the highest rate shall
16 be deposited in the special unemployment
17 insurance administration fund in accordance with
18 section 383-127;
19 (5) If the person is not an employing unit, the person
20 shall be subject to a penalty of not more than $5,000.
21 The penalty shall be deposited in the special
22 unemployment insurance administration fund in
23 accordance with section 383-127;

(6) For purposes of this subsection, the following definitions shall apply:

(A) "Knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the requirements or prohibition involved;

(B) "Violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation, or wilful nondisclosure;

(C) "Person" shall have the same meaning as defined in section [~~6601(a)(1)~~] 7701(a)(1) of the Internal Revenue Code of 1986, as amended; and

(D) "Organization, trade, or business" shall include the employer's workforce;

(7) In addition to the civil penalties imposed by paragraphs (4) and (5), any violation of this section may be prosecuted under sections 383-142 and 383-143. No existing civil or criminal remedy for any wrongful action that is a violation of any statute or any rule of the department or the ordinance of any county shall be excluded or impaired by this section;

(8) The department shall establish procedures to identify the transfer or acquisition of an employing unit for the purposes of this section; and

(9) This section shall be interpreted and applied in a manner to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

INTRODUCED BY: Calvin K.Y. Say

By Request

JAN 22 2008

H.B. NO. 3148

Report Title: SUTA Dumping; Federal conformity; Unemployment Insurance

Description:
Intended to conform Hawaii's unemployment insurance law to federal law to ensure uniform application to all state unemployment insurance experience rating transfers for employers.

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JUSTIFICATION SHEET

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO UNEMPLOYMENT CONTRIBUTION RATES.

PURPOSE: A housekeeping measure intended to conform Hawaii's unemployment insurance law to federal law in order to provide uniform application to all experience rating transfers for employers.

MEANS: Amend section 383-66(b), Hawaii Revised Statutes.

JUSTIFICATION: This amendment is needed to make all total and partial transfers under subsections (a) and (b) effective beginning with the calendar year immediately following the transfer. Currently, recalculation of rates under section 383-66(a) is effective beginning the following year while section 383-66(b) is effective beginning the next quarter which can result in multiple recalculations within a year. This proposed revision will make all total and partial transfers, whether mandatory or voluntary, to be treated the same and still be in accordance with federal requirements. This amendment will also preclude having to overhaul the entire UI Tax System at an estimated cost of $23,000,000 to do the redesign in order to do a handful of mandatory transfers.

Also, under section 383-66(b), a technical correction is needed to section 383-66(b)(6)(C) to change the federal law citation from section 6601(a)(1) to section 7701(a)(1) of the Internal Revenue Code, as amended.

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Impact on the public: Employers will not have to deal with mid-year rate changes and reprogramming of their accounting systems.

Impact on the department and other agencies: The current unemployment tax system can be used to perform the rate recalculations without major programming changes.

GENERAL FUND: None.

OTHER FUNDS: Federal.

PPBS PROGRAM DESIGNATION: LBR-171.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.