

Honolulu, Hawaii

MAR 22 2013

RE: H.B. No. 634
H.D. 1
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Madam:

Your Committees on Judiciary and Labor and Commerce and
Consumer Protection, to which was referred H.B. No. 634, H.D. 1,
entitled:

"A BILL FOR AN ACT RELATING TO EMPLOYMENT,"

beg leave to report as follows:

The purpose and intent of this measure is to require the
retention of employees who would be displaced from an employer by
divestiture of a covered establishment employing one hundred or
more persons to the successor employer. Specifically, this
measure:

- (1) Requires the successor employer to hire all incumbent
non-supervisory and non-confidential employees;
- (2) Prohibits the successor employer from requiring the
incumbent employees to file employment applications to
be considered for hire unless the existing files are
incomplete;
- (3) Allows the successor employer to conduct pre-hire
screening of the incumbent employees, including criminal
conviction records checks and drug screening;
- (4) Allows the successor employer to retain less than one
hundred percent of the incumbent employees if:



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- (A) The business of the successor employer is substantially dissimilar to the former employer's business; or
- (B) The human resource needs of the successor employer are reduced;

provided that the number of employees to be dislocated is in direct proportion to the reduction in the total human resource needs of the successor employer;

- (5) Adds a definition of "covered establishment";
- (6) Establishes penalties for an employer who is found in violation of this measure; and
- (7) Requires the Director of Labor and Industrial Relations to adopt administrative rules pursuant to chapter 91, Hawaii Revised Statutes.

Your Committees received testimony in support of this measure from the Department of Labor and Industrial Relations; International Longshore and Warehouse Union, Local 142; Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO; and Hawaii State AFL-CIO. Testimony in opposition to this measure was submitted by the Retail Merchants of Hawaii; Hawaii Credit Union League; The Chamber of Commerce of Hawaii; Maui Chamber of Commerce; Tesoro Hawaii, LLC; National Federation of Independent Business Hawaii; and three individuals.

Your Committees find that the divestiture of an establishment, whether via a sale, transfer, merger, bankruptcy, takeover, or transaction, often causes heightened anxiety for the incumbent employees. This measure will provide job security for employees who are displaced during a divestiture of a covered establishment by requiring the successor employer to retain all incumbent non-supervisory and non-confidential employees, subject to certain exceptions. This measure assists in minimizing the disruption that often occurs upon divestiture. Pursuant to this measure, many workers will not be dislocated or face financial uncertainty, customers will see business continue with little disturbance, and the economy will not be impacted by increased unemployment.



Your Committees encourage the Director of Labor and Industrial Relations, in adopting administrative rules to effectuate this measure, to define "substantially dissimilar" and establish criteria to determine whether a successor employer may retain less than one hundred percent of the incumbent employees if the business of the successor employer is substantially dissimilar to the former employer's business.

Your Committees have amended this measure by:

- (1) Clarifying that the pre-hire screening executed in accordance with chapter 329B, Hawaii Revised Statutes, is for substance abuse testing, not drug screening; and
- (2) Inserting an effective date of July 1, 2013.

As affirmed by the records of votes of the members of your Committees on Judiciary and Labor and Commerce and Consumer Protection that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 634, H.D. 1, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 634, H.D. 1, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committees on Judiciary and
Labor and Commerce and Consumer
Protection,


ROSALYN H. BAKER, Chair


CLAYTON HEE, Chair



The Senate
Twenty-Seventh Legislature
State of Hawai'i

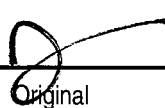
Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:*	Committee Referral:	Date:								
HB 634 HD1	JDL / CPN, WMA	3-19-13								
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____										
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313										
Members	Aye	Aye (WR)								
HEE, Clayton (C)	✓									
SHIMABUKURO, Maile S.L. (VC)		✓								
GABBARD, Mike		✓								
IHARA, Jr., Les		✓								
SLOM, Sam										
TOTAL	1	2								
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted										
Chair's or Designee's Signature:										
<table style="width: 100%; border: none;"> <tr> <td style="width: 25%;">Distribution:</td> <td style="width: 25%;">Original</td> <td style="width: 25%;">Yellow</td> <td style="width: 25%;">Pink</td> </tr> <tr> <td></td> <td>File with Committee Report</td> <td>Clerk's Office</td> <td>Drafting Agency</td> </tr> </table>			Distribution:	Original	Yellow	Pink		File with Committee Report	Clerk's Office	Drafting Agency
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	File with Committee Report	Clerk's Office	Drafting Agency							

*Only one measure per Record of Votes

The Senate
Twenty-Seventh Legislature
State of Hawai'i

Record of Votes
Committee on Commerce and Consumer Protection
CPN

Bill / Resolution No.:* HB 634, HD1	Committee Referral: JDL/CPN, WAM	Date: 3/17/13		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <div style="display: flex; justify-content: space-between;"> <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313 </div>				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	✓			
GALUTERIA, Brickwood (VC)	✓			
NISHIHARA, Clarence K.	✓			
SOLOMON, Malama				✓
TANIGUCHI, Brian T.				✓
WAKAI, Glenn	.	✓		
SLOM, Sam				✓
TOTAL	3	1		3
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <div style="text-align: center; font-size: 1.5em;">  </div>				
Distribution: <div style="display: flex; justify-content: space-around; font-size: 0.8em;"> Original File with Committee Report Yellow Clerk's Office Pink Drafting Agency Goldenrod Committee File Copy </div>				

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