



GOV. MSG. NO. 1056

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 10, 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:

I am transmitting herewith HB1503 HD1 SD1 CD1, without my approval, and with the statement of objections relating to the measure.

HB1503 HD1 SD1 CD1

A BILL FOR AN ACT RELATING TO EMPLOYMENT.

Sincerely,

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

LINDA LINGLE

P R O C L A M A T I O N

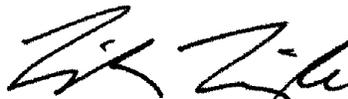
WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of the Governor's plan to return with the Governor's objections any bill presented to the Governor less than ten days before adjournment sine die or presented to the Governor after adjournment sine die of the Legislature; and

WHEREAS, House Bill No. 1503, entitled "A Bill for an Act Relating to Employment," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 1503 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 1503 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu,
State of Hawaii, this 25th
day of June, 2007.



LINDA LINGLE
Governor of Hawaii

EXECUTIVE CHAMBERS

HONOLULU

July 10, 2007

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1503

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 1503, entitled "A Bill for an Act Relating to Employment".

This bill expands the scope of Section 394B-9, Hawaii Revised Statutes, which requires an employer of a business employing fifty or more employees to provide to each employee and the Director of Labor and Industrial Relations at least sixty days' prior written notification of a "closing, partial closing, or relocation." It will also require a sixty days' prior written notification for any "divestiture," including the sale, transfer, merger, bankruptcy, or other business takeover or transaction of business interests that may cause workers to lose their jobs.

This bill is objectionable because requiring public disclosure may negatively impact the very employees this bill seeks to help since it can jeopardize the owner's efforts to reconstitute the business.

Although this bill exempts from the notice requirement an owner actively seeking a buyer for the business, it does not provide a similar exemption for an owner actively renegotiating a lease, seeking refinancing, seeking additional credit, or making other last minute efforts to save a business that is in imminent danger of closure. Requiring a business to post public notice of impending closure may jeopardize any attempts to save the

STATEMENT OF OBJECTIONS

HOUSE BILL NO. 1503

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businesses, because financial institutions may stop extending credit or refuse to grant loans. Customers may take their business elsewhere and employees may seek immediate employment elsewhere.

By including bankruptcies, this bill will unreasonably burden businesses least able to afford added burdens and may force a failing company to close sooner than expected or lay off more workers to retain sufficient finances for payments.

This bill also adds additional penalties to section 394B-9 for back pay and benefits and a \$500 civil penalty for each day of violation. Current law already makes employers liable to all affected employees in an amount equal to the value of all their wages, benefits, and other compensation for the three months preceding the closure, partial closure, or relocation of the covered establishment.

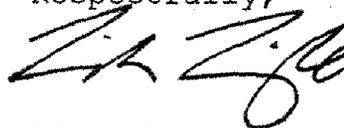
Additionally, the federal law under Worker Adjustment and Retraining Notification Act of 1989 (WARN) allows an employer to give less than sixty days notice under certain circumstances where, at the time notice would have been required, the employer was actively seeking capital to avoid or postpone closure and believed that public notice would jeopardize the business transition. This bill has no similar provision. Thus, this bill creates inconsistencies between federal and state law without good reason.

Although this measure intends to protect employees from the effects of unexpected and sudden layoffs or terminations, it may result in earlier business closures and less monetary benefit for the employee.

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HOUSE BILL NO. 1503
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For the foregoing reasons, I am returning House Bill 1503
without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "L. Lingle", written in a cursive style.

LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

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

1 SECTION 1. Section 394B-2, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By adding a new definition to be appropriately inserted
4 and to read:

5 "Divestiture" means the transfer of any covered
6 establishment from one employer to another because of the sale,
7 transfer, merger, bankruptcy, or other business takeover or
8 transaction of business interests that causes the covered
9 establishment's employees to become dislocated workers."

10 2. By amending the definitions of "closing", "covered
11 establishment", and "employer" to read:

12 "Closing" means the permanent shutting down of all
13 operations within a covered establishment due to the sale,
14 transfer, merger, [~~and~~] other business takeover or transaction
15 of business interests [~~which~~], bankruptcy, or other close of
16 business transaction that results in or may result in the layoff
17 or termination of employees of a covered establishment by the
18 employer.



1 "Covered establishment" means any industrial, commercial,
2 or other business entity [~~which~~] that employs at any time in the
3 preceding twelve-month period, fifty or more persons.

4 "Employer" means any [~~person who,~~] individual or entity
5 that, directly or indirectly, owns, operates, or has a
6 controlling interest in a covered establishment, excluding the
7 State or any political subdivision thereof."

8 SECTION 2. Section 394B-9, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§394B-9 Notification[-]; penalty.** (a) An employer in a
11 covered establishment shall provide to each employee and the
12 director written notification of a closing, divestiture, partial
13 closing, or relocation at least sixty days prior to its
14 occurrence.

15 (b) An employer that violates this section shall be liable
16 to each affected employee for an amount equal to back pay and
17 benefits for the period of violation not to exceed sixty days.
18 This liability may be reduced by any:

- 19 (1) Wages the employer pays during the notice period; and
20 (2) Voluntary and unconditional payment not required by a
21 legal obligation.



1 (c) An employer of a covered establishment that is
2 actively seeking a buyer for a sale, transfer, or merger shall
3 not be required to provide the notice required under subsection
4 (a) until the employer has entered into a binding agreement for
5 the sale, transfer, or merger of the covered establishment that
6 results in a divestiture.

7 (d) An employer who fails to provide notice under this
8 section shall be subject to a civil penalty not to exceed \$500
9 for each day of the violation and the amount shall be deposited
10 in the employment and training fund under section 383-128;
11 provided that the employer may avoid the penalty if the employer
12 satisfies its liability to each affected employee within three
13 weeks after the closing. In any suit, the court, in its
14 discretion, may award the prevailing party reasonable attorney's
15 fees and costs."

16 SECTION 3. Section 394B-12, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "[+]§394B-12[+] **Civil penalties.** [Any] Except as provided
19 in section 394B-9(b), any employer who fails to conform to the
20 provisions of this chapter shall be liable to each of the
21 employees affected in an amount equal to the value of all their
22 wages, benefits, and other compensation for the three months



1 preceding the closure, partial closure, or relocation of the
2 covered establishment."

3 SECTION 4. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun, before its effective date.

6 SECTION 5. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 6. This Act shall take effect upon its approval.

