



**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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February 3, 2011

To: The Honorable Karl Rhoads, Chair
and Members of the House Committee on Labor and Public Employment, and

The Honorable Angus McKelvey, Chair
and Members of the House Committee on Economic Revitalization and Business

Date: Friday, February 4, 2011
Time: 9:00 a.m.
Place: House Conference Room 309, State Capitol

From: Dwight Takamine, Interim Director
Department of Labor and Industrial Relations

Re: H.B. 1166 Relating to Employment

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 1166 proposes to amend Chapter 349B of the Hawaii Revised Statutes (HRS) by requiring the retention of employees who would be displaced from an employer by divestiture through a transfer of a covered establishment to a new employer. The following requirements would apply to the new employer:

- A. Shall hire all incumbent nonsupervisory and non-confidential employees;
- B. Shall not require such employees to file employment applications with the successor employer to be considered for hire unless the existing files are incomplete;
- C. May conduct pre-hire screening of the employees not prohibited by law, including criminal history record checks and drug screening;

- D. May retain less than one hundred percent of incumbent employees if:
- (1) the successor employer is substantially dissimilar to the former employer's business; or
 - (2) the human resource needs of the successor employer are reduced, resulting in the reduction of employees needed, provided that the number of employees to be dislocated shall be in direct proportion to the reduction in the total human resource needs of the successor employer; and
- E. If in violation, shall compensate the dislocated worker the difference between the employee's salary or wage earned under the employee's former employer and the dislocated employee's unemployment insurance benefits received for the covered period.

For the purposes of this bill, a "covered establishment" means any industrial, commercial or other business entity that employed fifty or more persons at any time in the preceding twelve-month period.

II. CURRENT LAW

Chapter 394B, HRS, provides employment and training assistance for workers who are faced with termination due to a closing, divestiture, partial closing or relocation as a result of a sale, transfer, merger, bankruptcy or other business transactions by:

- A. Requiring employers with fifty or more employees in the State of Hawaii to provide advance notification to the Department of Labor and Industrial Relations and to all affected employees;
- B. Requiring employers to provide Dislocated Worker Allowance (the difference between the employee's average weekly wage and the weekly unemployment compensation benefit) to affected employees who apply for and are found eligible for unemployment compensation;
- C. Allowing employers in violation to be liable to each affected worker an amount equal to back pay and benefits for the period of violation, not to exceed sixty days. The liability may be reduced by any wages the employer pays during the notice period and voluntary and unconditional payment not required by a legal obligation; and

- D. The definition of a “divestiture” is the transfer of any covered establishment from one employer to another because of the sale, transfer, merger, bankruptcy or other business takeover or transaction of business interests that causes the covered establishment’s employees to become dislocated workers.

III. HOUSE BILL

The Department of Labor and Industrial Relations supports the intent of this bill, however, we respectfully ask the Committee to consider the following comments:

- A. To implement the bill, if enacted, clarification is requested in the following areas:

- The bill allows for less than 100% retention of employees if the human resource needs of the successor employer are reduced, provided that the reduction is in “direct proportion” to the reduction in total human resource needs of the successor employer. Does the reduction apply to the combined workforce of the successor employer and original employer, or just to the original employer?

For example, if the original employer has a staff of 100, and the successor employer has a staff of 20 that could work at the acquired business (for a combined workforce of 120), but the business requires a staff of only 100, does the reduction apply only to the incumbent workers, or does it apply in equal proportion (20%) to both workforces?

- If the successor employer has different standards for their employees than the prior employer, will the successor employer have any means to apply those standards to the incumbent workers prior to acquiring them?
- Is there a deadline following the divestiture after which release of employees is no longer covered by this bill? For example, if the incumbent employees are released two months after the divestiture, is that a violation? Is it a violation if it occurs one week after the divestiture?
- If the employer is found in violation, he is responsible for compensation to affected workers for the covered period. The dates and duration of a covered period are not stated in the bill. The current law requires the payment of a “dislocated worker allowance” should a worker becomes

unemployed as a result of a closing. Is the successor employer required to pay both compensations, or is the compensation in the bill referring to the payments for dislocated worker allowances?

- B. The Department would be required to develop rules and respond to public inquiries to carry out the purposes of this law for which additional State funds would be necessary.



Representative Karl Rhoads, Chair
Representative Kyle Yamashita, Vice Chair
Committee on Labor & Public Employment

Representative Angus McKelvey, Chair
Representative Isaac Choy, Vice Chair
Committee on Economic Revitalization & Business

State Capitol, Honolulu, Hawaii 96813

HEARING Friday, February 04, 2011
 9:00 am
 Conference Room 309

RE: HB1166. Relating to Employment

Chairs Rhoads and McKelvey, Vice Chairs Yamashita and Choy, and Members of the Committees:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. The retail industry is the one of the largest single employers in the state, employing almost 24% of the labor force.

RMH strongly opposes HB1166, which establishes job security requirements upon the divestiture of a covered establishment if the covered establishment employs 50 or more persons.

This bill is an infringement on the basic rights of ownership that seriously impacts the value of a business and the ability of an owner to divest that business operation. It further discourages investment in Hawaii by severely restricting the options for potential new owners by dissuading any development and/or diversification possibilities.

At a time when Hawaii should be encouraging new enterprise in our state to accelerate economic recovery, this bill is a giant step in the opposite direction and could have the undesirable result of more companies just closing their doors for lack of viable alternatives.

The members of the Retail Merchants of Hawaii respectfully request that you hold HB1166. Thank you for your consideration and for the opportunity to comment on this measure.


Carol Pregill, President

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The Twenty-Sixth Legislature, State of Hawaii
House of Representatives
Committee on Labor and Public Employment
&
Committee on Economic Revitalization and Business

Testimony by
Hawaii State AFL-CIO
February 4, 2011

H.B. 1166 – RELATING TO EMPLOYMENT

The Hawaii State AFL-CIO strongly supports H.B. 1166 which establishes job security requirements upon the divestiture of a covered establishment if the covered establishment employs 50 or more persons.

It is not in Hawaii's best interest to potentially increase unemployment in today's unstable economy through the divestiture of business entities with no assurance of continued employment for its workers.

H.B. 1166 will help change the mind set of lower consumer confidence by providing additional comfort to those worried tomorrow may be their last day of work in the event of a divestiture.

H.B. 1166 will help retain jobs ensuring workers' lives are not disrupted and their families remain secure. Having a healthy, qualified workforce and lower unemployment is a win-win for everyone. Businesses perform better, consumers are more content and the family remains intact. While it is impossible to prevent all job losses, it is possible to help prevent some of them. H.B. 1166 does just that.

We hope the two committees recognize the importance of worker retention and pass H.B. 1166 out favorably.

Thank you for the opportunity to testify.

Respectfully submitted,

Randy Perreira
President