

JAN 28 2009

A BILL FOR AN ACT

RELATING TO EMPLOYMENT SECURITY.

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

1 SECTION 1. The purpose of this Act is to provide a measure
2 of employment security for all persons who are not employed in
3 an executive, administrative, or professional capacity and who
4 would otherwise be displaced from their employment by
5 divestiture of a business through a transfer of the business to
6 another employer due to a sale, transfer, merger, or other
7 business takeover or transaction, while providing a means to
8 reduce the strain on the unemployment compensation fund with the
9 increasing number of unemployed residents collecting
10 unemployment benefits.

11 SECTION 2. Chapter 394B, Hawaii Revised Statutes, is
12 amended by adding a new section to be appropriately designated
13 and to read as follows:

14 "§394B- Transition employment period. (a) In the event
15 of a divestiture of a covered establishment, within a period of
16 ten days after the confirmation of the transaction causing the
17 divestiture, the existing employer shall make available to the



1 prospective employer the names of all employees of the existing
2 employer employed at the site or sites covered by the
3 transaction, the date each employee was hired, and each
4 employee's job classification.

5 (b) At the time the prospective employer becomes a covered
6 establishment, the prospective employer shall provide a similar
7 level of products or services, or both, as the products and
8 services provided by the existing employer and shall retain, for
9 a ninety-day transition employment period, all employees of the
10 existing employer who were employed by the existing employer at
11 the time of the confirmation of the transaction causing the
12 divestiture of the existing employer.

13 (c) If at any time, the new employer determines that fewer
14 employees are required to perform the level of work or services
15 than were required by the existing employer, the new employer
16 shall retain employees by seniority within job classifications,
17 based on the list of employees provided by the existing employer
18 to the new employer under subsection (a).

19 (d) During the ninety-day transition employment period,
20 the new employer shall maintain a preferential hiring list of
21 eligible employees not retained by the new employer, from which



1 list the new employer shall hire additional employees based on
2 operational needs.

3 (e) Except as provided in subsection (c) of this section,
4 the new employer shall not discharge without cause, an employee
5 retained pursuant to this chapter during the ninety-day
6 transition period.

7 (f) At the end of the ninety-day transition employment
8 period, the new employer shall offer an employee retained from
9 the existing employer continued employment under the terms and
10 conditions established by the new employer, unless:

11 (1) Upon performing a written performance evaluation of
12 that employee, the new employer deemed the employee's
13 performance during the ninety-day transition
14 employment period to be unsatisfactory; and

15 (2) The employee was given the opportunity to improve the
16 employee's performance after receiving an
17 unsatisfactory performance evaluation pursuant to
18 paragraph (1)."

19 SECTION 3. Section 394B-1, Hawaii Revised Statutes, is
20 amended to read as follows:

21 **"§394B-1 Findings and purpose.** The legislature finds that
22 there is a need for employment and training assistance for



1 dislocated workers in Hawaii and that there is a need to protect
2 employees from the effects of unexpected and sudden layoffs or
3 terminations resulting from closings, plant closures, partial
4 plant closures, divestitures, and relocations."

5 SECTION 4. Section 394B-2, Hawaii Revised Statutes, is
6 amended as follows:

7 1. By amending the definition of "covered establishment"
8 to read:

9 ""Covered establishment" means any industrial, commercial,
10 or other business entity that employs at any time in the
11 preceding twelve-month period, [~~fifty~~] twenty or more persons."

12 2. By amending the definition of "employee" to read:

13 ""Employee" means any individual engaged in service to an
14 employer[~~-~~] except that for the purposes of section 394B- , the
15 requirements under the transition employment period shall not
16 apply to persons employed in an executive, administrative, or
17 professional capacity, as defined by title 29 Code of Federal
18 Regulations section 541.1, title 29 Code of Federal Regulations
19 section 541.2, and title 29 Code of Federal Regulations
20 section 541.3, respectively."

21 SECTION 5. Section 394B-12, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "§394B-12 Civil penalties. (a) In a closure, partial
2 closure, or relocation of a covered establishment, [Except]
3 except as provided in section 394B-9(b), any employer who fails
4 to conform to the provisions of this chapter shall be liable to
5 each of the employees affected in an amount equal to the value
6 of all their wages, benefits, and other compensation for the
7 three months preceding the closure, partial closure, or
8 relocation of the covered establishment.

9 (b) In a divestiture of a covered establishment, an
10 employer, whether an existing, prospective, or new employer,
11 that fails to conform to the provisions of section 394B- shall
12 be liable:

13 (1) To each of the employees affected in an amount equal
14 to the value of their wages, for the three months
15 preceding the divestiture; and

16 (2) To pay a penalty of \$500 for each day of the
17 violation; where each day an employer is found to be
18 in violation shall constitute a separate violation and
19 the amount shall be deposited in the employment and
20 training fund under section 383-128. If the employer
21 is also in violation of the notification provision



1 pursuant to section 394B-9, the penalties in this
2 subsection shall control."

3 SECTION 6. If any provision of this Act, or the
4 application thereof to any person or circumstance is held
5 invalid, the invalidity does not affect other provisions or
6 applications of the Act, which can be given effect without the
7 invalid provision or application, and to this end the provisions
8 of this Act are severable.

9 SECTION 7. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun, before its effective date.

12 SECTION 8. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 9. This Act shall take effect upon its approval.
15

INTRODUCED BY:

[Handwritten signature]

Anne M. ...

Trizanne Chun ...

[Handwritten signature]
[Handwritten signature]

[Handwritten signature]
[Handwritten signature]

[Handwritten signature]
[Handwritten signature]



Report Title:

Retention of Employees; Business Divestiture; Employment Security

Description:

Requires certain employers to retain employees who were displaced from an employer by divestiture through a transfer of a covered establishment to a new employer.

