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# 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:

3 1. By adding a new definition of "divestiture" to be  
4 appropriately inserted 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" and "covered  
11 establishment" to read as follows:

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 3. By amending the definition of "employer" to read as  
5 follows:

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

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

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

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

21 (1) Wages the employer pays during the notice period; and

1           (2) Voluntary and unconditional payment not required by a  
2           legal obligation.

3           (c) An employer of a covered establishment which is  
4           actively seeking a buyer for a sale, transfer, or merger is  
5           exempted from this section until such time the sale, transfer,  
6           or merger results in a divestiture; provided that when a  
7           divestiture occurs then the covered establishment shall meet the  
8           requirements in this chapter.

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

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

20           "~~+~~**\$394B-12**~~+~~ **Civil penalties.** ~~Any~~ Except as provided  
21           in section 394B-9(b), any employer who fails to conform to the  
22           provisions of this chapter shall be liable to each of the



1 employees affected in an amount equal to the value of all their  
2 wages, benefits, and other compensation for the three months  
3 preceding the closure, partial closure, or relocation of the  
4 covered establishment."

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

8 SECTION 5. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

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



**Report Title:**

Employment; Dislocated Workers; Notification; Penalty

**Description:**

Amends definitions of "closing", "covered establishment", and "employer". New definition for "divestiture". Requires employer to notify employees of divestiture. Excludes sale, transfer or merger unless the transaction results in a divestiture. Imposes penalties for failure to notify employees of business closing.  
(SD1)

