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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. 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:

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 unless existing employee files  
13 are incomplete;

14          (3) May conduct pre-hire screening of the incumbent  
15 employees not prohibited by law, including but not  
16 limited to criminal history record checks executed in  
17 accordance with section 378-2.5 and drug screening  
18 executed in accordance with chapter 329B; and



1       (4) May retain less than one hundred per cent of incumbent  
2       employees if:

3       (A) The business of the successor employer is  
4       substantially dissimilar to the former employer's  
5       business; or

6       (B) The human resource needs of the successor  
7       employer are reduced, resulting in the reduction  
8       of employees needed;

9       provided that the number of employees to be dislocated  
10       shall be in direct proportion to the reduction in the  
11       total human resource needs of the successor employer.

12       For the purposes of this subsection, "covered  
13       establishment" means any industrial, commercial, or other  
14       business entity that employed one hundred or more persons at any  
15       time in the preceding twelve-month period.

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

18       (c) An employer found in violation of this section shall  
19       pay to compensate the dislocated worker for the difference  
20       between the employee's salary or wages earned under the  
21       employee's former employer and the dislocated employee's  
22       unemployment insurance benefits received for the covered period.



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

3            SECTION 2. This Act does not affect rights and duties that  
4 matured, penalties that were incurred, and proceedings that were  
5 begun, before its effective date.

6            SECTION 3. New statutory material is underscored.

7            SECTION 4. This Act shall take effect on July 1, 2009.



**Report Title:**

Employment; Worker Retention

**Description:**

Establishes job security requirements upon the divestiture of a covered establishment if the covered establishment employs 100 or more persons. (HB396 HD1)

