
A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

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

1 SECTION 1. Chapter 394B, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:

4 "§394B-A Worker retention in the event of a divestiture.

5 (a) In the event of a divestiture of a covered establishment,
6 the successor employer:

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 to
12 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;



1 (4) May retain less than one hundred per cent of incumbent
2 employees if the nature of the successor covered
3 establishment is substantially dissimilar to the
4 former covered establishment or the human resource
5 needs of the successor employer are reduced, resulting
6 in the reduction of employees needed; provided that
7 the number of employees to be dislocated shall be in
8 direct proportion to the reduction in the total human
9 resource needs of the successor employer.

10 (b) This section shall not be construed to abrogate an
11 employer's right to manage the employer's employees.

12 (c) An employer found in violation of this section shall:

13 (1) Be assessed a penalty of \$; provided that each
14 day an employer is found to be in violation of this
15 section shall constitute a separate violation; or

16 (2) Pay to compensate the dislocated employee for the
17 difference between the employee's salary or wages
18 earned under the employee's former employer and the
19 dislocated employee's unemployment insurance benefits
20 received for the covered period.



1 Moneys received from penalties assessed under paragraph (1)
2 shall be deposited into the worker retention trust fund under
3 section 394B-B.

4 (d) The director shall adopt rules in accordance with
5 chapter 91 to carry out the purposes of this section.

6 **§394B-B Worker retention trust fund; rules.** There shall
7 be created within the treasury of the State the worker retention
8 trust fund to be administered by the department. Moneys
9 received from penalties assessed under section 394B-A shall be
10 deposited into the worker retention trust fund. Moneys in the
11 trust fund shall be expended by the director to compensate
12 dislocated workers under this chapter. The director shall adopt
13 rules in accordance with chapter 91 to implement the purposes of
14 this section."

15 SECTION 2. Section 394B-2, Hawaii Revised Statutes, is
16 amended by adding a new definition of "divestiture" to be
17 appropriately inserted and to read:

18 "Divestiture" means the transfer of any covered
19 establishment from one employer to another because of the sale,
20 transfer, merger, and other business takeover or transaction of
21 business interests."



1 SECTION 2. Section 383-66, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) The department, [~~for the nine-month period April 1,~~
4 ~~1941, to December 31, 1941, and for each calendar year~~
5 ~~thereafter,~~] except as otherwise provided in this part, shall
6 classify employers in accordance with their actual experience in
7 the payment of contributions and with respect to benefits
8 charged against their accounts with a view to fixing the
9 contribution rates to reflect this experience. The department
10 shall determine the contribution rate of each employer in
11 accordance with the following requirements:

12 (1) The standard rate of contributions payable by each
13 employer for any calendar year [~~through 1984 shall be~~
14 ~~three per cent. For the calendar year 1985 and~~
15 ~~thereafter, the standard rate of contributions payable~~
16 ~~by each employer]~~ shall be five and four-tenths per
17 cent;

18 (2) No employer's rate for the calendar year [~~1942 and for~~
19 ~~any calendar year thereafter]~~ shall be other than the
20 maximum rate unless and until the employer's account
21 has been chargeable with benefits throughout the
22 thirty-six consecutive calendar month period ending on



1 December 31 of the preceding calendar year, except
2 that, [~~for the calendar year 1956 and for each~~
3 ~~calendar year thereafter,~~] an employer who has not
4 been subject to the law for a sufficient period to
5 meet this requirement may qualify for a rate other
6 than the maximum rate if the employer's account has
7 been chargeable throughout a lesser period but in no
8 event less than the twelve consecutive calendar month
9 period ending on December 31 of the preceding calendar
10 year. [~~For the calendar years 1985 through 1991, the~~
11 ~~contribution rate for a new or newly covered employer~~
12 ~~shall be the sum of the employer's basic contribution~~
13 ~~rate of three and six-tenths per cent and the fund~~
14 ~~solvency contribution rate determined for that year~~
15 ~~pursuant to section 383-68(a), until the employer's~~
16 ~~account has been chargeable with benefits throughout~~
17 ~~the twelve consecutive calendar month period ending on~~
18 ~~December 31 of the preceding calendar year; except~~
19 ~~that no employer's contribution rate shall be greater~~
20 ~~than five and four-tenths per cent and no employer~~
21 ~~with a negative reserve ratio shall have a~~
22 ~~contribution rate less than the employer's basic~~



1 ~~contribution rate.]~~ For calendar years 1992 and
2 thereafter, the contribution rate for a new or newly
3 covered employer shall be the contribution rate
4 assigned to any employer with .0000 reserve ratio,
5 until the employer's account has been chargeable with
6 benefits throughout the twelve consecutive calendar
7 month period ending on December 31 of the preceding
8 calendar year;

9 (3) Any amount credited to this State under section 903 of
10 the Social Security Act, as amended, which has been
11 appropriated for expenses of administration, whether
12 or not withdrawn from the trust fund, shall be
13 excluded from the fund for the purposes of this
14 paragraph. Any advance that may be made to this State
15 under section 1201 of the Social Security Act, whether
16 or not withdrawn from this trust fund, shall be
17 excluded from the fund for the purposes of this
18 paragraph. No employer's rate shall be reduced in any
19 amount that is not allowable as an additional credit,
20 against the tax levied by the federal Unemployment Tax
21 Act pursuant to section 3302(b) of the federal
22 Internal Revenue Code or pursuant to any other federal



1 statute, successor to section 3302(b), which provides
2 for the additional credit now provided for in section
3 3302(b);

- 4 (4) If, when any classification of employers is to be made
5 (which may be after the commencement of the period for
6 which the classification is to be made), the
7 department finds that any employer has failed to file
8 any report required in connection therewith or has
9 filed a report that the department finds incorrect or
10 insufficient, the department shall notify the employer
11 thereof by mail addressed to the employer's last known
12 address. Unless the employer files the report or a
13 corrected or sufficient report, as the case may be,
14 within fifteen days after the mailing of the notice,
15 the maximum rate of contributions shall be payable by
16 the employer for the period for which the contribution
17 rate is to be fixed. Effective January 1, 1987, the
18 director, for excusable failure, may redetermine the
19 assignment of the maximum contribution rate in
20 accordance with this section, provided the employer
21 files all reports as required by the department and
22 submits a written request for redetermination before



1 December 31 of the year for which the contribution
2 rate is to be fixed;

3 (5) For the purpose of sections 383-63 to 383-69, if after
4 December 31, 1939, any employing unit in any manner
5 succeeds to or acquires the organization, trade, or
6 business, or substantially all the assets thereof
7 (whether or not the successor or acquiring unit was an
8 "employing unit", as that term is defined in section
9 383-1 prior to the acquisition), or after
10 December 31, 1988 and prior to December 31, [~~1992,~~
11 2007, acquires a clearly identifiable and segregable
12 portion of the organization, trade, or business of
13 another that at the time of the acquisition was an
14 employer subject to this chapter, and the successor
15 continues or resumes the organization, trade, or
16 business and continues to employ all or nearly all of
17 the predecessor's employees, or the successor
18 continues or resumes the clearly identifiable and
19 segregable portion of the organization, trade, or
20 business and continues to employ all or nearly all of
21 the employees of the clearly identifiable and
22 segregable portion, an application may be made for



1 transfer of the predecessor's experience record. If
2 the predecessor employer has submitted all information
3 and reports required by the department including
4 amended quarterly wage reports identifying the
5 employees transferred or retained and executed and
6 filed with the department before December 31 of the
7 calendar year following the calendar year in which the
8 acquisition occurred on a form approved by the
9 department a waiver relinquishing the rights to all or
10 the clearly identifiable and segregable portion of the
11 predecessor's prior experience record with respect to
12 its separate account, actual contribution payment, and
13 benefit chargeability experience, annual payrolls and
14 other data for the purpose of obtaining a reduced
15 rate, and requesting the department to permit the
16 experience record to inure to the benefit of the
17 successor employing unit upon request of the successor
18 employing unit, the experience record for rate
19 computation purposes of the predecessor shall
20 thereupon be deemed the experience record of the
21 successor and the experience record shall be
22 transferred by the department to the successor



1 employing unit and shall become the separate account
2 of the employing unit as of the date of the
3 acquisition. Benefits chargeable to the predecessor
4 employer or successor employer in case of an
5 acquisition of a clearly identifiable and segregable
6 portion of the organization, trade, or business, after
7 the date of acquisition on account of employment prior
8 to the date of the acquisition shall be charged to the
9 separate account of the successor employing unit. In
10 case of an acquisition of a clearly identifiable and
11 segregable portion of the organization, trade, or
12 business, the experience record that inures to the
13 benefit of the successor employer shall be determined
14 as follows:

- 15 (A) Wages, as used in section 383-61, attributable to
16 the clearly identifiable and segregable portion
17 shall be for the period beginning with the most
18 recent three consecutive calendar years
19 immediately preceding the determination of rates
20 under sections 383-63 to 383-69 and through the
21 date of acquisition; and



1 (B) Reserve balance attributable to the clearly
2 identifiable and segregable portion shall be the
3 amount determined by dividing the wages, as used
4 in section 383-61, of the clearly identifiable
5 and segregable portion in the three calendar
6 years (or that lesser period as the clearly
7 identifiable and segregable portion may have been
8 in operation) immediately preceding the
9 computation date of the rating period prior to
10 which the acquisition occurred by the total
11 taxable payrolls of the predecessor for the
12 three-year period (or that lesser period as the
13 clearly identifiable and segregable portion may
14 have been in operation) and multiplying the
15 quotient by the reserve balance of the
16 predecessor employer calculated as of the
17 acquisition date;

18 provided the waiver or waivers required herein are
19 filed with the department within sixty days after the
20 date of acquisition, the successor employing unit,
21 unless already an employer subject to this chapter,
22 shall be subject from the date of acquisition to the



1 rate of contribution of the predecessor or of two or
2 more predecessors if they have the same contribution
3 rate. If there are two or more predecessors having
4 different contribution rates, the successor shall be
5 subject to the rate prescribed for new or newly
6 covered employers under paragraph (2) until the next
7 determination of rates under sections 383-63 to
8 383-69, at which time the experience records of the
9 predecessors and successor shall be combined and shall
10 be deemed to be the experience record of a single
11 employing unit and the successor's rate shall
12 thereupon be determined upon the basis of the combined
13 experience. If the successor at the time of the
14 transfer is an employer subject to this chapter, the
15 rate of contribution to which the successor is then
16 subject shall remain the same until the next
17 determination of rates under sections 383-63 to
18 383-69, at which time the experience records of the
19 predecessor and successor shall be combined and shall
20 be deemed to be the experience record of a single
21 employing unit and the successor's rate shall
22 thereupon be determined upon the basis of the combined



1 experience. For the purpose of determination of rates
2 under sections 383-63 to 383-69 of all successor
3 employing units, waivers as required herein, if not
4 previously filed as hereinabove provided, shall be
5 filed with the department not later than March 1 of
6 the year for which the rate is determined; provided
7 that no waiver shall be accepted by the department for
8 filing unless the employing unit executing the waiver
9 has filed all reports and paid all contributions
10 required by this chapter;

11 (6) The department may prescribe rules for the
12 establishment, maintenance, and dissolution of joint
13 accounts by two or more employers, and, in accordance
14 with the rules and upon application by two or more
15 employers to establish such an account, or to merge
16 their several individual accounts in a joint account,
17 shall maintain the joint account as if it constituted
18 a single employer's account. The rules shall be
19 consistent with the federal requirements for
20 additional credit allowance in section 3303 of the
21 federal Internal Revenue Code and consistent with this
22 chapter;



1 (7) Whenever there is an amendment to this chapter which,
 2 if immediately effective, would change an employer's
 3 rate of contributions, the rate of the employer shall
 4 be changed in accordance with the amendment and the
 5 new rate shall apply for the remainder of the calendar
 6 year beginning with the calendar quarter immediately
 7 following the effective date of the amendment
 8 providing for the change, unless otherwise provided by
 9 the amendment;

10 (8) For the purposes of this section "contribution rate"
 11 shall mean the basic contribution rate as defined in
 12 section 383-68 when applied to calendar year 1978 or
 13 any calendar year thereafter; and

14 (9) For the purposes of this section, the terms "employing
 15 unit", "employer", "predecessor", and "successor"
 16 shall include both the singular and the plural of each
 17 term. Nothing in this section shall prevent two or
 18 more successor employing units, which each succeed to
 19 or acquire a clearly identifiable and segregable
 20 portion of a predecessor employing unit, from gaining
 21 the benefit of the clearly identifiable and segregable
 22 portion of the predecessor's experience record;



1 provided that the terms of this section are complied with,
2 nothing herein shall bar a predecessor employer from waiving the
3 rights to all or the clearly identifiable and segregable portion
4 of the predecessor's prior experience record in favor of a
5 successor employer where the successor acquired a clearly
6 identifiable and segregable portion of the predecessor's
7 organization, trade, or business after December 31, 1988 and
8 prior to December 31, [~~1992.~~] 2007."

9 SECTION 4. Section 394B-12, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "[~~+~~]**\$394B-12**[~~+~~] **Civil penalties.** [~~Any~~] Except as provided
12 in section 394B-A, any employer who fails to conform to the
13 provisions of this chapter shall be liable to each of the
14 employees affected in an amount equal to the value of all their
15 wages, benefits, and other compensation for the three months
16 preceding the closure, partial closure, or relocation of the
17 covered establishment."

18 SECTION 5. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun, before its effective date.

21 SECTION 6. In codifying the new sections added by section
22 1 of this Act, the revisor of statutes shall substitute



1 appropriate section numbers for the letters used in designating
2 the new sections in this Act.

3 SECTION 7. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 8. This Act shall take effect upon its approval.



Report Title:

Employment; Worker Retention; Worker Retention Trust Fund;
Unemployment insurance

Description:

Establishes job security requirements to protect employees when the business for which the employees work is sold or transferred to another employing entity. Adds definition of "divestiture". Creates worker retention trust fund to receive moneys from penalties and to be used to compensate dislocated workers. Enables certain successor companies that acquire a business to also acquire its predecessor's unemployment insurance contribution assessment rate through December 31, 2007. (HB1745 HD1)

