



GOV. MSG. NO. 1366

EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

July 06, 2012

The Honorable Shan Tsutsui, President  
and Members of the Senate  
Twenty-Sixth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

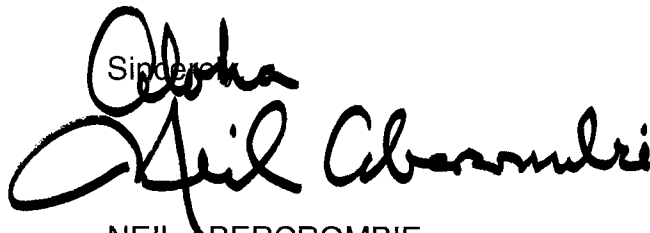
The Honorable Calvin Say, Speaker  
and Members of the House  
Twenty-Sixth State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 06, 2012, the following bill was signed into law:

HB2264 HD2 SD1

RELATING TO EMPLOYMENT SECURITY.  
**Act 263 (12)**

The image shows a handwritten signature in black ink. The signature is written in a cursive style and appears to read 'Neil Abercrombie'. Above the signature, the word 'Signed' is printed in a small, light font.

NEIL ABERCROMBIE  
Governor, State of Hawaii

Approved by the Governor  
on JUL 6 2012  
HOUSE OF REPRESENTATIVES  
TWENTY-SIXTH LEGISLATURE, 2012  
STATE OF HAWAII

ORIGINAL

ACT 263

H.B. NO. 2264  
H.D. 2  
S.D. 1

## A BILL FOR AN ACT

RELATING TO EMPLOYMENT SECURITY.

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

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

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

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



(2) No employer's rate for the calendar year 1942 and for any calendar year thereafter shall be other than the maximum rate unless and until the employer's account has been chargeable with benefits throughout the thirty-six consecutive calendar month period ending on December 31 of the preceding calendar year, except that, for the calendar year 1956 and for each calendar year thereafter, an employer who has not been subject to the law for a sufficient period to meet this requirement may qualify for a rate other than the maximum rate if the employer's account has been chargeable throughout a lesser period but in no event less than the twelve consecutive calendar month period ending on December 31 of the preceding calendar year. For the calendar years 1985 through 1991, the contribution rate for a new or newly covered employer shall be the sum of the employer's basic contribution rate of three and six-tenths per cent and the fund solvency contribution rate determined for that year pursuant to section 383-68(a), until the employer's account has been chargeable with benefits throughout the twelve consecutive calendar month period ending on



1 December 31 of the preceding calendar year; except  
2 that no employer's contribution rate shall be greater  
3 than five and four-tenths per cent and no employer  
4 with a negative reserve ratio shall have a  
5 contribution rate less than the employer's basic  
6 contribution rate. For calendar years 1992 and  
7 thereafter, the contribution rate for a new or newly  
8 covered employer shall be the contribution rate  
9 assigned to any employer with .0000 reserve ratio,  
10 until the employer's account has been chargeable with  
11 benefits throughout the twelve consecutive calendar  
12 month period ending on December 31 of the preceding  
13 calendar year;

- 14 (3) Any amount credited to this State under section 903 of  
15 the Social Security Act, as amended, which has been  
16 appropriated for expenses of administration, whether  
17 or not withdrawn from the trust fund, shall be  
18 excluded from the fund for the purposes of this  
19 paragraph. Any advance that may be made to this State  
20 under section 1201 of the Social Security Act, whether  
21 or not withdrawn from this trust fund, shall be  
22 excluded from the fund for the purposes of this



1 paragraph. No employer's rate shall be reduced in any  
2 amount that is not allowable as an additional credit,  
3 against the tax levied by the federal Unemployment Tax  
4 Act pursuant to section 3302(b) of the federal  
5 Internal Revenue Code or pursuant to any other federal  
6 statute, successor to section 3302(b), which provides  
7 for the additional credit now provided for in section  
8 3302(b);

- 9 (4) If, when any classification of employers is to be made  
10 (which may be after the commencement of the period for  
11 which the classification is to be made), the  
12 department finds that any employer has failed to file  
13 any report required in connection therewith or has  
14 filed a report that the department finds incorrect or  
15 insufficient, the department shall notify the employer  
16 thereof by mail addressed to the employer's last known  
17 address. Unless the employer files the report or a  
18 corrected or sufficient report, as the case may be,  
19 within fifteen days after the mailing of the notice,  
20 the maximum rate of contributions shall be payable by  
21 the employer for the period for which the contribution  
22 rate is to be fixed. Effective January 1, 1987, the



1 director, for excusable failure, may redetermine the  
2 assignment of the maximum contribution rate in  
3 accordance with this section, provided the employer  
4 files all reports as required by the department and  
5 submits a written request for redetermination before  
6 December 31 of the year for which the contribution  
7 rate is to be fixed;

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



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



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

19 (A) Wages, as used in section 383-61, attributable to  
20 the clearly identifiable and segregable portion  
21 shall be for the period beginning with the most  
22 recent three consecutive calendar years





1 immediately preceding the determination of rates  
2 under sections 383-63 to 383-69 and through the  
3 date of acquisition; and

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

21 provided the waiver or waivers required herein are  
22 filed with the department within sixty days after the



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



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

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



1 additional credit allowance in section 3303 of the  
2 federal Internal Revenue Code and consistent with this  
3 chapter;

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

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

17 (9) For the purposes of this section, the terms "employing  
18 unit", "employer", "predecessor", and "successor"  
19 shall include both the singular and the plural of each  
20 term. Nothing in this section shall prevent two or  
21 more successor employing units, which each succeed to  
22 or acquire a clearly identifiable and segregable



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

12       SECTION 2. Section 383-68, Hawaii Revised Statutes, is  
13   amended by amending subsection (d) to read as follows:

14       "(d) Subject to the requirements of ~~[section]~~ sections  
15   383-63 to 383-69, an employer's contribution rate for calendar  
16   year 1992 and for each calendar year thereafter shall be that  
17   rate which appears on the same line as the employer's reserve  
18   ratio for that year in the contribution rate schedule applicable  
19   for the year as specified in subsection (c).

20           CONTRIBUTION RATE SCHEDULES (rates in percentages)

21   Reserve Ratio	A	B	C	D	E	F	G	H
22   .1500 and over	0.0	0.0	0.0	0.2	0.6	1.2	1.8	2.4



1	.1400 to	.1499	0.0	0.0	0.1	0.4	0.8	1.4	2.0	2.6
2	.1300 to	.1399	0.0	0.0	0.2	0.6	1.0	1.6	2.2	2.8
3	.1200 to	.1299	0.0	0.1	0.4	0.8	1.2	1.8	2.4	3.0
4	.1100 to	.1199	0.0	0.2	0.6	1.0	1.4	2.0	2.6	3.2
5	.1000 to	.1099	0.1	0.3	0.8	1.2	1.6	2.2	2.8	3.4
6	.0900 to	.0999	0.3	0.5	1.0	1.4	1.8	2.4	3.0	3.6
7	.0800 to	.0899	0.5	0.7	1.2	1.6	2.0	2.6	3.2	3.8
8	.0700 to	.0799	0.7	0.9	1.4	1.8	2.2	2.8	3.4	4.0
9	.0600 to	.0699	0.9	1.1	1.6	2.0	2.4	3.0	3.6	4.2
10	.0500 to	.0599	1.1	1.3	1.8	2.2	2.6	3.2	3.8	4.4
11	.0300 to	.0499	1.3	1.5	2.0	2.6	3.0	3.6	4.2	4.8
12	.0000 to	.0299	1.7	1.9	2.4	3.0	3.4	4.0	4.6	5.2
13	-.0000 to	-.0499	2.1	2.3	2.8	3.4	3.8	4.4	5.0	5.4
14	-.0500 to	-.0999	2.5	2.7	3.2	4.0	4.4	5.0	5.4	<del>5.4</del>
15										<u>5.6</u>
16	-.1000 to	-.4999	2.9	3.1	3.6	4.6	5.0	5.4	<del>5.4</del>	<del>5.4</del>
17									<u>5.6</u>	<u>5.8</u>
18	-.5000 to	-.9999	3.4	3.6	4.2	5.2	5.4	<del>5.4</del>	<del>5.4</del>	<del>5.4</del>
19								<u>5.6</u>	<u>5.8</u>	<u>6.0</u>
20	-1.0000 to	-1.4999	4.1	4.2	4.8	5.4	<del>5.4</del>	<del>5.4</del>	<del>5.4</del>	<del>5.4</del>
21							<u>5.6</u>	<u>5.8</u>	<u>6.0</u>	<u>6.2</u>
22	-1.5000 to	-1.9999	4.7	4.8	5.4	<del>5.4</del>	<del>5.4</del>	<del>5.4</del>	<del>5.4</del>	<del>5.4</del>



