## A BILL FOR AN ACT

RELATING TO EMPLOYMENT SECURITY.

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

1	SECT	ION 1. Chapter 394B, Hawaii Revised Statutes, is			
2	amended by adding a new section to be appropriately designated				
3	and to read as follows:				
4	" <u>§39</u>	4B- Worker retention in the event of a divestiture.			
5	(a) In t	he event of a divestiture of a covered establishment,			
6	the successor employer or management entity:				
7	(1)	Shall hire all incumbent nonsupervisory and			
8		nonconfidential employees, unless otherwise provided			
9		in this section;			
10	(2)	Shall not require incumbent employees to file			
11		employment applications with the successor employer or			
12		management entity to be considered for hire;			
13	(3)	May conduct pre-hire screening of the incumbent			
14		employees not prohibited by law, including but not			
15		limited to criminal history record checks executed in			
16		accordance with section 378-2.5 and drug screening			
17		executed in accordance with chapter 329B; and			

1	(4)	May .	retain less than one hundred per cent of incumbent
2		empl	oyees if the new business to be conducted by the
3		succ	essor employer or management entity is
4		subs	tantially dissimilar to the former business;
5		prov	ided that:
6		(A)	If the new business to be conducted by the
7			successor employer or management entity is
8			substantially dissimilar to the former business,
9			or the new business' human resources needs are
10			reduced, resulting in the reduction of employees
11			needed, then the number of employees to be
12			dislocated shall be in direct proportion to the
13			reduction in the total human resources needs of
14			the successor employer's or management entity's
15			business; and
16		<u>(B)</u>	The priority of hiring for the successor
17			employer's or management entity's business shall
18			be based on employee seniority accrued under the
19			former employer's business.
20	(b)	This	section shall not be construed to abrogate an
21	employer'	s righ	nt to manage the employer's employees.

1	<u>(c)</u>	An employer or management entity found in violation of			
2	this sect	ion shall:			
3	(1)	Be assessed a penalty of \$ ; provided that			
4		each day an employer or management entity is found to			
5		be in violation of this section shall constitute a			
6		separate violation; or			
7	(2)	Be required to compensate the dislocated employee for			
8		the difference between the employee's salary or wages			
9		earned under the employee's former employer and the			
10		dislocated employee's unemployment insurance benefits			
11		received for the covered period.			
12	Mone	ys received from penalties assessed under paragraph (1)			
13	shall be	deposited into the unemployment insurance trust fund.			
14	<u>(d)</u>	The director shall adopt rules in accordance with			
15	chapter 91 to effectuate this section."				
16	SECTION 2. Section 394B-2, Hawaii Revised Statutes, is				
17	amended as follows:				
18	1.	By adding a new definition to be appropriately inserted			
19	and to read:				
20	"Divestiture" means the transfer of any covered				
21	establishment from one employer to another because of the sale,				

- 1 transfer, merger, and other business takeover or transaction of
- 2 business interests."
- 3 2. By amending the definitions of "covered establishment"
- 4 and "employer" to read:
- 5 ""Covered establishment" means any industrial, commercial,
- 6 or other business entity [which] that employs at any time in the
- 7 preceding twelve-month period[, fifty or more persons.] more
- 8 than fifty employees.
- 9 "Employer" means any [person who,] individual or entity
- 10 that, directly or indirectly, owns, operates, or has a
- 11 controlling interest in a covered establishment, excluding the
- 12 State or any political subdivision thereof."
- 13 SECTION 3. Section 394B-9, Hawaii Revised Statutes, is
- 14 amended to read as follows:
- 15 "\$394B-9 Notification. An employer in a covered
- 16 establishment shall provide to each employee and the director
- 17 written notification of a closing, divestiture, partial closing,
- 18 or relocation at least sixty days prior to its occurrence."
- 19 SECTION 4. Statutory material to be repealed is bracketed

- 1 and stricken. New statutory material is underscored.
- 2 SECTION 5. This Act shall take effect upon its approval.

583073,501

## Report Title:

Employment Security; Dislocated Workers

## Description:

Establishes job security requirements to protect employees when the business for which the employees work is sold or transferred to another employing entity. (SD1)