

---

---

# 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        (A) The number of employees to be dislocated shall be  
8        in direct proportion to the reduction in the  
9        total human resource needs of the successor  
10       employer; and  
11       (B) The priority of hiring for the successor employer  
12       shall be based on employee seniority accrued  
13       under the former employer;  
14       (b) This section shall not be construed to abrogate an  
15       employer's right to manage the employer's employees.  
16       (c) An employer found in violation of this section shall:  
17       (1) Be assessed a penalty of \$            ; provided that each  
18       day an employer is found to be in violation of this  
19       section shall constitute a separate violation; or  
20       (2) Be required to compensate the dislocated employee for  
21       the difference between the employee's salary or wages  
22       earned under the employee's former employer and the



1 dislocated employee's unemployment insurance benefits  
2 received for the covered period.

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

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

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

17 SECTION 2. Section 394B-2, Hawaii Revised Statutes, is  
18 amended by adding a new definition of "divestiture" to be  
19 appropriately inserted 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 SECTION 3. Section 394B-12, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "~~+~~**\$394B-12**~~+~~ **Civil penalties.** ~~[Any]~~ Except as provided  
6 in section 394B-A, any employer who fails to conform to the  
7 provisions of this chapter shall be liable to each of the  
8 employees affected in an amount equal to the value of all their  
9 wages, benefits, and other compensation for the three months  
10 preceding the closure, partial closure, or relocation of the  
11 covered establishment."

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

15 SECTION 5. In codifying the new sections added by section  
16 1 of this Act, the revisor of statutes shall substitute  
17 appropriate section numbers for the letters used in designating  
18 the new sections in this Act.

19 SECTION 6. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.



# H.B. NO. 1745

1 SECTION 7. This Act shall take effect upon its approval.

2

INTRODUCED BY:

T. Stah

John M. Negro

John M. Negro

John M. Negro

Nemini Noui

Benjamin

Paula

Della C. Belatti

John M. Negro

F. O. O.

Raymond

JAN 24 2007



**Report Title:**

Employment; Worker Retention; Worker Retention Trust Fund

**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.

