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# A BILL FOR AN ACT

RELATING TO EMPLOYMENT SECURITY.

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

1           SECTION 1. Chapter 394B, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§394B-       Worker retention in the event of a divestiture.

5           (a) In the event of a divestiture of a covered establishment,  
6 the successor employer or management entity:

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 or  
12 management entity to 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 new business to be conducted by the  
3        successor employer or management entity is  
4        substantially dissimilar to the former business;  
5        provided that:

6        (A) If the new business to be conducted by the  
7        successor employer or management entity is  
8        substantially dissimilar to the former business,  
9        or the new business' human resource needs are  
10       reduced, resulting in the reduction of employees  
11       needed, then the number of employees to be  
12       dislocated shall be in direct proportion to the  
13       reduction in the total human resource needs of  
14       the successor employer's or management entity's  
15       business;

16       (B) The priority of hiring for the successor  
17       employer's or management entity's business shall  
18       be based on employee seniority accrued under the  
19       former employer's business;

20       (b) This section shall not be construed to abrogate an  
21       employer's right to manage the employer's employees.



1        (c) An employer or management entity found in violation of  
2 this section shall:

3        (1) Be assessed a penalty of \$            ; provided that each  
4 day an employer or management entity is found to be in  
5 violation of this section shall constitute a separate  
6 violation; or

7        (2) Be required to compensate the dislocated employee for  
8 the difference between the employee's salary or wages  
9 earned under the employee's former employer and the  
10 dislocated employee's unemployment insurance benefits  
11 received for the covered period.

12        Moneys received from penalties assessed under paragraph (1)  
13 shall be deposited into the unemployment insurance trust fund.

14        (d) The director shall adopt rules in accordance with  
15 chapter 91 to effectuate this section."

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

18        1. By adding a new definition to be appropriately inserted  
19 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 2. By amending the definitions of "covered establishment"  
4 and "employer" to read:

5 "Covered establishment" means any industrial, commercial,  
6 or other business entity [~~which~~] that employs at any time in the  
7 preceding twelve-month period [~~fifty or more persons.~~] more than  
8 fifty employees.

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

13 SECTION 3. Section 394B-9, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "**§394B-9 Notification.** An employer in a covered  
16 establishment shall provide to each employee and the director  
17 written notification of a closing, divestiture, partial closing,  
18 or relocation at least sixty days prior to its occurrence."

19 SECTION 4. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.



1 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:           *Pinkano*          



**Report Title:**

Employment Security; Dislocated Workers

**SB. NO. 3033**

**Description:**

Establishes job security requirements to protect employees when the business for which the employees work is sold or transferred to another employing entity.

